

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

**CIV-2024-404-409
[2026] NZHC 2950**

BETWEEN	RANFURLY JIXIANG DEVELOPMENT LIMITED Plaintiff
AND	GWT NZ LIMITED First Defendant
	LEI WANG Second Defendant

Hearing: 2 June 2026 – 4 June 2026

Appearances: A Ho for Plaintiff
P Daniels for Defendants

Judgment: 25 September 2026

JUDGMENT OF WILKINSON-SMITH J

This judgment was delivered by me on 25/09/2026 at 3.30 pm.

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Registrar/Deputy Registrar

Solicitors/Counsel:
Crimson Legal, Auckland
P Daniels, Akarana Chambers, Auckland

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Introduction

[1] In October 2021, the defendant, GWT NZ Ltd (GWT) entered into two unconditional sale and purchase agreements with the plaintiff, Ranfurly Jixiang Development Ltd (Ranfurly) to purchase two future subdivision lots described as Lot 21 and Lot 22, 87 and 89 Ranfurly Road and 26 Epsom Avenue, Epsom, Auckland (Agreements).

[2] Ms Wang is the sole director and majority shareholder of GWT. Her friend, Ms Guan, is the minority shareholder.

[3] The plan was for GWT to purchase the newly developed lots. Ms Wang would live in one of the houses and Ms Guan in the other. The location was perceived as family friendly and in a preferred school zone.

[4] Ms Wang personally guaranteed GWT's obligations under the Agreements.

[5] GWT paid the deposits required under the Agreements but failed to settle on the settlement date. Ranfurly retained the deposits and sued GWT for breach of contract and Ms Wang for breach of guarantee.

[6] Ranfurly then attempted to mitigate its loss by reselling the two lots. The property market had significantly declined, and the sale price achieved upon resale was substantially lower than the original sale price.

[7] Ranfurly applied for summary judgment against GWT and Ms Wang. This was defended by GWT primarily on the basis that Ranfurly failed to mitigate its losses after cancelling the agreements.

[8] Summary judgment was declined because GWT raised an arguable defence as to whether Ranfurly acted reasonably on the resales, and as to whether the ultimate resales were bona fide, both of which required further investigation at trial.

[9] The trial was expected to proceed on the issue of quantum.

[10] At trial the defendants applied to substantially amend the statement of defence to plead that the Agreements were void for uncertainty because a plan of the proposed lots was not attached to the Agreements.

[11] GWT also applied to bring a counterclaim for the return of the deposits paid under the Agreements which it said were void.

[12] Ranfurly opposed the application to amend the pleadings and to bring a counterclaim. It acknowledged that the Agreements omitted the plan of the proposed lots but said there was no actual uncertainty as to the land that was the subject of the Agreements, and the Agreements could be rectified. Ranfurly also argued that the doctrine of estoppel precluded the defendants from resiling from their earlier acceptance that a valid contract existed.

[13] Ranfurly claims that it suffered losses of \$1,124,246.41 as a result of GWT's breach of the Agreements, and that GWT and Ms Wang are jointly and severally liable for that loss.

Background

[14] In 2020 Ranfurly purchased a property at 87 Ranfurly Road, Epsom which it proposed to develop into 19 residential units. The development as a whole comprised 23 separate lots accessed from either Ranfurly Road or Epsom Avenue.

[15] As part of the development, Ranfurly purchased two adjacent properties at 89 Ranfurly Road and 26 Epsom Avenue. The adjacent properties gave access from Ranfurly Road and Epsom Avenue to the proposed townhouse development at 87 Ranfurly Road (19 lots). The Epsom Avenue property remained a single lot.

[16] Three further lots were to be created at the 89 Ranfurly Road property. The existing house on the property at 89 Ranfurly Road would be subdivided from an area at the back of the section which contained a swimming pool. The swimming pool would be demolished, and two further titles created.

[17] The two titles to be created on the swimming pool area at the rear of the original house at 89 Ranfurly Road were Lots 21 and 22 of the development (Property).

[18] The numbering of the Ranfurly Road addresses eventually changed so that the original house at 89 Ranfurly Road retained that street number. Lots 21 and 22 became 8/87 and 9/87 Ranfurly Road.

[19] Ms Wang and Ms Guan were introduced to the Property prior to subdivision and Ms Wang visited the Property prior to signing the sale and purchase agreements.

[20] On 12 October 2021, GWT as purchaser, and Ranfurly as vendor entered into two agreements for the sale and purchase of two of the development lots being:¹

(a) Lot 21, for a purchase price of \$1,869,565 plus GST (if any); and

(b) Lot 22, for a purchase price of \$1,869,565 plus GST (if any).

[21] Ms Wang personally guaranteed GWT's obligations under the Agreements.

[22] The Agreements provided that the purchaser would pay a deposit of 10 per cent of the purchase price immediately upon execution of the Agreements, with the remainder to be paid on the settlement date. GWT paid the deposits which totalled \$373,913 on 14 October 2021.

[23] The settlement date was defined as the twentieth working day after the date the vendor's lawyers advised the purchaser's lawyer a search copy of the title to the lot, or the building consent (whichever was later) was available. The interest rate for late settlement was 15 per cent per annum.

