

Whakaruru v Bath [2023] NZHC 2474

The Whakaruru Family Trust (Trust) entered into an unconditional agreement with Mr Bath for the sale of the Trust's property on Pallant Street, Manurewa (Property) for the sum of \$1,160,000 including GST

Mr Bath's solicitors advised that due to changes in lending criteria and a decrease in property valuations, his financial position had changed and requested an extension to the settlement date and a reduction in purchase price. This was rejected.

Mr Bath failed to settle and the Trust gave notice the agreement was cancelled. The Trust relisted the Property and sold the Property for \$781,500 including GST. The Trust claimed for the loss on re-sale.

Mr Bath did not contest liability but opposed the decision on the grounds that by reselling the Property for approximately 30 percent less than the original price, the Trust failed to act reasonably to mitigate its loss on resale.

The Court concluded that the Trust did not act unreasonably to mitigate its loss and noted the following key points:

1. Under the standard ADLS agreement, a vendor may claim the loss incurred on a resale within a year of the agreed settlement date.
2. The vendor is granted a fair amount of leeway in relation to its duty to mitigate loss.
3. The Trust had no obligation to accept any of Mr Bath's subsequent offers to complete the purchase at a reduced purchase price with a six-month extension.
4. Due to the Vendor's financial position, the requirement for a faster sale was reasonable in the circumstances.
5. It is unnecessary to prove that the resale price represents the market value at the appropriate date.

Key Takeaway:

- A Vendor will be granted a certain amount of leeway when re-selling a property for a loss.

Want to know more?

If you have any questions please contact our specialist [Property team](#).