GALLERY VIE VARIATION EXPLANATION

By John Punch, Partner SP&G Lawyers

No matter how well we consider and plan for eventualities, we can also expect that something will occur to be a “disrupter” – particularly when you least expect it to happen.

This occurs in the law especially when a decision of a Court or Tribunal suddenly comes out of unusual circumstances, with an unexpected interpretation of the law, as it is written by the legislators.

This happened five years ago when the QCA Tribunal decided the case involving Suncorp and the Gallery Vie Body Corporate (commonly called the Gallery Vie Decision) which did not get tested by an appeal to an actual court of law. The result of the Tribunal was that doubt was cast on the security held by a bank over the Management Rights Agreements, as made by a Body Corporate. It concerned a Body Corporate’s right to terminate the Agreements if the Manager is a company and a liquidator is appointed, at a point and time after a Bank’s Receiver has already stepped in to conduct the business and is performing of the Agreements.

This case had a major impact on the banks who finance Management Rights.

Normally, when an unexpected interpretation or application through facts and law occurs, so as to upset the intent of the law (statute), the legislator will consider a small correction to the law and pass it through Parliament as soon as is possible. In this case, that did not happen with the Queensland Government, despite approaches from the Management Rights industry voice ARAMA.

So, lawyers assisting Management Right industry operators, such as my firm, have been indicating to operators of their Management Rights, how they can have a slight variation to the wording of the Agreements to make it safer for a bank to lend money. This entails lot owners in the scheme, voting on a Motion which is, presented to owners, as an Ordinary Resolution, but by secret ballot, at an Annual General Meeting (or, if urgent, at an Extraordinary General Meeting).

This should be easy enough to achieve as a reasonable path for all involved. However, more recently another “disrupter” has eventuated, in the form of some legal advisers to a Body Corporate. They indicate a need to have sometimes expensive legal representation, give advice to the Body Corporate, with a request to the Manager to pay for it, of course.

It is amazing how this interpretation, was never considered or anticipated to be an issue between 1997 and 2015, in so far as applying the Act was concerned, but now becomes a matter for caution and debate from legal advisers!

At SP&G Lawyers, we have been saying to all Managers, since the decision in 2015, don’t delay in seeking a Motion to vary at your next AGM, if the wording of your Agreement needs it. Surprisingly, many still have not. This presents a difficulty to their financier or to any Buyer contemplating buying with finance. It will disrupt the sale process at a time when a Manager wants everything to go smoothly for a Sale.

Recently, I assisted a Manager with an “easy to understand” explanation, which the Manager can send to all owners. It tackles the need for the Manager to be able to seek assistance and cooperation from all owners for their vote, by a mail out to all owners. Provided there is not a disruption caused by a negative committee, committee person or a legal advisor, there should really be no reason for an owner not to vote in favour of the Motion, so as to bring the standing of the Agreement back to the pre-2015 Decision days.

Should you require any guidance, please contact **John Punch** on 55382277.