[24] In the event the Agreements were avoided or cancelled due to the purchaser's default, the Agreements provided that the deposit would be forfeited to the vendor.

[25] The Agreements provided the following description of the Property:

¹ The terms of the sale and purchase agreement for each lot are identical.

Address: The Lot [21 or 22], 87 and 89 Ranfurly Road and 26 Epsom Avenue, Epsom, Auckland

Estate: **FREEHOLD**

Legal Description:

NEW TITLES TO BE ISSUED FOR THE SUBDIVISION
CONTEMPLATED IN THE TITLE PLAN REFERRED TO IN CLAUSE
20.1 OF THE FURTHER TERMS OF SALE ATTACHED

[26] Clause 20.1 provided the following definitions of “Title Plan”, “Plan” and “Land”:

“Title Plan” means the subdivisional plan of the Land for the current stage, of which the Lot forms part, deposit of which will create a separate legal title to the Lot, such plan to be prepared and completed by the vendor at the sole cost of the vendor generally in accordance with the Plan and the Approval.

“Plan” means the proposed site plan attached as Schedule A.

“Land” means the land situated at 87 Ranfurly Road, Epsom, Auckland being Part Allotment 19 Section 10 and Park Allotment 20 Section 10 Suburbs of Auckland and Part Deposited Plan 3782 in Certificate of Title 186/178 (North Auckland Registry), 89 Ranfurly Road, Epsom, Auckland being Lot 3 Deposited Plan 128020 in Certificate of title 103D/636 (North Auckland Registry) and 26 Epsom Avenue, Epsom, Auckland being Lot 5 Deposited Plan 5072 in Certificate of Title 187/245 (North Auckland Registry).

[27] Despite reference in the Agreements to a “Plan” contained in Schedule A, no such schedule was attached to either copy of the Agreements.

[28] On 2 September 2022 Ranfurly’s solicitors informed GWT’s solicitors that the vendor conditions in the Agreements had been satisfied.

[29] On 22 March 2023, Ranfurly’s solicitors notified GWT’s solicitors that building consent had been approved for Lots 21 and 22 and emailed a copy of the building consent approval. On 11 April 2023, Ranfurly’s solicitors advised GWT’s solicitors that new titles for subdivision of the Property had been issued, pursuant to which:

- (a) The street address for Lot 21 became 8/89 Ranfurly Road, Epsom (Unit 8). Lot 21 had an area of 224 square meters.

- (b) The street address for Lot 22 became 9/89 Ranfurly Road, Epsom (Unit 9). Lot 22 had an area of 229 square meters.

[30] Ranfurly gave written notice that settlement for Units 8 and 9 was due on 10 May 2023.

[31] On 20 April 2023, GWT's solicitors sent an email to Ms Wang and Ms Guan saying that if they did not settle the purchase, Ranfurly could sue GWT and Ms Wang for specific performance, or cancel the Agreements, forfeit the deposits and sue for damages.

[32] GWT's solicitors explained in an email to Ranfurly's solicitors dated 10 May 2023 that GWT was not able to settle due to an inability to obtain finance. GWT sought to terminate the Agreements and sought a full and final settlement by way of GWT's forfeiture of the deposits paid under the Agreements.

[33] On 11 May 2023, Ranfurly served GWT with settlement notices for Lots 21 and 22 in accordance with cl 11.1(1) of the Agreements. The settlement notices required GWT to settle within 12 working days.

[34] GWT did not settle, and on 2 June 2023, Ranfurly cancelled the Agreements, giving notice to GWT and Ms Wang.

[35] Following the cancellation, Ranfurly retained the deposits in accordance with cl 11.4(1) of the Agreements.

Resale efforts

[36] After cancellation, Ranfurly commenced resale efforts.

[37] The property market in Auckland had significantly declined between the date of the Agreements and the date of breach.

[38] On 31 October 2023, Ranfurly resold the units to JKC Investment Ltd at a lower value than that prescribed under the Agreements. Unit 8 sold for \$1,575,000 and Unit 9 for \$1,585,000. The resale agreements settled on 26 January 2024.

[39] Ranfurly filed an application for summary judgment against GWT and Ms Wang to recover its losses.

[40] GWT opposed the application primarily on the basis that Ranfurly failed to mitigate its losses after cancelling the Agreements.

[41] The application came before Associate Judge Taylor on 26 August 2024.²

[42] The Judge declined to enter summary judgment against the defendants, on the basis that GWT raised an arguable defence as to whether Ranfurly acted reasonably on the resales, and as to whether the ultimate resales were bona fide, both of which required further investigation at trial.

Application to amend pleadings

[43] At the commencement of the trial, counsel for the defendants, Ms Daniels, said that the defendants wished to substantially amend the statement of defence. This was not made known to the Court or to counsel for the plaintiff, Mr Ho, beforehand. Ms Daniels subsequently sought leave to file an amended statement of defence and counterclaim.

[44] The amended statement of defence raised, for the first time, a defence that the Agreements were void for uncertainty because the plan referred to in the Agreements was omitted. The defendants contended that the Agreements failed to include sufficient information to identify the land the defendants had agreed to purchase. The defendants said that the contracts were not capable of rectification. They abandoned their original defence that Ranfurly did not act reasonably in reselling the units.

