

21 November 2012

Case Note: *Murphy v Mitanovski* [2012] SASC 158

This case considered whether a vendor has obligations under a terminated contract for sale of land to mitigate its loss for termination of the contract.

Summary of facts

In February 2010 the vendor agreed to sell her home in Glenelg to the purchaser for the price of \$782,000 under a contract for sale of land.

The purchaser failed to complete the contract and the vendor served a notice of default on the purchaser under the contract. In July 2010 the contract was terminated. The vendor retained the deposit of \$10,000.

In September 2010, the purchaser again offered to purchase the property at the price of \$782,000 on the condition that the \$10,000 deposit was deducted from the purchase price. This offer was not accepted by the vendor because at that time the vendor had decided to retain the property. However, in October 2010, the vendor again advertised the property and it sold at auction in November 2010 for the sum of \$750,000.

Following the sale at auction, the vendor commenced proceedings against the purchaser for the difference between the original purchase price (\$782,000) and the purchase price she obtained at auction, namely \$32,000. At first instance, the vendor's proceeding was dismissed. The vendor then appealed to the Supreme Court of South Australia.

The decision

In finding that the vendor had suffered loss of \$32,000, the court applied *Carpenter v McGrath* (1996) 40 NSWLR 39. The principle from this case is that in situations where the vendor terminates due to a default by the purchaser, the vendor's loss is measured by the difference between the contract price and the market value of the land at the time of contract completion.

In this case, difficulties arose in determining the market value of the property at what would have been the date of completion under the contract. The sale of the property occurred some four months after this date and the purchaser argued that property prices had declined during that four month period. The court found that the price achieved at auction for the property in November 2010 was



consistent with the value of the property at the date of completion under the contract, namely July 2010. Consequently, the court found that the vendor had suffered loss in the sum of \$32,000.

The purchaser argued that the vendor had failed to mitigate her loss by rejecting the purchaser's subsequent offer in September 2010. The court found that it was not unreasonable for the vendor to reject this offer because under the contract she was entitled to retain ownership of the property.

However, the court held that when the vendor decided to sell the property one month later in October 2010, it would have been reasonable for the vendor to contact the purchaser and inform them that the property was back on the market and to make enquiries as to whether they wished to place another offer.

The court held that the vendor had failed to mitigate her loss. The vendor was denied her claim for \$32,000 in damages. The court held that the vendor was not entitled to any amount in losses above that of the forfeited deposit (\$10,000).

Comment

In circumstances where a vendor has terminated a contract for sale of land and subsequently decides to sell the property a second time, at a price of less than the original contract price, there may be an obligation on the vendor to mitigate its loss (whether or not that obligation is specified in the contract).

Both vendors and purchasers should be aware that their conduct may play an important role in any determinations to be made by a court in matters of this type. Further, vendors should consider the potential ramifications of accepting a deposit that is less than 10% of the purchase price under the contract.

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