

SUPREME COURT OF QUEENSLAND

CITATION: *Fitch Resorts Pty Ltd (as trustee) v Kuk* [2026] QSC 255

PARTIES: **FITCH RESORTS PTY LTD ACN 606177011 AS
TRUSTEE FOR FITCH FAMILY RESORT TRUST**
(applicant)
v
PETER ZHE KUK AND CINDY KUK
(respondents)

FILE NO/S: BS 3674/26

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court of Queensland at Brisbane

DELIVERED ON: 23 October 2026

DELIVERED AT: Brisbane

HEARING DATE: 25 September 2026

JUDGE: Treston J

ORDER: **1. Pursuant to s 10 of the *Civil Proceedings Act 2011*, it be declared that:**

(a) the respondents were not entitled, pursuant to cl 12.10(2) of the contract for the sale of land dated 3 March 2026 between the applicant as seller and the respondents as buyers concerning the property situated at Apartment 3901, 5-19 Palm Avenue, Surfers Paradise, Queensland, more particularly described as Lot 297 on BUP 1064 73 and title reference 50193261 (Contract), to terminate the Contract.

(b) the respondents' purported termination of the Contract by notice dated 10 July 2026 was invalid and of no force or effect.

2. The respondents shall specifically perform the Contract.

3. Settlement of the Contract shall take place on 20 November 2026.

4. The respondents shall pay to the applicant contractual default interest pursuant to the Contract at the rate of 10.84% per annum on the unpaid balance of the

purchase price from 10 July 2026 until settlement of the Contract.

5. The respondents pay the applicant's costs of this proceeding on the standard basis.”

CATCHWORDS: EQUITY – EQUITABLE REMEDIES – SPECIFIC PERFORMANCE – GENERALLY – where applicant entered into a contract for the sale of real property on the Gold Coast with the respondents – where levies for the property increased subsequent to execution of the contract – where respondents purported to terminate contract for material prejudice arising from the increased body corporate levies pursuant to the contract – where material prejudice not established – whether specific performance should be ordered

CONTRACTS – GENERAL CONTRACTUAL PRINCIPLES – CONSTRUCTION AND INTERPRETATION OF CONTRACTS – where contract permits termination and a refund of the deposit by the respondents for “material prejudice” arising from a body corporate decision which is not disclosed in the contract or seller disclosure statement – where body corporate resolved to increase Administration, Sinking and Special Levies – where levies increased by approximately \$8,943.79 per annum after resolution, excluding special levies – where resolutions not provided by the applicant – where respondents considered outgoings important aspect of their acquisition of the property – where respondents’ financial position not laid clear in the evidence – whether “material hardship” caused by resolutions passed – whether failing to give the resolutions gave rise to a right to terminate the contract