² *Ranfurly Jixiang Development Ltd v GWT New Zealand Ltd* [2024] NZHC 2939.

[45] The defendants also sought to bring a counterclaim on the basis that, if the Agreements were void for uncertainty, the first defendant was entitled to repayment of the deposits because the deposits were paid under a mistake of fact.

[46] Unsurprisingly, the plaintiff opposed the late application to amend the statement of defence and to bring a counterclaim. Mr Ho submitted that the plaintiff was prejudiced. Had the matter been pleaded in a timely manner the plaintiff would have sought further discovery, particularly of the “preliminary plan” referred to in the second defendant’s brief of evidence. The plaintiff could also have briefed evidence from the real estate agents involved in marketing the Property to Ms Wang and GWT.

[47] Ms Daniels submitted that the plaintiff bore the burden of establishing the existence of a valid contract regardless of whether the absence of a valid contract was specifically pleaded. She said that the proposed amendment was largely confined to an issue of law, and as such, did not create prejudice.

[48] Mr Ho sought to amend the plaintiff’s statement of claim partly in response to matters raised by the defendants. Paragraph 4 of the statement of claim pleaded that on or around 2 September 2020 the plaintiff purchased a property located at 87 Ranfurly Road, Epsom. Mr Ho explained that the reference to 87 Ranfurly Road was an error. The property which is the subject of these proceedings was numbered 89 Ranfurly Road at the time it was purchased by the plaintiff on 9 January 2021. 87 Ranfurly Road was purchased earlier as part of the same proposed development. The numbers were later changed which led to a drafting error.

[49] Mr Ho also applied to amend the statement of claim to plead rectification in response to the late application by the defendants to amend the statement of defence.

[50] I determined that the evidence would proceed and that the amendments would be dealt with as part of the substantive hearing. However, it became apparent during the cross-examination of the plaintiff’s first witness that the proposed amendments needed to be dealt with at the outset. I adjourned the hearing to allow counsel time to take instructions.

[51] I issued a minute on 3 June 2026 ordering the second defendant to bring a copy of the “preliminary plan” referred to at paragraph 6 of her brief of evidence to Court the following day.³

[52] I directed the parties to be prepared to address the following issues the next morning:

- (a) the prejudice that might arise from the defendants’ amendments;
- (b) whether the Court should permit an application for rectification of the Agreements to include the missing plans; and
- (c) what efforts could be made to ensure the hearing was concluded in the time allocated.

[53] On the second day of trial, and after hearing from counsel, I ruled that the trial would proceed and that the applications for leave to amend the statement of claim and statement of defence and to bring a counterclaim remained live issues.

[54] The trial proceeded and concluded within the allocated time frame. Only three days of hearing time had been allocated, with procedural issues consuming a large part of the first day. The defendants’ late application raised issues that counsel for the plaintiff did not have adequate time to respond to. Because of this, I directed counsel to file written submissions on the following legal issues after the conclusion of trial, namely:⁴

- (a) whether the contract was void;
- (b) whether the contract was capable of rectification; and

³ *Ranfurly Jixiang Development Ltd v GWT NZ Ltd* CIV-2024-404-409, 3 June 2026 (Minute of Wilkinson-Smith J).

⁴ *Ranfurly Jixiang Development Ltd v GWT NZ Ltd* CIV-2024-404-409, 4 June 2026 (Minute of Wilkinson-Smith J).

- (c) whether the doctrine of estoppel operated to prevent the defendants from resiling from their earlier position that there was a valid contract.

[55] I directed that this was not an opportunity to address each party's case in general or raise further factual matters. In that respect, I decline to admit into evidence Ms Wang's affidavit dated 8 July 2026 which was filed after the hearing in support of the defendants' application to amend the pleadings. I direct that Ms Wang's affidavit dated 8 July 2026 is not read, and I proceed to determine the defendants' application for leave to amend their pleadings on the evidence available at the conclusion of the hearing.

[56] I also directed Ms Daniels to file a marked-up version of the proposed amended statement of defence and Mr Ho to file a marked-up version of the proposed amended statement of claim.

[57] I now turn to consider whether the amendments should be permitted.

Legal principles

[58] Rule 7.7 of the High Court Rules 2016 provides that no statement of defence, amended pleading or affidavit may be filed after the close of pleadings date without the leave of a Judge.

[59] In determining whether it is appropriate to grant leave, the following principles apply:⁵

- (a) The paramount consideration is that the parties should have every opportunity to ensure that the real controversy goes to trial so as to secure the just determination of the proceeding.
- (b) Due regard must be had to whether the proposed amendment will cause significant delay or prejudice to another party.

⁵ *Ortem Trust Ltd v AMA Capital Management Ltd* [2026] NZHC 1133 at [20], citing *Oraka Technologies Ltd v Geostel Vision Ltd* [2017] NZHC 991 at [17].

- (c) Even where serious prejudice and significant delay will arise, an amended pleading may nevertheless be permitted if the proposed claim has substantial merit and will not cause injustice to the defendants.
- (d) The Court should consider the merit, or absence thereof, in a proposed amended pleading.

