IN THE HIGH COURT OF NEW ZEALAND
TAURANGA REGISTRY

CIV-2009-470-204

	BETWEEN	GRASSHOPPER FARMS LIMITED Plaintiff
	AND	LINAN ZHOU Defendant

Hearing: 10 December 2009

Appearances: Mr D M O'Neill for Plaintiff
Ms N Tabb for Defendant

Judgment: 21 December 2009 at 10 a.m.

JUDGMENT OF ASSOCIATE JUDGE DOOGUE

This judgment was delivered by me on
***21.12.09 at 10 am**, pursuant to*
Rule 11.5 of the High Court Rules.

Registrar/Deputy Registrar

Date……..…

Counsel:
Mr D M O'Neill, Barrister, P O Box 815, Waikato Mail Centre
Ms N Tabb, Barrister & Solicitor, P O Box 101972, NSMC

Background

[1] The plaintiff agreed to sell to the defendant 27 residential lots on which he proposed to construct a small community. The land was situated in Tauranga city. The purchase price was $4.93 million inclusive of GST (if any). The deposit paid was $400,000. Settlement was to be 30 days after the Defendant was notified of the issue of title.

[2] The plaintiff required, and obtained, the consent of the Tauranga City Council to the subdivision of an area of which the land to be sold was part. It is not easy to follow from the affidavits what notification was sent to the vendor/plaintiff but the parties are agreed that the initial conditions of the subdivision which gave rise to the dispute are as follows:

> **That a consent notice be registered on the Certificate of Title requiring that:**
>
> For Lots 405, 406, 409-411 & 415-417:
>
> a) The owners are required to meet the full cost of any fencing along the common boundary between the lot and the adjoining land that is vested in the Tauranga City Council.
>
> Lots 400-426
>
> b) That the fencing shall be maintained in accordance with the fencing plan contained in Harrison Grierson's drawing 125595-RC06 dated 30 April 2008.
>
> c) The design and construction of any structures requiring a building consent in accordance with the Building Act 2004 shall fully comply with the recommendations contained in the geotechnical completion report compiled by S & L Consultants Ltd for Stage 2A dated June 2008, reference 18264. Any development of the property shall also be undertaken in accordance with the above report.
>
> For Lots 406, 409-411, 415 & 416
>
> d) These lots contain debris protection earthfill bunds formed as part of the subdivisional works. No excavations shall be made into the bund which would result in a reduction in mass or height without the approval of a Category 1 Chartered Professional Engineer. The bunds shall be inspected and maintained regularly at the property owner's expense to ensure that they are kept clear of upslope debris accumulation and that stormwater runoff routes remain in place. An accumulated material in the reserves behind the bunds shall be removed immediately after deposition.

DATED at Tauranga this 4th day of July 2008

[3] The consent notice concerning the bunds was later modified:

Tauranga City Council varies the Consent Notice CONO 7883264.1 condition (d) registered on the Certificate of Title for Lots 406, 409-411, 415 & 416 DP 407041 pursuant to Section 221(3) of the Resource Management Act 1991 to read as follows:

(d) These lots contain debris protection earthfill bunds formed as part of the subdivisional works. No excavations shall be made into the bund which would result in reduction in mass or height without the approval of a Category 1 Chartered Professional Engineer. The area of bund that falls within each Lot shall be inspected and maintained regularly at the property owner's expense.

Dated at Tauranga this *24th* day of *December* 2008

[4] On 17 July 2008 the defendant's lawyers voiced on behalf of their client objections to all of the conditions, including the obligation to pay for the fencing.

[5] The defendant's lawyers wrote again on his behalf objecting to the conditions on 5 August 2008. In their letter they said:

> We note that the most relevant of the sub-clauses in issue, i.e clause 4.1(i) envisages a list of matters (which we acknowledge not being an exhaustive list) and that all matters listed and referred to in that sub-clause are largely if not all to do with granting the Council rights regarding normal services arising out of the subdivision, pedestrian and vehicle access and right of way etc. The consent notice in issue requires our client, inter alia, to follow the geotechnical completion report compiled by S & L Consultants Limited (a report that we have to say that our client has no knowledge of) with respect to any development of the property on the land. The requirement, which falls into a category not contemplated by the contracting parties, clearly falls outside the necessary implication of contractual wording if properly and reasonably interpreted.
>
> None of the other sub-clauses of clause 4.1 appears to assist your client's argument that the matter in dispute falls within clause 4.1.
>
> Our client's position, as set out in our 05.08.2008 fax to you, accordingly stands and we await your urgent advice as to whether the consent notice will be removed from the titles on or before settlement.