Civil Proceedings Act 2011 (Qld), s 10

Burton v Palmer [1980] 2 NSWLR 878

Kay v Playup Australia Pty Ltd (2020) 19 BPR 40,037;
[2020] NSWCA 33

Lindaning Pty Ltd (Receivers and Managers Appointed) v Goodlock [2011] QSC 266

Malligan v Chevron Apartments Pty Ltd [2026] QSC 195

Mirvac Queensland Pty Ltd v Wilson [2010] QCA 322

Moussa v Eather [2026] QCA 45

Turner v Bladin (1951) 82 CLR 463, 473

Vennard v Delorain Pty Ltd [2010] QCA 309

COUNSEL: M Downes, for the applicant
P Kuk and C Kuk, self-represented

SOLICITORS: Stone Group Legal, for the applicant

- [1] The issue in this case is whether the respondents' purported termination of a contract for the purchase of a property at Surfers Paradise was valid or not. If the termination was not so valid, the applicant seeks orders *inter alia* for specific performance to compel the respondents to complete the sale.
- [2] The property in question is apartment number 3901 at 5-19 Palm Avenue, Surfers Paradise more particularly described as Lot 297 on BUP 106473, with Title Reference 50193261 (the **property**). The contract was entered into between the applicant as seller and the respondents as buyers on 3 March 2026. The purchase price was \$7.5 million, and the deposit, \$375,000. Settlement was due on 3 July 2026.
- [3] The contract was conditional on the respondents being "absolutely satisfied" with their due diligence inquiries within seven days of the date of contract. If they were not so satisfied, they were contractually entitled to terminate and have their deposit refunded in full (contract, special condition 8). After a short, agreed extension of time to 11 March 2026, the respondents' solicitors confirmed their satisfaction with their due diligence.
- [4] On 9 March 2026, during the due diligence process, the respondents were informed that increases to the administration fund, sinking fund and special levies were proposed for consideration at an Extraordinary General Meeting of the body corporate to be held on 25 March 2026 (the **EGM**). On that date, the respondents' body corporate search agent forwarded to the respondents' solicitor body corporate records including the minutes of committee meetings. The proposed EGM date and the proposed resolutions were a part of that bundle. The first respondent deposes in relation to the records that "[t]here were so many pages that it was too daunting to read." Neither of the respondents' read the contents of the records, but their solicitors did. The second respondent spoke by telephone to Ms Chai, the conveyancing clerk employed by the respondents' solicitors, on 9 March 2026, and she advised that there would be increased levies in the coming years but could not be certain how much they would be.
- [5] At the time that the respondents were advised by Ms Chai that the EGM was to consider raising those levies, they were in a position where they could have terminated and had their deposit refunded in full. They did not choose to terminate but rather chose to proceed.
- [6] In his affidavit, the first respondent deposes:
- "We did not seriously consider terminating the contract during the due diligence period. At the time, I thought that when Cindy and I owned the apartment we could attend body corporate meetings and have some influence on the amount of any levy increases."
- [7] How the first respondent thought that might be achieved when the EGM was to be held on 25 March 2026, long before settlement was due to take place, remained unclear throughout the proceeding.
- [8] The resolutions were duly passed at the EGM on 25 March 2026.

- [9] Before the resolutions were passed, the yearly administration fund was \$23,953.82 and the yearly sinking fund was \$3,996.10. In total, the contributions for the relevant lot were \$27,949.92 per year (before applying any applicable discount).
- [10] After the resolution was passed, the yearly administration fund was \$31,618.94 and the yearly sinking fund was \$5,274.77(before applying any applicable discount).
- [11] The comparative total contribution for the lot, post resolution, was therefore \$36,893.71, an increase of \$8,943.79 per year (approximately \$171 per week).
- [12] The applicant did not advise the respondents that the resolutions had passed.
- [13] The respondents each say that on 10 July 2026, the day before settlement, Ms Chai informed them that she had reviewed the body corporate records which showed that “significant increase in levies” had been implemented for the period commencing 1 June 2026. The respondents identify that this was the first occasion that they learned that “the levies had almost doubled”. That appears to have been a misunderstanding based on how the administrative fund contribution from 1 June 2026 to 30 September 2026 was increased. Rather, the levy records in the June quarter, an increase to \$15,649.74, and for the subsequent quarter, it lowering to \$10,540.64.
- [14] Relative to the 2025 June quarter alone which recorded \$7,585.39, it can be appreciated that this was, effectively, a doubling, but it was not the yearly effect.
- [15] On 11 July 2026, the date for settlement, the respondents purported to terminate the contract pursuant to cl 12.10 of the contract. That clause provides:

“12.10 Body Corporate Meetings

- (1) The Seller must promptly give the Buyer a copy of:
 - (a) any notice it receives of a proposed meeting of the Body Corporate and any Principal Body Corporate to be held after the Contract Date; and
 - (b) resolutions passed at that meeting and prior to settlement.
- (2) The Buyer may terminate this contract by notice in Writing to the Seller given before settlement if it is materially prejudiced by any resolution of the Body Corporate or Principal Body Corporate passed after the contract date other than a resolution, details which are disclosed to the Buyer in this contract or in the Seller Disclosure Statement.
- (3) In cl 12.10(2) a resolution includes a decision of the Body Corporate Committee to consent to recording a new community management statement.
- (4) If the Buyer is not given a copy of the resolutions before settlement, it may sue the Seller for damages.”

[16] The purported termination notice was provided at 3:42pm on 10 July 2026 and stated:

“...

5. Pursuant to clause 12.10 (2) of the contract the buyer may terminate this contract by notice in writing to the Seller before settlement if it is materially prejudiced by any resolution of the body corporate, unless the resolution was previously disclosed to the Buyer in this contract or the seller disclosure statement – the resolutions were **not** disclosed to our client in the Contract or in the seller disclosure statement. Accordingly, our client considers that the resolutions passed by the body corporate on 25 March 2026 is materially prejudicial to them as a result of the unexpectedly considerable increase in the said contributions.
6. Given the above, and pursuant to clause 12 .10 (2) we are instructed to terminate the contract.
7. The contract is now at an end. We require the full deposit refunded into our trust account forthwith.”

