



PRE-PURCHASE INSPECTIONS – BUYERS BEWARE

No matter the size of the property being purchased from a small cottage to a mansion, it is prudent and common practice for buyers to obtain pre-purchase inspection reports before buying a property. However, a recent case in the Victorian Civil and Administrative Tribunal (VCAT) illustrates some potential limitations/issues that can arise with standard inspection reports.

Summary of Facts

The applicants had entered into a contract to buy a 100 year old timber house for \$172,000. At the time the house was sold, it was tenanted and heavily furnished.

The applicants engaged an expert to inspect the property and provide a pre-purchase inspection report. The expert was a registered builder and charged \$500 for the inspection and report.

Following settlement, the applicants discovered that the house was infested with termites and had structural problems. The applicants had engaged another builder to repair the house, but the builder's view was that the house was only fit for demolition.

The applicants sought damages of \$344,528 from the expert for the demolition of the old house and construction of a new house. Alternatively, they sought an order for the expert's company to repair the house to a fit and proper condition.

The applicants claimed that they had chosen the expert based on representations on the expert's company's website, and that they had bought the house in reliance of the inspection report.

The website made representations regarding the type of investigations which the expert undertook and highlighted the strengths over its competitors by using high level technology to inspect areas which were hard to access.

The report however, contained several qualifications and limitations which included that the report was based on a visual inspection, the house was tenanted and heavily furnished, the expert was unable to move the furniture and fixtures, the expert could not access certain parts of the property and had limited access to the perimeters of the rooms.

Decision

VCAT found that the representations on the website created the impression that the expert would provide a very detailed and comprehensive report however, the expert did not carry out his inspection by doing all the things shown on the website. Accordingly, VCAT found that the representations were misleading or deceptive in contravention of section 18 of the *Australian Consumer Law*. As the applicants had suffered loss and damage, they were entitled to a refund of the \$500 fee.

VCAT did however find that a reasonable person would not have relied on the website when buying the house because it was superseded by the inspection report.

VCAT also found that the expert:

- had conducted a visual inspection only;
- was not permitted to move the furniture or conduct an invasive inspection;
- had adequately identified the structural defects in the property and made it clear the expert was not inspecting areas he could not reasonably access.

Takeaway

It is common for buildings to be occupied and furnished when pest and building inspections are being undertaken. It is also common for standard pest and building inspection reports to be limited to visual inspections. Although from a buyer's perspective, a visual inspection is potentially unsatisfactory due to its limited nature; an invasive inspection is often unacceptable from a seller's perspective, as the property could easily be damaged by the cutting of floors or wall panels in order to inspect difficult to reach areas. As such, buyers need to be mindful of the limitations of inspection reports (and the disclaimers contained within them) when purchasing property.

Garrett v Elim House Pty Ltd (Building and Property) [2018] VCAT 1862

If you have any questions or require any advice in relation to property issues, please contact Peter Broun (Director) of Murfett Legal's property & real estate team.

For further information or assistance contact Murfett Legal on +61 8 9388 3100.

Author: [Peter Broun](#) (Director: Property & Real Estate)

Email: peter.broun@murfett.com.au

Murfett Legal is a leading law firm in WA, providing services in litigation, corporate and commercial, employment and workplace relations, insolvency, debt collection, business restructuring, Wills & estates, property, leasing, settlements, liquor licensing and intellectual property.