

CONTRACT FOR PLANS AND SPECIFICATIONS = MAJOR DOMESTIC BUILDING CONTRACT

The Victorian Supreme Court has recently determined that the provisions of Section 31 of the Domestic Building Contracts Act (DBCA), with modification, must be included in an agreement to prepare plans and specifications for domestic residential works (and not just contracts for the construction of works).

The case of the Director of Consumer Affairs Victoria v Glenvill Pty Ltd concerned an agreement between Glenvill and Kirpal Kaur and Rabi Kumar (Owners) whereby Glenvill agreed to carry out certain preliminary work for the commencement of a new Glenvill home. The agreement to carry out the preliminary works required Glenvill to undertake or arrange for full working drawings, details and design to construct the home, structural engineering computations, design drawings, building approval, town planning approval sewer drainage information, water tapping approvals, colour consultancy selection, documentation and supervision for the completion of the above items. The price for the works in the agreement was \$20,333.00. A building contract was to follow subsequently.

The issue at hand was whether the agreement was a "major domestic building contract" for the purposes of the DBCA. The DBCA provides that a person must not enter into a major domestic building contract unless the contract complies with the requirements of Section 31(1) (a) to (s). These provisions include a contract in writing which sets out full details of the contract, a description of the work, registration number of the builder, starting and finishing dates, contract price, a five day cooling off period, warranties required by the DBCA and a checklist in the form approved by the Director of Consumer Affairs.

The Court held that the agreement did in fact constitute a major domestic building contract under the Act and that Section 31 provisions did apply. Mr. Justice Kaye found that:

1. The term "domestic building contract" is defined to mean a "contract to carry out or manage the carrying out of domestic building work".
2. Domestic building work is defined to include the construction of a home and any associated work including landscaping, paving, swimming pools, garages, the renovation, extension, improvement or repair of a home and any site work related to these items. The definition also includes the preparation of plans and specifications for carrying out of these works.
3. A contract to prepare plans or specifications is domestic building contract.

4. As the price for the contract exceeds \$5000, the contract is a major domestic building contract which attracts the operation of section 31 of the DBCA (with modification).

CONSEQUENCES

The decision means that developers, contractors and those who enter to contracts to prepare plans and specifications for domestic building works (which will include high rise apartments) as a preliminary step to entering into a building contract will need to be mindful of Section 31 and the requirements that must be included in any such contract otherwise they may find themselves in breach of the DBCA and thereby subject to prosecution in addition to having invalid contracts. Architects who prepare plans and specifications are personally exempt by Section 6(e) of the DBCA however this does not apply to companies or firms who may prepare plans and specifications within their building or development businesses.

Any contracts that you have for the preparation of plans and specifications prior to entering into a building contract should be reviewed for compliance with the DBCA.

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