[6] In the letter his solicitors wrote 14 August 2008, the defendant also claimed that the plaintiff had misrepresented the soil type to him. In that letter the solicitors said:

> A separate issue seems to exist from the presence of consent notice, i.e. your client's representation at the time of the agreement to our client that there would not be any earth filling with respect to any of the sections of stage 2A. The inquiries were made at the various pre-contractual negotiation stages and the representation induced our client to enter the agreement. The representation has obviously turned out to be, as assessed against the recent information received by our client regarding S & L Consultant's comments, a misrepresentation.
>
> Whether your client's earth-filling activities in the course of the subdivision of stage 2A substantially reduces the land value is a live issue, our client obviously needs to ascertain more facts to confirm his current view on this.

[7] The plaintiff's solicitors answered the requisitions on 20 August 2008 stating:-

(a) The fencing was a standard consent from the Council.
(b) The foundations were for a standard conventional foundation in a house.
(c) The bunds were something the defendant was aware of and the defendant had initialled the plan showing the bunds.

[8] On 17 September 2008 the plaintiff served a settlement notice under the contract on the defendant but that has not been complied with.

[9] The defendant has not attempted to cancel. He seeks compensation for the defects in the title. Presumably, his defence is that he has suffered loss as a result of those defects and he would seek to set that loss off against the price for the land; and, again I assume, it is his position that the existence of a set-off gives him a defence to the claim for specific performance in that he should not be required to pay the price of the land without some abatement against the purchase price. As to the misrepresentation about the geotechnical features of the adjoining land, I assume, it not having been spelt out, that this provides him a defence at equity to a claim for specific performance.

The requisitions

[10] Two provisions of the contract are of particular relevance to the question of the defendant's right to requisition. They are clauses 4.1 and 9.1.

[11] Clause 4.1 sets out rights relating to the land which the vendor retained up to possession date, namely:

> (i) To grant Tauranga City Council such rights as they may properly require in connection with the land including in particular but not by way of limitation a public pedestrian accessway, service vehicle accessway, right of way, the right to lay power and telephone cables, sewerage, gas and water pipes and other connections underground and to construct any transformer or supply box;
>
> (ii) To provide for any rights in respect of water, stormwater, sewerage, gas drainage, electricity, telecommunications and rights-of-way and other requirements by way of easement or otherwise howsoever;
>
> ...
>
> No such matter entitles the purchaser to compensation or damages or to annul the sale or entitle the purchaser to make any objection or requisition pursuant to clause 9 however if such matter substantially reduced the value of any lot as a residential building site then the purchaser is entitled to cancel the agreement...

[12] Clause 9.1 states:

> Any objections to or requisitions on the title to the lots which the purchaser shall be entitled to make must be stated in writing to the vendors' solicitors within five (5) working days from the date the vendors or their solicitors have notified the purchaser or his solicitor that the title is available (time being essential) and in default thereof the same shall be held to be waived and the title to have been absolutely accepted by the purchaser. In the event of the vendors being unable or unwilling to remove or comply with any such objections or requisitions the vendors shall be at liberty notwithstanding any intermediate negotiations by notice in writing to the purchaser to cancel the agreement for purchase in which case the purchaser shall receive back all moneys paid to the vendor in accordance with the terms hereof but shall have no other claim whatsoever on the vendors for the expense of investigating the title or for compensation or otherwise howsoever;

[13] I observe in passing that Clause 4.1 could hardly be stated in wider terms when it speaks of 'such rights as [the Council] may properly require in connection with the land and 'other requirements by way of easement or otherwise howsoever'.

Defendant's submissions

[14] Ms Tabb in her submissions said that the purpose of clause 9.1 is to allow the purchaser to consider the title (once it is available) to determine whether that title reflects what he agreed to purchase. The defendant's position is that the title is something different from what he agreed to purchase. The defendant expected to obtain a fee simple title with no restrictions or obligations on the title. The consent notices and covenants reveal geotechnical issues which were not known to the purchaser at the time the sale and purchase agreement was signed and impose restrictions or additional obligations on development of the sections together with additional obligations to fence and inspect, maintain and clear bunds at the land owner's cost and potential difficulty with insurance cover.

