

12 of 1977

IN THE PRIVY COUNCIL

No. 28 of 1976

ON APPEAL
FROM THE COURT OF APPEAL OF NEW ZEALAND

BETWEEN:

ROBERT GOODE

Appellant

- and -

MURRAY NEWTON SCOTT

Respondent

RECORD OF PROCEEDINGS

ROSLING KING AYLETT & CO
~~BARNETT, TUSON & CO.~~
1, Pilgrim Street,
London, EC4V 6AD

Agents for :

Harper, Atmore & Roussell,
Otaki,
New Zealand.

LINKLATERS & PAINS
Barrington House
59/67 Gresham Street,
London, EC2V 7J0.

Agents for :

Bell, Gully & Co.,
Wellington,
New Zealand.

(1)

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BETWEEN:

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Appellant

- and -

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O N A P P E A L
FROM THE COURT OF APPEAL OF NEW ZEALAND

BETWEEN:

ROBERT GOODE

Appellant

- and -

MURRAY NEWTON SCOTT

Respondent

10

RECORD OF PROCEEDINGS

No. 1

STATEMENT OF CLAIM

IN THE SUPREME COURT OF NEW ZEALAND
PALMERSTON NORTH REGISTRY

No. A. 2/74

In the Supreme
Court of New
Zealand

No. 1

BETWEEN

MURRAY NEWTON SCOTT
of 6 Atmore Avenue,
Otaki, Building
Contractor

Statement of
Claim

9 January 1974

20

Plaintiff

A N D

ROBERT GOODE of
Waitohu Valley Road,
Otaki, Farmer

Defendant

STATEMENT OF CLAIM
WEDNESDAY THE 9TH DAY OF JANUARY, 1974

THE PLAINTIFF by his Solicitor says :

1. THAT on or about the 18th day of

In the Supreme
Court of New
Zealand

—
No. 1

Statement of
Claim

9 January 1974

- continued

September 1973, the Plaintiff entered into an Agreement in writing with the Defendant to purchase for the sum of \$65,000 the Defendant's freehold land situate off Awahohona Road, Otaki, being more particularly described as Lots 41, 42 and 43 on Deposited Plan No. 1429 Block IX Waitohu Survey District, Wellington Land District, Otaki Borough, containing thirteen and one half acres more or less. Attached hereto and marked "A" is a photocopy of the said Agreement (hereinafter called "the Agreement"). 10

2. THAT the Plaintiff pursuant to the Agreement paid the deposit of \$1,000.00 to Rod Weir and Company Limited, the duly authorised agents of the Defendant.

3. THAT pursuant to the said Agreement the Defendant made appropriate application under the Land Settlement Promotion and Land Acquisition Act 1952 for consent to the sale of the land described in the Agreement and consent thereto was granted on the 19th day of October, 1973, by the Administrative Division of the Supreme Court of New Zealand (Palmerston North Registry) under No. LVP 326/73, pursuant to Part II of the said Act. 20

4. THAT upon the granting of the said consent the Agreement was rendered unconditional as between the Plaintiff and the Defendant and settlement of the sale and purchase was pursuant to further provision in the Agreement to take place on or before the 2nd day of November, 1973. 30

5. THAT the Plaintiff has consistently since the 26th day of October, 1973, required the Defendant to fulfil the Agreement but the Defendant has consistently declined to proceed with the Agreement.

6. THAT the Plaintiff has since the 26th day of October consistently demanded through his solicitors Messieurs Hollings, Thompson & Fairbairn, Solicitors, Paraparaumu, that the Transfer of the land described in the Agreement be executed by the Defendant and 40

Plaintiff has consistently expressed his preparedness through his solicitors to the Defendant to fulfil all the terms of the Agreement yet requiring to be observed and/or performed by the Plaintiff and which are necessary to have the Agreement performed by the Defendant but the Defendant has consistently refused to complete his obligations under the Agreement.

In the Supreme Court of New Zealand

No. 1

Statement of Claim

9 January 1974

10 WHEREFORE THE PLAINTIFF CLAIMS

1. That the Defendant be ordered specifically to perform the Agreement.
2. The costs of this action.
3. Such further or other relief as this Honourable Court deems just.

- continued

No. 2

AGREEMENT FOR SALE AND PURCHASE

No. 2

ROD WEIR & CO.LTD.

Agreement for Sale and Purchase

OFFER AND ACCEPTANCE

20 TO: ROD WEIR & CO.LTD. (Licensed Real Estate Agents) as agents for ROBERT COOD (hereinafter referred to as the Vendor)
 FROM: MURRAY NEWTON SCOTT (As agent)
 (hereinafter referred to as the Purchaser)

18 September 1973

30 THE PURCHASER HEREBY OFFERS to purchase from the Vendor all that property as inspected being more particularly described in the Schedule herein (subject to any Order in Council, Building Line Condition, Fencing Covenant, Drainage Easement, or any other restriction affecting the same) on the terms and conditions mentioned below.

SCHEDULE: ALL THAT freehold property situate at : Off Awahohonu Road Otaki being Lots 41, 42 and 43 D.P.1429 Block IX Waitohu S.D. Wgton. Land Dist. Otaki Borough containing 13½ acres more or less.

In the Supreme
Court of New
Zealand

TERMS AND CONDITIONS

No. 2
Agreement for
Sale and Purchase
18 September 1973

- continued

1. THE PURCHASE PRICE shall be \$65,000
Sixty Five Thousand Dollars.

2. A DEPOSIT of \$1,000 One Thousand
Dollars shall be paid to the Vendor's said
agents immediately upon acceptance hereof and
such sum shall also be part payment of the
purchase price.

3. THE BALANCE of the purchase price shall
be paid as follows:

10

IN CASH ON DATE OF SETTLEMENT

4. SETTLEMENT shall be effected on or before
the 26th October 1973 or 14 days after the
approval shall have been granted by the
Supreme Court under The Land Settlement
Promotion Act whichever shall be the later.

5. VACANT POSSESSION shall be given and
taken on settlement.

6. APPORTIONMENT of all incomings and
outgoings shall be made as at the date of
settlement.

20

7. INSURANCE: Until settlement the Vendor
will hold all policies of insurance in
respect of the property in trust for the
Purchaser subject to the rights of any
existing mortgagee and will notify the
Insurance Company of such trust.

8. THE PURCHASER acknowledges he has inspected
the property and has knowledge thereof and the
improvements thereon and buys the same in
reliance upon his own judgment and not upon
any warranty or representation made or said
to have been made by the Vendor or the Agent
of the Vendor, and the Purchaser shall buy
and take the same as it is.

30

9. ANY contract arising out of this offer
is conditional upon obtaining any necessary
consent under or otherwise complying with
the provisions of the Land Settlement
Promotion and Land Acquisition Act 1952

40

and any Regulations thereunder and each party hereto shall do all such acts and things as may be reasonably necessary or expedient for the purpose of endeavouring to obtain such consent and ensuring compliance with the provisions of the said Act and Regulations. If any such consent where necessary shall not be granted by the 26th day of October 1973 or such later date as the parties agree or shall be refused or granted subject to conditions unacceptable to the parties then such contract shall be void and the Purchaser shall be entitled to a refund of all moneys paid by him hereunder.

In the Supreme
Court of New
Zealand

—
No. 2

Agreement for
Sale and
Purchase

18 September
1973

- continued

10. THE Vendor shall not be liable to pay or contribute towards the cost of erecting or maintaining any fence or fences between the land hereby sold and any adjoining land the property of the Vendor and if such is the case a fencing covenant in the usual form shall be inserted in the transfer to be executed pursuant to this agreement with the further provision that such covenant shall not enure for the benefit of any purchaser or lessee of such adjoining land or any part thereof.

11. IF the Purchaser shall make default for fourteen days in payment of the purchase money or any part thereof (time being strictly of the essence of the contract) the Vendor in addition to his or her other remedies without notice may rescind this agreement or sue for the balance of purchase money as a debt or forfeit the deposit theretofore paid by the Purchaser and without tendering any assurance may resell the said land by public auction or private contract subject to such conditions as the Vendor may think fit and any deficiency in price resulting from and all expenses attending a resale or any attempted resale after set-off of the said deposit may be recovered from the Purchaser by the Vendor as liquidated damages.

12. IF from any cause whatever (save the default of the Vendor) any portion of the purchase money shall not be paid upon the due date the Purchaser shall pay to the Vendor

In the Supreme
Court of New
Zealand

—
No. 2

Agreement for
Sale and Purchase

18 September
1973

- continued

interest at the rate of nine per centum per annum on the portion of the purchase money so unpaid from the due date until completion of the purchase but nevertheless this stipulation is without prejudice to any of the Vendor's rights or remedies under this agreement.

13. THIS offer is subject upon the purchaser being able to arrange his finances to his, and his solicitors satisfaction by a date no later than 10th October, 1973 and should finance not be available the deposit shall be refunded in full to the purchaser. 10

DATED this 17th day of September 1973.

Solicitor - Hollings, Thompson & Fairbairn

Mr Bryson 'M.N. Scott'

(Purchaser)

THE VENDOR HEREBY ACCEPTS the foregoing offer and hereby acknowledges ROD WEIR & CO.LTD. as duly authorised agents in this sale, whose commission shall be paid by the Vendor. 20

DATED this 18th day of September 1973.

Solicitor - Harper Atmore & Rousell

'R. Goode'

(Vendor)

STATEMENT OF DEFENCE

Tuesday, the 19th day of February 1974

Statement of
Defence

19 February
1974

The Defendant by his Solicitor says :

1. THE Defendant admits the allegations contained in Paragraph 1 of the Statement of Claim.

10

2. THE Defendant admits the allegations contained in Paragraph 2 of the Statement of Claim.

3. THE Defendant denies the allegation contained in Paragraph 3 of the Statement of Claim and says that consent to the agreement referred to in the Statement of Claim was not granted by the Administrative Division in the Supreme Court of New Zealand within the time prescribed in the said Agreement.

20

4. THE Defendant denies the allegations contained in Paragraph 4 of the Statement of Claim.

5. THE Defendant denies the allegations contained in Paragraphs 5 and 6 of the Statement of Claim and says that at all times since the 26th day of October 1973 the said agreement has been void and of no effect.

AGREED STATEMENT OF FACTS

Agreed
Statement of
Facts

August 1974

30

1. ON the 18th day of September, 1973, the Plaintiff entered into an Agreement in writing with the Defendant to purchase for the sum of \$65,000.00 the Defendant's freehold land situate off Awahohona Road, Otaki, being more particularly described as Lots 41, 42 and 43 on Deposited Plan No. 1429 Block IX

In the Supreme
Court of New
Zealand

No. 4

Agreed Statement
of Facts

August 1974

- continued

Waitohu Survey District, Wellington Land District, Otaki Borough, containing thirteen and one half acres more or less.

