

COOGEE ESPLANADE SURF MOTEL PTY LTD V COMMONWEALTH (1976) 50 ALR 363

Court of Appeal (New South Wales) – 16 March 1976

FACTS

Commonwealth government department had agreed in principle to purchase the Coogee Beach Motel for a fixed price. As the relevant officer from the Commonwealth was aware that the Vendor was being pressed by its creditors, he agreed to send a conclusive letter of intent to the Vendor which could be shown to the Vendor's creditors prior to a formal exchange of contracts.

The letter was sent and stated that the purchase of the motel had been approved and also outlined the Commonwealth's intention to proceed to purchase the motel and to complete the transaction. After a change of government, the Commonwealth decided not to proceed with the purchase of the motel.

ISSUES

Should the Court grant the application by Coogee for specific performance of the agreement for the sale of the motel?

FINDING

The letter of intent from the Commonwealth envisaged that the agreement between the parties was not a binding contract.

There would only be a contract when formal documents were exchanged between the parties.

QUOTE

Moffit P said:

“Neither in the telephone conversation of 4 June, nor the letter of 6 June, was it said that the Commonwealth agreed to purchase or certainly not to purchase upon the terms of the draft contract and inventories only just received” – page 369-370 of (1976) 50 ALR 363

“The reference to a ‘letter of intent’ is quite against Mr Timbs [the Commonwealth officer] then promising, on behalf of the Government, to buy the land ... The need to provide a letter of intent, i.e. unilateral contract, is inconsistent with there being then a contract to buy.” – page 371 of (1976) 50 ALR 363.

IMPACT

The court's finding shows that letters of intent should not be read as proof that a legally binding contract exists between the parties.

A legally binding contract will only exist if both parties agree to be legally bound.