



## Crown Melbourne Limited v Cosmopolitan Hotel (Vic) Pty Ltd & Anor [2013] VSC 614

### FACTS

Cosmopolitan (“tenants”) were tenants of Crown Melbourne (“landlord”). Their leases did not contain an option to renew, but Clause 2.3 of each lease provided:

*At least 6 months, but no more than 12 months before the Expiry Date, the Landlord must give notice to the Tenant stating whether:*

- a) The Landlord will renew this Lease, and on what terms;*
- b) the Landlord will allow the Tenant to occupy the Premises on a monthly tenancy after the Expiry Date; or*
- c) the Landlord will require the Tenant to vacate the Premises by the Expiry Date.*

The tenants contended that landlord gave them oral assurances that if they undertook major refurbishment works they would be ‘looked after with a further term’ (the “collateral contract”). Following the refurbishment, the landlord delivered notices in accordance with clause 2.3(c) requiring vacation of the premises. VCAT held that the collateral contract was sufficiently clear and capable of giving rise to legal obligations. The landlord sought leave to appeal the decision in the Supreme Court of Victoria.

### ISSUES

As no terms of the new lease were specified, was the wording of the collateral contract (you will be ‘looked after with a further term’) sufficiently certain to be enforceable?

### FINDINGS

The Court found that both Clause 2.3(a) and the collateral contract gave the landlord an unfettered discretion to specify the terms, including as to rental, on which a new lease was made. The Court held that this was illusory promise and subsequently set aside the VCAT decision and allowed the appeal.

### QUOTE

Hargrave J [at 72]:

*“I accept that a contract may give one of the parties a discretion as to the content of subsidiary terms, or as to how the contract is to be implemented, without necessarily rendering the contract unenforceable...But that principle does not extend to agreements which give one party a complete discretion as to one or more of the essential terms of the contract, at least in the absence of a contractual requirement that the discretion be exercised in accordance with the criteria specified in the contract. In this case, there are no such criteria.”*

### IMPACT

The judgement indicates that where discretion is given to a party to a contract, clear criteria for the basis of the decision must also be given lest the promise be unenforceable.

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