...

[17] In light of the respondents’ purported termination, the applicant opts to affirm the contract, and brings these proceedings consistent with cl 9 of the contract:

“9. PARTIES’ DEFAULT

9.1 Seller and Buyer May Affirm or Terminate

- (1) If the Seller or Buyer, as the case may be, fails to comply with an Essential Term, or makes a fundamental breach of an intermediate term, the Seller (in the case of the Buyer’s default) or the Buyer (in the case of the Seller’s default) may affirm or terminate this contract under this clause.
- (2) Clause 9.1 does not limit any other right or remedy of the parties including those under this Contract or any right at law or in equity.

9.2 If Seller Affirms

If the Seller affirms this contract under clause 9.1, it may sue the Buyer for:

- (1) damages;
- (2) specific performance; or
- (3) damages and specific performance.

... ”

Legal Principles

- [18] A vendor of land may have specific performance although its claim is for money.¹ There is "a general inclination" to grant it to a vendor, and a purchaser's agreement to submit to the remedy "is a material factor in deciding whether to withhold it".² Like in *Lindaning*, each of the parties have submitted to specific performance by cl 9.2.
- [19] Whether I would decline to order specific performance turned predominantly on whether the respondents had been "materially prejudiced" by the resolutions duly passed on 25 March 2026. What is meant by "materially prejudiced" has been the subject of previous consideration³ and both parties accept the principles are as follows.
- [20] First, the onus of establishing material prejudice rests on the buyer who so asserts the right to terminate.⁴
- [21] A buyer is materially prejudiced if disadvantaged "substantially" or "to an important extent"⁵ meaning "in a way which is substantial or of much consequence".⁶
- [22] The resolution of the question requires an objective assessment but must take into account the particular buyer's circumstances, and whether the disadvantage reaches the level to justify cancellation of the contract is to be decided "in accordance with community standards".⁷ A buyer's belief about whether the buyer is prejudiced is not ordinarily relevant.⁸
- [23] There must be a causal relationship, and proportionality, between the change and the prejudice.⁹ As such, it is necessary to look to the effect of the resolution as compared to the existing state of affairs contemplated by the contract and the seller disclosure statement.
- [24] Finally, a "dramatic" percentage increase does not, without more, establish material prejudice, and the broader context may be relevant to assess the significance of the increase in the context of the contract.¹⁰

The arguments and resolution

- [25] The respondents contend there are two parts to their defence of these proceedings.
- [26] The first argument centres around cl 12.10(1). The respondents submit that the seller did not provide to the buyer a copy of any notice which the seller had received of a

¹ *Turner v Bladin* (1951) 82 CLR 463, 473 (Williams, Fullagar and Kitto JJ).

² *Lindaning Pty Ltd (Receivers and Managers Appointed) v Goodlock* [2011] QSC 266, [7]-[8] (Byrne SJA).

³ *Mirvac Queensland Pty Ltd v Wilson* [2010] QCA 322, [58]-[59] (Jones J, with McMurdo P, Fraser JA concurring); *Vennard v Delorain Pty Ltd* [2010] QCA 309, [27] (Fraser JA, with de Jersey CJ and Philippides J concurring).

⁴ *Mirvac*, [45]; *Vennard*, [26].

⁵ *Mirvac*, [59].

⁶ *Vennard*, [27].

⁷ *Mirvac*, [50] (citing the primary judge at [32](a)), [59].

⁸ *Mirvac*, [55] and *Malligan v Chevron Apartments Pty Ltd* [2026] QSC 195, [61], [73] (Freeburn J).

⁹ *Mirvac*, [50] (citing the primary judge at [32](c)-(d)).

¹⁰ *Malligan*, [70], [75].

proposed meeting of the body corporate in accordance with subclause (a) and nor did it provide to the respondents a copy of resolutions passed at a body corporate meeting prior to settlement in accordance with subclause (b).

