

THE CRYSTAL BALL REVISITED

2010 – The Year of Surprise

This time last year we were all on the edge of our seats watching the rest of the world financially crumble. The so-called industry doubters painted pictures of doom, including the impending imploding of the management rights industry as it stood.

Lets revisit some of my Resort News articles over the last 12 months, **September 2009 “What Happened to the Recession”** Paragraph 12 from that article my ‘crystal ball’ sits in full view. Business is excellent, and the multiplier on the high end continues to be strong. Contracts in general are nearly all subject to valuation. Very few, if any, contracts fail to settle if all the correct steps are taken when listing. Quality stock is rarely available and continues to sell soon after listing. Here we are in November 2010 and how true this statement was, or should I say what the ‘crystal ball’ indicated.

April 2010 “Let Me Tell You A Story” paragraph 6 from that article, I am continually asked by accountants, solicitors, valuers and financiers what the industry multiplier is doing? “Years Purchase Factor”, in appraising the value of management rights each and every property listed for sale has its own deciding and influencing points, i.e. location, length of agreement, type of scheme, manager accommodation, break- up of lots in the scheme, nett profit, growth, the lists goes on. The old system of average of all sales in a set period = the asking price + real estate is gone.

Again how true this is, if the homework and preparation prior to listing isn’t forthcoming, the correct multiplier at the time of sale will never be achieved. Personally our adoption of this simple policy of ticking the boxes prior to listing has this year given us an almost 100% settlement rate. The April article also stated that the industry continues to gain further recognition as a very stable and commercially viable proposition. How true this statement has turned out to be with 75% borrowing in some cases still occurring.

June 2010 “Hello! Is There Anybody Listening?” An extract from this article, paragraph 8 the opening header Hello! Is anybody listening?? Is aimed fairly at the industry dissidents who should keep their personal gripes to themselves and stop muddying the waters. In my opinion a fair comment based on vendor feedback. We have in the past 6 months had a large shift in how professional business is conducted in this industry, so one would say right or wrong someone took notice.

September 2010 “Stairway to Heaven”, a light and enthusiastic approach to the industry from a purchasers point of view. Contracts of sale are now occurring on a regular basis, the majority of purchasers focused on taking the industry (from their point of view) to the next level.

It takes a great deal of dedication to continue to have nothing but a positive spin on the management rights industry, however the tried and true industry professionals continue to offer that point of difference, myself included. My continual consultation of the ‘crystal ball’ along with all our industry associates points of view no doubt assists the process of further strong commercial acceptance of the management rights industry.

The only worrying factor is the value of the Australian dollar which is having a dramatic effect on the domestic tourism market; one would expect the reserve bank to raise interest rates slowly expecting the dollar to correct itself in the first quarter of 2011. Moving forward to 2011, the ‘crystal ball’ clearly predicts a very buoyant management rights market, with the sales emphasis appearing to favour permanent and corporate management rights of high nett profit being the first to sell.

Jake Clarke



MANAGERS HELD PERSONALLY LIABLE

The recent New South Wales District Court decision of *Borg -v- The Owners – Strata Plan 64425 (2010) NSW DC 203* has ramifications for Resident Building Managers all around the country.

Facts

Ms Borg was a guest at The Quest Apartments at Cronulla. She had a night out celebrating her 30th birthday and when she returned to the complex, she fell at the top of a set of stairs leading from the footpath down to the reception area of The Quest Apartments. She claimed the fall was caused by a cracked tile at the top of the stairs (which was actually on the Council footpath as the building encroached slightly onto the Council land). The accident occurred between 12:30am and 1:00am but evidence was produced that Ms Borg was still breast-feeding her daughter at this time and only consumed two (2) alcoholic drinks during the evening. The area was very dark at the time and it had been raining. The evidence showed that the heel of her shoe caught in a hole in a cracked tile and this caused the fall.

The Decision

There were three Owners Corporations which formed part of the “Sur Mer” building in which The Quest Apartments were located. These Owners Corporations were bound by a Strata Management Statement and Ms Borg sued the three Owners Corporations, as well as the operator of The Quest Apartments and the associated Quest Management Company which held the Caretaking Rights for their complex. She also sued the Sutherland Shire Council but later dropped the Council from the Court proceedings.

It was held that even though the cracked tile was located on Council land, the Owners Corporations were in “occupation” of the relevant area because of the encroachment. Consequently they could be held liable as occupiers. The total damages awarded by the Court was \$517,000.00 and this amount was apportioned between the relevant Defendants.

Liability of the Caretaker

There was a Caretaking Agreement in place between one of the Owners Corporations and The Quest company whereby the Caretaker was effectively delegated the Owners Corporation’s functions in respect to the repair, replacement and maintenance of the common property. This included the tiled area where the accident happened. The Court looked at the wording of the Caretaking Agreement, which had the standard clauses obliging the Caretaker to “care take” the common property, to conduct regular inspections and arrange for repairs of the common property and to immediately report to the Owners Corporation hazards or dangers in the common property that came to the Caretaker’s attention.

The Court concluded that the Owners Corporation had delegated to the Caretaker responsibility for minor handyman repairs which the Court considered would include temporary repairs to the hole in the cracked tile, as well to inspect and report on more serious defects and arrange for their repair (including replacement of the tile itself).

Ramifications for Caretakers

This case makes it clear that Resident Building Managers will be held accountable if they do not arrange for the repair and maintenance of common property. The case also brings home the necessity for Resident Building Managers to ensure that they have their own Public Liability and Professional Indemnity insurance cover. The resident Manager and the Owners Corporation are separate entities and each must carry their own insurance. The Manager gets no protection from the policy that covers the Owners Corporation.

The case also illustrates the benefit of the Resident Building manager using the same insurance company who holds the Owners Corporation insurance - so as to avoid a dispute with the insurer over the extent of the cover.

Col Myers - Partner

Small Myers Hughes | LAWYERS

FEATURED LISTINGS

Management Rights



Beautiful Lennox Head Management Rights

- Superb 4 star holiday 100m from the beach
- 39 in letting pool
- Restaurant on site (not part of management rights)
- No permanent living permitted
- Long agreements

Nett Profit \$381,000 Asking Price \$2,475,000



Iconic Holiday Surfers Paradise Highrise

- 23 levels of luxury
- Two heated pools and spas
- Opposite popular surf club and beach
- Tightly held management rights now available
- Perfect for two person team, growth assured

Nett Profit \$381,803 Asking Price \$2,550,000



Strategically Located Gold Coast Resort

- Fully established business, ideal holiday / corporate
- Themed resort with café, tour desk, conference facilities & day spa
- 4 bedroom managers apartment
- Long agreements
- Ideal family business

Nett Profit \$641,758 Asking Price \$3,585,000



Newcastle Permanent – Unique Development

- Trendy woolstore refurbishment
- In excess of 50% investors
- No pool or lawns to maintain
- No set office hours
- Large managers apartment – 3 bedroom + study, 2 car spaces

Nett Profit \$200,895 Asking Price \$1,425,000

Motels



North West NSW Leasehold

46 unit motel, licensed restaurant, extensive upgrade over last 2 yrs, 3 pools, 2 spas, internet. 2 bedroom managers residence. New 30 yr lease

Asking Price \$1,580,000



Beaudesert Freehold Motel

Easy to run, good growth area, 30 mins from Bris, strong trade from workers & tourists, only 3 motels in town. Nett Profit \$147,000

Asking Price \$1,100,000



Stanthorpe Investment Motel

This long term investment offers 9.2% return on annual rent of \$191,250. Luxury apartment complex, highest rated in Southern Downs area.

Asking Price \$2,075,000