No Marketplace For Error

The way properties were marketed in Queensland meant the market price was not obtained. The receiver was held responsible for the loss suffered by the borrower, writes David Lalic.

WHEN A receiver is selling property under the powers given to it under the Corporations Act, or when property is sold in Queensland under the Property Law Act, the duty on the seller is to obtain not less than the market value or otherwise the best price that was reasonably obtainable, if there was no market value.

In New South Wales, if it is not a receiver selling, the duty is to act in good faith. If the case of Glodale happened in New South Wales and it was a private seller, the result may well be different.

In March 2003, Investec Bank appointed receivers to sell property at Port Douglas in Queensland.

The receivers sold the two properties in one line. That is, they sold the two blocks of units rather than selling the individual units. The allegation was that the receivers and the bank did not get the best price by selling in the way they did.

The judge who heard the case pointed out the bank's perspective: the debt was increasing rapidly and significantly, there had been attempts to sell which had failed the risk of being left with some apartments which may be hard to sell and other matters.

The conclusion of the judge was that if the bank had conducted the sale properly, there would be no problem with in one line.

The difficulty however, was that the marketing was not done in a way that achieved the market price. The judge pointed out for example, that no local Port Douglas real estate agent was involved in the sale. He accepted evidence that the Port Douglas real estate market was special and it would have been helpful if there had been a local agent.

The judge looked at the tender documents for the sale and thought that they were not calculated to obtain the best price for the properties.

They obtained information that was harmful to the sale with no balanced full picture as to how problems might be dealt with. Among other things, the judge referred to the overstatement in significance of some of the difficulties.

He pointed out the reference to 'illegal' decking and the landscaping non-compliance.

The fact that nothing had been done to rectify the problem or to determine what was needed to rectify the non-compliance or the costs of compliance.

The judge's conclusion was that the sale price received did not satisfy the duty under the Queensland legislation or the Corporations Act. The damages were calculated as the difference between the sale price and the valuation - $2,714,250.

Care should be taken in a sale like this, to ensure that the marketing campaign is directed to obtaining the market price, or if there is no market price, the best price reasonably obtainable.

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