Supreme Court of New Zealand
Te Kōti Mana Nui

15 October 2014

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

KUMAR & ORS v STATION PROPERTIES LIMITED (IN LIQUIDATION AND IN RECEIVERSHIP)

(SC 39/2013) [2014] NZSC 146

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest www.courtsofnz.govt.nz

The appellants were investors in a Queenstown apartment complex developed by Station Properties Ltd (Station). Initially, they invested through purchasing shares in a company which was to invest in Station. However, at Station's request, the form of their investment changed and, between late 2005 and early 2006, they entered into agreements with Station for the purchase of individual units in the development on what was described as an "underwrite" basis. The appellants said they understood that they would not be required to actually purchase the units, but were simply underwriters facilitating the funding of the construction of the development, so that Station could on-sell it to an organisation which would operate it under a brand name as uniformly furnished serviced rental apartments. The appellants were also to receive one per cent of the purchase price as a signing incentive.

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By the time the development was substantially completed in mid-2008, the value of the units had dropped significantly as a result of a general downturn in the property market. Station was unable to find a purchaser for the development and looked to the appellants and other purchasers to settle their purchase agreements for the units, although the units were unfurnished and there was no management agreement in place. Moreover, the appellants had never received the one per cent signing fee. The appellants refused to settle, although only one purported to cancel his agreement formally. In April 2010 Station took the view that the appellants had repudiated their agreements and cancelled them. It then sued the appellants for damages for breach of contract.

Station was unsuccessful in the High Court but succeeded on appeal to the Court of Appeal, which held that the apartment complex was substantially complete by mid-July 2008 and although Station had called for settlement on three occasions after that, the appellants had consistently refused to settle on the mistaken understanding that they were not obliged to do so. The Court considered this refusal was not justified by any contractual breach by Station, because, although Station was in breach of contract, those breaches were matters that could easily have been remedied or accommodated through a reduction in the purchase price. As a consequence, Station was entitled to cancel the agreements and sue for damages.

The Supreme Court granted leave to appeal on the question of whether Station was entitled to cancel the agreements.

The appellants argued that Station's contractual obligations (which were not disputed) to provide a valid certificate of practical completion, to pay the signing fee, to provide a furniture package for the apartments and to have a management agreement in place were essential terms of the sale and purchase agreements. Station's failure to perform these obligations amounted to repudiation, meaning the appellants were entitled to cancel their agreements. For its part, Station argued that the appellants had repudiated the agreements because they made it clear they did not believe they were required to settle no matter what Station did, and that its contractual breaches were not sufficient to justify the appellants' refusal to perform their agreements.

The Supreme Court has decided by majority (comprising Elias CJ, McGrath, Glazebrook and Arnold JJ) to allow the appeal.

The majority has found that, taken together, the obligations to provide a furniture package and a management agreement were essential terms and that Station's failure to perform them amounted to a repudiation of the purchase agreements, which entitled the appellants to cancel them under s 7 of the Contractual Remedies Act 1979. Station intended either to on-sell the development on completion, or, failing that, to have it managed as serviced rental accommodation by an operator. The contractual obligations at issue were very important to Station's proposals for the complex. Moreover, investing in an apartment complex where units are uniformly furnished and managed by an operator as serviced rental accommodation is fundamentally different from individuals investing in single apartments and making their own arrangements as to furnishing and renting them, particularly for out of town investors. Against that background, the majority has accepted that, viewed objectively, the obligations to provide a management agreement and furniture package would have been regarded as essential by parties in the appellants' position given their importance to Station's proposals. Accordingly, the appellants were entitled to refuse to perform the agreements in light of Station's failure to meet these obligations.

Moreover, the majority is satisfied that even if the appellants did operate under the mistaken belief that they were not required to settle as they were only underwriters, they also raised Station's obligations in relation to the furniture package and management agreement, and were, in any event, still able to refuse to settle because they had a proper basis to do so in light of Station's conduct, regardless of the reasons they gave for refusing to settle at the time.

William Young J has dissented.

In accordance with the views of the majority, the appeal has been allowed.

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