

SUPREME COURT OF QUEENSLAND

CITATION: *Wentworth Equities No 2 Pty Ltd v Redstone Rockingham Marina Pty Ltd* [2026] QSC 248

PARTIES: **WENTWORTH EQUITIES NO 2 PTY LTD**
ACN 165 829 872
(plaintiff)
v
REDSTONE ROCKINGHAM MARINA PTY LIMITED
ACN 660 498 251
(first defendant)
ROBERT JOHN LEE PATTERSON
(second defendant)

FILE NO/S: BS 1865/25

DIVISION: Trial

PROCEEDING: Claim

ORIGINATING COURT: Supreme Court

DELIVERED ON: 16 October 2026

DELIVERED AT: Brisbane

HEARING DATE: 7, 8 and 16 October 2026

JUDGE: Freeburn J

ORDERS: **1. The second defendant pay to the plaintiff the amount of \$1,972,500 plus interest until today in the sum of \$239,034.57.**

2. I will hear the parties on costs.

CATCHWORDS: CONTRACTS – GENERAL CONTRACTUAL PRINCIPLES – CONSTRUCTION AND INTERPRETATION OF CONTRACTS – PENALTIES AND LIQUIDATED DAMAGES – where the plaintiff (as grantor), the first defendant (as grantee) and the second defendant (as guarantor) entered into a Pull and Call Option Agreement for the purchase of a property for \$39.5 million – where the first defendant was required to pay security in the sum of \$2,172,500 to the plaintiff over three instalments – where, by clause 7.3(c) of the Agreement, the security paid by the first defendant would be forfeited to the plaintiff if the plaintiff terminated the Agreement due to a breach of a material obligation by the first defendant – where the second defendant guaranteed the payment of security – where the first two security instalments were paid by the first defendant– where the parties subsequently varied the time for the last security payment of \$2,072,500 – where the first

defendant paid a further sum of \$100,000 – where the sum of \$1,972,500 was not paid – where the plaintiff terminated the Agreement following the breach and now seeks to recover the outstanding sum against the second defendant as guarantor – where the second defendant claims that clause 7.3(c) is void as a penalty – whether clause 7.3(c) of the Agreement is void or otherwise unenforceable against the second defendant

COMPETITION, FAIR TRADING AND CONSUMER PROTECTION LEGISLATION – CONSUMER PROTECTION – MISLEADING OR DECEPTIVE CONDUCT OR FALSE REPRESENTATIONS – MISLEADING OR DECEPTIVE CONDUCT GENERALLY – where the plaintiff (as grantor), the first defendant (as grantee) and the second defendant (as guarantor) entered into a Pull and Call Option Agreement for the purchase of a property for \$39.5 million – where the plaintiff terminated the Agreement, as varied, following the first defendant’s breach to make payment of security and now seeks to recover the outstanding amount of \$1,972,500 against the second defendant as guarantor – where the second defendant alleges that a representative of the plaintiff made misleading or deceptive representations to him on two occasions – where those representations are pleaded as vague and imprecise discussions – whether the alleged representations were made by the plaintiff to the second defendant

Competition and Consumer Act 2010 (Cth), sch 2, s 18

Ashdown v Kirk [1999] 2 Qd R 1, cited

Paciocco v Australia and New Zealand Banking Group Ltd (2016) 258 CLR 525; [2016] HCA 28, cited

COUNSEL: R W Tooth for the plaintiff
The second defendant was self-represented

SOLICITORS: Mahoneys for the plaintiff
The second defendant was self-represented

[1] The plaintiff, Wentworth Equities No 2 Pty Ltd, sues the second defendant, Mr Patterson, as guarantor of the obligations of the first defendant, Redstone Rockingham Marina Pty Limited, under a Put and Call Option Agreement dated 20 December 2024 (**the Agreement**).

[2] Wentworth has already obtained default judgment against Redstone.

The Agreement

[3] The Agreement is a relatively simple document. The subject of the Agreement was a valuable property at 19 Hercules Street, Hamilton. There are two constituent elements to the Agreement.

