



**By Lloyd Collins**  
 lloyd@collinsmay.co.nz  
 DD: 576 1403

**Eugene Collins**  
 eugene@collinsmay.co.nz  
 DD: 576 1407

**Amy Haste**  
 amy@collinsmay.co.nz  
 DD: 576 1412

**Hannah Nimot**  
 hannah@collinsmay.co.nz  
 DD: 576 1409

**Elly-Marie Connolly**  
 elly-marie@collinsmay.co.nz  
 DD: 576 1411

*If you would like any of our previous newsletters or any of our free booklets on Wills, Family Trusts, Relationship Property of Business Law please email us or visit our website at [www.collinsmay.co.nz](http://www.collinsmay.co.nz)*

## SATISFACTION OF CONDITIONS IN LAND CONTRACTS—BUYER BEWARE

Today's newsletter is about highlighting a purchasers' obligations to ensure that they carry out their best endeavours to ensure that a condition in an Agreement for Sale and Purchase of Land is satisfied. Sitting back and doing nothing and then electing to withdraw from the agreement could end up being a costly exercise.

Today's newsletter has been prompted as a result of the recent Court of Appeal decision of Arcadia Homes Limited (*in liquidation*) ("AHL"). AHL signed a contract to purchase a holiday home in Wanaka for \$2,000,000.00. The contract was subject to director's approval. AHL found an alternative property it preferred and also entered into a contract to purchase the alternative property. AHL withdrew from the first contract stating that director's approval had not been received and, as such, the contract was at an end.

Unfortunately for AHL the vendor did not accept this situation and served a settlement notice. When AHL refused to settle, the contract was cancelled and the vendor placed the property back on the market for sale. The property was subsequently sold for \$1,400,000.00 to another purchaser. The vendor then sued AHL for its loss being the difference in the purchase price of \$600,000.00, together with penalty interest as set out in the agreement and costs.

The vendor was successful in both the High Court and in the New Zealand Court of Appeal. The judgment from the Court of Appeal made some observations:

- (a) A purchaser has a legal obligation to carry out its best endeavours to ensure that a condition is satisfied;
- (b) In this particular case there was inescapable evidence that AHL used the director's approval condition as a device to lock the vendor into holding the property while the purchaser looked around for a better alternative;
- (c) As there was only one director of the company and the director had already signed the contract, it was not open for the director not to give approval to something that it had already agreed to by signing the contract.

This is a timely warning to those purchasers who, during the purchasing process, find a more favourable property and then choose to cancel the contract citing finance or some other reason for cancellation. The Court will always impose an objective test and will carry out an investigation to ensure that the purchaser used all reasonable efforts in order to satisfy the conditions. A purchaser cannot use a condition in a contract as a cancellation device merely because they have found a more suitable property.

### 20 MINUTE FREE

**WANT to review your Family Trust structure?  
 THEN call us and take advantage of our 20 Minute Free interview**



