Cripps

Don’t get leisurely about your easements

A swimming pool, some timeshare apartments and a country estate – what could possibly go wrong?

If you are developing land, or currently own or occupy land that has the benefit of rights to use facilities, this article is for you.

The 2018 case of Regency Villas Title Ltd v Diamond Resorts (Europe) Ltd (and another) set a new precedent for when a right can be categorised as an easement. This is of significance because an easement attaches to land, so that as the land that benefits from the right changes hands, the subsequent owners will continue to be able to exercise the right.

Regency Villas concerned a country estate which originally included two large buildings and adjoining land. Part of the estate was sold in 1967 (Land A). The rest of the estate was retained by the original owner (Land B). On Land B there was a building containing apartments occupied by timeshare owners (Land B Timeshare Owners), together with a billiard room and a sauna in the basement. Outdoors there was a tennis court, swimming pool, gardens, golf course and squash courts.

In 1980 planning permission was obtained for the creation of 26 timeshare apartments on Land A. In 1981, there were two transfers of Land A and it was ultimately transferred to a trustee for the intended apartment timeshare owners (Land A Timeshare Owners). The first transfer (1981 Transfer) granted a right for the Land A Timeshare Owners to use the outdoor swimming pool, golf course, squash courts, tennis courts, the ground and basement floor of the building, the gardens and any other sporting or recreational facilities created on Land B. In about 2000, the outdoor swimming pool was filled in and an indoor swimming pool was constructed in the basement

of the building on Land B.

These facilities were also open to the general public, subject to payment.

To consider whether the rights could be established as easements meant turning to two of the existing well-established conditions that need to be satisfied in order for an easement to be created.

The first condition in question is whether the right is required for the use of Land A, in this case as timeshare apartments. The court held that the timeshare apartments would be occupied by individuals on holiday, who would typically involve themselves in recreational activities. The rights to use the leisure facilities on Land B was therefore of service to the Land A Timeshare Owners and this condition was met.

The second condition is that the right does not prevent the Land B Timeshare Owners enjoying or controlling Land B, and that the right does not impose on them an obligation to actively manage the facilities. It is this point that is most controversial. Given the nature of the facilities and the numerous people who are entitled to use them, it must be necessary for there to be active management. However, it was felt there should be some flexibility to accommodate new types of property ownership, such as through timeshares, and new ways of enjoying land and the court again found this condition was met.

As a result of the court's decision, the reality is that the Land B Timeshare Owners will now have to allow the Land A Timeshare Owners to use their facilities without any arrangements as to maintenance or management of the facilities.

What does this mean for developers, owners and occupiers in the future?

The main point to take away is that if rights are being granted between landowners, the parties should always make proper provision for:

1. maintenance of the land (and facilities) over which the rights are granted;
2. who will pay for this; and
3. how the existence of the rights could impact the use of land in the future.

To discuss further please contact our real estate team.

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