- [27] The applicant admits that it gave neither document but submits that the failure to do so does not in any respect affect the right of termination under cl 12.10(2). First, cl 12 is not a defined “essential term” within the meaning of cl 1.1(x) of the contract and therefore does not give rise to a right to terminate. Second, the applicant relies upon subclause 12.10(4) which provides that if the buyer is not given a copy of the resolutions before settlement, the buyer may sue the seller for damages but does not provide a right to terminate. In that way, there is no interdependency between the separate parts of cl 12.10. Rather, the respondents’ rights in respect of the applicant’s failure to provide the documents in 12.10(1)(a) and (b) are limited to a suit for damages. In contrast, a buyer has a right of termination if, upon becoming aware of any resolution passed that is not disclosed by the contract or the seller disclosure statement, the buyer is “materially prejudiced” by the resolution.
- [28] Whether terms within a contract are independent of each other or not depends upon the intention of the parties.¹¹ In ascertaining that intention, the more closely the obligations are linked to the rights, the easier it will be to construe the instrument as granting merely qualified rights. Relevant considerations include the express provisions of the contract in respect of interdependence, the extent of any connection between the obligations, whether the respective covenants go to the whole consideration, whether the breach of the obligation goes to the root of the contract or whether the breach may be compensated by damages.¹²
- [29] Here, I am satisfied that the failure to comply with cl 12.10(1)(a) and (b) does not, on the proper construction of the clause, give rise to a right to terminate. Expressly, it gave right to damages, but there is no such claim before me. Those clauses are independent of the right to terminate for material prejudice.
- [30] Next, although the applicant did not provide a copy of the proposed meeting of the body corporate in accordance with subclause 12(1)(a), I am satisfied that the respondents knew of the meeting in any event, and what was proposed to be considered. As I have detailed above at [4], the respondents had undertaken and received their own body corporate searches from their agent, Pentons, in the course of their due diligence enquiries; enjoying as they did, an unlimited right to terminate were they not satisfied. Amongst the documents which they obtained, was a notice that an increase to the administration fund levy had been defeated at an AGM on 12 December 2025 but an EGM was to be held on 25 March 2026 at which the increase to both the administration fund and the sinking fund, as well as a proposed special levy, were to be voted upon.
- [31] Knowing, as they did, that there was a risk that the resolutions would be passed and the administration and sinking funds increased along with a special levy imposed, and proceeding with the contract anyway, was a deliberate choice on the respondents’

¹¹ *Kay v Playup Australia Pty Ltd* (2020) 19 BPR 40,037; [2020] NSWCA 33, [62] (Brereton JA, Macfarlan JA and Simpson AJA concurring) citing *Burton v Palmer* [1980] 2 NSWLR 878, 89.

¹² *Moussa v Eather* [2026] QCA 45, [57] (Sullivan J, Mullins P and Henry J concurring).

behalf. The first respondent's submission before me that an increase of "even one dollar" would be material to them cannot be accepted in light of their knowing decision to proceed.

- [32] I am also satisfied that the respondents' solicitors had a copy of the resolutions which were passed at the EGM prior to settlement. The evidence of Mr Birch, solicitor for the applicant, is that he provided a settlement statement to the respondents' solicitors on 8 July 2026 at 9:59 am. The respondents' solicitors responded at 10:37 am that same day advising that they did not agree with the settlement calculations and providing their own draft settlement statement for review.
- [33] That draft settlement statement identified the increased amounts for both the administrative fund and the sinking fund levy, proving that by at least 8 July 2026, the respondents' solicitors had the resolution which had been passed at the EGM on 25 March 2026. The certificate itself detailing the increased amount of the administrative fund, sinking fund and special levy is dated 12 June 2026, and so I am prepared to infer that sometime between the date of the certificate and the morning of 8 July 2026, the respondents' solicitors had access to that certificate. At that stage, the respondents were still proposing to settle, and the increase in the administration fund and the sinking fund and proposed special levy had not been raised as a matter of any concern.
- [34] The second, and more substantive, argument is as to the asserted material prejudice.
- [35] The parties accept that the inquiry as to material prejudice is not purely mathematical. However, the respondents do not contend that the apartment's physical attributes were altered, or that the apartment became unsaleable. The respondents called no expert to opine that the value of the property prior to the resolution was adversely affected after the resolution had been passed. There is no evidence that the post resolution levies sat above the range expected for this class of property. Accordingly, notwithstanding that the enquiry is not purely mathematical, the maths still matters.
- [36] The respondents contend that when they started looking to buy a penthouse apartment on the Gold Coast, they considered a number of comparable penthouses and, I accept, they were motivated to understand their ongoing commitments in the form of outgoings.
- [37] The respondents identify that they are both retired and assert that they do not have regular employment income or day to day cash income. Nevertheless, they depose to owning several investment properties, subject to loans, such that their living expenses are primarily funded by rental income and investments in shares.
- [38] The respondents did not adduce any evidence such as taxation returns to evidence those statements nor to demonstrate the value of the investment properties which they owned, or the income earned from them. Therefore, whilst I can accept that they were motivated to understand the nature of their ongoing commitments to this purchase, I am unable to assess the asserted material prejudice to them by reference to any actual figures. Rather, their statements were mere assertions.
- [39] The respondents claim that their financial commitments have increased significantly due to their children's education, and by implication, the increase in the levies has adversely affected them. Their elder daughter moved to London to study in