Submissions

[60] Mr Ho submitted that the amendment to the statement of defence should not be permitted because it did not relate to newly discovered facts, rather, the defendants sought to recast their case after the trial commenced. Mr Ho said that the Agreements, and their contended deficiencies, were always available to the defendants, and that the issue should have been raised earlier.

[61] In addition, Mr Ho submitted that the proposed amended pleadings introduced a substantially different case which would require him to take further instructions and file a reply to the amended defence and counterclaim. It would require further factual investigation and potentially further discovery. It might necessitate calling additional witnesses from Barfoot & Thompson and preparing further evidence to address the defendants' fresh allegations.

[62] In contrast Mr Ho submitted the proposed amendment to paragraph 4 of the statement of claim was minor and simply addressed a drafting error that had no bearing on the substantive issues in the proceedings.

[63] Ms Daniels submitted that in preparing for trial a number of issues became apparent that could not have been foreseen:

- (a) The failure to identify in the Agreements the amount or location of the land to be included in the title after subdivision.
- (b) The apparent error by real estate agent, Anthony An, in identifying the land intended to comprise Lots 21 and 22 in the Comparative Market Analysis.

- (c) The absence in any of the plaintiff's disclosure of the subdivision plan prior to the Settlement Date, including the missing "Schedule A" referred to in the Agreements.
- (d) The failure by the plaintiff to give an accurate account of its acquisition of the title to 89 Ranfurly Road.

[64] Ms Daniels submitted the Agreements are unenforceable and void for uncertainty because the land was not sufficiently defined. The plan, referred to in cl 20.1 of the Agreements as "Schedule A" was omitted from the Agreements. Without the plan, Ms Daniels submitted it was not possible to identify the land to which the Agreements related. The inability to define the land meant that a core term of the Agreements was missing, rendering each agreement void for uncertainty.

[65] Ms Daniels submitted that the statement of defence filed on 7 July 2025 put the plaintiff to proof of the Agreements, but even if it had not, the uncertainty lying at the heart of the contracts could not be cured. If the contracts were void, the fact that the issue was raised only at trial could not make them valid.

Should the defendant's amendment to the pleadings be permitted?

[66] There is no doubt that permitting the proposed amendment to the statement of defence would cause substantial prejudice to the plaintiff. The plaintiff prepared for trial on the basis the defence case would be focused on mitigation, bona fides of resale and quantum. The new case the plaintiff was asked to meet was substantially different, without proper pleading, preparation, discovery or evidence directed to that case.

[67] Where there is substantial merit in a proposed claim, this Court may have no option but to permit an amendment even where significant prejudice or delay would result. The merit or absence of the proposed amendment is an important factor and is closely tied to the paramount consideration to ensure that the real controversy between the parties is determined.

[68] In *Rascals International Ltd v Taylor*, leave to amend a statement of claim was refused on the basis that the amendment would raise new factual and legal issues that

would add to the hearing time and cause delay; the plaintiffs had sufficient information to bring the amended claim at an earlier point; and the proposed amendment lacked merit.⁶

[69] The proposed amendment in the present case similarly raises new factual and legal issues. The defendants had sufficient information to raise the amended defence and counterclaim at a much earlier stage — in fact from the date on which settlement did not occur. The only factor that could lead to the amendment being permitted is overwhelming merit.

[70] It is therefore necessary to examine the substantive issues in order to determine whether the application by the defendants to amend the defence and bring the counterclaim should be permitted.

Issues

[71] The legal issues that arise under the amended statement of defence are:

- (a) Are the contracts void?
- (b) Are the contracts capable of rectification?
- (c) Does the doctrine of estoppel operate to prevent the defendants from resiling from their earlier position that there was a valid contract?

Issue one: Are the Agreements void for uncertainty?

[72] It will be rare for a contract to be void for uncertainty if the parties had an intention to contract.⁷ Once a Court has determined that the parties intended to be bound, it will do what it can to uphold the contract. A Court may step in to impose certainty on an agreement which is uncertain if some machinery or formula can be found to determine the matter which has been left uncertain.⁸

⁶ *Rascals International Ltd v Taylor* [2025] NZHC 2413.

⁷ *Whitaker v Freeman* [2015] NZHC 1327 at [14], citing *Fletcher Challenge Energy Ltd v Electricity Corporation of New Zealand Ltd* [2002] 2 NZLR 433 at [50].

⁸ *Attorney-General v Barker Bros Ltd* [1976] 2 NZLR 495 (CA) at 499.

[73] The law is well-settled that a contract for the sale and purchase of land must be in writing and must be sufficiently certain as to its terms.

[74] As Tipping J observed in *TA Dellaca Ltd v PDL Industries Ltd*:⁹

A contract for the sale and purchase of land to be enforceable (leaving aside the need for writing) must contain certain minimum terms. I have always guided myself on such a point by saying that there must as a minimum be clear reference to the five Ps: parties, price, possession, parcels (sufficient description of the land), and payment.

[75] It is not disputed that the Agreements were sufficient for certainty of parties, possession and payment.

[76] The issue is whether the Agreements contained sufficient certainty as to parcels. The defendants also say that, because the description of the land was uncertain, there is also no certainty as to price, even though a price was specified, and a deposit was paid by the defendants based on the price in the Agreements.

