



PROPERTY BULLETIN

This is an interesting case ...

We have all seen special conditions in contracts allowing rescission if a party becomes mentally ill.

In December 2009 the Supreme Court of New South Wales considered the meaning of becoming “mentally ill” in relation to special condition in a Contract for the Sale of Land which may have allowed the purchaser to rescind the Contract.

In the case of *Brennan v O'Meara [2009] NSWSC 1374* the Supreme Court determined that the following two issues must be considered:

1. Did the plaintiff's mental illness create an impediment to the fulfilment of contractual obligations?
2. Did the plaintiff become mentally ill after exchange and prior to completion?

In this case the Court decided that the purchaser's mental illness, which was pre-existing, did not impede his ability to fulfil the contract and that he did not “become” mentally ill prior to completion.

What this means for you

Special Conditions often refer to a right to rescind if a party becomes mentally ill but a party may not be able to exercise that right if:

1. If a client has an existing mental illness;
2. the mental illness did not develop in the time period between exchange and completion of the contract;
3. The mental illness did not prevent the fulfilment of contractual obligations.

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