September 2025 and the respondents contend that they currently spend over AUD \$200,000 per year on her education and living expenses. I infer this is an after-tax figure and that it was an obligation which preceded the contract date.

[40] The first named respondent asserts that their elder daughter is about to commence her second year of study and, after completing her undergraduate studies, intends to undertake further postgraduate study and eventually study in the United States. The first named respondent states that the funding of her university plans represents a significant ongoing financial commitment for the respondents in the coming years. Further, the respondents' younger daughter is currently in year 10 at school and hopes to study medicine and the cost of such degree is also substantial.

[41] The evidence in fact suggests that the respondents are financially comfortable, if not well off. In addition to the purchase of the property for \$7.5 million, the investment properties and the substantial \$200,000 per year support of a child living in London, in a message from the first named respondent to the real estate agent engaged in respect of the property, Mr Amir, on 17 March 2026, Mr Kuk asserted:

“ ... Before retiring, I served as a former Managing Director and Vice Chairman for the Asia-Pacific / Greater China region at HSBC and Bank of America. Even after retirement, my schedule remains demanding. I am currently managing investment sums totalling several billion US dollars, and because my daughter lives in London, we are also in the process of arranging the acquisition of a project in London valued at over one billion US dollars.

... The reason we were able to make a quick decision to purchase the \$7,500,000 apartment was precisely because we often need to fly between Europe and Hong Kong at short notice. We simply do not have the time to focus on minor details or narratives, nor are we particularly interested in them. ...”

[42] The first named respondent did not make any attempt to explain how, as a retired person, he had a role in the management of several billion US dollars, and what income (if any) he earned from those endeavours. If that sum (several billion US dollars) is his own money, or that of companies he controls, it is hard to imagine that a yearly increase in levies by \$8,943.79 would have any material prejudice upon his finances. If he manages that sum for another, or others, that is difficult to reconcile with his asserted “retirement”. Whatever the truth of the assertions in the email, the sum of \$8,943.79 seems more likely to fall within the category of a “minor detail” in which the respondents were not “particularly interested”, rather than a matter of material prejudice.

[43] In the absence of any evidence in terms of financial records, taxation returns or other evidence as to their income to demonstrate the effect the increase in levies has upon the respondents' financial position, I am not prepared to accept that they have discharged their onus of showing that they been materially prejudiced thereby. Rather, the evidence suggests that the respondents are wealthy investors who did not regard the increased levies as an impassable issue. Their assertions to the contrary are simply not established on the evidence.

[44] The respondents have not discharged their onus of establishing material prejudice.

[45] The respondents did not raise any other matters which would relieve them of an order for specific performance. There will be orders therefore as sought by the applicant as follows:

- “1. Pursuant to s 10 of the *Civil Proceedings Act 2011*, it be declared that:
 - (a) the respondents were not entitled, pursuant to clause 12.10(2) of the contract for the sale of land dated 3 March 2026 between the applicant as seller and the respondents as buyers concerning the property situated at Apartment 3901, 5-19 Palm Avenue, Surfers Paradise, Queensland, more particularly described as Lot 297 on BUP 1064 73 and title reference 50193261 (**Contract**), to terminate the Contract.
 - (b) the respondents’ purported termination of the Contract by notice dated 10 July 2026 was invalid and of no force or effect.
2. The respondents shall specifically perform the Contract.
3. Settlement of the Contract shall take place on 20 November 2026.
4. The respondents shall pay to the applicant contractual default interest pursuant to the Contract at the rate of 10.84% per annum on the unpaid balance of the purchase price from 10 July 2026 until settlement of the Contract.
5. The respondents pay the applicant's costs of this proceeding on the standard basis.”