

22 November 2012

Case Note: *Stringer v Gilandos Pty Ltd* [2012] VSC 361

This case considered whether leases of serviced apartments to members of the public are considered retail premises leases within the meaning of the *Retail Tenancies Act 1986*, the *Retail Tenancies Reform Act 1998* and the *Retails Leases Act 2003*.

Facts

The subject units were part of an apartment/resort complex located near Bright in Victoria. The operator of the resort paid rent to the owners of the units and then rented the apartments as 'serviced apartments' to members of the public. Significantly, during the period from 2007 to January 2012, members of the public had not stayed in the units on a permanent or semi-permanent basis. Conversely, members of the public were only occupying the premises for days at a time.

The decision

Justice Croft found that it was difficult to distinguish the apartments from the manner in which hotel or motel accommodation rooms are used. On considering the authorities, his Honour found that:

... there may be very fine distinctions between use of premises as a motel on the one hand or as a serviced apartment or serviced

apartment complex on the other hand ... observations by the various courts and tribunals with respect to motels and serviced apartments indicate that the characteristics of both types of premises can overlap, thus adding to difficulties in characterising the mode of usage.

Although Justice Croft held that the lease of the serviced apartments in this case did constitute a retail lease, he cautioned that not all leases of units or apartments described as 'serviced apartments' will be considered retail leases. In making his note of caution, Justice Croft mentioned the following:

'whether or not premises described as "serviced apartments" is to be characterised as "retail premises" depends upon the particular circumstances, including the nature of the premises, the manner in which occupancy is provided and the nature of that occupancy.'

Comment

While in some circumstances the lease of a serviced apartment may be considered a retail lease, the terms of each lease and nature of the premises need to be examined carefully on a case by case basis.



In light of his Honour's findings, anyone considering whether a lease of serviced apartments is a retail premises lease should:

1. review the above judgment;
2. closely examine the terms of the lease;
3. consider the nature of the property itself;
4. consider the use to which the premises are put during the term of the lease; and
5. pay particular regard to the length of stay by actual or anticipated guests during the terms of the lease.

Seek advice if you are unsure about any issue.

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