Did GWT intend to purchase Lots 21 and 22 in the Resource Consent Plan?

[77] I turn first to consider the parties' intention and whether, notwithstanding the absence of Schedule A of the Agreements, there is sufficient certainty as to the land that was intended to be the subject of the Agreements.

[78] Resource consent for the lots was issued on 21 September 2021. Ranfurly's solicitors' evidence was that, after resource consent was issued, Ranfurly's director Mr Lin instructed Ranfurly's solicitors to prepare agreements for sale and purchase for Lots 21 and 22 as shown in the Approved Resource Consent Plan dated 21 September 2021 (produced as Exhibit 1 at the hearing).

[79] Ranfurly's solicitor, Ms Lee, said she was instructed by Mr Lin to annex the Approved Resource Consent Plan to the Agreements as Schedule A. Ms Lee noted that not all of the pages of the Approved Resource Consent Plan were relevant to

⁹ *TA Dellaca Ltd v PDL Industries Ltd* [1992] 3 NZLR 88 (HC) at 97. See also s 24 of the Property Law Act, whereby a contract for disposition of land is not enforceable unless it is in writing.

Lots 21 and 22, and pages relating to other lots of the subdivision were intended to be omitted. Ms Lee emailed the draft agreements to Mr Lin for his approval.

[80] Ms Lee said that she sent the Agreements with Schedule A attached to Ranfurly. Ranfurly then provided various documents, including the Approved Resource Consent Plan, to a Barfoot & Thompson real estate agent who then presented them to GWT.

[81] When Mr Lin sent the Agreements back to Ms Lee, no resource consent plans were attached. Ms Lee and Mr Lin understood that the real estate agent had provided the plans to the purchasers, which accorded with standard practice. No issue was raised by any party in relation to Schedule A at the time.

[82] In evidence, Ms Wang denied ever seeing the Approved Resource Consent Plan showing the location of Lots 21 and 22. She did, however, say that the plans produced as Exhibit 1 looked very familiar.

[83] Ms Wang gave evidence that she went to 89 Ranfurly Road prior to signing the Agreements and looked at the swimming pool area where Lots 21 and 22 were to be created. She understood that the two lots would be situated in the area occupied by the swimming pool. Ms Wang recalled the dimensions of the lots as being around 200 square meters and said that the dimensions could be clearly ascertained by imagining the swimming pool area divided in half.

[84] Ms Wang said the agent showed her and Ms Guan a “preliminary plan” of the lots. She said that she was not given a copy of the preliminary plan but was simply shown it. She said that the purpose of looking at the preliminary plan was to know exactly what she was going to purchase. She confirmed the preliminary plan looked similar to the first page of Exhibit 1, but without the official notations or colour. The version she was shown instead featured handwritten notes. Ms Wang accepted that she would have checked that the plan related to the lots GWT intended to purchase. In addition, she accepted that after having looked at the plan and visited the site, she knew what she was purchasing.

[85] Ms Wang accepted that, after the Agreements were signed, the building consent was emailed to her solicitors but said that she never saw a copy of the building consent because she was not in Auckland at the time. She said that Ms Guan forwarded the building consent to their designer/planner. Ms Wang accepted that the building consent reflected the property GWT had intended to purchase. She also accepted that she and her solicitors were sent a copy of the title plans for Lots 21 and 22 after the titles were issued on 11 April 2023.

[86] It is clear from the evidence that at no stage prior to GWT's failure to settle or indeed prior to the hearing, did the defendants raise an objection about the identity of the land they were purchasing. Ms Wang accepted that at all material times the defendants considered the Agreements to be valid and binding. Ms Wang also accepted that the defendants understood that, pursuant to the Agreements, GWT would be purchasing Lots 21 and 22, and that those lots were based on plans.

[87] I find as a matter of fact that the parties intended to enter into an agreement for the sale and purchase of Lots 21 and 22 as depicted on the Approved Resource Consent Plans dated 21 September 2021.

[88] Ms Daniels referred to the Comparative Market Analysis for Lots 21 and 22 prepared on 12 October 2021 by Mr An. The document provided an aerial image of 87 and 89 Ranfurly Road. In that document, 87 Ranfurly Road is outlined in red instead of 89 Ranfurly Road. Ms Daniels contends this is an essential mistake concerning the location of Lots 21 and 22 and indicates that the real estate agents themselves were uncertain about the location of the land to be sold under the Agreements.

[89] There is, however, no evidence Ms Wang relied on, or was misled by, the Comparative Market Analysis as to the location of Lots 21 and 22. In fact, Ms Wang gave evidence at trial that she had never seen the Comparative Market Analysis prior to these proceedings. Even if the real estate agent's error in the preparation of the Comparative Market Analysis reflected a misunderstanding by the real estate agent as to the identity of the lots, I am satisfied that any misunderstanding was not shared by the defendants.

Case law concerning uncertainty of parcels

[90] Ms Daniels contends a distinction should be made between circumstances in which a contract for sale and purchase of land describes the incorrect property, but the property can otherwise be ascertained from either the contract or extrinsic evidence; and circumstances in which the contract contains inadequate information to identify the property, and the location, boundary or land cannot be ascertained from extrinsic evidence. She contends that the present case falls within the latter category.