2. THE said Agreement is produced herewith and marked "A".

3. PURSUANT to the said Agreement the Plaintiff paid the requisite deposit of \$1,000.00 to Rod Weir and Company Limited, the duly authorised agents of the Defendant.

4. THE Defendant, pursuant to the said Agreement made appropriate application under the Land Settlement Promotion and Land Acquisition Act 1952 for consent to the sale of the land described in the said Agreement and the Land Valuation Committee sitting at Palmerston North dealt with the application for consent on the 19th day of October, 1973, by consenting to the application without calling on the parties to attend or give evidence. 10

5. A copy of the Notice to the parties of the making of the Land Valuation Committee's order consenting to the proposed sale and purchase of the land is produced herewith and marked "B". 20

6. THE date mentioned in paragraph 9 of the said Agreement, namely the 26th day of October, 1973, was not extended by agreement between the Plaintiff and the Defendant.

7. ON the 29th day of October, 1973, the said order of the Land Valuation Committee was sealed by the Administrative Division of this Honourable Court at Palmerston North. 30

8. A copy of the said sealed order of the Land Valuation Committee is produced herewith and marked "C".

9. ON the 26th day of October, 1973, the Plaintiff's solicitors submitted upon behalf of the Plaintiff and under cover of a letter dated the 26th day of October, 1973, a Memorandum of Transfer of the land described in the said Agreement, for execution by the 40

Defendant after perusal by the Defendant's solicitors. The said letter is produced herewith and marked "D".

In the Supreme
Court of New
Zealand

10. THE Defendant through his solicitors declined to execute the said Memorandum of Transfer upon the contended ground that the said Agreement between the Plaintiff and the Defendant had become void as from midnight on the 26th day of October, 1973. Produced herewith and marked with the letters "E" and "F" are letters written by the Defendant's solicitors to the Plaintiff's solicitors dated respectively the 26th and 29th days of October, 1973, which particularise in summary form the Defendant's reasons for contending that the said Agreement was void as from midnight of the 26th day of October, 1973.

No. 4

Agreed
Statement of
Facts

August 1974

- continued

20 11. THE Plaintiff through his solicitors declined to accept that the said Agreement was void, and further required the Defendant by letter dated the 16th day of November, 1973, addressed by counsel retained by the Plaintiff's solicitors, to continue with the said Agreement which the Plaintiff contended was a valid enforceable agreement. Produced herewith and marked with the letters "G" and "H" respectively are letters dated the 16th day of November, 1973, from counsel retained by the Plaintiff's solicitors to the Defendant's solicitors and the reply of the Defendant's solicitors dated the 19th day of November, 1973.

30 12. THE Plaintiff on the 9th day of January, 1974, commenced proceedings in this Honourable Court for specific performance of the said Agreement and the Defendant filed a Statement of Defence to the Plaintiff's Statement of Claim on or about the 19th day of February, 1974.

DATED this day of August, 1974.

40

'B.A. Palmer'

Counsel for the Plaintiff

'R.O.R. Clarke'

Counsel for the Defendant

OFFER AND ACCEPTANCE

TO: ROD WEIR & CO. LTD. (Licensed Real Estate Agents) as agent for ROBERT GOOD.
FARMER OF OTAKI.

FROM MURRAY NEWTON SCOTT (As Agent)
(hereinafter referred to as the Vendor)
(hereinafter referred to as the Purchaser)

THE PURCHASER HEREBY OFFERS to purchase from the Vendor all that property as inspected being more particularly described in the Schedule herein (subject to any Order in Council, Building Line Condition, Fencing Covenant, Drainage Easement, or any other restriction affecting the same) on the terms and conditions mentioned below.

SCHEDULE: ALL THAT freehold/leasehold property situate at: OFF ANAKOHONU ROAD OTAKI
BEING LOTS 41, 42 + 43 DP 1429 BLOCK IX WAITOHU S.D.
NGTN. LAND DIST. OTAKI BOROUGH. CONTAINING 13 1/2 acres more or less.

TERMS AND CONDITIONS

1. THE PURCHASE PRICE shall be \$65,000 SIXTY FIVE THOUSAND DOLLARS.
2. A DEPOSIT of \$1,000 ONE THOUSAND DOLLARS. shall be paid to the Vendor's said agents immediately upon acceptance hereof and such sum shall also be part payment of purchase price.
3. THE BALANCE of the purchase price shall be paid as follows:

IN CASH ON DATE
OF SETTLEMENT.

4. SETTLEMENT shall be effected on or before the 26th OCTOBER 1973 or 14 day after the approval shall have been granted by the Superintendant under the Land Settlement Promotion Act, whichever shall be the later.
5. VACANT POSSESSION shall be given and taken on settlement. Subject to the existing tenancy.
6. APPORTIONMENT of all incomings and outgoings shall be made as at the date of settlement.
7. INSURANCE: Until settlement the Vendor will hold all policies of insurance in respect of the property in trust for the Purchaser subject to the rights of any existing mortgagee and will notify the Insurance Company of such trust.
8. THE PURCHASER acknowledges he has inspected the property and has knowledge thereof and the improvements thereon and buys the same in reliance upon his own judgment and not upon any warranty or representation made or said to have been made by the Vendor or the Agent of the Vendor, and the Purchaser shall buy and take the same as it is.
9. ANY contract arising out of this offer is conditional upon obtaining any necessary consent under or otherwise complying with the provisions of the Land Settlement Promotion and Land Acquisition Act 1952 and any Regulations thereunder and each party hereto shall do all such acts and things as may be reasonably necessary or expedient for the purpose of endeavouring to obtain such consent and ensuring compliance with the provisions of the said Act and Regulations. If any such consent where necessary shall not be granted by the 26th OCTOBER 1973 or such later date as the parties agree or shall be refused or granted subject to conditions unacceptable to the parties then such contract shall be void and the Purchaser shall be entitled to a refund of all moneys paid by him hereunder.
10. THE Vendor shall not be liable to pay or contribute towards the cost of erecting or maintaining any fence or fences between the land hereby sold and any adjoining land the property of the Vendor and if such is the case a fencing covenant in the usual form shall be inserted in the transfer to be executed pursuant to this agreement with the further provision that such covenant shall not enure for the benefit of any purchaser or lessee of such adjoining land or any part thereof.
11. IF the Purchaser shall make default for fourteen days in payment of the purchase money or any part thereof (time being strictly of the essence of the contract) the Vendor in addition to his or her other remedies without notice may rescind this agreement or sue for the balance of purchase money as a debt or forfeit the deposit theretofore paid by the Purchaser and without tendering any assurance may resell the said land by public auction or private contract subject to such conditions as the Vendor may think fit and any deficiency in price resulting from and all expenses attending a resale or any attempted resale after set-off of the said deposit may be recovered from the Purchaser by the Vendor as liquidated damages.
12. IF from any cause whatever (save the default of the Vendor) any portion of the purchase money shall not be paid upon the due date the Purchaser shall pay to the Vendor interest at the rate of nine per centum per annum on the portion of the purchase money so unpaid from the due date until completion of the purchase but nevertheless this stipulation is without prejudice to any of the Vendor's rights or remedies under this agreement.

13 SEP 17th 1973
DATED this 17th day of SEPTEMBER 1973.
Solicitor HOLLINGS, THOMPSON & FAIRBAIN.
MR. BRYSON. (Purchaser)

THE VENDOR HEREBY ACCEPTS the foregoing offer and hereby acknowledges ROD WEIR & CO. LTD. as duly authorised agents in this sale, whose commission shall be paid by the Vendor.
DATED this 18th day of SEPTEMBER 1973.
Solicitor HARDEN, AMORE & KUSSEN. (Vendor)

13. This offer is subject upon the purchaser being able arrange his finances to his, and his Solicitors satisfaction by a date no later than 10th October 1973. and should finance not be available the deposit shall be refunded in full to the purchaser. R sh,

NOTICE OF ORDER GRANTING UNCONDITIONAL CONSENT UNDER SECTION 28 OF LAND
SETTLEMENT PROMOTION AND LAND ACQUISITION ACT 1952

In the Supreme Court of New Zealand
(Administrative Division)

~~DISTRICT~~

No. LVP. 326/73

PALMERSTON NORTH

Registry

IN THE MATTER OF an application
under the Land Settlement Promo
and Land Acquisition Act 1952 f
consent to a sale of land

Between ROBERT GOODE

~~Vendor~~

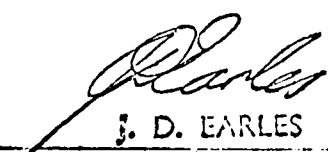
and MURRAY NEWTON SCOTT

~~Purchaser~~

On reading the above application, the Palmerston North Land Valuation Committee is satisfied that the application should be granted, and has made an order dated the 19th day of October 1973 consenting, pursuant to Part II ~~(or Part II A or Part II B or Part II C or Part II D)~~ of the Land Settlement Promotion and Land Acquisition Act 1952, to the application in accordance with the application without calling on the applicant or evidence.

Messrs. Harper, Atmore & Roussell,
Solicitors,
P.O. Box 3,
OTAKI.

Messrs. Hollings, Thompson & Fairbairn,
Solicitors,
To: P.O. Box 11,
PARAPARAUMU


J. D. EARLES

(Deputy) Registrar.

The Crown Representative,
Department of Lands and Survey,
P.O. Box 5014,
WELLINGTON.

"C"

L.V.P. 16

R. 60(1)

ORDER OF LAND VALUATION COMMITTEE

In the Supreme Court of New Zealand
(Administrative Division)

No. LVP.326/73

~~DISTRICT~~
PALMERSTON NORTH Registry

IN THE MATTER of an application
under the Land Settlement Promotion and Land
Acquisition Act 1952 for consent to a **sale**
of land

Between ROBERT GOODE Vendor/~~Lessee~~

and MURRAY NEWTON SCOTT Purchaser/~~Lessee~~

BEFORE THE PALMERSTON NORTH LAND VALUATION COMMITTEE

On reading the application of ROBERT GOODE
for consent to a sale of land
in respect of the land described in the schedule hereto

~~*And in the hearing of~~

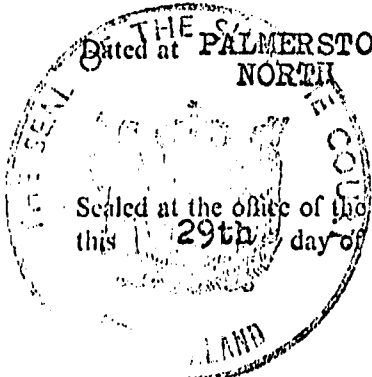
IT IS ORDERED that *(the consent of the Administrative Division of the Supreme Court of New Zealand be granted to the transaction *pursuant to Part II (~~or Part IIA or under both Part II and Part IIA~~) of the Land Settlement Promotion and Land Acquisition Act 1952:

~~*upon the following terms and conditions:~~

SCHEDULE

13 acres 2 roods 7.3 perches more or less situate in the Borough of Otaki being part Awahohonu A3 No.2 and being also parts Lots 41, 42 and 43 on Deposited Plan 1429 and being all of the land comprised and described in Certificate of Title Volume 6D Folio 449 (Wellington Registry)

*Delete where not applicable.