[4] *First*, clause 2.1 provided that, in return for Redstone agreeing to pay the Call Option Fee of \$1 to Wentworth, Wentworth agreed to grant to Redstone an option to purchase the property on the terms set out in the REIQ contract attached to the Agreement. That agreement specified a purchase price of \$39.5 million.

[5] Clause 2.2 provided that:

The Call Option constitutes an irrevocable offer by [Wentworth] to enter into a binding agreement for the sale of the Property to [Redstone] or the Nominee on the terms of the [attached REIQ] Sale Contract which, if accepted, must be accepted during the Call Option Period in accordance with the provisions of this Agreement, otherwise the Call Option will lapse.

[6] The ‘Call Option Period’ was defined as the period starting on 20 December 2024 and finishing at 5:00 pm on 1 September 2025.

[7] The mechanics of the exercise of the Call Option were specified in clause 3 and the ability for Redstone to appoint a nominee to purchase the property was specified in clause 4.

[8] *Second*, clause 5.1 was a reciprocal Put Option. That clause specified that, in consideration of Wentworth agreeing to pay the Put Option Fee of \$1 to Redstone, Redstone granted to Wentworth an option to require Redstone to purchase the Property at the Purchase Price of \$39.5 million and on the terms of the attached REIQ contract.

[9] For present purposes, an important provision is clause 7.1 which is as follows:

7.1 [Redstone] must pay the Security to [Wentworth] as follows:

- (a) the sum of \$10,000 on or before the Agreement Date (being 20 December 2024);
- (b) the sum of \$90,000 on or before 23 December 2024; and
- (c) the sum of \$2,072,500 on or before 31 January 2025.

[10] Clause 7.3 prescribed the way in which that ‘Security’ sum was to be dealt with, namely that:

- (a) on the exercise of the Call Option or the Put Option, the Security was to be applied towards the deposit payable under the sale contract and was to be credited towards and form part of the purchase price under the sale contract; or
- (b) the Security was to be refunded to Redstone in the event that:
 - (i) Wentworth failed to comply with any of its material obligations under the Agreement or the sale contract and, as a consequence of that default, Redstone terminated the Agreement or the sale contract; or
 - (ii) the Agreement ends for any other reason other than due to the Call Option nor the Put Option not being exercised or due to the breach by Redstone of a material obligation under the Agreement; and

- (c) the Security paid by Redstone was to be forfeited to Wentworth if Wentworth terminated the Agreement due to the breach of a material obligation under the Agreement by Redstone.
- [11] Further, clause 7.4 provided that if, on the day *after* expiry of the Put Option Period, neither the Call Option nor the Put Option had been exercised, then the Security could be retained in full by Wentworth.
- [12] Clause 9.1 provided that Redstone would be in default if it did not provide the Security when required, or if it suffered an Insolvency Event or failed to comply with any of its material obligations under the Agreement. Clause 9.2 gave Wentworth a right to terminate if it did not provide the Security when required.
- [13] Time was specified to be of the essence of the Agreement.¹
- [14] Redstone was responsible for and was obliged to pay all Outgoings from 1 March 2025.²
- [15] Clause 20.1 of the Agreement provided as follows:
- 20.1 The Parties acknowledge that:
- (a) this Agreement and its annexures comprise the whole of the agreement between the Parties in relation to the subject matter of it; and
 - (b) no further or other covenants are implied or arise between the Parties by way of collateral or other agreement or by reason of any alleged promise, representation, warranty or undertaking given or made by either Party to the other on or before the execution of this Agreement and the existence of any implied, collateral or other agreement is negated.
- [16] By clause 22.1, Mr Patterson guaranteed the payment of the Security in accordance with clause 7.1 of the Agreement.

