

When examining if there has been a sale at an undervalue, every case must be looked at on its own facts ...

Price at auction is the best guide to market value >>

Consider the following scenario. You are in default on a loan. The lender forces a sale. The way the property is marketed and sold leaves you with a sense that it was little more than a fire sale.

To add more complication, what if you had a valuation taken prior to the auction that valued the property well in excess of the sale price?

If the advertising of the property made it clear that it was a forced sale you might very well think this had a negative influence on the bids and the results at the auction.

Take the case of Mr and Mrs Stockl, who borrowed money from Adolfsen Investments Pty Limited through their company Planetronics Pty Limited, providing a first mortgage over their residential property at St Ives.

Mr and Mrs Stockl failed to make any interest payments and Adolfsen moved to sell the property.

>> On a forced sale, each case must be looked at on its facts to decide if there has been a sale at an under value <<

Mr and Mrs Stockl began court proceedings, claiming that the agents failed in their duty to get the best price at auction. Their action amounted to five claims, that the agents:

1. sold the property under value, as demonstrated by a number of expert valuations,
2. refused to postpone the auction so the property could be repaired,
3. advertised the property as a mortgagee sale and so depressed the market,
4. failed to obtain independent valuations before accepting the offer of the person connected to the second lender, and
5. disclosed the reserve price to the second mortgagee prior to the auction.

In general, the Court of Appeal judges held that in such cases the particular circumstances are essential in deciding the matter and no general rules could apply to all cases.

Where the sale was properly conducted the Court preferred to take the market response, rather than subsequent valuations, as a true indication of the property's value.

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In this case, there was only one bidder. The alleged failure to seek valuations and even the disclosure of the reserve price did not affect the sale price. There is no principle in law requiring a mortgagee to obtain an independent valuation before sale.

In looking at the conduct of the St Ives sale, the Judges accepted evidence that repairs had been made to the property before the auction.

On the question of whether or not the advertising gave the impression of a fire sale, the Judges found that there was no overt indication of such. Had the advertisements been emblazoned in bold type with words like "Mortgagee Sale" then a stronger argument might have been run. But this was not the case here.

So was your forced sale a fire sale? What you must consider is whether or not the mortgagee seriously failed to take reasonable steps in all circumstances to achieve a proper price.

The Court has made it clear that there is no simple formula. Each case will be decided after a close scrutiny of the facts.

We hope that this is of some interest and value to you and your clients.

Where to find us >>

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