



PACER LEGAL

Commercial | Litigation | Taxation

How to protect your interest when leasing farmland

Legal considerations, tips and traps

Melissa Adams

Liebe -1 March 2017

WHY DISPUTES

- ❖ Long Duration;
- ❖ Lessor's not ready to "give up control" (exclusive possession/quiet enjoyment);
- ❖ Differences in ideas & practices;
- ❖ Expectations (i.e. priority if re-leased).

TO AVOID DISPUTES

- ❖ Need clarity on what is agreed;
- ❖ Written lease provides the building blocks;
- ❖ But parties need to provide the detail;
- ❖ Combination will produce a workable agreement that minimises risk of disputes.

LEASE DOCUMENT

Sets out:

- ❖ Parties;
- ❖ What is leased;
- ❖ How long & for how much;
- ❖ Other essential terms & conditions.

START – SEARCH THE LAND/PARTIES

Title searches show ownership & competing interests:

- ❖ Mortgagees consent – if not received then bank not bound by lease (note: lessor breaches mortgage without this consent);
- ❖ Caveats (i.e. prior lessees caveat/first right of refusal to lease/buy).

KNOW WHO YOU ARE DEALING WITH

- ❖ Business / partnership name &/or ABN does not constitute a legal entity;
- ❖ i.e. “M & J Adams & Co” – need to know who is behind the business / partnership name;
- ❖ Who are the directors of a company?

CONSEQUENCES OF GETTING IT WRONG!

Company purported to lease land, but signed by person who was not Director:

- ❖ Risk is an invalid lease;
- ❖ Damages claim by other affected parties (i.e. party claiming it has a valid lease);
- ❖ Legal costs.

DISPUTE – TERM NOT INCLUDED

Lease did not identify lessor retained house:

- ❖ Lessee has falling out with lessor over weed control;
- ❖ Lessee claimed lessor had no right to be in house;
- ❖ Lessor said lessee knew this was a condition of lease;
- ❖ Lessor, successful but later prevented from allowing son to reside in house.

DISPUTE – UNCLEAR TERMS

Lease provided “must pick and dispose of melons”:

- ❖ Lessee & Lessor had difference of opinion over timing of picking;
- ❖ Lessee disposed of melons by dumping melons into a natural hollow;
- ❖ Lessor commenced action, lessee counter claimed breach of right to “quiet enjoyment because Lessor was coming onto farm weekly to inspect & to “have a look around”.

DISPUTE – RIGHTS

What could have been done better?

- ❖ Include date for latest picking;
- ❖ Disposal method;
- ❖ Lessor understanding of right to quiet possession;
- ❖ Dispute resolution method.

SUGGESTION – DISPUTE RESOLUTION

- ❖ Can help avoid costly legal's;
- ❖ Mediator chosen by agreement;
- ❖ Sample – If cannot agree then an expert arbitrator of the dispute shall be chosen by the then Chairperson of The Australian Association of Agricultural Consultants of WA Inc.

DEFINITION OF WEED

- ❖ We now include because lessee disputed what was a weed;
- ❖ “Weed” means a plant which is not Crop and which has the potential to have a detrimental effect on economic productivity and/or conservation values of the Land in regards to the Permitted Use and/or in any other agricultural use.

REGISTRATION OF LEASE

- ❖ Caveat is only a notification of potential interest claimed;
- ❖ Need to go to Supreme Court to argue caveatable interest;
- ❖ Recent Court decisions call into question value of caveats;

REGISTRATION OF LEASES

- ❖ Courts have held in absence of registration, sale of property to third party automatically terminates lease of more than three years;
- ❖ Termination means any options (to lease/buy) are also terminated;
- ❖ Both lessor and lessee at risk;
- ❖ Registration gives necessary primacy over all subsequent interests in land.

SIMPLE CHECKLIST – All Parties

- ❖ Do Title and Company searches to ensure any prior interests identified and that correct party executes Lease.
- ❖ Include Map if not leasing whole Titles.
- ❖ Does lease specify insurance requirements (personal liability, improvements, crop insurance)?
- ❖ Check Insurance Certificates of Currency before commencement date.
- ❖ Is mortgagees consent required?
- ❖ Dispute Resolution provision included?
- ❖ Is indemnification against loss or damage from breach by other party included?
- ❖ Does rent include GST or is it plus GST?
- ❖ Who pays rates?

SIMPLE CHECKLIST – Lessor

- ❖ Consider doing credit checks.
- ❖ Include right to charge interest on overdue payments.
- ❖ Include right to require lessee to de-stock where overgrazing is occurring?
- ❖ Include right to receive annual application of fertiliser/herbicide/pesticide /stocking rates & yield records .
- ❖ If retaining house/sheds is access right needed to pass over leased land. Is right to draw water required?
- ❖ Does Lease specify the lessee repairs damage to land caused by storm, flooding etc?
- ❖ Include right to terminate if breach.
- ❖ Lessee acknowledgement that takes land “as is”.

SIMPLE CHECKLIST – Lessee

- ❖ If Lease exceeds 3 years and/or has options or first rights of refusal, include right to require lessor to produce titles to allow for registration.
- ❖ Consider including provision that “make good” provision is to standard as at commencement of lease.
- ❖ Include right to quiet enjoyment.