The Dispute

- [17] Clause 7 is the focus of the dispute. The first two payments of 'Security' were made in accordance with the Agreement. Under clause 7.1(c), the sum of \$2,072,500 was due to be paid by Redstone on or before 31 January 2025.
- [18] On or about 6 March 2025, the parties agreed to vary the time for payment of that last Security instalment of \$2,072,500 so that \$100,000 was to be paid on or before 10 March 2025 and the balance of \$1,972,500 was to be paid by 7 April 2025. It was agreed that time was to remain of the essence and all other terms of the Agreement remained in force and unchanged.
- [19] The sum of \$100,000 was paid in accordance with the Agreement, as varied. The sum of \$1,972,500 was not paid.

¹ Clause 11.1 of the Agreement.

² Clause 12.2 of the Agreement.

- [20] On 8 April 2025, Wentworth terminated the Agreement by reason of the breach.
- [21] Pursuant to clause 7.3(c) of the Agreement, that part of the Security paid by Redstone (a total of \$200,000) was forfeited to Wentworth because Wentworth terminated the Agreement due to the breach by Redstone of a material obligation under the Agreement.
- [22] Pursuant to clause 22.1 Mr Patterson guaranteed the payments of the Security in accordance with clause 7.1. Under clause 23, the guarantee was not affected by any alteration or variation of the parties' rights under the Agreement.
- [23] Thus, subject to the two issues considered below, Mr Patterson is liable to Wentworth for the balance of the Security in the sum of \$1,972,500.

The Issues

- [24] Two issues are raised by the pleadings.³ The *first* is an allegation by Mr Patterson that clause 7.3(c) is void as a penalty. The *second* is that Mr Slavin, a representative of Wentworth, made false or misleading representations to Mr Patterson.
- [25] Both issues are considered in turn.

Is Clause 7.3(c) a Penalty?

- [26] Paragraph 27 of Mr Patterson's defence is as follows:

27. Further or alternatively, subclause 7.3(c) of the Agreement is void or otherwise unenforceable against [Redstone] and [Mr Patterson] as constituting a penalty.

Particulars

- (i) Subclause 7.3(c) provides for the forfeiture of the whole of the Security under the Agreement in the event that [Wentworth] terminates the Agreement following a material breach by [Redstone]. On the proper construction of the subclause, therefore, it constitutes a secondary or collateral stipulation *in terrorem* of the principal obligations of [Redstone] under the Agreement.
- (ii) The forfeiture of the Security under subclause 7.3(c) is expressed to apply regardless of the duration of the Agreement, the reason(s) for the termination of [Wentworth] (other than for material breach) and/or any nexus between the breach and any loss or damage sustained by [Wentworth].
- (iii) The quantum of the forfeiture does not reflect any genuine pre-estimate of the loss or damage which could

³ The pleadings were filed and served at a time when Mr Patterson was legally represented in the proceeding.

or would be suffered by [Wentworth] in the event of termination for a material breach.

- [27] There is a problem with Mr Patterson's claim that paragraph 7.3(c) is a penalty. That problem can be explained by quoting paragraph 7.3(c):

7.3 The Security will be dealt with as follows:

[...]

- (c) the Security **paid** by [Redstone] will be forfeited to [Wentworth] if [Wentworth] terminates this Agreement due to the breach by [Redstone] of a material obligation under this Agreement. [emphasis added]

- [28] The purpose of clause 7.3(c) is to specify that any sums *paid* by Redstone by way of Security are to be forfeited to Wentworth. That forfeiture is of any sums that have been paid.
- [29] Those parts of the Security that have *not* been paid are not comprehended by clause 7.3(c). Instead, for the unpaid portions of the Security, clause 7.1 (as varied) specifies that Redstone is obliged to pay those sums and clause 22.1 specifies that Mr Patterson guarantees those payments by Redstone. That is the nature of the claim made against Mr Patterson.
- [30] Of course, it is basic contract law that the accrued rights of the parties remain enforceable after termination, including a plaintiff's accrued right to recover a sum liquidated (fixed) by the contract.⁴ Redstone was obliged to pay all three portions of the Security, and Mr Patterson guaranteed those payments. Under the Agreement, as varied, Wentworth's right to the balance of \$1,972,500 accrued on 7 April 2025. The termination by Wentworth on the following day had no effect of that accrued right.⁵ And it had no effect on Mr Patterson's guarantee of that obligation.
- [31] It follows that Mr Patterson's claim that clause 7.3(c) is a penalty is misconceived. Wentworth's claim does not depend on clause 7.3(c). Even if the court were persuaded that clause 7.3(c) was void as a penalty, Wentworth's claim under Mr Patterson's guarantee of clause 7.1 would continue to bind the parties.

