



**Supreme Court of New Zealand
Te Kōti Mana Nui**

6 OCTOBER 2017

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

***KAWARAU VILLAGE HOLDINGS LIMITED AND MELVIEW
(KAWARAU FALLS STATION) INVESTMENTS LIMITED (IN
RECEIVERSHIP) v HO KOK SUN AND OTHERS, PENINSULA ROAD
LIMITED (IN RECEIVERSHIP AND IN LIQUIDATION) AND RUSSELL
MCVEAGH***

(SC 115/2016) [2017] NZSC 150

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

This appeal raised questions about the construction of agreements for sale and purchase of units in two buildings, Kingston West and Lakeside West, which were to be part of the Kawarau Falls Station Development in Queenstown. The development was to contain 13 buildings, to be built in three stages. During construction of stage one of the development, the global financial crisis occurred. The market value of the units fell significantly and the developers were placed in receivership. The receivers completed stage one of the development, which included the Kingston West and Lakeside West buildings, but stages two and three were not completed and the land was later sold.

When the Kingston West and Lakeside West buildings were completed, settlement notices were issued to the purchasers. By this point it was clear that stages two and three would not be built. The purchasers refused to settle. The vendor purported to cancel the agreements and forfeit the deposits. The purchasers claimed that the settlement notices issued by the vendor and notices of cancellation amounted to a repudiation of the agreements and purported to accept this repudiation and cancel the agreements.

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Whether the purchasers were entitled to cancel the agreements turned on two principal issues addressed in the appeal before this Court: first, whether there was an obligation to complete all the stages of the development; and second, if such an obligation existed, whether it was essential such as to allow the purchasers to cancel pursuant to s 37(2)(a) of the Contract and Commercial Law Act 2017.

The High Court concluded that there was no obligation to complete the development. The Court of Appeal overturned this decision, finding that there was an obligation to complete and that it was an essential term of the agreements.

This Court has held, by majority (Elias CJ expressing concurrence with the separate reasons given by Arnold J and Ellen France J), that there was an obligation to complete all three stages of the development and that this obligation was an essential term of the agreements. Because it was clear at the time that the vendor called for settlement that stages two and three of the development would not be completed, it was in breach of the essential term. Accordingly, the vendor was not entitled to call for settlement and its purported cancellation of the agreements was a repudiation. In not settling, the purchasers were therefore not in breach. The majority have dismissed the appeal. Because of the conclusion reached on the appeal, it was not necessary to deal with the purchasers' cross-appeal which dealt with other provisions in the agreements.

The minority (William Young and O'Regan JJ) agreed with the majority that there was an obligation to complete the development, but found that this obligation was not essential. Accordingly, the view of the minority was that the purchasers were not excused from performance of the obligation to settle and were not entitled to cancel the agreements. The minority would have allowed the appeal.

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