

Re Feng [2023] NZHC 2074

The Mills Family Trust (Trust) agreed to sell their property at 22 Manapau Street, Auckland (Property) to Mr Feng

Mr Feng then nominated Mr Wang as purchaser who subsequently failed to settle the purchase. After the purchase fell through, the Mills Trust proceeded to sell the property at a significantly lower value and issued proceedings against Mr Feng and Mr Wang to recover the shortfall on the re-sale of the property.

The Court granted summary judgment jointly and severally against Mr Feng and Mr Wang to the value of \$756,597.31. The Trust issued a bankruptcy notice on Mr Feng for payment of the judgement sum. Mr Feng applied to have this set aside.

The Court could only set aside the bankruptcy notice if it was satisfied that Mr Wang had a cross claim against the Trust. The Court struck out Mr Feng's claim against the Trust on the basis that:

1. Although the Trust may have been aware that Mr Wang was the actual purchaser and not Mr Feng, this does not alter Mr Feng's liability under the sale and purchase agreement as he had signed it as purchaser.
2. The Trust, as vendor, had no legal obligation to ensure any due diligence was conducted by Mr Feng and this was his sole responsibility.
3. The fact that Mr Feng did not consent to the Trust's re-sale of the property is not a ground for a claim against the Trust.
4. The Trust was not 'in trade' in respect of the sale of the property, therefore the Fair-Trading Act 1986 did not apply.
5. There was no duty of care owed by the Trust to ensure that any finance or overseas investment office consent conditions were included in the agreement.

Key Takeaways:

- Purchasers need to be careful when nominating other entities.
- It is a Purchaser's obligation to complete any due diligence.
- The Vendor does not have to ensure the correct conditions are included in any agreement.

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