The consent notices

[15] The obligation on a vendor to make good title is as described in Professor McMorland's text Sale of Land (2nd ed 2000, Publishing Press Auckland), at 269:

> **9.040 Duty to make a good title**
>
> The vendor is under a duty, implied by law into the contract, and therefore except to the extent that the contract itself expressly or impliedly provides otherwise, to make good title to the estate described in the contract of sale.

[16] Further on in the same paragraph the authors state, again authoritatively in my view:

> The exact nature of a good title is not clear. It has been said that "a purchaser is entitled to be satisfied that [the] vendor is seised of the estate which he [or she] is purporting to sell ... and ... is in the position without the possibility of dispute or litigation, to pass that [estate] to the purchaser. (footnotes omitted)

[17] Various suggestions have been made as to the test to be adopted. For example, the test has been said to be whether "the Court, in an action for specific performance at the instance of the vendors, [would] force a title containing the alleged defect upon a reluctant purchaser". (See *Manning v Turner* [1957] 1 WLR 91 at 94).

[18] The matter was considered by the Court of Appeal in *Underwood v Bevin* [1992] 3 NZLR 129. In that case there were encumbrances on the vendor's title which placed limitations on the erection of buildings on the property. Those limitations included minimum footing depths and a restriction on building on slopes of a specified steepness unless a registered engineer was engaged to design and supervise the work. After referring with approval to the statement of the law in an earlier (1979) edition of Hinde McMorland and Sim, McKay J, at page 133, said:

> On their face, [the covenants] represent a serious restriction on the ability of a purchaser to deal with the land as he might himself choose. Perhaps more importantly, the encumbrance signals to an intending purchaser that the stability of the land should be regarded as suspect. A prudently advised purchaser would hesitate to purchase such land without obtaining engineering reports, or at least discounting the purchase price.

[19] While the judgment is not explicit on the point, the flavour of those references, including as they do references to the impression that the existence of the covenants on the title might make on an intending purchaser, would seem implicitly to be an adoption of the 'marketable title' approach. Such approach is referred to in paragraph 9.04 of *Sale of Land*:

> In that sense, it was held to mean not necessarily a title which is perfect in all respects, but a title which a court will force on an unwilling purchaser, excepting that a court will not compel a purchaser to take a title which will expose the purchaser to litigation or hazard.

The authority given is *Barclays Bank PLC v Weeks Leg and Dean* [1999] QB 309.

[20] What is clear is that the qualities of a title that the Court will compel an unwilling purchaser to accept cannot be decided in isolation from the question of what the parties actually agreed were the conditions, if any, to which the title would be subject. In this case, clause 4.1 conferred wide rights on the vendor under the heading "vendors sub-divisional rights". Before considering those rights more closely, I note that it seems to be the case that when councils approve subdivisions, they will frequently take the opportunity to impose conditions or controls on the land use and development that are more stringent than those that previously existed. That is a matter of common knowledge. That, in a sense, is part of the price that the developer has to pay. It is without doubt for that reason clause 4.1 is drawn in such wide terms. The developer will not be able to envisage in detail what conditions are

going to be attached until an application for subdivision consent is submitted to the council and a response obtained. No doubt it was for that reason the vendor under the present contract wanted to preserve a wide power to grant to the Tauranga City Council "such rights as they may properly require in connection with the land".

[21] I interpolate that in this case there is no suggestion made that the Tauranga City Council acted without power or authority in attaching the conditions that resulted in the consent notices being registered against the title to the property.

[22] To continue, it is a matter of commonsense that conditions which the Council might seek to attach by means of consent notices could result in degradation of the attractiveness of the property. In order to protect the interests of the purchaser, the contract goes on to provide that the purchaser may cancel the agreement if the effect of any such grant is to "substantially reduce the value of any lot as a residential building site".

[23] The consent notices that were objected to in this case fall into the following groups :

a) The requirement to comply with the geotechnical advice contained in the S & L Consultants Ltd report and, in particular, the requirements as to the standard to be met when constructing the foundations;

b) The fencing obligation;

c) The requirement to maintain the bunds and clear away debris.

