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IN THE PRIVY COUNCIL
ON APPEAL FROM THE FULL COURT
OF THE SUPREME COURT OF QUEENSLAND

No. 21 of 1983

B E T W E E N :

BOHETO PTY. LTD
(Defendant) Appellant

- and -

SUNBIRD PLAZA PTY. LTD.
(Plaintiff) Respondent

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SUPPLEMENTARY CASE FOR THE RESPONDENT

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The decision of the majority of the High Court in Deming No. 456 Pty. Ltd. v. Brisbane Unit Development Corporation Pty. Ltd. is against the respondent here in respect of certain matters dealt with in its written case. Parliament's reaction to the Deming decision was to pass legislation having retroactive effect, a copy of the relevant statute being attached. Section 49A(b) applies to pending proceedings, including these, and has the effect that the appellant must be taken to have been aware at all times of the provisions of s.49 and of the obligations of the respondent thereunder and must be taken to have read the Section 49 Statement at the time it was received. The result is that the

argument of the appellant to the effect that it is necessary, for the purchaser to be "aware", that he knows the requirements of the section, cannot succeed.

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The passage of the statute makes it unnecessary to consider whether under the Act in its original form "awareness" required prescience of the ultimate judicial construction of the section - as would seem to follow from the High Court's decision. However, if for some reason not presently apparent, it is thought that the amendment of the statute does not defeat the appellant, the respondent would wish to argue that the views of the dissenting judges in the High Court on the question of the address and the meaning of "aware" are to be preferred.

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The respondent wishes to add that it will seek leave, following certain authority in the High Court, to refer to the speech of the relevant Minister when introducing the amending Bill into Parliament, if there is doubt as to the mischief aimed at: Wacando v. The Commonwealth (1981) 37 A.L.R. 317 at 335, 336 and Sillery v. R. (1981) 35 A.L.R. 227 at 232-3.

C.W. PINCUS, Q.C.

Counsel for the Respondent

Queensland



ANNO TRICESIMO SECUNDO

ELIZABETHAE SECUNDAE REGINAE



No. 53 of 1983

**An Act to amend the Building Units and Group Titles Act
1980 in certain particulars**

[ASSENTED TO 22ND DECEMBER, 1983]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. Short title and citation. (1) This Act may be cited as the *Building Units and Group Titles Act Amendment Act 1983*.

(2) In this Act, the *Building Units and Group Titles Act 1980* as amended by the *Companies (Consequential Amendments) Act 1981* is referred to as the Principal Act.

(3) The Principal Act as amended by this Act may be cited as the *Building Units and Group Titles Act 1980–1983*.

2. Amendment of s. 49. Duties of original proprietor. Section 49 of the Principal Act is amended by—

(a) in subsection (4),

(i) omitting the words “if the rights of the purchaser have been materially affected” and substituting the words “if the purchaser has been materially prejudiced”;

(ii) omitting the word “void” and substituting the word “avoid”.

(b) omitting subsection (5) and substituting the following subsection:—

“(5) If the original proprietor fails to give to a purchaser—

(a) a statement in compliance in every respect with subsections (1), (2) and (3); or

(b) a notice prescribed by subsection (4),

and the purchaser is materially prejudiced by the failure (proof of which shall lie on him) the purchaser may, by notice in writing given to the original proprietor, avoid the contract, agreement or other document within 30 days after he first becomes aware of the failure:

Provided that a purchaser shall not be entitled to avoid a contract, agreement or other document pursuant to this subsection if he has not given the notice of avoidance herein prescribed before the expiration of—

(a) in a case where the purchaser has become proprietor of the lot before the commencement of the *Building Units and Group Titles Act Amendment Act 1983*, six months after the commencement of that Act; or

(b) in any other case, six months after the purchaser has become proprietor of the lot.

The contracts, agreements and other documents to which this subsection applies include those made before the commencement of the *Building Units and Group Titles Act Amendment Act 1983* that have not been avoided before the date on which the Bill for that Act was introduced into the Legislative Assembly.”;

(c) in subsection (6), omitting the word “voidance” and substituting the word “avoidance”;

(d) in subsection (7), omitting the words "to void" and substituting the words "to avoid";

(e) in subsection (8), omitting the word "voids" and substituting the word "avoids".

3. **New s. 49A.** The Principal Act is amended by inserting after section 49 the following section:—

"**49A. Interpretation of awareness in s. 49 (5).** For the purposes of—

(a) the avoidance of any contract, agreement or other document to which section 49 (5) applies; or

(b) the giving of judgment or of a decision by any court, after the commencement of the *Building Units and Group Titles Act Amendment Act 1983*, upon the application of section 49 (5) of the *Building Units and Group Titles Act 1980* to the avoidance of a contract, agreement or other document, whenever the proceedings in which the judgment or decision is to be given were commenced,

the purchaser under the contract, agreement or other document shall be taken to have been aware at all times of the provisions of section 49 or, as the case may be, section 49 of the *Building Units and Group Titles Act 1980*, and of the obligations of an original proprietor thereunder, and to have read any statement or notice given to him, being a statement or notice required by the section to be given to him, at the time when he received it."