CAVEAT EMPTOR - BUYER BEWARE

The recent High Court decision of Johnson v Auckland Council highlights the fundamental legal principle of caveat emptor - buyer beware!

The Johnsons purchased a property in Auckland in April 2009 at a mortgagee sale. The vendor warranties, including those that related to building works, were deleted.

Substantial alterations to the house had been carried out by the homeowner and the Council had issued code compliance certificates in relation to those alterations.

It later transpired that the work that was carried out was defective and the house was not weather-tight.

The purchasers then claimed compensation in the vicinity of $1.925 million from the Council on the basis that it was negligent in issuing the code compliance certificate when the works were in fact defective.

The Council admitted that it had been negligent but responded by saying that the purchasers had contributed to their own loss as they had not obtained a pre-purchase report (such as a building inspection) or made any other enquiries before purchasing the property.

The purchasers then argued that they were entitled to rely on a code compliance certificate issued by the Council.

The High Court rejected this argument and held that the purchasers could not solely rely on a code compliance certificate and had contributed to their own loss as they had failed to make the necessary enquiries to satisfy themselves that the house wasn't defective.

Although each case will be decided on its own facts, there are a few important factors to bear in mind when purchasing a property:

1. If you are experienced in dealing with a particular issue, such as leaky homes, you may be held to be alert to those issues and therefore be required to investigate those issues if there are any indicating factors.

2. Any code compliance certificate issued by the Council will only relate to the specific work defined in the certificate. It is therefore important to take prudent steps, such as obtaining a LIM or a building inspection report, to ensure that all works have been certified by the Council.

3. It is essential that you read the vendor warranties contained in the agreement for sale and purchase and ensure that they haven't been deleted or amended before signing an agreement.

This case shows that all purchasers must make enquiries and take steps that a "prudent purchaser" would take to satisfy themselves that the property is not defective.

Although this case deals with a leaky home, the same principles are applicable to any purchase including that of an earthquake damaged home.

This case also highlights the importance of obtaining legal advice before entering into an agreement for sale and purchase.
If you are entering into an agreement for sale and purchase or going to auction we recommend that you contact our Private Client team who will review the contract and help guide you through the purchasing process.

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