

IN THE SUPREME COURT OF NEW ZEALAND

**SC CIV23/2004
[2005] NZSC 8**

BETWEEN

PARSOA BAHRAMITASH
Appellant

AND

SATISH KUMAR AND SUNILA
KUMAR
Respondents

Court: Gault J and Blanchard J

Counsel: D G Smith and J C Bassett for Appellant
D Singh for Respondents

Judgment: 3 March 2005

JUDGMENT OF THE COURT

- A. Leave to appeal is granted.**
- B. The approved ground of appeal is that the appellant's cancellation of the contract was valid as the respondents had failed to comply with a settlement notice validly issued after they failed to settle, the appellant not being in default; and that accordingly the respondents were not entitled to an order for specific performance.**
- C. The respondents may support the judgment under appeal upon the ground (not appearing in that judgment) that they were not in default when the settlement notice was issued (and the appellant was himself in default) because, contrary to the finding of the High Court, they were ready, willing and able to settle in accordance with cl. 4.2(2) and were not obliged to tender settlement, the appellant having made it clear that**

it would be futile to do so as he would not accept any tendered amount less than the full purchase price.

D. The appellant is to give security for costs in the sum of \$6000.

Solicitors:
Cairns Slane, Auckland for Appellant
Shean Singh, Auckland for Respondents