

YOU AND YOUR PROPERTY

IN THIS ISSUE RESIDENTIAL PROPERTY LAWYER, MICHAEL HOFMANN-BODY LOOKS AT THE CASE OF *SAYERS V BURTON* HEARD RECENTLY IN THE HIGH COURT WHICH SERVES AS A SALUTARY LESSON OF WHY YOU SHOULD GET LEGAL ADVICE BEFORE SIGNING LEGALLY BINDING AGREEMENTS.

Signing an Agreement for Sale and Purchase can be very stressful. Whether you are a seller or a buyer, it can be hard to know whether you are investing well. For most people, the dollar amounts involved are usually significant multiples of your annual income. A purchaser will worry whether or not they are paying too much or if the property has some defect they have not noted. A seller on the other hand worries they have not accepted a high enough price and could have negotiated for more. Both parties are conscious of the significance of their personal and financial investment in the transaction.

In recent weeks, I put my house on the market and purchased another house. It reminded me that in many respects the process of buying and selling a house is much like a game of poker, with both seller and purchaser trying to bluff the other. The stakes are much higher than we are used to and we have a huge emotional investment in our decision. Those emotions can affect our decision making. A purchaser tendering on a property has little knowledge of how many other parties are interested and the strength of that interest. When selling (unless there is stiff competition for the property) it is hard to identify whether or not the seller is selling the property for a discount or is making a significant profit.

A solicitor brings experience and knowledge to your situation and is able to provide you with a more objective opinion.

What happens when you make a mistake in your decision? You have some degree of protection if you are buying and there has been misrepresentation by the seller or the seller's agent. If, however, you simply sell for a lower price than is reasonable or buy without a full understanding of how a

property can be used there is not likely to be a basis to cancel the agreement.

The case of *Sayers v Burton* was recently heard in the High Court. This case illustrates the possible outcome of signing an agreement without full knowledge of the property. Burton, who was 79 years of age, agreed to sell a property (which she had inherited) to Sayers for \$125,000.00. The property was in need of significant repairs. Between the time the agreement was entered into and the time the contract was due to settle, Burton became aware the property was worth substantially more (\$190,000.00). Burton refused to settle on the basis the deal was unconscionable (meaning unfair and unreasonable). She asserted that the purchaser must have known the property was being sold at a substantial discount (even considering the need for repairs). In fact, Sayers was not under the impression the property was worth a substantially greater amount. Sayers believed that only once the repairs were completed would the property be worth the \$155,000.00 rateable valuation.

Burton argued her advanced years and lack of living relatives meant she was frail and easily swayed. The Judge found that that was not Burton's character. He was convinced she was an independent woman who knew her own mind. Burton also argued she was ignorant of the property's true value. The Judge found Burton was aware the property had a rateable valuation of \$155,000.00. The Judge considered Sayers' offer had been discounted to allow for the repairs that both parties acknowledged were required to the property.

Burton alleged Sayers misled Burton by suggesting a lawyer wasn't necessary. Sayers evidence was he encouraged Burton to see a lawyer but Burton refused on the basis that it would cost too much. The Judge

preferred Sayers' evidence. This is a salutary lesson as to the reasons why you should get legal advice before signing legally binding agreements.

The Judge ultimately held the purchase price of \$125,000.00 was a significant understatement of the property's value. He found that even with the need for repair the property was worth \$190,000.00. Notwithstanding this he held there was nothing about the agreement that was unconscionable and he ordered Burton sell the property to Sayers for the agreed price. The lesson from this case is that a 79-year-old woman who sells a property at an under-value of \$65,000.00 or 33 per cent of its valuation will not necessarily receive any support from the Courts to set aside an Agreement for Sale and Purchase entered into by two willing parties.

Agreements for Sale and Purchase involve large sums of money and the implications of failing to meet your obligations can be significant. Not only was Burton compelled to settle the transaction, she was obliged to pay her own legal fees and contribute to Sayers' legal fees.

My recommendation, as always, is that you must get legal advice prior to signing any Agreement for Sale and Purchase. If there is any matter that concerns you it should be brought to your lawyer's attention. It is a false economy to omit to tell your lawyer information in an effort to save costs. Invariably that information is relevant to the transaction as a whole and the omission to inform your lawyer ultimately results in additional legal costs later in the transaction.

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