[91] Counsel referred to numerous authorities that discuss potential uncertainty in agreements for the sale and purchase of land.

[92] In *Design At Space v Julian*, the respondents wished to sell off most of their 4 ha block of land to a developer for subdivision, while maintaining a small parcel of land on which they would reside.¹⁰ The purchaser visited the vendor and together they walked around the property, pointing out the boundaries of the land the vendor wished to retain. Various plans were available, however, at the time of visit, the potential subdivision had not been surveyed and so the vendors were not in a position to obtain resource consent.

[93] The parties then signed a document which the purchaser contended was an unconditional agreement for sale and purchase. The respondent disputed this and contended the agreement was simply another step in their negotiations, which later discontinued. The purchaser relied on a clause in the document which read:¹¹

The Vendor will identify a portion of land in mutual agreement with the Purchaser that will be retained by the Vendor for a home block. This will be identified in a draft survey plan provided by the Purchaser prior to the contract becoming unconditional.

[94] The respondent argued the document was unenforceable given the land to be sold had not been identified. The purchaser then sued the respondents and sought a declaration that a valid and binding contract for the sale of the land existed, arguing

¹⁰ *Design At Space v Julian* CA149/05, 19 July 2006.

¹¹ At [10].

that the vendor had identified the portion of land when they walked around the property.

[95] The Court found that although three boundaries of the proposed home block were reasonably identifiable, the northern boundary was not. The real estate agent gave evidence that no firm agreement had been reached as to the area or boundaries of the land, and the vendor's wife who had not been present at the farm visit had no knowledge of what was discussed. The Court considered that the parties had not provided a "workable formula or objective standard" for determining the land area and held that there was no concluded contract.

[96] The defendants rely on *Robin Schwass Ltd v G R McKay Ltd*.¹² That decision involved a sale and purchase agreement which did not specify the area of land, nor did it refer to any document, such as a plan, which could identify the land being sold. No plan was attached to the agreement.

[97] The purchaser, who later sued the vendor for specific performance, contended that the description of the land could be identified by reference to a plan that had been submitted to the local authority. The real estate agent had shown the purchaser a copy of a plan, but the plan had not been approved by the vendor. Had the vendor seen the plan, he would not have approved it.

[98] The Court was not satisfied that the plan, which had been procured without the vendor's consent, was binding on the vendor, and as such considered that the contract was void for uncertainty. The Court made the following observation:¹³

Obviously the document may be supplemented, if it can be shown what the parties agreed upon was in fact what was later contained in a plan submitted to the Porirua City Council, or as Mr Castle submitted, had determined the mechanism by which it was to be defined.

[99] Mr Ho submitted that the present case is distinguishable from *Design At Space* and *Robin Schwass Ltd*. He says that the present case is comparable to the Court of Appeal decision in *Bouma v Busst*.¹⁴ In that case the respondents entered into

¹² *Robin Schwass Ltd v G R McKay Ltd* HC Wellington CP306/86, 12 May 1988.

¹³ At 10.

¹⁴ *Bouma v Busst* (1997) 8 TCLR 168 (CA).

negotiations with the appellants to acquire farmland from the appellants. On appeal, the appellants argued that the agreement was too uncertain to give rise to an enforceable contract as it did not precisely define the boundaries of the land.

[100] The Court of Appeal observed that parol evidence may be admitted to define the land which was the subject of the agreement and that evidence of what the parties actually did in order to implement the bargain was significant.

[101] The Court noted that the property description assumed no importance at trial, and there was evidence that a surveyor had lodged a plan of the subdivision with the local authority together with the necessary fees — half of which were paid by the appellants and the other half by the respondents. The Court also considered that the difference between the area of land provided for in the agreement for sale and purchase and the actual area of the land was insignificant. That aspect of the agreement did not make the contract too uncertain.

[102] Mr Ho also relied on the decision in *Sunnyside 2019 Ltd v Li* where the vendor sold one lot out of a four-lot subdivision before title had been issued.¹⁵ The agreement for sale and purchase described the property to be sold as “Lot 4” with reference to a provisional plan of subdivision attached to the contract and by reference to its area. When the subdivision plan was deposited with Land Information New Zealand and titles issued, the property was designated as Lot 3 on the deposited plan, the surveyors having altered the numbering of the lots. The neighbouring property was designated as Lot 4.

[103] The purchaser defaulted and the vendor cancelled the contract and re-sold the property, suing the purchaser for the shortfall. The purchaser sought the return of his deposit on the basis that the purchaser was not ready, willing and able to settle the contract because it insisted on selling the incorrect property. At no point did the parties in fact misunderstand what land was the subject matter of the contract.

[104] The Court considered there was no evidence indicating that mistaken references to the wrong lot in the settlement statement, and wrong record of title in the

¹⁵ *Sunnyside 2019 Ltd v Li* [2025] NZHC 214.

settlement notice confused or misled the purchaser about the property that he had agreed to purchase. The purchaser had visited the property. The Court was satisfied that the purchaser's reason for default was that he did not have the funds to settle. The misdescription did not render the contract void.

