

357 Is a Contract a Contract?

Times are tough and there are a lot of contracts being walked away from.

I am not a Solicitor, but I have studied Contract Law and it is quite clear. Contract Law is the very basis of all New Zealand commerce. It is the basis of our rural business as well. Notwithstanding that there are a number of people walking away from signed contracts only to find that they are following them.

Some of the issues are as follows:

1. Sale and purchase agreements.

There are a number of these contracts that have failed already in the rural sector and I would not be surprised if there are more to come. Farm lending is no longer a Bankers preferred choice and if the numbers for finance, do not work on a conservative basis, the Bank will not help or support them any more.

So what happens?

The vendor normally keeps the deposit, which can be tough on the purchaser, but a very good reason to make sure that the vendor's agent gets a 10% deposit.

The Realtor normally gets paid the commission due for the sale out of the deposit that is one of the reasons why they usually ask for the 10% deposit. It is also to show that the purchaser is genuine and putting the offer on the property in good faith. The deposit is banked into the real estate companies Trust Account. If the sale and purchase agreement does not settle the vendor can then sue the purchaser for the losses that may have been incurred, including diminutive value of the farm.

If the purchaser has no further funds and the vendor is human, they may just keep the balance of the deposit, lick their wounds and move on from there. Unless, as a purchaser, you are absolutely sure that the sale can settle, it may be sufficient reason not to purchase another property until the money is in your bank, or you could get caught. I have heard of a progression of 10 farm sales falling like a pack of cards, because the first sale did not proceed. Currently it is about maneuvering your ships through the icebergs in the hope that you do not get sunk by an iceberg that you did not see coming.

- 2 Maize contracts: Many people have walked away and tried to renegotiate the contract. The results and the enforceability of the contract will largely depend on the wording of the same. Palm Kernel contracts are also being challenged, but the larger suppliers in New Zealand have their contracts watertight and expect them to be honoured, as they should be.

- 3 Contracts for sale of Livestock are also under pressure as well. The purchaser is bound by the contract. The vendor can clearly sue the purchaser for any loss. There are cases where cows have been signed up at say \$2,000 and are then subsequently sold for much less. The purchaser can be made liable for the loss.

If a contract fails what can you do?

All agreements must be in writing, verbal grazing agreements are not worth anything these days. Find a good solicitor that understands agriculture to write up the agreement for you.

Be mindful that if you are going to pursue a failed contract, check whether they have any money for you to recover the losses. Remember that you can not get blood from a stone.

Bankrupting someone must be the last resort for anybody. I lent money to a rat bag and I went to the wire to recover it, got a bankruptcy order on this person, but stopped there. I asked myself would I feel better for making this person bankrupt and destroying his life, probably not.

Some due diligence on purchasers by vendors would be a very good idea. Because of the Official Secrets Act in New Zealand, this prevents too much knowledge being available, but there are ways and means of finding out if the purchaser has the financial horsepower to settle, which could prevent a lot of stress later.

Is the purchaser naïve, and who is advising them? Is the solicitor competent and knowledgeable about the forthcoming contract or not? All these questions need to be answered in these uncertain days.

SUMMARY:

A contract is a contract. But the winds of time are blowing hard and some purchasers are just not going to be able to settle. Careful financial management, a good solicitor, an independent negotiator and good old fashioned common sense are essential should things fly to pieces.

Contracts need to be in writing, signed and dated correctly and all matters attended to with due diligence or we can find ourselves in serious trouble.

These are the opinions of Don Fraser of Fraser Farm Finance. Any decisions made should not be based on this article alone and appropriate professional assistance should be sought.

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