Do the clauses otherwise operate as a Penalty?

- [32] Whilst it is called a Security, the Security to be paid pursuant to the Agreement was a deposit.⁶ On the proper interpretation of the Agreement, that is the character of the Security. The treatment of the Security in clause 7.3 makes that clear.⁷

⁴ See *Halsbury's Laws of Australia*, LexisNexis, at [110-9545] and [110-11555]-[110-11605].

⁵ Assuming that the deposit is not paid, but the plaintiff subsequently terminates the performance of the contract for breach or repudiation on the part of the defendant, the deposit is recoverable as a liquidated sum due for payment prior to termination and recoverable afterwards on the basis of an accrued right: *Halsbury* (supra) at [110-11605] citing (inter alia) *Farrant v Leburn* [1970] WAR 179 and *Ashdown v Kirk* [1999] 2 Qd R 1 at 8.

⁶ A payment due at the time of entry into the contract, but not described as a deposit, will not be regarded as a deposit unless the proper interpretation of the contract shows that that was the nature of the payment: *Coates v Sarich* [1964] WAR 2 at 15.

⁷ Clause 7.3 provides for the Security to operate as a part payment and for forfeiture in the event of a breach.

- [33] And so, the Security is properly regarded as a deposit. The amount of the deposit represents about 5.5% of the proposed purchase price of \$39.5 million. Those two features make the remarks of McPherson JA in *Ashdown v Kirk* relevant:

...A deposit is considered an “earnest” of the bargain or its performance (*Brien v. Dwyer* (1978) 141 C.L.R. 378, 385) that is designed to demonstrate the sincerity of the contracting party who is to pay it. For that reason, **it is ordinarily beyond the reach of equitable relief against penalties or forfeiture, at least if it is not excessive or unconscionable in amount, of which in Queensland the equivalent of 10 per cent of the purchase moneys is ordinarily considered the upper limit:** *Freedom v. A.H.R. Constructions Pty Ltd* [1987] 1 Qd. R. 59. Since the purchase price was \$2.6 million, the deposit required under the contract was in this instance less than 10 per cent of that total. The fact that it was payable post-contractually in two amounts, rather than by a single sum on signing the contract, is uncommon in practice but certainly not unknown. It has been held to have the consequence of leaving the vendor with the right to recover the unpaid balance after terminating the contract.⁸ [emphasis added]

- [34] Even assuming that the amount of Security in this case was within the reach of equitable relief against penalties or forfeiture, Mr Patterson bears the evidentiary and persuasive onus of establishing that clause 7.1, by itself, or in combination with clause 7.3, operated as a penalty.⁹ In *Paciocco v Australia and New Zealand Banking Group Ltd* Keane J observed:

Given the importance of the values of commercial certainty and freedom of contract in the law, the courts will not lightly invalidate a contractual provision for an agreed payment on the ground that it has the character of a punishment.¹⁰

- [35] Here, the parties entered into an option agreement to purchase a valuable property. The proposed purchase price was \$39.5 million. There is no evidence that discharges the burden of showing that the Security was excessive or unreasonable or extravagant.
- [36] In his oral submissions, Mr Patterson argued that the forfeiture of the deposit did operate to give to Wentworth a sum out of all proportion to any possible loss that might be suffered by Wentworth. I do not accept that submission. There is no evidence that supports the submission. And, it is common sense that, if a property worth \$39.5 million is taken off the market for about 9 months,¹¹ there may be substantial movements in the market or there may be lost opportunities to sell at a higher price.

⁸ [1999] 2 Qd R 1 at 8.

⁹ *QNI Resources Pty Ltd v North Queensland Pipeline No 1 Pty Ltd* (2022) 11 QR 648 at [96] citing *Paciocco v Australia and New Zealand Banking Group Ltd* (2016) 258 CLR 525 at [167].