Analysis

[105] In the present case, as in *Sunnyside*, there was never any real misunderstanding between GWT and Ranfurly as to the identity of the land that was the subject of the Agreements. Ms Wang accepted that GWT intended to purchase two specific lots based on the preliminary plans she was shown — which she considered looked very similar to the Approved Resource Consent Plans. She visited the Property and was told where the lots would be. Ms Wang accepted that she would not have signed the Agreements without knowing what land GWT was purchasing. When building consent later issued, Ms Wang accepted that it concerned the property GWT had planned to purchase.

[106] This case is distinguishable from both *Design At Space* and *Robin Schwass Ltd*. Unlike *Design At Space*, where the contract stipulated that the land to be sold would be identified at a later date. In the present case the Agreements were specifically for Lots 21 and 22 and those lots were capable of identification at the time the contracts were signed.

[107] Further, as was the case in *Bouma v Busst*, I consider that the very late plea that the contract was uncertain, some three years after the defendants defaulted under the Agreements, suggests that any uncertainty is confined to a matter of form, not substance.

[108] In this instance, there was a mechanism to identify the lots by reference to the Approved Resource Consent Plan. The plan was omitted from the contract in error, but that error did not undermine the intention of the parties which was to contract in respect of the two parcels of land which were in fact designated Lots 21 and 22 in the Approved Resource Consent Plan. The omission of the plan from the Agreements does not leave the Court without objective means of identifying the land which was the subject of the Agreements.

[109] The Agreements also contained settlement machinery tied to the issue of title or building consent, which, as observed by the Court in *Attorney-General v Barker Bros Ltd*, is capable of curing any apparent lack of certainty.¹⁶

[110] I am satisfied that the evidence in the present case reveals no actual uncertainty. The defendants' contemporaneous conduct shows that GWT knew what it was purchasing, proceeded on the basis that the Agreements were binding, and failed to settle because of an inability to obtain finance. Ms Wang's own evidence establishes that she knew where the two lots were situated in the development, and she knew the land area of the two lots, give or take about 20 square metres. Both parties to the Agreements intended to contract in exactly the way the plaintiff says they did.

[111] For these reasons, I find that the Agreements are not void for uncertainty. If I am wrong about that I would, in any event, find the contracts capable of rectification.

Issue two: Are the contracts capable of rectification?

[112] Where parties have agreed to the terms of a contract, but the terms of the contract do not accurately represent the parties' mutual intentions, the Court may order that a written instrument be rectified to reflect the parties' true intentions, and thereafter give effect to the modified document.¹⁷

[113] The Court of Appeal in *Kusabs v Staite* approved the ingredients of rectification set out in the English decision in *Swainland Builders Ltd v Freehold Properties Ltd*, namely:¹⁸

- (a) the parties have a common continuing intention, whether or not amounting to an agreement, in respect of a particular matter in the instrument to be rectified;

¹⁶ *Attorney-General v Barker Bros Ltd*, above n 8, at 499.

¹⁷ Stephen Todd and Matthew Barber *Burrows Finn Todd on the Law of Contract in New Zealand* (7th ed, LexisNexis, Wellington, 2022) at [10.6.1(a)]; *Hanover Group Holdings Ltd v AIG Insurance New Zealand Ltd* [2013] NZCA 442, (2013) 13 TCLR 702 at [30]; and *Kusabs v Staite* [2019] NZCA 420, [2023] 2 NZLR 144 at [66].

¹⁸ *Kusabs v Staite*, above n 17, at [28].

- (b) an outward expression of accord;
- (c) the intention continues at the time of the execution of the instrument sought to be rectified; and
- (d) by mistake, the instrument does not reflect that common intention.

[114] Because rectification is an equitable remedy, it is also discretionary. That means even if the plaintiff were to satisfy each requirement, the Court may decline to grant relief if it considers that it would be inequitable to do so.¹⁹ Rectification is another exception to the general principle that parol evidence cannot be received to contradict or to vary a written agreement.²⁰

[115] Whether a contract is capable of rectification depends as a first step upon whether there was an intention to contract. Where there is no intention to contract, there is nothing to rectify. In this case I have already determined that there was an intention to contract.

[116] The defendants submit that rectification is not possible in the present circumstances because there was no single plan that was seen and agreed to by both parties to the Agreements.

[117] Ms Daniels accepts that had Ms Wang seen the Approved Resource Consent Plans she would be unable to resist rectification. She says that there is no evidence that Ms Wang did see that document. The resource consent plan was not available at the date of Ms Wang's visit to the site. Ms Daniels submits that Ms Lee's suggestion that there was an earlier "scheme plan" could have provided a route to rectification if that plan had been before the Court. However, it was not in evidence and the defendants submit that the plaintiff is not entitled to rely on the existence of a scheme plan to supplement the missing description in the Agreements.

¹⁹ *Robb v James* [2014] NZCA 42 at [23].

²⁰ Todd and Barber, above n 17, at [10.6.1(a)].

[118] Mr Ho submits that the decision in *Dundee Farm Ltd v Bambury Holdings Ltd* is applicable to the present case.²¹ He says the decision is important for the following reasons:

- (a) It confirms that rectification is available for contracts for sale of land, which are required to be in writing.
- (b) It confirms that rectification is available where the mistake concerns the description or extent of land itself.
- (c) It confirms that the Court may admit and consider evidence outside the written instrument to determine the parties' true common intention.