Dated at PALMERSTON NORTH this 19th day of October

Sealed at the office of the Supreme Court at this 29th day of October 73.

19 73.

(Deputy) Registrar.

(Deputy) Registrar

for the applicant: Harper Atmore & Russell,
Solicitors,
OTAKI.

15.

No. 8.

"D"

In the Supreme
Court of New
Zealand

HOLLINGS, THOMPSON & FAIRBAIRN
Barristers & Solicitors

—
No. 5

6 October, 1973.

Exhibit "D"

Messrs Harper, Atmore & Roussell,
Barristers & Solicitors,
P.O. Box 3,
OTAKI.

6 October 1973

10 Dear Sirs,

re: Goode to Scott

We enclose our Transfer for perusal and execution and advise that we are ready to settle today.

20 We must make it perfectly clear that we are anxious and willing to complete this transaction as soon as possible and we understand that the necessary approval under the Land Settlement Promotion and Land Acquisition Act 1952 was given on the 19th October. Any attempt to rescind the contract by your client will be opposed, and we shall if necessary bring an action for specific performance in respect of the said contract.

Yours faithfully,
HOLLINGS, THOMPSON & FAIRBAIRN

Per: 'F. Bryson'

16.

No. 9.

"E"

In the Supreme
Court of New
Zealand

HARPER, ATMORE & ROUSSELL
Barristers & Solicitors

26th October 1973

No. 9
Exhibit "E"
26 October
1973

Messrs Hollings, Thompson & Fairbairn,
Solicitors,
P.O. Box 11,
PARAPARAUMU Attention : Mr Bryson

Dear Sirs,

10

RE: GOODE to SCOTT

A check at the offices of the Supreme Court at Palmerston North today discloses that the Order consenting to the abovementioned sale will not be sealed until the 29th October 1973.

We refer you to Section 27 of the Land Settlement Promotion and Land Acquisition Act 1952 and to Sections 25 and 26 of the Land Valuation Proceedings Act 1948.

20

In particular, Section 25 (2) of the Land Valuation Proceedings Act 1948 states that on the sealing of the Order by the Registrar it shall thereupon be deemed to be an Order of the Court.

This means that Clause 9 of the Sale Agreement between the parties has not been satisfied in that the consent by the Court has not been finalised by the 26th October 1973.

Our client refuses to agree to any extension of time for the obtaining of the Court's consent and the Contract will therefore become void after midnight on the 26th October 1973.

30

Your client is entitled to a refund of his deposit and we have written to Rod Weir & Co.Ltd. instructing that a refund be made forthwith.

Yours faithfully,
HARPER, ATMORE & ROUSSELL
Per: 'R.W. Roussell'

40

17.

No. 10

"F"

In the Supreme
Court of New
Zealand.

HARPER ATMORE & ROUSSELL
Barristers & Solicitors

No.10

29th October 1973

Exhibit "F"

Messrs Hollings Thompson & Fairbairn,
Solicitors,
P.O. Box 22,
P. RAPARAUMU.

29 October
1973

Attention : Mr Bryson

10 Dear Sirs,

RE: SCOTT v. GOODE

We acknowledge receipt of your letter of 26th October 1973 enclosing a Transfer for perusal. However, we confirm that our client refuses to execute the Transfer because he is treating the contract as void from midnight on 26th October for the reasons stated in our letter to you dated 26th October.

20 Any proceedings against our client seeking a Writ for Specific Performance will be defended, and we are authorised to accept service.

We are confident that our view that the contract is at an end would be upheld in any Court proceedings because :

- 30 (1) The terms "Court" and "Land Valuation Committee" are defined in both the Land Settlement Promotion and Land Acquisition Act 1952, and the Land Valuation Proceedings Act 1948. It is clear that they are entirely different entities.
- (2) Sections 25 and 27 of the Land Settlement Promotion and Land Acquisition Act 1952 state that the Court's consent is required to transactions covered by Part II of the Act.
- (3) Section 25 of the Land Valuation

In the Supreme
Court of New
Zealand

No.10

Exhibit "F"

Proceedings Act requires the Land Valuation Committee to make an order, a delay of 7 clear days to take place to see whether any appeals are lodged, and then the Registrar of the Court seals the order. It is only after this last action by the Registrar that the order is deemed to be an order of the Court.

29 October (4)
1973

We understand that the Registrar sealed the order today, thus the Court's consent to the sale was not given until 29th October. This means that the Sale Contract is void because the condition contained in Clause 9 was not satisfied.

10

- continued

Yours faithfully,
HARPER, ATMORE & ROUSSELL

per: 'R.W. Rouscell'

No.11

Exhibit "G"

16 November
1973

No. 11

"G"

BELL, GULLY & CO.,
Barristers & Solicitors

20

16th November, 1973.

Messrs Harper, Atmore & Rouscell,
Solicitors,
60 Main Street,
OTAKI.

Attention: Mr Rouscell

Dear Sirs,

re: Scott v. Goode

Mr Bryson of Messrs Hollings, Thompson & Fairbairn has instructed us in relation to your client's expressed refusal to continue with the contract which he entered into with Mr M.N. Scott.

30

We have carefully considered your letter of the 29th ultimo and indeed the issues as a whole, and are satisfied that your client has no valid reason for declining to continue with the contract.

In these circumstances we have advised our instructing solicitors that a Writ for specific performance of the contract should issue and indeed Mr Scott wishes to continue with the purchase. Accordingly unless we receive written confirmation from you on or before Wednesday the 21st November next that your client will execute the Transfer submitted to him for that purpose in favour of Mr Scott, a Writ will be issued seeking specific performance of the contract. We enclose an additional copy of this letter for direct reference to your client and look forward to hearing from you on or before the date stipulated.

10

In the Supreme Court of New Zealand

No.11

Exhibit "G"

16 November 1973

- continued

Yours faithfully,
BELL, GULLY & CO.

per: 'B.A. Palmer'

No. 12

No.12

"H"

Exhibit "H"

20

HARPER, ATMORE & ROUSSELL
Barristers & Solicitors

19 November 1973

19th November, 1973.

Messrs Bell, Gully & Co.,
Solicitors,
P.O. Box 1291,
WELLINGTON, 1.

Dear Sirs,

RE: SCOTT v. GOODE

30

YOUR REF : BAP:CAB

We acknowledge receipt of your letter dated 16th November 1973.

Any proceedings issued by Mr Scott will be defended and we are authorised to accept service.

Yours faithfully,
HARPER, ATMORE & ROUSSELL

per: 'R.W. Roussell'

In the Supreme
Court of New
Zealand

REASONS FOR JUDGMENT OF BEATTIE J.

Hearing: 24 October 1974

No. 13

Counsel: B.A. Palmer for Plaintiff
R.A. Clarke and R.W. Roussell
for Defendant

Reasons for
Judgment of
Beattie J.

Judgment: 26 November 1974

26 November
1974

The plaintiff seeks specific performance of a contract made in writing on the 18 September 1973 wherein he agreed to purchase approximately 13½ acres of market garden land from the defendant at a price of \$65,000. The case proceeded on an agreed statement of facts. The agreement provided for a deposit of \$1,000 which was paid to the duly authorised land agents of the defendant. The balance of the purchase price was to be paid in cash on the date of settlement. Clause 4 of the Agreement reads :

"Settlement shall be effected on or before the 26 October 1973 or fourteen days after the approval shall have been granted by the Supreme Court under the Land Settlement Promotion Act, whichever shall be the later."

Clause 9 reads :

"Any contract arising out of this offer is conditional upon obtaining any necessary consent under or otherwise complying with the provisions of the Land Settlement Promotion and Land Acquisition Act 1952 and any Regulations thereunder and each party hereto shall do all such acts and things as may be reasonably necessary or expedient for the purpose of endeavouring to obtain such consent and ensuring compliance with the provisions of the said Act and Regulations. If any such consent where necessary shall not be granted by the 26th day of October 1973 or such later

date as the parties agree or shall be refused or granted subject to conditions unacceptable to the parties then such contract shall be void and the Purchaser shall be entitled to a refund of all moneys paid by him hereunder."

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Reasons for
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- continued

10 Pursuant to the Agreement, the defendant made the appropriate application under the Land Settlement Promotion and Land Acquisition Act 1952 for consent to the sale of the land described in the said Agreement. The Land Valuation Committee sitting at Palmerston North dealt with the application for consent on the 19th October 1973 by consenting to the application without calling on the parties to attend or give evidence. A copy of the Notice to the parties of the making of the Land Valuation Committee's Order consenting to
20 the proposed sale and purchase of the land was produced. It stated inter alia :

30 "On reading the above application, the Palmerston North Land Valuation Committee is satisfied that the application should be granted, and has made an order dated the 19th day of October 1973 consenting, pursuant to Part II of the Land Settlement Promotion and Land Acquisition Act 1952, to the application in accordance with the application without calling on the applicant or evidence."

40 The date mentioned in clause 9 of the Agreement (supra), namely, Friday the 26th October 1973, was not extended by agreement between the plaintiff and the defendant. On Monday, 29th October 1973, the Order of the Land Valuation Committee was sealed by the Administrative Division of the Supreme Court at Palmerston North. The Order of the Land Valuation Committee (a printed form) recites :

"It is ordered that (the consent of the Administrative Division of the Supreme Court of New Zealand be granted to the transaction pursuant to Part II) of the Land Settlement Promotion and Land Acquisition Act 1952."

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The document was dated the 19 October 1973 and signed by the Deputy Registrar of the Court. The Order reveals that the seal and the signature of the same Deputy Registrar were affixed as mentioned on the 29 October 1973. On the 26 October 1973 under cover of a letter of that date, the plaintiff's solicitors submitted on behalf of the plaintiff a Memorandum of Transfer of the land described in the Agreement for execution by the defendant after perusal by the defendant's solicitors.

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The defendant, through his solicitors, declined to execute the said Memorandum of Transfer upon the ground that the Agreement between the parties had become void as from midnight on the 26 October 1973. I set out the letter dated the 26 October 1973 from the defendant's solicitors to the plaintiff's soliditors:

"Messrs Hollings, Thompson & Fairbairn,
Solicitors,
P.O. Box 11,
PARAPARAUMU

20

26 October 1973.

Attention: Mr Bryson

Dear Sirs,

re: GOODE to SCOTT

A check at the offices of the Supreme Court at Palmerston North today discloses that the Order consenting to the above-mentioned sale will not be sealed until the 29th October 1973.

