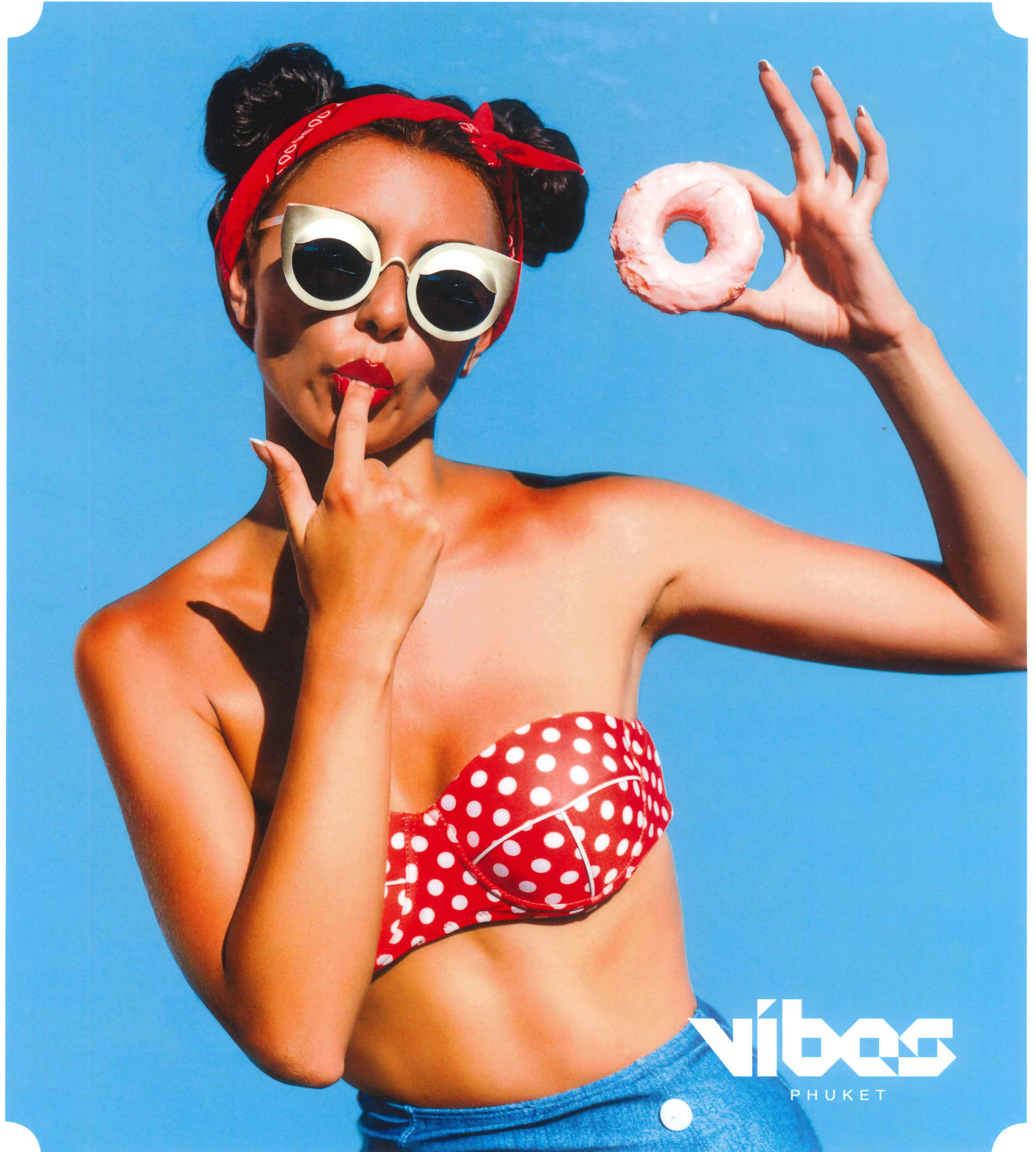


Bikinis & Martinis

PHUKET'S LUXURY BEACH LIFESTYLE MAGAZINE - VOLUME 6 NO 1 / JANUARY-MARCH 2018



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PHUKET



You have bought your dream house in Thailand, which includes an incredible ocean view. You couldn't be happier. And then, it happens. Someone starts construction of their dream house, directly in front of yours which, when completed, will completely block your beautiful view. What, if anything, can you do?

There are legal measures that can address this issue. How successful those measures are depends on what steps you take and when. Most commonly purchasers fail to take any steps to protect that treasured view that was part of why and what they thought they were buying.

CONTRACT

Sometimes parties will enter into a contract, which includes a provision to protect their view. This is already better than nothing. However, if your contract party is no longer the owner of relevant land at some point in the future (because they cease to exist or sell the land to someone else, etc.), then you are essentially in the same position as an owner who did nothing.

Furthermore, we often see contractual provisions that are intended to protect an owner's view wherein such protection was dependent

on some "owners committee"—that does not legally exist, and therefore, cannot be held liable to protect such view.

CIVIL COURT

So what if you have no enforceable contract? One possible option would be to file a case in civil court based on the loss of the full benefit of your property. However, your view might not be recognized as a compensable benefit. And, even it is, at best you would be awarded money, but not your view.

ADMINISTRATIVE APPEAL

Another possible option would be to challenge the construction itself. A party who is affected by the government's bureaucratic actions may challenge such action by administrative appeal. In our case, this would include the government's issuance of a building permit to the party who is or will block your view. However, in order to succeed on such a claim, you will need to show that the building permit was issued illegally. If so, the construction may be halted or, if built, ordered to be demolished. However, if the permit was issued legally, your claim will not succeed.

REAL PROTECTION

As you can see, in none of the circumstances above could your action legally secure your view. There is, however, an alternative that will do that. A "servitude" is a real estate property right which allows you to restrict construction on the land that would block your view. If you wish you protect your view, and

if such is a key component to your purchase, then it is recommended that you require such a servitude to be registered on the relevant land in favor of your purchase land as a condition of and prior to your purchase.

As a legal right (as opposed to a contractual right) a servitude is registered on the title of the land that could block your view. Thus, regardless of who the current or future owner of that land is, the owner will be restricted from blocking your view.

Furthermore, the legal servitude right will also be registered on your land title and be applicable to future owners as well, an obvious added benefit to your heir or your sale price should you decide to sell the property on later.

DUENSING KIPPEN is an international law firm specializing in business transaction and dispute resolution matters, with offices in Bangkok and Phuket, Thailand and affiliated offices in 45 other countries. Visit them at: duensingkippen.com