[119] In *Dundee Farms Ltd*, the parties entered into a sale and purchase agreement for a farm consisting of three parcels of land. The schedule to the agreement included a fourth parcel of land which was not part of the farm. It was common ground that this fourth parcel was included by mistake.

[120] The defendant was unable to settle the transaction on the settlement date. After the settlement date passed, the plaintiff's solicitor discovered that the fourth parcel of land was not part of the farm and informed the defendant's solicitor accordingly. In response, the defendant said he did not want to proceed with the purchase on the basis that the fourth parcel of land was not included as part of the farm.

[121] The plaintiff then commenced proceedings claiming rectification of the agreement by deleting the fourth parcel of land and seeking specific performance and damages. The defendant sought to avoid the contract by arguing that a condition of the agreement was that the fourth parcel was included in the agreement, although also accepting it was included as a mistake.

[122] The Court was satisfied that the parties intended to enter an agreement for the purchase of the whole of the farm excluding the fourth parcel, which is exactly what the vendor's agent was instructed to sell, what was advertised, and what the defendant

²¹ *Dundee Farm Ltd v Bambury Holdings Ltd* [1976] 2 NZLR 747 (SC).

inspected when he visited the farm and then agreed to purchase. The Court considered the agreement continued after it was signed, evidenced by the defendant shifting cattle onto the farm for grazing. Accordingly, the Court ordered rectification of the agreement by deleting the schedule's reference to the fourth parcel of land.

[123] In the present case I am satisfied that the parties had a common continuing intention to contract in respect of the land that is shown as Lots 21 and 22 in the Approved Resource Consent Plans.

[124] Rectification would simply correct the written record so that Schedule A comprises the Approved Resource Consent Plans identifying Lots 21 and 22, which the parties always intended to be the subject of the Agreements.

Issue three: Does the doctrine of estoppel operate to prevent the defendants from resiling from their earlier position that there was a valid contract?

[125] The plaintiff contends that if the Court grants the defendants leave to amend their statement of defence and bring a counterclaim, the plaintiff should be permitted to rely on estoppel. Mr Ho submits the defendants should be estopped from denying their liability to settle under the Agreements, a position that they maintained until the commencement of trial.

[126] Given the conclusion I have reached in respect of issues one and two, the estoppel issue does not arise

Conclusion

[127] The defendants' application to amend the pleadings and to bring a counterclaim lacks the overwhelming merit required to permit such a late and prejudicial amendment to the pleadings.

[128] I am prepared to grant leave for paragraph 4 of the statement of claim to be amended so that it identifies the correct address of the Property and the time of purchase by Ranfurly in 2021 (being 89 Ranfurly Road, Epsom, Auckland). There is no prejudice to the defendants in allowing that amendment.

[129] I also consider that the application to amend the statement of claim to plead rectification must be permitted. That application was a response to the late application by the defendants to amend the statement of defence and to raise uncertainty for the first time on the day of trial. Although I do not think the contract was void for uncertainty, I consider that it should be rectified to add the Approved Resource Consent Plan dated 21 September 2021 as that plan was clearly intended to form part of the contract.

[130] The statement of claim seeks interest at the contractual rate from the date of default until the date of settlement of the resale. Interest in accordance with the Interest on Money Claims Act 2016 is sought from the date of judgment until the date of payment. No interest is claimed in the statement of claim for the period between resale and judgment although Mr Ho asked for interest at the contractual rate for that period in his opening and closing addresses. I consider that interest for that period should have been pleaded if sought.

[131] The defendants took no issue with the quantum of the claim at the hearing.

Result

[132] The defendants' application to amend their pleadings and to bring a counterclaim is declined.

[133] The plaintiff's application to amend its statement of claim is granted to the extent set out above.

[134] The Agreements are rectified to add as Schedule A to each agreement, the plan produced in evidence as Exhibit 1 (Approved Resource Consent Plans dated 21 September 2021).

[135] I give judgment to the plaintiff in the sum of \$1,124,246.41 together with interest pursuant to the Interest on Money Claims Act from the date of judgment to the date of payment.

[136] I recognise that this result will be devastating to Ms Wang personally, but the reality is that an agreement for sale and purchase is a binding legal document. If purchasers choose not to include a finance clause and then fail to obtain finance, they are not released from their obligations under the contract. The plaintiff agreed to sell the land to GWT and lost the opportunity to sell to a different purchaser when the market was strong. The plaintiff should not bear the cost of GWT's failure to uphold its side of the bargain.

Costs

[137] The parties should attempt to agree costs.

[138] If they are unable to agree on the amount of costs to be paid, I make the following directions:

- (a) the plaintiff is to file and serve material to support the actual and reasonable costs claimed within **20 working days** of the date of this judgment; and
- (b) any memorandum as to costs from the defendants is to be filed and served within a further **10 working days** following service of the plaintiff's material.

[139] I will deal with the issue of costs on the papers unless the parties indicate that hearing time is required.

Wilkinson-Smith J