[24] The defendant faces a potential problem in that it has not adduced any evidence to establish the proposition that the consent notices will substantially reduce the value of any lot. Ms Tabb invited me to assume that that would be the result. She referred to the comments of the Court of Appeal in *Bevin* that I have mentioned above, as lending support to the view that the tagging of the title with such conditions would make a purchaser wary about entering into the contract or encouraging a purchaser to negotiate for a lower price.

The condition concerning foundations

[25] I accept the evidence of the plaintiff that the provision prescribing the standard of foundations actually imposed a basic or minimum standard for foundations and one that is applicable to virtually any residential building.

[26] My conclusion is that such a provision would hardly be likely to deter a reasonably interested purchaser in the property.

Fencing

[27] The effect of the registration of the encumbrance relating to fencing against the title to the property was to transfer to the owner/s of the property the obligation to fence parts of the land contiguous to city council property.

[28] In the first place, I consider that the right to impose an obligation to pay for fencing is one of those matters that falls within clause 4.1. In essence, clause 4.1 recognises that the Tauranga City Council may as the as the approving local authority extract from the subdivider a wide range of concessions in return for subdivision approval.

[29] If the granting of the right to lodge consent notices falls within the terms of clause 4.1, as I believe it does, then the question that needs to be asked is whether the existence of the clause imposing the obligation on the landowner will only give an entitlement to requisition if it "substantially reduced" the value of any "lot as a residential building site'. This raises the question, "reduced from what?" I will assume that the answer to the question requires a comparison to be made between the value of the land with the fencing cost burden and without it.

[30] I assume, although the evidence is not clear on this point, that part of the subdivision was land which bordered a council reserve.

[31] It may be that buyers of properties bordering on reserves might be prepared to pay more for them because of the ambience and the views that properties have

because of their proximity to reserves. The fencing cost might, in general terms, be part of the price paid for acquiring a section next to a reserve. On the other hand one can also imagine unattractive aspects of being adjacent to council land. The effect of all of these factors is that I simply do not know if the presence of the fencing covenant would substantially reduce the value of the land of sections in this category in Tauranga city.

[32] Even that is probably not the end of the matter. It might be that the general characteristics of the sections mean that they are highly desirable. There might be limited supply of sections in a context of considerable demand for them all of which could mean that the hypothetical willing buyer would not be at all influenced at all, or only slightly, by the matter of fencing costs. It is, of course, possible that the opposite is true.

[33] In the end, given the absence of information about the fencing costs, the value of the sections and what relationship the one has to the other, the extent to which the obligation to pay the one would have on the value of the other, I consider that would not be it is legitimate to speculate as to whether the fencing covenant would cause a substantial reduction in the value of the lot. No evidence was adduced of what effect, if any, the obligation to pay for the fencing had on the value of the residential lots.

[34] Taken overall, there are too many uncertainties to enable me to make any judgment uninformed by evidence as to whether fencing obligation substantially reduced the value of any lot as a residential building site.

The bunds

[35] I accept that the consent notice reference to the bunds is of rather more substance. In its current form it reads:

> (d) These lots contain debris protection earth filled bunds formed as part of the sub-divisional works. No excavation shall be made into the bund which would result in reduction in mass or height without the approval of a category 1 chartered professional engineer. The area of bund that falls within each Lot shall be inspected and maintained regularly at the property owner's expense.

[36] The first part of the proposed clause confirms what any purchaser would see on a visual inspection of the property: namely, there are earth-filled bunds present. The second part, which forbids excavations, is hardly likely to discourage them. The third, the requirements for inspection and maintenance, may have a dampening effect on a potential purchaser's enthusiasm. The provision is a vague one and quite what the extent of the commitment it imposes is in monetary terms is unclear.

[37] But the purchaser's objection was more fundamental than that. In effect, it was that the presence of the consent notice drew attention to an unattractive aspect of the property to which I shall now make reference.

[38] The function of the bunds, apparently, is to prevent debris which might be dislodged from the 20-30 metre high hill on the council reserve from crossing on to the subject properties. It is true that, overall, the consent notice does draw attention to this feature. Whether the council's apparent apprehension that there is a real risk originating from debris falls from the hill is correct or not is no doubt a matter that each purchaser would make his or her own decision about – assuming they adverted to the issue at all. Certainly, it would not appear to a reasonable reader of the condition in the consent notice who had inspected the property that the bunds have been constructed as a defence to a catastrophic land-slide of the type which the defendant's expert engineer has spoken of in his evidence. If that is correct, the fact that the entire hill on the reserve adjoining the property may ultimately prove to be unstable is irrelevant to the present application. The issue that arises on the present application is not the allegedly hazardous state of the hill. Rather, it is what effect compelling the purchaser to accept a title tagged with the consent notice might have on that party.