¹⁰ *Paciocco* (supra) at [220].

¹¹ The Agreement is dated 20 December 2024 and the expiry of the option period was 1 September 2025.

Representations?

- [37] Wentworth admits that Mr Simon Slavin was its representative and that the negotiations comprised Wentworth acting in trade or commerce within the meaning of section 18 of the *Australian Consumer Law*.

The First Alleged Representation

- [38] Mr Patterson's defence alleges representations on two occasions. The *first* is said to have occurred in mid to late 2024 at a property at 287 Pacific Highway, Crows Nest in Sydney. Mr Slavin, or interests associated with him, owned the Crows Nest property. This is the pleaded account of the first occasion:

27C. At the First Meeting. Mr Slavin and the second defendant relevantly spoke words to the following effect:

- a. Mr Slavin said that he was involved with the development of the property at which they met at 287 Pacific Highway Crows Nest NSW 2065 (the **Crows Nest Property**);
- b. Mr Slavin said that he was involved with the development of the Property as defined in the statement of claim (the **Hamilton Property**);
- c. Mr Slavin discussed the development potential of the Crows Nest Property and said he thought it would be a lucrative development;
- d. Mr Slavin said that he was having difficulty selling the Hamilton Property;
- e. Mr Slavin said that he needed to deal with the Hamilton Property before selling the Crows Nest Property;
- f. Mr Slavin said that he had received an offer for about \$80M to buy the Crows Nest Property;
- g. Mr Slavin said that if [Redstone] would purchase the Hamilton Property he would sell the Crows Nest Property to [Mr Patterson's business] for about \$80M.

- [39] There are a large number of problems with that conversation as a representation or as part of a representation, even assuming that the court were to accept that it occurred as pleaded:

- (a) the conversation is alleged to have occurred "*in mid to late 2024*"; Mr Patterson was unable to more precisely identify the conversation in either his pleading or in his evidence; if there was a conversation of significance that constituted a representation relied on by Mr Patterson, one would expect him to have a better grip on the detail;

- (b) the conversation is alleged to have involved real property worth, in total, about \$120 million and yet neither party appears to have considered that a document might be prepared recording what was proposed; that rather suggests that the parties did not arrive at a concluded agreement and that all that was happening was that there were discussions;¹²
- (c) the proposed sale of the Crows Nest Property appears to have been contingent on Redstone first purchasing the Hamilton Property; in other words, the sale of the Hamilton property was to occur *before* any deal was concluded regarding Crows Nest;¹³ in any event, that purchase did not proceed; and
- (d) the Crows Nest Property was to be purchased by an unknown business of Mr Patterson's, on a date that was not fixed, and on terms that were not identified and at a price of "*about \$80M*".

[40] Mr Patterson's evidence about the conversation was just as imprecise and vague. He merely referred to several conversations. Nowhere in his evidence did Mr Patterson say anything like 'Mr Slavin promised me this...'.

[41] For those reasons, it is hard to regard the conversation as anything other than two proposed property developers 'chewing the fat' about what they may do in the future. Certainly, there is nothing in the conduct of the parties that suggest that what they discussed was to affect their legal rights or the legal rights of their respective businesses.

The Second Alleged Representation

[42] The *second* pleaded conversation is no better. This conversation is said to have occurred in or around December 2024, but prior to the execution of the Agreement on 20 December 2024:

29. During the course of the Pre-Agreement Meeting, [Wentworth] (by its director, Mr Slavin) represented to [Mr Patterson] that:
 - a. Mr Slavin was in poor health;
 - b. Mr Slavin wished to have [Redstone] and [Mr Patterson] enter into the Agreement as a means of simplifying his affairs and to provide for his wife in the event his health continued to deteriorate;
 - c. in exchange for [Redstone] and [Mr Patterson] entering into the Agreement, Mr Slavin (either himself or through his associated entities) would offer [Mr Patterson] (either himself or through his associated entities) to acquire an interest in the development being undertaken at 287 Pacific Highway, Crows Nest NSW 2065, Crows Nest NSW (**Crows Nest Development**); and

¹² It is hard to imagine that the two men did not appreciate the need to overcome the 'statute of frauds' requirements.

