The Worst Case Scenario: Investment Risk

When making new investments many people look through rose-coloured glasses, but it is essential to consider the risks.

An example of a worst case scenario is in the recent Court of Appeal decision of *Station Properties Ltd (in receivership and liquidation) v Kumar*.[i] The defendants entered into agreements to buy apartments in the belief that they would never be required to settle the purchases.

The Facts
In May 2006, Mr and Mrs Kumar, Mr Selwyn and Mr and Mrs Donaldson entered into arrangements to partly fund the development of a complex to be built in Queenstown by Station Properties. They each signed agreements to purchase individual apartments.

The developer's plan was to sell the whole complex after it was constructed, at which time it would cancel the individual apartment agreements. The parties who had agreed to buy the apartments would receive a fee of one percent of the purchase price and a share of the profits made on the development.

The parties did not anticipate a significant downturn in the property market over the following years. Construction was completed, but Station Properties was unable to sell the complex in its entirety. In 2008, Station Properties began calling on the purchasers to settle in accordance with the agreements. At that stage, the finished apartments were worth substantially less than what the purchasers had agreed to buy them for. The purchasers refused to settle.

In 2010, Station Properties was in receivership and its receivers cancelled the agreements and sued for damages. The High Court held that because Station Properties had not obtained a practical certificate of completion for the complex, it was not entitled to require settlement and was not awarded damages.

The Appeal
The Court of Appeal was satisfied the purchasers had each repudiated the agreements by making it clear they had no intention of meeting their obligation to settle the apartment purchases at the prices agreed in 2006.

The purchasers argued that Station Properties was in material breach of the contracts due to not meeting the requirements for practical completion, failure to pay an agreed one per cent fee and failure to provide furniture for each apartment. On that basis the purchasers felt they were justified in repudiating their agreements. The Court of Appeal disagreed.

By the time the dispute reached the Court of Appeal, a certificate of practical completion had been issued – but incorrectly by the quantity surveyors rather than the architects. However the Court was satisfied this issue could have easily been remedied because practical completion had in fact been achieved. Other breaches by Station Properties were relatively minor and could have been easily remedied before or upon settlement.

The Court of Appeal was satisfied that when the purchasers repudiated the agreements, Station Properties was ready, willing and able to transfer the completed apartments to the purchasers in exchange for payment of the purchase price.

The purchasers never expected to buy the apartments themselves. However the Court of Appeal held that they were contractually required to do so, and that Station Properties was entitled to compensation from the purchasers for their failure to settle.

What this means for you
The next time you are entering into a contract take the time to consider what you are agreeing to. While contracting parties may expect or hope for a particular outcome, things do not always happen as intended.

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[i] *Station Properties Ltd (in receivership and liquidation) v Kumar and others* [2013] NZCA 70, 20 March 2013