30

We refer you to Section 27 of the Land Settlement Promotion and Land Acquisition Act 1952 and to Sections 25 and 26 of the Land Valuation Proceedings Act 1948.

In particular, Section 25(2) of the Land Valuation Proceedings Act 1948 states that on the sealing of the Order by the Registrar it shall thereupon be deemed to be an Order of the Court.

40

This means that Clause 9 of the Sale Agreement between the parties has not been satisfied in that the consent by the Court has not been finalised by the 26th October 1973.

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10 Our client refuses to agree to any extension of time for the obtaining of the Court's consent and the Contract will therefore become void after midnight on the 26th October 1973.

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Your client is entitled to a refund of his deposit and we have written to Rod Weir & Co.Ltd. instructing that a refund be made forthwith."

- continued

A further letter dated the 29 October 1973 from the defendant's solicitors amplifies the stand that the defendant took. I set it out for completeness :

20 "Messrs Hollings Thompson & Fairbairn,
Solicitors,
P.O. Box 11,
P. RAPARAUMU.

Attention: Mr Bryson

Dear Sirs,

RE: SCOTT v. GOODE

30 We acknowledge receipt of your letter of 26th October 1973 enclosing a Transfer for perusal. However, we confirm that our client refuses to execute the Transfer because he is treating the contract as void from midnight on 26th October for the reasons stated in our letter to you dated 26th October.

Any proceedings against our client seeking a Writ for Specific Performance will be defended, and we are authorised to accept service.

40 We are confident that our view that the contract is at an end would be

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upheld in any Court proceedings
because :

(1) The terms "Court" and "Land Valuation Committee" are defined in both the Land Settlement Promotion and Land Acquisition Act 1952, and the Land Valuation Proceedings Act 1948. It is clear that they are entirely different entities.

10

(2) Sections 25 and 27 of the Land Settlement Promotion and Land Acquisition Act 1952 state that the Court's consent is required to transactions covered by Part II of the Act.

(3) Section 25 of the Land Valuation Proceedings Act requires the Land Valuation Committee to make an order, a delay of 7 clear days to take place, to see whether any appeals are lodged, and then the Registrar of the Court seals the order. It is only after this last action by the Registrar that the order is deemed to be an order of the Court.

20

(4) We understand that the Registrar sealed the order today thus the Court's consent to the sale was not given until 29th October. This means that the Sale Contract is void because the condition contained in Clause 9 was not satisfied."

30

The plaintiff thereupon declined to accept the Agreement was void and required the defendant to continue with the Agreement which the plaintiff contended was valid and enforceable. The defendant relied on the legal position as he understood it. Hence, this action.

40

It was a fundamental submission for the plaintiff that the expression "any necessary consent under the Land Settlement Promotion and Land Acquisition Act 1952" in the context of clause 9 (supra) means and was intended

by the parties to mean the consent of the Land Valuation Committee provided that such consent is not granted "subject to conditions unacceptable to the parties".

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10 I first pay regard to the position of the parties to the contract when it was entered into on the 18 September 1973. They were then respectively, a willing seller and a willing buyer. There was also the commonly imposed obligation upon both vendor and purchaser pursuant to clause 9 "to do all such acts and things which may be reasonably necessary or expedient for the purpose of endeavouring to obtain such consent and ensuring compliance with the provisions of the said Act and Regulations". I next refer to the understanding (which is presumed to be known to both parties at all material times) of the relevant law applicable to their contract under the Land Settlement Promotion and Land Acquisition Act. They would be presumed to know the procedure applicable to the making of orders contemplated by Part II of the Act, namely :

- 20
- 30 (i) An application filed in the Administrative Division of the Supreme Court with supporting Declarations by both vendor and purchaser (vide s.27 of the Act and R.47 of the Supreme Court (administrative Division) Rules 1969).
- (ii) The particular transaction is then referred by the Administrative Division of the Supreme Court to the Land Valuation Committee in the district concerned. That Committee makes a determination (s.22 of the Land Valuation Proceedings Act 1948.)
- 40 (iii) Upon that determination the Land Valuation Committee is required forthwith to advise the parties of its decision making a final order (s.25(1) of the Land Valuation Proceedings Act 1948).
- (iv) If an appeal is not lodged within seven days of the determination of

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Committee, the Registrar of the
Administrative Division seals the
Order (s.25(2)).

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I turn to consider the status of the
Land Valuation Committee in the context of the
relevant legislation, namely, the Land
Settlement Promotion and Land Acquisition
Act 1952; the Land Valuation Proceedings
Act 1948 and the Supreme Court
(Administrative Division) Rules 1969,
particularly Part IV thereof. As Cooke J.
said in Tauhera Properties Limited v.
Mercantile Developments Limited [1974]
1 N.Z.L.R. 584 at 591 :

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"Under ss.21, 22 and 25 of the Land
Valuation Proceedings Act, proceedings
reach the Land Valuation Committees
only as a result of being filed in the
office of the Administrative Division
and final orders of the committees are
deemed to be orders of the Court
unless appeals are duly lodged. Apart
from s.27(1) there are various other
provisions in the Act, giving the Court
general control over the committees, in
particular s.22(2), s.24 and s.26(3).
The scheme of the statute is thus that
in a sense the committees are delegates
of the Administrative Division".

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I respectfully adopt this summary of the
function of a Land Valuation Committee. In
doing so, I am fortified that Mahon J. in
Barker and Another v. Liddington and Others
(unreported decision 8 July 1974, Hamilton
Registry) also adopted the above passage. I
agree with Mr Palmer that notwithstanding as
a matter of definition a distinction is
carefully made in s.11 of the Land
Settlement Promotion and Land Acquisition Act
and preserved both in that Act, the Land
Valuation Proceedings Act 1948, and the
Supreme Court (Administrative Division)
Rules 1969, between the Administrative
Division of the Supreme Court and Land
Valuation Committees, the Committees by
statutory delegation, especially under
Part II of the Land Settlement Promotion and

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Land Acquisition Act, act for and on behalf of the Administrative Division of the Supreme Court and as an integral part of it. This submission, which I accept, is fortified when consideration is given to s.25(2) read in conjunction with s.26(2)(b) of the Land Valuation Proceedings Act which provides that if an appeal is not lodged within seven days of the making of an unconditional Order under Part II of the Land Settlement Promotion and Land Acquisition Act, then a formal Order embodying the determination of the Committee "shall be sealed by the Registrar and shall thereupon be deemed an Order of the Court". R.60 of the Supreme Court (Administrative Division) Rules 1969 reads as follows :

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- continued

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"Order of Committees generally - (1) In proceedings other than those in relation to objections to valuations as aforesaid, the Committee's formal order shall be in form 16.

(2) The order shall be prepared by the Registrar and signed by him.

(3) If the order is not appealed from within the time prescribed by section 26(2) of the Act, the Registrar shall cause the formal order to be sealed with the seal of the Court.

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(4) The formal order shall not be so sealed in any case where -

(a) Before the time prescribed for sealing the order an application for an extension of time within which to appeal is pending in or has been granted by the Court; or

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(b) The Court has directed, pursuant to section 26(3) of the Act, that the order be reviewed or that it be referred to the Committee for further consideration."

In my opinion, R.60(3) is purely complementary to s.25(2) of the Land Valuation Proceedings Act. My conclusion, therefore, is that

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although s.25(1)(a) of the Land Settlement Promotion and Land Acquisition Act refers to the consent of the Court as does s.27 of the Act, the consents, almost invariably, both in fact and law, go to transactions dealt with under Part II of the Land Settlement Promotion and Land Acquisition Act and are the consents of the particular Land Valuation Committees concerned with the transactions before them. I also refer to s.28 of the Act which is repeated exemptively under s.23(1) of the Land Valuation Proceedings Act. It was this particular procedure which was adopted by the Land Valuation Committee in the present case. Further examples of the subordinate delegate function of Land Valuation Committees are provided by Rules 47, 48, 49 and 55 of the Supreme Court (Administrative Division) Rules 1969. In my opinion, the function of sealing the Committee's Order as contemplated by s.25(2) of the Land Valuation Proceedings Act, renders a Committee's consent the consent of the Court.

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In this case the plaintiff and defendant knew that on the 19 October 1973 the Land Valuation Committee in Palmerston North had unconditionally consented to the transaction. Furthermore, neither party, being bound as each was under clause 9 of the Agreement (supra) could appeal against that consent which would inevitably become the deemed Order of the Court after seven days had expired from the making of the Order. Therefore, no further "consent" was necessary by the Administrative Division of the Supreme Court. At the time of hearing this case I remarked to counsel that I was sure that the same point had been recently considered by the Supreme Court but counsels' researches were not then able to produce any decision. I have found such a decision. It is the case of Barker and Another v. Liddington and Others, already referred to. Mahon J. was faced with a consent being given by the Committee on the 29 March 1974 and a stipulation in the contract that if the consent should not be granted by the 29 March or such later date as

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the parties agree on ... then the Agreement should be void. The Order of the Hamilton Land Valuation Committee could have been sealed on the 8 April 1974 but the Supreme Court seal and the Deputy Registrar's signature were not placed on the Order until the 3 May 1974. The learned Judge considered that the later date must be taken as the actual date of sealing of the Order. It was the opinion of Mahon J. that the plaintiffs obtained the consent of the Court to the transaction on the 29 March, 1974, and although the Order evidencing that consent was not sealed until 3 May, the consent granted on the 29 March remained unaffected, there having been no appeal or motion to review. As substantially the same arguments were advanced by counsel for the defendant in Barker's case as were urged upon me by Mr Clarke in the present case, I will not repeat them. What Mahon J. said in his judgment, which I gratefully adopt, was :

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"I am satisfied that the argument of Mr Tompkins is correct, and that the provisions of s.28 of the Land Settlement Act vest in the Land Valuation Committee power to grant the consent of the Supreme Court (Administrative Division) to an application duly made. It is clear that the order of the Committee does not become an order of the Court until it is sealed, but the order only enshrines the consent of the Court previously given on its behalf by the Committee."