¹³ The second group of representations appears to suggest the opposite – namely that contracts for Crows Nest would be exchanged before the Hamilton transaction proceeded (see below).

- d. Mr Slavin (either himself or through his associated entities) would invite or offer [Mr Patterson] (either himself or through his associated entities) opportunities to participate in other development ventures undertaken by Mr Slavin, [Wentworth] or their related entities in Sydney, NSW,
 - e. Mr Slavin said contracts would be exchanged in relation to the Crows Nest Development before paying the deposit under the agreement to purchase the Hamilton Property.
- (together, the **Pre-Agreement Meeting Representations**).

Particulars

- (i) The Pre-Agreement Meeting Representations were oral and made by Mr Slavin to [Mr Patterson] (by saying words to such effect) during the course of the Pre-Agreement Meeting.

- [43] Again, this pleaded version of the discussions prior to the Agreement is infected by vagueness and imprecision. Mr Slavin is said to have offered Mr Patterson an interest in the Crows Nest Development and yet the conversation did not descend to identify what interest Mr Patterson was to acquire, or the price, or the terms, or when the interest was to be transferred to Mr Patterson or his entity.
- [44] Mr Patterson's oral evidence did not supply any specific detail.
- [45] The vagueness here is a particular vice because it is alleged that Mr Slavin was to offer Mr Patterson, presumably at some time in the future, *unidentified* opportunities to participate, in an *unstated* way, in other *unidentified* development ventures undertaken by Mr Slavin.
- [46] It is possible that all of this is context for subparagraph e. above which asserts that Mr Slavin said contracts would be exchanged in relation to the Crows Nest Development *before* the deposit was paid under the agreement to purchase the Hamilton Property. Perhaps the idea that the pleader wanted to convey was that Mr Slavin was promising that the deposit need not be paid until after Crows Nest contracts were exchanged. But the pleading does not go that far. Mr Slavin is merely recorded as stating that one would occur before the other, not that one was dependant on the other.
- [47] The evidence was no better. Mr Patterson's evidence was exceedingly vague. He said he was told by Mr Slavin that the Crows Nest job would be forthcoming. He said that he and Mr Slavin were 'going to do a lot of things together'.
- [48] I readily accept that Mr Patterson and Mr Slavin discussed their next project, or projects. They may well have had plans. But no evidence establishes that the parties arrived at a concluded agreement in relation to those plans, or that any promises were made, or that the obligations in the Agreement were qualified or postponed or dependent on some other event occurring.

Lack of Evidence of the Representations

- [49] Importantly, Mr Patterson's lawyers and Wentworth's lawyers exchanged a number of communications, including the negotiation of an extension of time for the balance of the Security payment. Nowhere in that correspondence did Mr Patterson's lawyers mention that the payment of the Security was somehow dependent on the Crows Nest project. There is no document, email or text message that evidences any of those alleged discussions. Even Mr Patterson's first defence,¹⁴ prepared with the assistance of lawyers, did not mention the representations he now relies on.
- [50] In so far as the conversations might be alleged to have occurred before the parties entered into the Agreement – the 'entire agreement' clause¹⁵ records that the Agreement is the entire agreement and that there were no prior representations relied on.
- [51] In any event, I do not accept Mr Patterson's evidence that there was any discussion between him and Mr Slavin whereby Mr Slavin qualified, or postponed, or otherwise varied the obligations imposed by the Agreement.
- [52] In that respect, I prefer Mr Slavin's evidence to that of Mr Patterson. As I have explained, the particular problem with Mr Patterson's evidence was that his evidence mirrored the vagueness of his pleading.

Conclusions

- [53] In the circumstances, neither of the issues raised by Mr Patterson can succeed.
- [54] Judgment will be given for Wentworth.

¹⁴ Exhibit 3.

¹⁵ Clause 20.1 of the Agreement.