



HIGH COURT OF AUSTRALIA

Public Information Officer

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TANWAR ENTERPRISES PTY LIMITED v JOSEPH CAUCHI, ANGELO CAUCHI, MARY CAUCHI AND JULIAN DALLEY

JOSEPH JOHN ROMANOS AND JOSEPH JOHN ROMANOS AS EXECUTOR OF THE ESTATE OF THE LATE TERESA ROMANOS v PENTAGOLD INVESTMENTS PTY LIMITED AND MAROON BROTHERS INVESTMENTS PTY LIMITED

The High Court of Australia today handed down two judgments in favour of property vendors who terminated contracts of sale after the purchasers failed to observe stipulations as to time for performance.

In the first case, Tanwar arranged to buy three parcels of land at Glenwood, near Blacktown in Sydney, from the Cauchis and Mr Dalley for a total purchase price of \$4.5 million. The vendors terminated the contracts on June 26, 2001, after Tanwar failed to complete the contract by 4pm the day before. Tanwar had still been arranging Singaporean finance which was finalised on June 26, but the vendors refused to proceed. Tanwar had paid a 10 per cent deposit, another \$397,473.40 towards the purchase price and \$80,000 in consideration of an earlier extension of time. A revised contract had stipulated that time was of the essence and that Tanwar would forfeit all money already paid if the sale was not completed on June 25, 2001.

In the second case, investment companies Pentagold and Maroon Brothers exchanged contracts with Joseph and Teresa Romanos for the sale of three adjoining parcels of land at Harris Park, near Parramatta in Sydney, for a total purchase price of \$1.875 million. The buyers planned to build 24 units and sought development approval from Parramatta Council. Time for completion was extended to March 1, 2001, and the buyers paid a total of \$50,000 towards the 10 per cent deposit. The balance of the deposit, \$137,500, was payable upon approval of the development application. The purchasers received notice of the approval on December 1, 2000. The vendors terminated the contracts on December 19.

In both cases, the purchasers sought specific performance of the contracts but their claims were rejected by Justice William Windeyer in the New South Wales Supreme Court. However, Justice Windeyer ordered the Romanoses to return the \$50,000 deposit. In the Tanwar case, the NSW Court of Appeal unanimously dismissed its appeal. In the Pentagold-Maroon Brothers case, a differently constituted Court of Appeal, by majority, allowed their appeal and dismissed a cross-appeal by the Romanoses. Tanwar and Joseph Romanos appealed to the High Court.

The High Court unanimously dismissed Tanwar's appeal and allowed the Romanos appeal. It held that the stipulations as to time were to be applied according to their terms. Of Tanwar, the Court held that there was no relevant breach of contract by the vendors and they exercised a contractual right to terminate the contract and had not acted unconscionably. In the Romanos case, the Court held that Justice Windeyer erred in ordering the return of the deposit where there was a lack of evidence that it was unjust for the Romanoses to retain the deposit. It ordered that the deposit be forfeited to Mr Romanos.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*