
Competing Buyers not Always a Pot of Gold

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FABCOT PTY LTD V PORT MACQUARIE-HASTINGS COUNCIL [2010] NSWSC 726

NSW Supreme Court

The above case has shown that sellers must be cautious of failing to disclose competing offers. This case involving a dispute between Woolworths and a Local Council for failing to disclose a competing offer with Coles for the sale of a property has highlighted the importance of sellers using caution when considering and accepting offers.

The court recognised that in the circumstances, the seller had a 'back-up' option which the main front-runner in the negotiations was unaware of. When the seller diverted to the back-up purchaser and proceeded through a deal, the prior front-runner sued for non-disclosure.

It was held that the seller had created a 'reasonable expectation' that the property was being negotiated with only one purchaser; however, in reality there was another party moving to complete a sale. Essentially, the court found that the actions (or lack thereof) of the Council provided for an opportunity which was "well short of commercial fair dealing".

Ultimately, the court decided that the purchaser was not going to purchase the property regardless and hence the Council was successful. Although, in circumstances where a seller does not have this protection; the outcome could be much less favourable and could have huge financial implications on the seller.

If you would to discuss this further, you should contact our property team at MatthewsFolbigg on 9635 7966.

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