In my view, for the Court to accept the defendant's argument would be to create havoc with conveyancing practice. Because I find reassurance for my own view in Mahon J.'s decision, I also do not intend to deal with the interesting arguments from Mr Palmer that the time restriction imposed in clause 9 was in law a condition subsequent to the contract, nor that when, rather like with Cinderella when midnight struck on the 26 October 1973, the Committee's final Order immediately following the last chime at

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- continued

midnight could theoretically be sealed rendering the determination a deemed Order of the Court. I rather think that where a plaintiff has entered into a contract subject to a time limit, the Court cannot on that particular submission vary the stipulated time, more particularly where the Registrar has to allow seven clear days. I also accept that the transaction cannot be registered in the Land Registry Office without a sealed Order being produced but, as I have indicated, I regard the sealing as an administrative function following upon a consent concerning which the parties themselves had no effective appeal. 10

I consider this is an appropriate case to grant the decree sought (see Loan Investment Corporation of Australasia v. Bonner [1968] N.Z.L.R. 1025 at 1037 and especially Richmond J. at 1047. The plaintiff 20 commenced his proceedings promptly and from the outset made it clear to the defendant he wished him to complete the contract.

I order specific performance in terms of the Statement of Claim. Costs are reserved and counsel may submit a memorandum thereon.

No.14

Order of the
Supreme Court

26 November 1974

—
No. 14.

ORDER OF THE SUPREME COURT

TUESDAY THE 26th DAY OF NOVEMBER 1974

BEFORE THE HONOURABLE MR JUSTICE BEATTIE

UPON READING the Statement of Claim and the Statement of Defence filed herein AND UPON READING the Agreed Statement of Facts filed herein and the agreed exhibits filed herein AND UPON HEARING Mr B.A. Palmer, Counsel for the Plaintiff and Mr R.A. Clarke and Mr R.W. Roussell, Counsel for the Defendant THIS COURT HEREBY ORDERS that there be specific 30

performance in the terms sought in the Statement of Claim filed herein of the contract entered into between the Plaintiff and the Defendant AND THIS COURT FURTHER ORDERS that costs be reserved.

In the Supreme Court of New Zealand

No.14

Order of the Supreme Court

26 November 1974

- continued

BY THE COURT

L.S.

'R.A. Hurley'

DEPUTY REGISTRAR

No. 15

No.15

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NOTICE OF MOTION ON APPEAL

IN THE COURT OF APPEAL OF NEW ZEALAND

In the Court of Appeal of Zealand

No. C.A. 7/75

No.15

BETWEEN ROBERT GOODE of Otaki,
Farmer

Notice of Motion on Appeal

Appellant

A N D MURRAY NEWTON SCOTT of
Otaki, Building Contractor

3 February 1975

Respondent

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TAKE NOTICE that on Monday, the day of 1975 at 10 o'clock in the forenoon or so soon thereafter as Counsel can be heard Counsel for the abovenamed Appellant will move this Honourable Court for an Order setting aside the whole of the Judgment of the Supreme Court given by the Honourable Mr Justice Beattie at Palmerston North on the 26th day of November 1974 wherein the said MURRAY NEWTON SCOTT was Plaintiff and the said ROBERT GOODE was Defendant UPON THE GROUNDS that the said Judgment is erroneous in fact and in law.

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DATED at Otaki this 3rd day of February 1975.

'R.W. Roussell'
Solicitor for the Appellant

In the Court
of Appeal of
New Zealand

No. 16

REASONS FOR JUDGMENT OF McCARTHY P.

No.16

Hearing: September 8, 1975

Reasons for
Judgment of
McCarthy P.

Counsel: B.L. Inglis for Appellant
A.D. Ford for Respondent

30 October
1975

Judgment: October 30, 1975

This appeal arises out of a dispute between the parties to an agreement for the sale and purchase of an area of 13½ acres of land in the Borough of Otaki which the respondent agreed to purchase and the appellant agreed to sell for the sum of \$65,000. It was farm land, and so was within the operation of s.25 of the Land Settlement Promotion and Land Acquisition Act 1952. Consequently, the consent of the Administrative Division of the Supreme Court was required, unless the purchaser could make a declaration in terms of s.24(1), which this purchaser could not do. The agreement, dated 17 September 1973, provided for settlement on or before 26 October or 14 days "after the approval shall have been granted by the Supreme Court under The Land Settlement Promotion Act whichever shall be the later." It also contained a specific provision, clause 9, relating to the obtaining of the consent necessary under that act. The clause is in a form commonly used, so we were told, and it read thus:

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9. ANY contract arising out of this offer is conditional upon obtaining any necessary consent under or otherwise complying with the provisions of the Land Settlement Promotion and Land Acquisition Act 1952 and any Regulations thereunder and each party hereto shall do all such acts and things as may be reasonably necessary or expedient for the purpose of endeavouring to obtain such consent and ensuring compliance with the provisions of the

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said Act and Regulations. If any such consent where necessary shall not be granted by the 26th day of October 1973 or such later date as the parties agree or shall be refused or granted subject to conditions unacceptable to the parties then such contract shall be void and the Purchaser shall be entitled to a refund of all moneys paid by him hereunder.

In the Court
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The problem is what is meant by the words "necessary consent" in this clause, for although the appropriate Land Valuation Committee acting pursuant to s.28 did make an order on 19 October consenting to the transaction, the Committee's order was not sealed and thereupon "deemed to be an order of the Court" as provided by s.25(2) of the Land Valuation Proceedings Act 1948, until 29 October, some three days after the date mentioned in clause 9. Thereupon the vendor, taking the view that the words "necessary consent" required an order sealed at the office of the Supreme Court, as provided for by s.25, by 26 October, claimed that he was not bound by the contract once that date had passed and refused to complete. So the purchaser sought an order for specific performance. In the Supreme Court Beattie J. held that in a case such as this where the parties bind themselves by their contract to cooperate in securing any necessary consent, they should be taken to intend, in the absence of opposition from the Crown, that the consent of the appropriate Land Valuation Committee is the step covered by the words "any necessary consent". He ordered performance of the contract. The vendor now appeals.

30 October
1975

- continued

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There can be no doubt that in order to make a transaction of this class effective, the consent of the Supreme Court is required, and were it not for the language of s.28 I would think that a consent granted by a Land Valuation Committee could not satisfy the words "necessary consent". But s.28 says:

Consent without hearing in certain cases -
If in any case the Land Valuation Committee is satisfied that, having regard to the provisions of this Part of

In the Court
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McCarthy P.

30 October
1975

- continued

this Act, any application for the consent of the Court to any transaction should be granted, the Committee may make an order consenting to the transaction in accordance with the application without calling on the applicant or hearing evidence.

I find it impossible to read this section otherwise than as intending that in those cases where the Committee acts under the powers it confers, that body gives consent on behalf of the Court, so that one can say that a consent given by the Committee is actually a consent given by the Court. This, it seems to me, would dispose of appellant's submission that the Court's consent had not been obtained in time were it not for what is found in s.25(2) of the Land Valuation Proceedings Act 1948, referred to earlier, which I must now consider. This section unquestionably raises a difficulty. It reads thus:

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(2) If an appeal is not lodged under the next succeeding section, a formal order embodying the determination of the Committee shall be sealed by the Registrar and shall thereupon be deemed to be an order of the Court.

I should go on to say that the next section in that Act s.26, allows an appeal to the Court from "any final order" of a Committee providing it is brought within the prescribed time or within such further time as may be allowed by the Court. The prescribed time in respect of applications under the Land Settlement Act is fixed, by subs. (2)(b), at seven days in the case of an order under Part II where there is no objection from the Crown representative. This means that in the present case it was not possible to seal the order until after 26 October, but it also means that the time for appealing expired on 26 October. Thereafter there could be no appeal unless the Court extended time.

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There are two opposing views open to the requirement of s.25(2) that an order of a Committee must be sealed by the Registrar before it is "deemed" an order of the Court. On the one hand there is the view that because of this requirement no consent is given by the Court until the Committee's order is sealed. On the other hand, there is the view that sealing, pursuant to s.25(2), is only for the purpose of conferring a degree of finality upon what has already been done by the Committee, and that the fact that sealing is required for that purpose does not prevent the conclusion that in granting consent a Committee acts as the deputy or surrogate of the Court. According to this view, once the Committee has consented the Court has consented, though that consent is inchoate in the sense that it is subject to appeal and may not be acted on until it is sealed in terms of s.25 - there is a locus poenitentiae between the grant of consent and the sealing.

I prefer this latter view because it does seem to me to fit in more suitably with the structure of Part II of the Land Settlement Act, as well as with the language of s.28. I find the form of order adopted by the Court, which is built on Form 16 in the Schedule to the Administrative Division's Rules, of some interest in this connection. I will set it out in full, because it seems to me to show that the Court's view - though that may not be important - is that when the Committee gives consent, it does so for the Court.

R.60(1)

L.V.P.16

ORDER OF LAND VALUATION COMMITTEE

In the Supreme Court of New Zealand
 (Administrative Division) No. LVP.326/73
 PALMERSTON NORTH Registry

In the Court
 of Appeal of
 New Zealand

—
 No.16

Reasons for
 Judgment of
 McCarthy P.

30 October
 1975

- continued

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IN THE MATTER of an applica-
 tion under the Land Settlement
 Promotion and Land Acquisition
 Act 1952 for consent to a
 sale of land

In the Court
of Appeal of
New Zealand

BETWEEN ROBERT GOODE Vendor
and MURRAY NEWTON SCOTT Purchaser

BEFORE THE PALMERSTON NORTH LAND VALUATION
COMMITTEE

No.16

Reasons for
Judgment of
McCarthy P.

On reading the application of ROBERT GOODE
for consent to a sale of land

30 October
1975

in respect of the land described in the
schedule hereto

- continued

IT IS ORDERED that *(the consent of the
Administrative Division of the Supreme Court
of New Zealand be granted to the
transaction * pursuant to Part II) of the
Land Settlement Promotion and Land
Acquisition Act 1952:

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SCHEDULE

13 acres 2 roods 7.3 perches more or less
situate in the Borough of Otaki being part
Awahohonu A3 No. 2 and being also parts
Lots 41, 42 and 43 on Deposited Plan 1429 and
being all of the land comprised and described
in Certificate of Title Volume 6D Folio 449
(Wellington Registry)

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Dated at PALMERSTON NORTH this 19th day of
October 1973

(sgd) J.D. EARLES

(Deputy) Registrar

L.S. Sealed at the office of the Supreme
Court at this 29th day of October 1973

(sgd) J.D. EARLES

(Deputy) Registrar

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Solicitors for the applicant:

Harper Atmore & Housell
Solicitors,
OTAKI

So I accept that the order of the Committee in this case did grant the consent of the Supreme Court, inchoate though that consent was until sealing was effected.

In the Court
of Appeal of
New Zealand

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No.16

Reasons for
Judgment of
McCarthy P.

