

THE STATE OF THE CIVIL LIST AT SOUTHPORT SINCE THE G.F.C.¹

by Judge C. F. Wall QC.²

Introduction

- [1] The civil list of the District Court at Southport is varied and consists of personal injury actions (both motor vehicle and master and servant), general property and contractual disputes between individuals and corporations, defamation, testators family maintenance, claims by the Deputy Commissioner of Taxation, claims by mortgagees suing in relation to default by mortgagors and appeals from the Magistrates Court involving child welfare, civil, criminal and traffic matters. The court also dealt with body corporate matters including adjustments to lot entitlements and defacto property settlements. These last two areas of work have, since the GFC but unrelated to it, gone to QCAT and the Family Court respectively.
- [2] The Global Financial Crisis hit between mid 2007 and 2008.
- [3] As at 30 June 2007 there were 607 active claims of various types on the Southport civil list. An active file is one where there has been activity on the file within the last 12 months. Active files do not include those where summary judgment has been granted or judgment in default of appearance has been entered.
- [4] As at 30 June 2014 there are about 297 active claims but most are not ready for trial. This number does not include matters currently listed for trial this year or another group of cases I will mention in a moment. Of the 297 matters, all were commenced in 2013 or 2014 except for 28 commenced in 2012 and 10 commenced in 2011. This suggests that the entire pre-GFC list of active matters has gone but has not been replaced by an equivalent number of active matters.

¹ This paper was presented to the Gold Coast District Law Association meeting at Southport on 16 July 2014

² Judge of the District Court, Planning and Environment Court and Childrens Court, Southport

- [5] General property and contractual disputes are the main casualty of the GFC. These have virtually disappeared from the callover list – i.e. the ready for trial list and only slowly make their way onto that list. Personal injury actions, defamation (often involving residents of high rise buildings), TFM’s and appeals from the Magistrates Court have continued.
- [6] Since the GFC a new category of case, mainly because of the number of such cases, has arisen and it is this that I want to emphasise in my talk this morning, particularly by reference to two buildings. This category is actions for damages against defaulting purchasers of high rise building units. These are not included in the 297 active matters as at 30 June 2014 but they do involve a substantial amount of court time.
- [7] As a result of the GFC prices of units (and houses) not only stopped increasing, they fell dramatically and many purchasers of units off-the-plan defaulted and initially sacrificed their deposits. The developers of Boulevard Tower and Orchid Tower (Elan Boulevard Pty Ltd and Orchid Avenue Pty Ltd respectively) went into liquidation. Orchid Tower houses the Hilton Hotel in Surfers Paradise and Boulevard Tower is next door. These companies have been taken over by the ANZ Bank and the defaulting purchasers are being sued for damages. The developer of the Soul building also in Surfers Paradise also went into liquidation. Proceedings in respect of Boulevard Tower and Orchid Tower are taking place in the District Court at Southport and those in respect of the Soul building in the Supreme Court at Brisbane.

Some background

- [8] Boulevard Tower has 32 storeys and 186 units.
- [9] Orchid Tower has 57 levels and houses the 169 room Hilton Hotel and 224 apartments. It has been said of this development that it “will go down in history as one of the worst loss making Gold Coast high rises for property investors, with virtually every initial off-the-plan apartment buyer losing money”.³

³ Alistair Walsh, Property Observer 21 August 2013

[10] Units in both buildings are being discounted 30-50% from their original contract prices. These percentages are consistent with valuations used in court proceedings.

[11] The Soul building developer was the Juniper Group. It is 77 storeys and 288 units. During 2006-2007 there were pre-sales of about \$425 million. Many buyers were unable or unwilling to settle.⁴

Effect on the Civil List at Southport

[12] Figures for the Southport District Court are

Orchid Tower

Claims: 53, all filed in 2012

Defences have been filed in 13, 10 of which also include a counterclaim. All defences allege misrepresentation by agents.

In 22 claims involving Orchid Tower, judgment in default of appearance has been entered. Damages have been assessed in 4 of those cases and also in one where summary judgment was entered for the plaintiff.

For overseas defendants service has occurred under the provisions of the Hague Convention on International Service and where there is no appearance default judgment has been entered under r 130K of the *Uniform Civil Procedure Rules* 1999.

2 claims are currently listed for trial later this year.

The defaulting purchasers are from the following countries:

China 31 (some are said to be generals in the PLA), Singapore 7, Russia 4, Australia 2 and one each from New Zealand, Netherlands, South Africa, Japan, United States of America, United Kingdom, Malaysia, Indonesia and Cyprus.

⁴ Smart Company, 25 October 2012

10 claims have been discontinued, 3 after defences and/or counterclaims had been filed and 7 after claim only. It is not possible to say why these claims were discontinued.

