



## Supreme Court of New Zealand

23 July 2010

### **MEDIA RELEASE – FOR IMMEDIATE PUBLICATION**

***Mana Property Trustee Limited v James Developments Limited***  
**(SC 105/2009)**  
**[2010] NZSC 90**

### **PRESS SUMMARY**

**This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at [www.courtsofnz.govt.nz](http://www.courtsofnz.govt.nz).**

Mana Property Trustee Ltd agreed to sell vacant land in an industrial subdivision in Cromwell to James Developments Ltd. It was recognised that a boundary adjustment would be necessary before settlement, affecting the area of the property, estimated in the contract at 4.7161 hectares. However, it was also agreed that the final area of the property must not be less than 4.7150 hectares. The latter figure was unrelated to the bulk and location requirements of the District Scheme. On the date on which the transaction should have been settled the area of land for which Mana had obtained issue of a new certificate of title was slightly less than the agreed minimum final area. James gave notice of cancellation on the ground of the area deficiency without first going through the settlement notice procedure.

The issues on the appeal to the Supreme Court from a judgment of the Court of Appeal upholding the validity of James's cancellation were whether the minimum area clause in the contract was an essential term under section 7(4)(a) of the Contractual Remedies Act 1979 and, if so, whether James was entitled to cancel the contract without issuance and expiry of a settlement notice.

The Supreme Court has unanimously allowed Mana's appeal, holding that, although the minimum area term was essential to Mana, the time by which it must be performed, namely the settlement date, was not essential and accordingly James could not cancel the contract under s 7(4)(a) unless a settlement notice had been issued to Mana and Mana had failed to make available a title containing the minimum area by the expiry date of that notice. Accordingly the Court has held that the purported cancellation by James was of no effect. The case has been remitted to the High Court for determination of outstanding questions.

Contact person: Gordon Thatcher, Supreme Court Registrar (04) 914 3545