Supreme Court of New Zealand
Te Kōti Mana Nui

22 April 2016

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

DEREK NICHOLAS BLACKWELL AND CHARLES BASIL BLACKWELL AS EXECUTORS AND TRUSTEES OF THE ESTATE OF ROSS WINSTON BLACKWELL v EDMONDS JUDD

(SC 30/2015) [2016] NZSC 40

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 Judicial Decisions of Public Interest www.courtsofnz.govt.nz

The late Mr Ross Blackwell owned a dry stock farm (known as Haupouri) at Arohena, near Te Awamutu. He was diagnosed with an inoperable brain tumour in June 2000. After his diagnosis, he leased the farm to his neighbours, Leith and Rosemary Chick, and granted them a right of first refusal. Edmonds Judd acted as solicitors for both Ross and the Chicks and prepared the relevant documentation for the lease, as they did for all transactions at issue in this appeal.

The lease was renewed in 2004, with the rental remaining at 2000 levels. The right of first refusal was replaced by an option to purchase. Ross had spoken to a valuer who had estimated the current market value of the farm at $1.8 million. After discussion, an option price of $1.5 million was agreed if settlement took place before 30 April 2007, with the exercise price reverting to market value after that date. There was an informal understanding between Ross and the Chicks that the option would not be exercised while Ross was still alive.

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The parties agree that Ross' objectives in relation to this transaction were to benefit Adam (the Chicks' son) and for Ross to retain ownership of the farm during his lifetime. Ross also wished the farm to continue to be run as a dry stock operation.

In 2005, the option to purchase at $1.5 million was extended to 30 April 2010. In 2007 the lease was renewed. The rent was increased and a further right of renewal was added, exercisable from 30 April 2010. From 2008, Ross required full time residential care. Ross agreed to renew the lease and extend the option in 2010. His brothers intervened. When it became clear that the lease would not be renewed, the Chicks gave notice that they wished to exercise the option, even though Ross was still alive. By this stage, the agreed option price was less than half the current market value. The agreed rental for the farm was also below market rates.

The Chicks sought specific performance of the option to purchase in the High Court. Ross' brothers, as Ross' litigation guardians, challenged this on the grounds that Ross either lacked capacity at the time the transactions were executed or that the agreements constituted unconscionable bargains. These contentions were rejected in the High Court. The Court of Appeal upheld the High Court decision. Leave to appeal to the Supreme Court on these issues was refused.

A third party claim against Edmonds Judd was also made in the High Court alleging negligent advice that caused Ross loss. This claim was successful in the High Court. The Court of Appeal overturned this decision on the basis that the High Court's conclusion that Edmonds Judd's admitted negligence caused loss could not stand, in light of the High Court's findings on the capacity and unconscionability causes of action, including that Ross had an unwavering intention that the option be exercisable at $1.5 million.

The Supreme Court granted leave to appeal on the question of whether the Court of Appeal was correct in this conclusion. In a unanimous decision the Supreme Court has allowed the appeal. It has held that the finding that Ross had an unwavering intention that the exercise price under the option be $1.5 million cannot stand in light of the fact that that exercise price was time-limited from its creation in 2004, reverting back to market value in 2007. While Ross did intend to benefit Adam at his own detriment, limits were set on this benefit as reflected by the original discount price of only 16.67 per cent from the market value for the first three years and the reversion to market value after three years. In any event, any attachment to the $1.5 million exercise price was without the benefit of competent legal advice.

The Court has held that, if properly advised Ross would have included a condition (in place of the informal understanding) that the option not be exercised in his lifetime. He would, however, have agreed after the first three year period to an exercise price at a discount to market value of between 15 and 25 per cent. The 2005 variation would not have been

necessary therefore and would not have occurred. In 2007 he would have agreed that the option could be exercised in 2010 if the lease was not renewed. In the Court's view the Chicks would have exercised the option in 2010 as the price would still have been favourable.

The market value as at 2010 was $3,222,500. Given Ross' concern about affordability, the Court considers that it is more likely than not the option price would have been discounted at 20 per cent. With rounding, this gives a market price of $2,500,000. This is $1,000,000 higher than the price paid by the Chicks, meaning a proved loss of $1,000,000.

As for rental, Ross wanted the property to be used for dry stock farming and for the rent to be calculated on a basis that was affordable for Adam. Ross was not interested in the premiums being achieved for dairy grazing. Such premiums would have influenced the rental valuation agreed by the parties. As there is no evidence to suggest what a fair market rental would have been not taking into account these premiums, the claim for loss of any additional market rental failed for want of proof of the quantum of loss.

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