Boulevard Tower

Claims: 50 (19 filed in 2011, the balance in 2012)

Defences have been filed in 33 (27 include counterclaims). The basis for the defences is the same as for Orchid Tower. Most defences are by Australian purchasers.

In 10 claims involving Boulevard Tower, judgment in default of appearance has been entered. Damages have been assessed in 4 of those cases and also in one where the defendants entered an appearance but did not appear for trial and the plaintiff proved its case and damages by affidavit.

3 claims are currently listed for trial later this year.

The defaulting purchasers are from the following countries:

Australia 33, New Zealand 4, South Africa 3, Russia 3 and one each from China, Hong Kong, New Caledonia, Solomon Islands, Sweden and United Kingdom.

16 claims have been discontinued, 9 after defences were filed and 7 after defences and counterclaims were filed. It is also not possible to say why these claims were discontinued.

In the case of each of Orchid Tower and Boulevard Tower I was concerned as to whether a test case representative of others as well could be run with the result determining the result in the other cases, but on examination of the various defences and counterclaims there was no commonality of the representations relied upon or the agents involved. Some agents appeared in more than one case but the representations were different. For that reason each claim will have to be tried separately.

Damages assessed so far – both towers

1.	Date of assessment	13 July 2012
	Contract price and tower	\$830,000, BT
	Contract date	3 January 2008
	Purchaser from	New Zealand
	Deposit forfeited	\$83,000
	Market value of unit at June 2011	\$645,000
	Damages, including interest and fees	\$350,000
2.	Date of assessment	13 July 2012
	Contract price and tower	\$690,000, BT
	Contract date	26 November 2011
	Purchaser from	Queensland
	Deposit forfeited	\$69,000
	Market value of unit at February 2011	\$480,000
	Damages, including interest and fees	\$354,000
3.	Date of assessment	13 July 2012
	Contract price and tower	\$790,000, BT
	Contract date	21 December 2007
	Purchaser from	Gold Coast
	Deposit forfeited	\$79,000
	Market value of unit at January 2012	\$675,000 (re-sale)
	Damages, including interest and fees	\$319,000
4.	Date of assessment	9 November 2012
	Contract price and tower	\$1,144,450, OT
	Contract date	11 May 2010
	Purchaser from	China
	Deposit forfeited	\$114,445
	Market value of unit at September 2011	750,000
	Damages, including interest and fees	\$511,000
5.	Date of assessment	09 November 2012
	Contract price and tower	\$945,000, OT
	Contract date	5 February 2010
	Purchaser from	China
	Deposit forfeited	\$94,090
	Market value of unit at September 2011	\$615,000
		(late re-sale \$624,000)
	Damages, including interest and fees	\$417,000
6.	Date of assessment	24 May 2013
	Contract price and tower	\$1,025,000, BT
	Contract date	3 January 2008
	Purchaser from	New Zealand
	Deposit forfeited	\$102,500
	Market value of unit at April 2013	\$620,000
	Damages, including interest and fees	\$535,000

7.	Date of assessment	24 May 2013
	Contract price and tower	\$1,227,350, OT
	Contract date	25 June 2010
	Purchaser from	China
	Deposit forfeited	\$122,735
	Market value of unit at September 2011	\$755,000
	Damages, including interest and fees	\$690,000
8.	Date of assessment	21 June 2013
	Contract price and tower	\$1,125,000, OT
	Contract date	18 August 2008
	Purchaser from	Russia
	Deposit forfeited	\$112,500
	Market value of unit at December 2011	\$735,000 (re-sold in June 2013 for \$705,000)
	Damages, including interest and fees	\$643,000
9.	Date of assessment	17 February 2014
	Contract price and tower	\$870,000, BT
	Contract date	January 2008
	Purchaser from	China (NSW address for service)
	Deposit forfeited	\$87,000
	Market value of unit at April 2013	\$570,400 (re-sale)
	Damages, including interest and fees	\$560,000

Summary

Total damages assessed to date	\$4,379,000
Prospects of Recovery?	Unknown
Total deposits forfeited to date (in these cases)	\$ 864,270

In these cases the notified contract completion dates were mid-December 2010 for Boulevard Tower and August-September 2011 for Orchid Tower.

Other civil work at Southport

[13] All other civil work at Southport is relatively up to date and there are not many cases ready for but not yet listed for trial. Civil trials, not involving Orchid Tower and Boulevard Tower are currently listed for hearing in July, August, September and November. For those months the civil trials which have been set down for hearing and the number of days allocated are

Orchid Tower/Boulevard Tower

3 trials, 9 days

Other civil cases

10 trials, 28 days

- [14] Work in the Planning and Environment Court has declined significantly, not just on the Gold Coast but throughout the State. As at 30 June 2014 there are only 15 active matters on the Southport Planning and Environment list.