30 October
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10 But the real question in the case still remains; what was intended by the parties by their wording of clause 9? Did they intend that the order must be sealed and the consent thereby made fully effective by the date stated in the clause, or did they intend that the consent of the Court granted by the Committee but not sealed would be sufficient, if the Committee acted under s.28. For the reasons which are developed at length by my brother Cooke in a judgment to be delivered, I consider that this latter view is preferable. I see no reason to think that the parties would have viewed sealing as the critical step. I think they must have intended that if it so happened that the Crown did not oppose the transaction and the Committee acted pursuant to s.28, with the result that the only tribunal which would in fact be required to consider the application and make a decision granting consent would be the Committee, that a consent so given should be taken as the "necessary consent", even though some time thereafter must elapse before it could be sealed and acted upon. This approach to the legislation found favour with Beattie J. in the Supreme Court. I believe it was also the view of Mahon J. in Barker v. Liddington, Hamilton (unreported) 8 July, 1974. I think we should uphold it.

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I would dismiss the appeal with costs against appellant.

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No. 17

No.17

REASONS FOR JUDGMENT OF RICHMOND J.

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Clause 9 of the contract is in the following form -

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40 Any contract arising out of this offer is conditional upon obtaining any necessary consent under or otherwise complying with the provisions of the Land

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Settlement Promotion and Land Acquisition Act 1952 and any Regulations thereunder and each party hereto shall do all such acts and things as may be reasonably necessary or expedient for the purposes of endeavouring to obtain such consent and ensuring compliance with the provisions of the said Act and Regulations. If any such consent where necessary shall not 10
be granted by the 26th day of October 1973 or such later date as the parties agree or shall be refused or granted subject to conditions unacceptable to the parties then such contract shall be void and the Purchaser shall be entitled to a refund of all moneys paid by him hereunder.

The clause is part of a standard printed form of contract and was evidently drafted in such a way as to cover both transactions in 20
which the purchaser is able to make a declaration under s.25(1)(b) of the Land Settlement Promotion and Land Acquisition Act 1952 and those in which he is not. The latter was the position in the present case, and accordingly the transaction would have been unlawful and would have had no effect (s.25(4)) unless 'entered into subject to the consent of the Court' (s.25(1)(a)). In 30
the Land Settlement Act 'Court' means the Administrative Division of the Supreme Court and 'Land Valuation Committee' is separately defined (s.2(1)). In s.25 there is nothing to suggest that the word 'Court' is used to include a Land Valuation Committee. On the contrary the two expressions are used in contradistinction to one another in s.25(1)(a) and in s.25(6).

Section 25(5) is important. It is as follows - 40

Where any transaction to which this Part of this Act applies is entered into subject to the consent of the Court, the transaction shall not have any effect unless the Court consents to it and the conditions upon or subject to which the consent is granted are complied with.

One can say then (apart from a purchaser's declaration under s.25(1)(b)) that a transaction will be unlawful unless entered into subject to the consent of the Administrative Division of the Supreme Court and will have no effect unless that Court consents to it.

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10 By clause 9 the contract is expressed to be 'conditional upon obtaining any necessary consent under ... the provisions of the Land Settlement Promotion and Land Acquisition Act 1952'. 'Any necessary consent' must here mean the consent of the Administrative Division, for if it meant anything else the contract would be unlawful.

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20 Section 25(1)(a) imposes time limits within which applications must be made for the consent of the Court but fixes no limit of time within which such consent must be actually obtained. Thus it is as a matter of private bargain between the parties, and not because of any requirement of the Land Settlement Act, that clause 9 goes beyond making the contract conditional on the consent of the Court when it further provides that 'If any such consent where necessary shall not be granted by the 26th day of October 1973 or such later date as the parties agree or shall be refused or granted subject to conditions unacceptable to the parties then

30 such contract shall be void and the Purchaser shall be entitled to a refund of all moneys paid by him hereunder'. I can see no reason why the parties, if they so wished, could not have worded their agreement in such a way that the contract would become void (which may mean voidable) if neither the consent of the Court nor of a Land Valuation Committee were granted by the 26th October 1973. But I find the words 'any such

40 consent where necessary' (following as they do immediately after the phrase 'for the purpose of endeavouring to obtain such consent' towards the end of the previous sentence) incapable, and intractably so, of any other meaning than as relating back to the same kind of consent as is earlier referred to in clause 9 when the contract is expressed to be 'conditional upon obtaining any necessary consent' under the Land

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Settlement Act. In other words they mean the consent of the Court, as referred to in both s.25(1)(a) and s.25(5) of the Act, for the consent to which the transaction must be made subject and the consent which gives efficacy to the transaction are clearly one and the same thing. That the parties to this particular contract had the need for the consent of the Court very much in mind is clear from clause 4 of the agreement, which provides -

10

Settlement shall be effected on or before the 26th October 1973 or 14 days after the approval shall have been granted by the Supreme Court under The Land Settlement Promotion Act whichever shall be the later.

The question then is - Had the Court, in the present case, consented to the transaction by the 26th October 1973?

20

An application for the consent of the Court was duly filed in the office of the Court and was referred by the Registrar to a Land Valuation Committee (Land Settlement Act s.27 and Land Valuation Proceedings Act 1948 ss.21 and 22). The Committee, on 19 October 1973, dealt with the application under s.28 of the Land Settlement Act, which provides -

28. Consent without hearing in certain cases - If in any case the Land Valuation Committee is satisfied that, having regard to the provisions of this Part of this Act, any application for the consent of the Court to any transaction should be granted, the Committee may make an order consenting to the transaction in accordance with the application without calling on the applicant or hearing evidence.

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If this section stood alone it might be possible to argue that it empowers a Committee, acting as the statutory delegate of the Court, to make an order which effectively granted the consent of the Court to the transaction, and

thus brings to an end the status imposed upon the transaction by s.25(5) of the Land Settlement Act, namely that of not having any effect unless consented to by the Court. But the language of s.28, even standing alone, is by no means compelling in this direction, and may be read as doing no more than to empower the Committee to give its own consent to the transaction. The phrase 'in accordance with the application', in my view, means no more than 'unconditionally' or 'absolutely'.

10

However, s.28 does not stand alone, as consideration must also be given to s.25 of the Land Valuation Proceedings Act 1948. That section is as follows -

25. Orders of Committees to be sealed -

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(1) Notice of the making of every final order of a Land Valuation Committee under this Act shall forthwith be given to the parties and to such other persons, and in such manner, as may be prescribed.

(2) If an appeal is not lodged under the next succeeding section, a formal order embodying the determination of the Committee shall be sealed by the Registrar and shall thereupon be deemed to be an order of the Court.

30

The next succeeding section (s.26) makes provision for appeals to the Court from final orders made by Committees. In the case of applications dealt with under s.28 of the Land Settlement Act the time for appealing is seven days (s.26(2)(b)). In the present case the time ran out at midnight on Friday 26 October and the formal order embodying the determination of the Committee was sealed on Monday 29th October.

40

I regard s.25(2) of the Land Valuation Proceedings Act as having two very evident purposes. The first is to enable an order of a Committee to be given (by the affixing of the seal of the Court) a quality in law which it did not previously possess. Thereupon it is 'deemed' to be an order of the Court'. In law it then has the same effect as an order of the Court itself granting consent to a transaction. The other purpose of s.25(2) is to ensure that

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an order of a Committee does not operate as an order of the Court until the time for an appeal has run out and then only if no appeal has been lodged. This is irreconcilable with a construction of s.28 of the Land Settlement Act which would enable a Committee to grant an immediate and operative consent of the Court.

I should add that I can see nothing in the language of the Act which justifies attributing to a consent given by a Committee under s.28 any different quality (i.e. as being a consent of the Court) from an absolute consent given by a Committee under s.29. The relevant words of the latter section are - 10

If the Land Valuation Committee, upon considering an application for consent and after hearing such evidence as it thinks fit, is satisfied (here follow as (a) (b) and (c) the matters upon which the Committee must be satisfied) the Committee shall make an order consenting to the transaction, either absolutely or 20

The words 'an application for consent' must mean the same thing as the words 'any application for the consent of the Court', which appear in s.28. Both sections empower the Committee to 'make an order consenting to the transaction'. Under s.28 the consent is given 'in accordance with the application', and under s.29 it may be given 'absolutely'. Orders under both sections fall within the provisions of s.25 of the Land Valuation Proceedings Act 1948. The only legal difference appears to be that in relation to s.29 orders the time for appeal is 14 days instead of 7 days in relation to s.28 orders. 30

I mention these matters because it seems to me that no importance can be attached to the fact that in the present case the Committee acted under s.28 rather than under s.29. In either case the consent would in my opinion be of the same legal nature - a consent of the Committee not operating as a consent of the Court. 40

I should add that I can derive no help in this connection from the printed form of order which was used in the present case. The body of that order, which uses language to the effect that the Committee has ordered that the consent of the Court be granted, is not derived from any prescribed form. It may be contrasted with Form 13 (in the Schedule to the Supreme Court (Administrative Division) Rules 1969) which merely follows the language of s.28 of the Land Settlement Act.

In brief, and for the reasons which I have given, I have come to the following conclusions -

- (1) Clause 9 of the contract unambiguously provided that the contract would be 'void' if the consent of the Court were not given by 26 October.
- (2) Under the relevant provisions of the two statutes it is not possible to regard the consent of a Committee as a consent of the Court until it is deemed to be so after sealing in terms of s.25(2) of the Land Valuation Proceedings Act 1948.
- (3) In the present case there was accordingly in existence, as at 26 October, only a consent of the Committee and not a consent of the Court.

For myself, therefore, I would allow the appeal.

No. 18

REASONS FOR JUDGMENT OF COOKE J.

The parties, whom it is convenient to call respectively the vendor and the purchaser, entered into an agreement for the sale and purchase of a freehold property of some 13½ acres at Otaki. The agreement is contained in a real estate agents' offer-and-acceptance form, the offer to purchase being

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dated 17 September 1973 and the acceptance
18 September 1973. Since 26 October 1973
the vendor by his solicitors has maintained
that the agreement has come to an end
because, so it is contended, the necessary
consent under the Land Settlement Promotion
and Land Acquisition Act 1952 was not
granted to the contract by that day, as
required by clause 9 of the agreement. In
a suit by the purchaser for specific perfor- 10
mance Beattie J. rejected that contention
and granted a decree. The vendor appeals.

The agreement provides for a purchase
price of \$65,000 of which \$1000 was payable
as a deposit immediately upon acceptance of
the offer and the balance in cash on the
date of settlement. Settlement was to be
effected on or before 26 October 1973 or
14 days after the approval had been granted
by the Supreme Court under the Land 20
Settlement Promotion Act whichever should
be the later. Clause 9 provides :

9. ANY contract arising out of this
offer is conditional upon obtaining
any necessary consent under or other-
wise complying with the provisions
of the Land Settlement Promotion and
Land Acquisition Act 1952 and any
Regulations thereunder and each party
hereto shall do all such acts and 30
things as may be reasonably necessary
or expedient for the purpose of en-
deavouring to obtain such consent and
ensuring compliance with the provisions
of the said Act and Regulations. If
any such consent where necessary shall
not be granted by the 26th day of
October 1973 or such later date as
the parties agree or shall be refused
or granted subject to conditions 40
unacceptable to the parties then
such contract shall be void and the
Purchaser shall be entitled to a
refund of all moneys paid by him
hereunder.

