

## Agent Liable for a Buyer's "Imprudent Gamble"

Buyers who purchased off-the-plan properties in the belief that they would experience capital growth in the period between signing the contract and building completion (which often occurs years later) are sorely disappointed in the current housing market. This has led to a wave of purchasers trying to get out of the contract prior to settlement, claiming that the offer made to them by the agent was a misrepresentation.

A recent NSW Supreme Court case demonstrates that agents need to be extremely careful in their pre-contractual representations. They must check the wording of advertisements and other representations to ensure they are based on fact and there is a reasonable basis for making representations as to future values. If statements in relation to future values are made, then information to qualify those representations needs to be available to the purchaser.

### Case Study

In May 2003, the purchasers, Mr Zhang and Ms Liu read a newspaper advertisement for a property in Sydney. The advertisement, which had been written by the agent in English, and was translated into Mandarin by a third party, read in part that the property was located in an area "which is going to double in value in five years..."

Contracts were exchanged at the peak of the market in September 2003, however, by the time the contract was due to be settled in July 2005, the market had fallen substantially and the purchasers refused to complete the contract. The purchasers argued that the agent persuaded them to enter into the contract based on misrepresentations, and that they were entitled to avoid the contract on that basis.

### The Result

The court held that even though it was 'an imprudent gamble' for the purchasers to enter into a contract they could not afford to complete, that gamble was induced by misleading advertisements and encouraged by the agent. The purchasers had relied on the representations that had been made by the agent without reasonable grounds and were therefore entitled for the contract to be rescinded and the deposit returned.

The agent, acting as an agent of the developer, was found liable under section 52 of the *Trade Practices Act 1974* (Cth) for misleading and deceptive conduct.

Principals page is a regular newsletter for real estate Principals in which we look at issues that go to the heart of real estate agency management and practice.

msl has specialist litigators and commercial lawyers who act for real estate agencies in a range of matters including licensing, disciplinary and commission disputes and contractual issues.



---

### Practical Tips

- When advertising properties, ensure there is a reasonable basis for any representations regarding future matters.
- Future property values should be qualified with further information available for the purchaser.
- Be aware of what qualifies as misleading and deceptive misconduct.
- Agents may still be held liable for information that is translated into a foreign language.



---

For assistance with all your conveyancing needs, email us at [info@msslayers.com.au](mailto:info@msslayers.com.au) or visit our website [www.msslayers.com.au](http://www.msslayers.com.au). Alternatively, contact our professional team at our Gold Coast or Brisbane office.

**Gold Coast Office**

9 Ouyan Street  
Bundall QLD 4217

PO Box 9073 GCMC QLD 9726  
T +61 7 5597 8888  
F +61 7 5597 8899

**Brisbane Office**

Level 10, 410 Queen Street  
Brisbane QLD 4000

PO Box 3246 Brisbane QLD 4001  
T +61 7 3229 6099  
F +61 7 3226 9001