



DOCTOR lost \$1 million dollars in legal fees. Salesmen, be aware....

This is the case of **Tan & Lo v Russell** (2016).

This is a Victorian case and it can also happen to NSW and will have the same implication.

The plaintiffs are Doctors, they were sued for the financial losses suffered through breach of contracts. You would think that they are very smart as they are professionally capable and have higher intelligence than average person.

After several days of negotiation, the contracts were exchanged for \$4.48 million dollars. The purchasers and the vendor had entered into a contract of sale of land at 43 Erin Street, Richmond in Victoria.

Buyers sought to exercise their cooling off rights by emailing their notice of rescission to the vendor's estate agent within the 3 business day period as allowed under the contract of sale and demand the return of deposit.

"We have decided to excise the cooling off with immediate effect. That is, we are withdrawing from this tentative Contract of Sale as allowed by law

Thanks

Regards

Eng K Tan"

Buyer also texted the agent, left a voice mail and made a call but no answer.

The agent denied that he has received any of the above.

The vendor then accused the buyers that they have breached the agreement and were given 14 days to remedy the problem.

Tan & Lo the buyers, think they did not breach any contract because they believed that it has been rescinded.

After the 14 days has lapsed, the vendor terminated the contract.

This matter went to the Supreme Court.

Both sides hired the best legal minds in Australia.

It all came down to; does the real estate agent have the authority or duty to receive the Notice of Rescission?



"The prisons are all full, so I'm going to knock some sense into you!" The Court's decision is that purchasers had not validly terminated the contract of sale. The trial judge agreed that S31 Act **did not authorise** the vendor's real estate agent to receive the notice of termination.

Judge Cameron said;

The duty of the salesman is to find buyers and not receive the Notice of Rescission.

Therefore, Tan & Lo lost the case and more than \$1 million.

SMART TIP

This is a new rule.

If you are a sales agent and you receive a notice of rescission, you should call the purchaser's conveyancer to fax another rescission notice to the vendor's conveyancer. You should also contact the vendor and purchaser to make sure it was actually rescinded.



Note: This case has not ended. Tan & Lo is appealing to a higher court.

In the meantime, salesman and conveyancers should be careful when rescinding, Make sure that it is rescinded properly.

Issues: some purchases will not have appointed a conveyancer and would do the rescinding themselves.

The new contract of sale of land has not taken the above case into consideration.

In short, to be safe, make sure you fax and email to the vendor, the conveyancer and the real estate agent (at the same time). There is no harm in over doing it.

Who cares if people get annoy with you?

Better be safe than losing a million bucks.

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