Clause 11 stipulates for certain remedies for
the vendor if the purchaser makes default for
14 days in payment of the purchase money or

any part thereof. That clause contains the words 'time being strictly of the essence of the contract'. Clause 13 provided :

13. THIS offer is subject upon the purchaser being able arrange his finances to his, and his solicitors satisfaction by a date no later than 10th October, 1973. and should finance not be available the deposit shall be refunded in full to the purchaser.

10

Part II of the Land Settlement Promotion and Land Acquisition Act 1952 applies to the transaction. It is common ground that the purchaser was not in a position to make the declaration referred to in s.24 of that Act. Accordingly, by force of s.25(1)(a) the transaction had to be entered into subject to the consent of the Court and an application for that consent had to be made within one month after the date of the transaction. By s.25(5) the transaction would not have any effect unless the Court consented to it and the conditions upon and subject to which the consent was granted were complied with. The case was argued in the Supreme Court on an agreed statement of facts. From that statement it appears that on a date not there specified the vendor filed an appropriate application for consent. We were informed from the Bar that this was shortly after the purchaser had indicated, on 10 October 1973, that finance had been satisfactorily arranged. Evidently the application was filed in the Palmerston North office of the Court and was then referred to Palmerston North Land Valuation Committee pursuant to s.22 of the Land Valuation Proceedings Act 1948. The Committee dealt with the application on 19 October 1973 by consenting to it without calling on the applicant or hearing evidence. The Committee acted under s.28 of the Land Settlement Promotion Act, which provides :

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30

40

28. If in any case the Land Valuation Committee is satisfied that, having regard to the provisions of this Part of this Act, any application for the

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consent of the Court to any transaction should be granted, the Committee may make an order consenting to the transaction in accordance with the application without calling on the applicant or hearing evidence.

That procedure is preserved by s.23(1) of the Land Valuation Proceedings Act which provides:

23.(1) Where any claim, objection, application, or other matter is referred to a Land Valuation Committee to be dealt with by that Committee in accordance with the provisions of this Act, the Committee shall as soon as practicable fix a time and place for the hearing, and shall give notice of the time and place so fixed to all parties: 10

Provided that nothing contained in this subsection shall in any way restrict the power of the Land Valuation Committee under section 28 of the Land Settlement Promotion and Land Acquisition Act 1952 to grant its consent to any transaction without calling on the applicant or hearing evidence. 20

By r.55 of the Supreme Court (Administrative Division) Rules 1969, in determining whether under s.28 of the Land Settlement Promotion Act it should consent to any transaction without calling on the applicant or hearing evidence, the Committee may have regard to any report of the Crown representative; and where the Committee makes an order under s.28 the Registrar is to give the parties notice in form 13 of the making of the order. This rule harmonises with s.25 of the Land Valuation Proceedings Act, which provides: 30 40

25. (1) Notice of the making of every final order of a Land Valuation Committee under this act shall forthwith be given to the parties and to such other persons, and in such manner, as may be prescribed.

(2) If an appeal is not lodged under the next succeeding section, a formal order embodying the determination of the Committee shall be sealed by the Registrar and shall thereupon be deemed to be an order of the Court.

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10 In accordance with s.25 and r.55 the Deputy Registrar of the Supreme Court (Administrative Division) at Palmerston North gave written notice to the parties in the prescribed form L.V.P.13. As prescribed, the form is described as 'Notice of Order Granting Unconditional Consent under Section 28 of Land Settlement Promotion and Land Acquisition Act 1952'. It bears the prescribed general heading: 'In the Supreme Court of New Zealand (Administrative Division) Palmerston North Registry. In the matter of an application under the Land Settlement Promotion and Land Acquisition Act 1952 for consent to a sale of land'. The parties are then named. The notice continues:

20

30 On reading the above application, the Palmerston North Land Valuation Committee is satisfied that the application should be granted, and has made an order dated the 19th day of October 1973 consenting, pursuant to Part II of the Land Settlement Promotion and Land Acquisition Act 1952, to the application in accordance with the application without calling on the applicant or evidence.

Rule 60 provides:

60. (1) In proceedings other than those in relation to objections to valuations as aforesaid, the Committee's formal order shall be in form 16.

40 (2) The order shall be prepared by the Registrar and signed by him.

(3) If the order is not appealed from within the time prescribed by section 26(2) of the Act, the Registrar shall cause the formal order to be sealed with the seal of the Court.

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(4) The formal order shall not be so sealed in any case where -

(a) Before the time prescribed for sealing the order an application for an extension of time within which to appeal is pending in or has been granted by the Court; or
(b) The Court has directed, pursuant to section 26(3) of the Act, that the order be reviewed or that it be referred to the Committee for further consideration.

10

As the Committee had granted the application unconditionally and as there was no objection from the Crown representative, the prescribed time for appeal under s.26 of the Land Valuation Proceedings Act was seven days. Although there was initially a submission for the vendor to the contrary, it became common ground later in the argument in this Court that the prescribed time expired at the end of Friday 26 October 1973. No appeal was lodged within that time. On Monday 29 October 1973 the Deputy Registrar sealed the order, and in terms of s.25(2) of the Land Valuation Proceedings Act 'thereupon' it was to be deemed to be an order of the Court. As prescribed the formal order is described as 'Order of Land Valuation Committee'. It bears the general heading already mentioned, showing that it is made in a proceeding in the Supreme Court of New Zealand (Administrative Division) Palmerston North Registry and stating the nature of the application and the names of the parties. It reads :

20

30

Before the Palmerston North Land
Valuation Committee

On reading the application of ROBERT GOODE for consent to a sale of land in respect of the land described in the schedule hereto IT IS ORDERED that the consent of the Administrative Division of the Supreme Court of New Zealand be granted to the transaction

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pursuant to Part II of the Land Settlement Promotion and Land Acquisition Act 1952.

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10 Particulars of the land are given in a
schedule. The document states that it is
dated at Palmerston North this 19th day of
October 1973 and is sealed at the office of
the Supreme Court this 29th day of October
1973; the Deputy Registrar has signed in
that capacity after each date; and the seal
of the Supreme Court is affixed. This
is in accordance with the scheme of form 16,
but the wording after 'It is ordered that'
has been supplied. The formal order is in
conformity with s.25 of the Land Valuation
Proceedings Act and r.60 in that it indicates
that an order consenting was made on 19
October and was then signed by the Deputy
Registrar of the Court, and that it was later
20 sealed as an order of the Court. The
vendor's contention rests ultimately on the
point that the seal was not affixed by
midnight on Friday 26 October 1973. In
rejecting that contention Beattie J. accepted
that Land Valuation Committees act for and on
behalf of the Administrative Division and are
'an integral part of it'. He regarded the
sealing as an administrative function
following upon a consent concerning which
30 the parties themselves had no effective appeal.
He thought that to accept the vendor's argument
would be to create havoc with conveyancing
practice. He followed an unreported
judgment of Mahon J. in Barker v. Liddington
(Hamilton, 8 July 1974). In that case
Mahon J. said 'It is clear that the order of
the Committee does not become an order of the
Court until it is sealed, but the order
only enshrines the consent of the Court
40 previously given on its behalf by the
Committee.

In determining whether or when an order
or consent has been made or granted by a
Court, it is necessary to have regard to the
purposes for which the question is asked and
the context in which it arises, including
any relevant statutory or contractual
provisions. That is illustrated by

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Ex Parte Hockey, In re Risca Coal and Iron Co. (1862) 4 De G.F.& J. 456; In re Thomas [1911] 2 Ch. 389, In re Harrison's Share [1955] Ch. 260, Johns v. Westland District Licensing Committee [1961] N.Z.L.R. 35 and Westland Freezing Co.Ltd. v. Steel Construction Co.Ltd. [1968] N.Z.L.R. 680.

None of these authorities were cited in argument. Nor could it be suggested that any of them is directly in point. They are cited here merely to emphasise that in this field answers to somewhat similar questions vary with the precise question and the context. They also show that there is no reason in principle why a reference to the granting of a consent should not be taken as referring to the making or pronouncing of the order as distinct from its perfection by sealing. In a contract of the present kind a consideration which seems to me to point to that interpretation is that the parties are more likely to have been concerned with the fact of consent, so that for practical purposes they would know where they stood, than with the formality of sealing. Moreover, it is most unlikely that in cl.9 the parties were addressing themselves to the contingency of a consent being challenged on appeal or review : the relatively short time agreed on for obtaining consent and the statutory provisions for appeal or review, to be cited later, rule out that interpretation.

The precise question here is whether, within the meaning of cl.9, any necessary consent under the Land Settlement Promotion Act had not been granted by 26 October 1973. The words just italicised are the crucial ones. AS counsel were agreed, it is basically a question of interpretation of the contract. It is a question of mixed law and fact. Prima facie the words of the parties have to be taken in the ordinary or natural meaning they bear in the context of this contract referring to a statute, and then they have to be applied to the facts.

As to the contractual context, the purpose of cl.9 was plainly to ensure that the parties did all they reasonably could to obtain consent under the statute by 26 October 1973 and that they would know by then whether consent had been granted. If consent was granted unconditionally by then, the contract would continue; if not, it might be treated as at an end. The great majority of applications under Part II of the Land Settlement Promotion Act are disposed of by Committees. In an agreement made on 18 September, whereunder the purchaser had until 10 October to arrange finance, the parties would hardly have contemplated that the Administrative Division itself would grant consent by 26 October. The necessity of a report from the Crown Representative and of arrangements to convene a Court consisting of a Judge and at least one additional member would make such a possibility rather remote. There was the possibility of seeking the leave of the Court to having the application heard and determined by the Court without reference to the Committee, and perhaps also of obtaining such a hearing by a Judge of the Court sitting alone: Land Valuation Proceedings Act 1948, proviso to s.22(1); s.13(4) added in 1970. Or the Court might have intervened under s.16. But these would have been unusual eventualities. In the present case, as indeed in most cases of contracts subject to Part II of the Land Settlement Promotion Act, I think that the parties contemplated the ordinary procedure of reference to a Committee.