[39] My overall conclusion is that a reasonably robust purchaser, one who is not unduly risk-averse, would on being acquainted with the existence of the consent notices, consider the significance of the bunds, the likelihood that he/she would be involved in expense clearing up debris that might cross over the bunds into the sections. Such a purchaser would, in my assessment, be unlikely to infer that the reference to the bunds might hint at the existence of even more serious landslide problems. The notional purchaser that I have in mind might well take the view that

if there was a risk of a major landslide onto the property, the council would have been unlikely to permit construction there in any circumstances, without or without low bunds - bunds which would seem to offer little, if any, protection against such an event.

[40] There is a an absence of evidence on these matters. It is for the defendant who wishes to make out a right to cancel to persuade me that there is an issue of substance to be resolved in the proceedings viz whether the presence of the consent memorandum would in all the circumstances lead to a substantial reduction in the value of the property. It is only in such a circumstance that the defendant would be entitled to argue that the proceeding should be sent to trial. I am not convinced that that is the case.

Misrepresentation

Defendant's submissions

[41] Ms Tabb for the defendant submitted that the evidence put forward on behalf of the defendant is that the defendant specifically enquired about geotechnical issues and soil quality before the contract was signed; and that Mr Graeme Lee responded by stating that there were no soil issues but failed to address the geotechnical issues arising from the hill on council land adjacent to the sections, or the requirements for the bunds including land stability and potential slippage/debris. Given the direct enquiry by the defendant, Mr Lee was under an obligation to disclose the true position fully and frankly. The defendant's (uncontested) evidence is that he did not do so. The omission to disclose the correct position regarding the stability of the adjacent land and slippage together with the reasons for the bunds amounts to a misrepresentation.

Plaintiff's submissions

[42] In essence, the reply from the plaintiff was that there had been no misrepresentation. The plaintiff pointed to evidence from the consulting engineer that the foundation material on which construction would take place was of a good quality and there were no 'soil issues'.

Discussion

[43] For the purposes of my decision I will accept that Mr Cho, a deponent on behalf of the plaintiff, was correct when he deposed that Mr Lee indeed made the statement about there being no soil issues. The issue then is what meaning can be attributed in the circumstances to the alleged statement that there were no 'soil issues'. It may be impossible in the context of a summary judgment application to attribute any clear meaning to the expression. Was the reference to 'soil issues' restricted to the quality of the foundation material on the property that was the subject of the agreement, or did it extend to the potential hazard represented by the presence of the nearby hillock which is situated on council land.

[44] In the defendant's notice of opposition he stated that one of the grounds of opposition was as follows:

> (b) The plaintiff, through its employees or agents misrepresented the quality of the land by confirming that there were no soil or geotechnical issues affecting the sections and that the sections would be easy to build on;

[45] The thrust of the defendant's case is that the plaintiff's reference to 'soil issues', was wide enough to extend not just to the question of whether the sections were comprised of material suitable for building on but also to the stability of the nearby hillock. In that regard, Mr Storic (an engineer) has given evidence on behalf of the defendant. He considers that there is a possibility of slippage from the hill close to the land because of certain features including its steepness, the presence of slip scars and other reasons. In this he disagrees with the expert who gave a report on behalf of the plaintiff –Mr Hughes of the firm S & L Consultants. Mr Storic referred in his evidence to the stated requirement for the bunds being justified by the need to hold back debris. He says that "debris" by definition includes any quantity of falling debris or landslide debris which could be hundreds of cubic meters or more.

[46] The essence of the defence of misrepresentation against a claim for specific performance, as I understand it, is that a party to a contract should not be compelled to accept something different from what he contracted for.

[47] The question I have to determine is whether there is a reasonable defence available to the defendant against the claim for specific performance based upon the misrepresentation that he alleges. The defendant has evidence available that shows the plaintiff misrepresented the position so far as the condition of the "soil" was concerned. It is a matter of deciding whether in terms of practicality and common sense the statement that the plaintiff made actually could be taken to relate to the condition of the ground on the hill and the reserve area. That requires a judgement to be made as to whether someone who was talking about a building site and who refers to "the soil" may ordinarily be taken to be talking about the land on which the buildings are actually to be constructed, rather than land in an adjoining area. That raises questions about what can words reasonably understood by a reasonable person would be taken to communicate. On balance I would be prepared to accept for the purposes of summary judgement that the meaning which the defendant advances is arguable.

