Case law update: Force majeure, cancellation and caveats

FCL CL Ltd v Lynch & Others [2026] NZSC 17

Off-the-plans residential purchases often assume a straightforward path: the developer builds, titles issue, and settlement follows. FCL CL Ltd v Lynch is a useful reminder that, when a project becomes delayed and more expensive, the legal levers available to a developer (and the protections available to purchasers) depend heavily on the exact contract wording and on orthodox cancellation principles.

What happened (in brief)

The Supreme Court described the 'central question' as whether FCL (a developer) could rely on the consequences of the COVID-19 pandemic to invoke a force majeure clause to cancel agreements for sale and purchase of units in a Queenstown development. As a result of the COVID-19 lockdowns and supply chain delays, FCL had incurred delays and additional expense. They had invited purchasers to agree to an increase in the unit prices, and when purchasers did not agree, it gave notice of cancellation of the contract. The agreements also contained a common 'no-caveats' clause. After the purported cancellation, purchasers lodged caveats on the title and FCL relied on that breach to justify cancellation.

Where the litigation ended up

FCL sought leave to appeal to the Supreme Court from a Court of Appeal judgment that had upheld (i) summary judgment in favour of the purchasers and (ii) an order that the caveats should not lapse. The Supreme Court dismissed the application for leave and ordered FCL to pay costs.

Key legal points highlighted by the Supreme Court's leave decision

A force majeure clause isn't a "price-reset" button

The Supreme Court noted that the lower courts' decisions turned on factual findings that the requirements to trigger the force majeure clause were not met — including whether COVID-19 consequences actually prevented the developer from continuing the build, or made it impractical to do so (in the legal sense, not just "harder" or "more expensive").

Cost increases alone won't necessarily make performance "impractical"

The Supreme Court recorded the Court of Appeal's reasoning that the project did not become "impractical" just because it became more expensive, because that would let a developer cancel based on its own profitability preferences.

If a developer says "the bank made us do it", the evidence must be clear

The Supreme Court recorded that the Court of Appeal agreed with the High Court that the evidence did not show the funder had made ongoing funding unequivocally conditional on cancelling the purchasers' contracts.

Cancellation must not be premature

The Supreme Court noted the Court of Appeal's conclusion that cancellation was premature on the facts found.

A developer cannot rely on a purchaser's breach (like a "no-caveat" clause) to cancel if the developer isn't itself ready to perform

Even though the contracts contained a no-caveats clause, the Supreme Court recorded that the developer could not cancel for breach of that clause because the

developer was not ready and willing to perform its own obligations. That "ready and willing" requirement is a long-standing cancellation principle.

Why the Supreme Court didn't take it further

The Supreme Court was not persuaded the Court of Appeal applied the wrong legal tests for summary judgment or for the ready and willing cancellation rule, and therefore refused leave to appeal (so the Court of Appeal outcome stands.

Why this matters (practical takeaways)

For developers, the case is a caution against assuming that COVID-19-era disruption (or any broader economic shock) will, without more, justify cancellation under a force majeure clause—particularly where the problem is best characterised as increased cost or reduced profitability rather than true prevention or impracticability of performance. It also reinforces that arguments about lender pressure need to be backed by clear evidence if they are to carry weight.

For purchasers, the decision illustrates two important points: first, the strength of specific performance remedies where the contract remains on foot and the vendor's cancellation is not justified; and secondly, that 'no-caveat' clauses, while common in off-the-plans contracts, do not necessarily give a vendor a clean cancellation pathway—especially where the vendor is not itself ready and willing to perform.

While each development is different, the litigation underlines why parties should pay close attention to the mechanics of force majeure and cancellation clauses. If parties intend cost escalation, funding constraints, or supply-chain disruption to carry specific contractual consequences, those consequences should be expressed clearly. Likewise, if 'no-caveat' obligations are intended to be enforceable as a cancellation trigger, the contract needs to be drafted and operated consistently with the statutory regime and with the general requirement that a cancelling party be ready and willing to perform.

Summary

The Supreme Court's refusal of leave, leaves in place the Court of Appeal outcome: the developer's attempted cancellation did not succeed. The decision is a useful reminder that force majeure clauses are not a general 'price reset' mechanism, and that contractual rights to cancel sit alongside (and are constrained by) orthodox cancellation principles—particularly the requirement that a cancelling party be ready and willing to perform.

Want to know more?

If you have any questions, please contact our specialist Residential Property team.