As to the statute referred to in the contract, in ascertaining the ordinary and natural meaning of the reference to the granting of any necessary consent it is relevant that, although Land Valuation Committees are sui generis, they are in a sense delegates of and act on behalf of the Administrative Division. The concept that orders made by Committees are made for the Court' was expressed by Finlay J. as regards Land Sales Committees and the Land Sales Court in Fisher to Pitman [1946] N.Z.L.R. 64, 65, where that Judge also spoke of a

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Committee as being 'the executive instrument by which the order is made'. Similarly in Mountney to Young [1947] N.Z.L.R. 436, 441, Judge Archer spoke of Land Sales Committees as 'acting on behalf of the Court'. These opinions do not appear to have depended, as counsel for the appellant suggested, on the point that under s.52(2) of the Servicemen's Settlement and Land Sales Act 1943 Land Sales Committees had 10
power to revoke consents (even after sealing), which power is reserved to the Administrative Division by s.34 of the Land Settlement Promotion Act. They were descriptions of the general relationship between the Committees and the Court, based on the general scheme of the legislation. As regards the general relationship between Land Valuation Committees and (formerly) the Land Valuation Court and (now) the Administrative Division, similar 20
descriptions have been given or suggested by a number of different Judges : Horowhenua County v. Nash [1968] N.Z.L.R. 525, 527, where Wild C.J. said that, broadly speaking, the Committees are 'the work-horses of the ... Court'; Tauhara Properties Ltd v. Mercantile Developments Ltd [1974] 1 N.Z.L.R. 584, 592; D.C. Allan Ltd. v. Blakely [1974] 2 N.Z.L.R. 723, 728; and the unreported case of Barker v. Liddington already mentioned. And the 30
judgment of Shorland J. in Davis v. Capel [1959] N.Z.L.R. 825 illustrates general usage well. Throughout the Judge uses the consent of a Committee and the consent of the Court as interchangeable expressions. Of course the Committees and the Court are separate entities and to a large extent have different functions. But that is not 40
inconsistent with the delegation concept : the same would apply to many agents or deputies and their principals. Among the provisions demonstrating the close relationship of the Division and the Committees and the control of the latter by the former, reference may be made to the Land Valuation Proceedings Act ss.16, 24 and 27, and to the Land Settlement Promotion Act, s.34(1)(b). The provision last-mentioned appears to assume that the submission of facts to a Committee is tantamount to submission to the Administrative Division. The same idea is

inherent in the general heading for forms prescribed by the Supreme Court (Administrative Division) Rules. As already mentioned, this postulates that proceedings dealt with by a Committee take place 'in' the Administrative Division.

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10 The idea of statutory delegation is also consistent with the language of s.28 of the Land Settlement Promotion Act, under which the Committee acted here. While s.25 of that Act requires the consent of the Court, s.28 may be interpreted as empowering the Committee to grant its consent on behalf of the Court in the circumstances there specified. The section is designed to provide prompt and simple machinery for disposing of straightforward cases. Not only is a hearing of the parties dispensed with but, in contrast with the position under s.29 when the Committee hears
20 evidence, there is no provision for imposing conditions.

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30 It is true, as Mr Inglis emphasised, that under s.25(2) of the Land Valuation Proceedings Act an order of a Committee is not deemed to be an order of the Court until sealed. Nevertheless it has been made before then - and, for the reasons already given, I think the scheme of the legislation as a whole fairly justifies the view taken in our Courts for nearly thirty years that it has been made on behalf of the Court. That view is supported by r.60 and form 16, which recognise that the order sealed as the order of the Court is the same order as has been made by the Committee on a previous date. The order cannot be sealed until the time for appeal (in this case seven days) has expired, but the sole purpose of requiring that interval appears to be to give an opportunity for appeal under
40 s.26(1) or review by the Court of its own motion under s.26(3). It may well be that for some purposes the order is not fully effective until perfected by the administrative act of sealing. For instance in practice the transaction probably could not be registered in the Land Transfer Office (although Part II of the Land Settlement Promotion Act does not contain any express provision on that matter

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corresponding to s.35D(b) in Part IIA). But the reason for this is basically that evidence, in the form of a sealed order, of the grant of consent by the Committee for the Court would not yet be available. On considering all the foregoing points together, it is apparent that in the period before it is sealed a final order of a Committee granting consent is in an unusual category - perhaps a category unique to this legislation. Faced with something of a rara avis, the Court should try, in my view, to give a practical interpretation to the contract made by the parties in relation to it. 10

In interpreting clause 9 of the contract in that context it is helpful to bear in mind what was said by Jenkins L.J. in delivering the judgment of the Court of Appeal in England in In re Harrison's Share at p.276:

We think that an order pronounced by the judge can always be withdrawn, or altered, or modified by him until it is drawn up, passed and entered. In the meantime it is provisionally effective, and can be treated as a subsisting order in cases where the justice of the case requires it, and the right of withdrawal would not be thereby prevented or prejudiced. For example, the granting of an injunction, though open to review, would generally operate immediately, that is, as soon as the relevant words are spoken. But an order which could only be treated as operative at the expense of making it, in effect, irrevocable, for example, an order for the payment of money, cannot be treated as operative until it has been passed and entered. 20 30

Here of course the Court's right of withdrawal on appeal or review could not be prevented or prejudiced by treating the order as in the meantime provisionally effective. Indeed, notwithstanding s.25(2) of the Land Valuation Proceedings Act and notwithstanding anything in the contract, the power of revocation conferred by s.34 of the Land Settlement Promotion Act is available at least until a 40

transaction is completed and perhaps even after that. Moreover the effect of s.26(2A) of the Land Valuation Proceedings Act, enabling a retrospective extension of the time for appeal, appears to be that strictly speaking there can never be an irrevocable consent when an application has been dealt with by a Committee.

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10 The question then becomes, in terms of the passage quoted from Jenkins L.J., whether the justice of the case requires the order made by the Committee for the Court to be treated as subsisting before sealing. Relating that approach to the present type of case, the question is whether the true interpretation of the contract requires the order to be so treated. As already suggested, by referring to the grant of any necessary consent the parties cannot have

20 meant an irrevocable consent. Bearing in mind the general recognition, shown by the line of cases previously cited, that the Committee acts on behalf of the Court, there is good reason for treating the consent so granted by the Committee as the necessary consent within the meaning of clause 9. It would be the common understanding of the Act that the Committee is able to give the necessary consent on behalf of the Court, though it is

30 subject to appeal until sealing. Clauses such as cl. 9 are not directed to the question of revocation of consent on appeal or review or otherwise : the consequences of revocation would depend on s.25(4) or s.s.34(3) of the Land Settlement Promotion Act and the general law. The line of cases reviewed in Anker Developments Ltd v. Wainuiomata Golf Club [1972] N.Z.L.R. 801, where the result only of the Court of Appeal judgments is reported, would be relevant. They indicate that the

40 transaction would have to be treated as of no effect and that prima facie restitutio in integrum would be appropriate.

As to s.25(2) of the Land Valuation Proceedings Act, that subsection seems to me to provide in essence that the document evidencing the order is to be available when the time for appeal has expired and no appeal

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has been lodged. If such is the scope and purpose of the subsection, the words 'shall thereupon be deemed to be an order of the Court' refer simply to the status of the document and are not inconsistent with the view that the consent has been granted previously by the Committee on behalf of the Court; that is to say, in effect by the Court.

For these reasons I think that a granting of a consent by a Committee, whether with or without a hearing, may reasonably be treated as a granting of the consent of the Court and that normally a provision in a contract stipulating that the necessary consent under the Land Settlement Promotion Act must be granted by a certain date will thereby be complied with. In particular cases, however, the text of the contract or the surrounding circumstances may call for a different interpretation. In the present case there is no compelling reason for any other interpretation. Accordingly I think that Beattie J. reached the right conclusion and would dismiss the appeal. 10 20

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No. 19

JUDGMENT OF COURT OF APPEAL

BEFORE

THE RIGHT HONOURABLE MR JUSTICE McCARTHY
(Presiding)

THE RIGHT HONOURABLE MR JUSTICE RICHMOND
THE HONOURABLE MR JUSTICE COOKE

Thursday the 30th day of October 1975

THIS Appeal coming on for hearing on the 8th day of September 1975 AND UPON HEARING Mr B.D. Inglis of Counsel for the Appellant and Mr A.D. Ford of Counsel for the Respondent THIS COURT HEREBY ORDERS that the Appeal be dismissed with costs of \$300 to the Respondent, together with Respondent's disbursements of \$20.00 as per attached Schedule. 40

BY THE COURT

L.S.

'D.V. Jenkin'
REGISTRAR

ORDER OF THE COURT OF APPEAL GRANTING
FINAL LEAVE TO APPELLANT TO APPEAL TO
HER MAJESTY IN COUNCIL

In the Court
of Appeal of
New Zealand

No.20

MONDAY THE 1st DAY OF MARCH 1976

BEFORE THE RIGHT HONOURABLE MR JUSTICE
McCARTHY, PRESIDENT, THE RIGHT HONOURABLE
MR JUSTICE RICHMOND, AND THE HONOURABLE MR
JUSTICE COOKE

Order granting
final leave to
Appellant to
Appeal to Her
Majesty in
Council

1 March 1976

10 UPON READING the Notice of Motion for grant
of final leave to appeal to Her Majesty in
Council and the Affidavit filed in support
thereof AND UPON HEARING Mr Inglis of Counsel
for the Appellant and Mr Wilson of Counsel for
the Respondent THIS COURT HEREBY ORDERS that
the above-named Appellant be and he is hereby
granted final leave to appeal to Her Majesty
in Council from the judgment of this Honourable
Court given and made on the 30th day of October
1975

20

By the Court

L.S.

'D.V. Jenkin'

REGISTRAR

In the Court
of Appeal of
New Zealand

CERTIFICATE OF REGISTRAR OF
COURT OF APPEAL

No. 21

Certificate
of Registrar
of Court of
Appeal

I, DOUGLAS VICTOR JENKIN, Registrar of the Court
of Appeal of New Zealand DO HEREBY CERTIFY
that the foregoing 57 pages of printed matter
contain true and correct copies of all the
proceedings, evidence, judgments, decrees and
orders had or made in the above matter, so
far as the same have relation to the matters
of appeal, and also correct copies of the
reasons given by the Judges of the Court of
Appeal of New Zealand in delivering judgment
therein, such reasons having been given in
writing:

10

AND I DO FURTHER CERTIFY that the Appellant
has taken all the necessary steps for the
purpose of procuring the preparation of the
record, and the despatch thereof to England,
and has done all other acts, matters and
things entitling the said Appellant to
prosecute this Appeal.

20

AS WITNESS my hand and Seal of the
Court of Appeal of New Zealand this 26th
day of July 1976

'D.V. Jenkin'

L.S.

REGISTRAR

ON APPEAL
FROM THE COURT OF APPEAL OF NEW ZEALAND

BETWEEN:

ROBERT GOODE

Appellant

- and -

MURRAY NEWTON SCOTT

Respondent

RECORD OF PROCEEDINGS

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