[48] One difficulty with the alleged misrepresentation, though, is that what is relied upon is apparently a statement of opinion. In general terms representations must concern questions of fact rather than opinion: *Shotover Mining Ltd v Brownlie* (30/9/87, McGechan J, HC Invercargill CP96/86). There are recognised exceptions to such an approach. Where the representor may be supposed to have greater familiarity with the facts than the representee, then the representee is entitled to assume that what he is hearing accords with and is based upon the facts that the representor knows. But that is not the position here. A representee should be able to safely assume that representations about the quality of the soil on the sections themselves property are based on fact because a developer of the land can be taken to have acquainted himself with the factual position. But the position is otherwise when one comes to statements of opinion about the geo-technical properties of land some distance removed from the subject property. The enquiry is a fact-specific one. In that context, I note no express evidence has been given to prove that the representee would have had reason to expect that Mr Lee would have known about the geotechnical state of the hill. The fact that low bunds had been erected on the boundary of the subject property is insufficient. The presence of the bunds which are a relatively small-scale barrier is hardly suggestive of fears of a major landslide

event. My conclusion is that the alleged misrepresentation is not one upon which a successful equitable defence of misrepresentation could be based.

[49] A further issue is whether the defendant relied upon the representation in the sense that I have construed it when he entered into the contract. There is no evidence that actually occurred. There can be no basis therefore for withholding specific performance on the grounds of a misrepresentation.

Conclusion

[50] As to the foundation specifications, if a purchaser wanting to understand what compliance with the standard rules involved, by making reference to the standard itself or obtaining advice on the point, he/she would soon be reassured that the requirement for foundations was a minimal one.

[51] Additionally, in the absence of evidence, it cannot be assumed that the presence of the fencing obligation has caused a substantial reduction in the value of the sections. Factors such as the desirability of the land, the significance of the fencing costs in proportion to the cost of the land, whether sections bordering a reserve carry a premium making the fencing cost of marginal concern and other factors mean have to be considered. When all those matters are taken into account, I am not persuaded, in the absence of evidence on the issue, that the cost of fencing is a foundation for a substantial ground of defence.

[52] There is no proper evidential basis for suggesting that any aspect of consent notices that are connected with geotechnical issues would have resulted in a substantial reduction of the value of the property. I do not consider that the fact that the consent notice made reference to the bund and the necessity to clear the debris away from the section will have substantially reduced the value of the land. The existence of the bunds would have been obvious on inspection of the property. The scale of the construction of the bunds and the knowledge that rocks, top-soil and other debris might be expected to fall from steep unformed land, would on their own explain to a purchaser what the function of the bunds was: that is, to prevent the ingress of non-catastrophic falls of debris. Against this background, it is an

exaggeration to suggest that the consent notice would have conveyed to buyers that there was a danger of a major landslide from the hill on the reserve with resulting reduction in the value of the sections.

[53] I am firm in my belief that there is nothing in the misrepresentation point, either. Even if it is arguable that a reference to their being no problems with "the soil" had an extended meaning beyond the substrate of the land which was being sold and in fact additionally referred to the geotechnical condition of the land in the adjoining reserve, it was only an expression of opinion that was made in circumstances where the defendant could not reasonably claim that the vendors knew more about the facts of the matter that he did. Therefore, in the circumstances it is not a case where the expression of opinion can be taken as involving an assertion of facts known to the representor.

[54] Additionally, there is no evidence that the purchaser took the representation as having that meaning and was influenced to enter the contract on the basis that the vendors had given him a reassurance about the condition of the land in the reserve.

[55] In my judgement the application for an order for specific performance must succeed. There is no substantial defence available to the defendant to the effect that the lodging of the consent notices was not within the rights of the plaintiff in terms of its contract with the defendant. The summary judgment application is granted. I consider that the appropriate order is that the defendant is ordered to perform his obligations under the contract for sale and purchase dated 10 August 2007. The parties should confer on costs. If they are unable to agree on that matter I shall hear submissions from them at 9 am on a suitable date.

_____

J.P. Doogue
Associate Judge