

YOU AND YOUR PROPERTY

BY RESIDENTIAL PROPERTY LAWYER
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I have in the past used this column to discuss cases of interest relating to residential conveyancing. This issue I focus on an interesting judgment delivered on November 16 last. The case provides a salutary lesson on how an Agreement for Sale and Purchase can go catastrophically wrong if the parties do not fully understand their obligations under an Agreement.

In the case Mr and Mrs Messenger agreed to sell a property in Muritai Road in Auckland to Mr Goodman and Ms Rattray. The purchase price for the property was \$5,995,000.00 payable in instalments. The first instalment was \$2,750,000.00. There were then to be seven quarterly payments of \$61,875.00 followed by a final payment of \$2,811,875.00 on the second anniversary of the settlement date.

As the settlement date approached a dispute arose as to whether or not the Messengers would transfer ownership of the property to Goodman and Rattray in December 2006 or on the second anniversary of the possession date (December 2008). The parties were unable to agree and both parties served settlement notices on the other.

Payment was not made by Goodman and Rattray in December 2006 or subsequently. Possession was not given to the purchasers and the contract was not cancelled. In December 2008 the Messengers' solicitor enquired of Goodman and Rattray's solicitor whether or not they intended to settle on 18 December 2008. No response was forthcoming other than a response from Goodman and Rattray's solicitor to say he had no further instructions. Settlement did not occur on 18 December 2008 and the contract was cancelled by the Messengers.

The Messengers subsequently relisted and sold the property. The property sold for \$4,430,000.00 (a reduction from the original purchase price of \$1,565,000.00).

The Court was asked to consider whether or not Goodman and Rattray were

responsible to reimburse the Messengers for the difference in the purchase price and any ancillary costs suffered by them as a result of Goodman and Rattray's failure to settle in either December 2006 or December 2008.

The High Court heard the dispute in the first instance and gave a decision in favour of Goodman and Rattray. The High Court determined title to the property should have passed to Goodman and Rattray in December 2006 and because the Messengers had declined to transfer ownership at that time they were responsible for the loss and accordingly the Messengers' claim would fail.

The Messengers appealed the High Court's decision to the Court of Appeal. Interestingly, Goodman and Rattray did not attend the hearing or have any representation

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present. The decision to not be present would not have improved their chances of success at the appeal. The Court of Appeal held that Goodman and Rattray had ample opportunity to settle the purchase and to make payments in accordance with the terms of the Agreement. Their failure to do so, in the Court's opinion, was the cause of the Messengers' loss. The Court then made an order that the following amounts should be paid to the Messengers by Goodman and Rattray:

- \$1,565,000.00 (being the shortfall in the purchase price);
- \$1,145,722.69 (being interest on the purchase price);
- \$143,446.25 (being the real estate agent's costs on resale);
- \$27,539.26 (legal costs);

a total of \$2,881,000.00. The Messengers can now seek to enforce this judgment against Goodman and Rattray. In the event they are unable to pay the sum, they will no doubt be bankrupted by the Messengers.

“The High Court heard the dispute in the first instance and gave a decision in favour of Goodman and Rattray.”

While the amounts recorded in this case are significant, the principles apply whether or not you are buying a property for \$5,000,000.00 or \$500,000.00. In the event you fail to meet your obligations under an Agreement for Sale and Purchase and the other party suffers a loss, you may well be liable for the full extent of that loss together with interest and other incidental costs (which in this case amounted to almost the same amount as the actual loss).

Entering into an Agreement for Sale and Purchase always has pitfalls and great care should be taken before signing an agreement, whether you are buyer or seller.

“If you would like a copy of previous articles on property written by Michael email him on michael@homelegal.co.nz.”

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