



Supreme Court of New Zealand

8 December 2009

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

**Christopher Bede Ward v Diane Mary Ward (SC 40/2009)
[2009] NZSC 125**

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.

About 10 years after their marriage the parties to this appeal, Mr and Mrs Ward, formed a Trust for the benefit of themselves, their children and remoter issue. They each contributed equally to the capital of the Trust by transferring to the trustees their equal shareholdings in a company which owned the farm on which they were living and which they were operating in partnership. When the marriage came to an end several years later, the trustees of the Trust, who were Mr and Mrs Ward and a third person, could not agree on how the Trust was to be administered in these changed circumstances.

Mrs Ward filed proceedings in the Family Court seeking orders under s 182 of the Family Proceedings Act 1980 by way of variation of the Trust or the transfer of some of its assets to her. The Family Court varied the Trust by dividing it into two separate trusts and vesting the original Trust assets in those two trusts equally. One of the new trusts was for the benefit of Mrs Ward and the children and the other was for the benefit of Mr Ward and the children. The two trusts now equally owned the shares in the land owning company.

On Mr Ward's appeal to the High Court the Judge held that the order made by the Family Court was precluded by s 182(6) as being an impermissible variation of a matrimonial property agreement which the parties had entered into immediately before and in anticipation of the establishment of the Trust.

The Court of Appeal, on Mrs Ward's appeal to that Court, held that the Family Court's order was not precluded by s 182(6) and reinstated that order. This was because the establishment of the Trust was a separate transaction from the matrimonial property agreement.

The Supreme Court, on Mr Ward's further appeal, has upheld the Court of Appeal's conclusion on the s 182(6) issue. The Court has also upheld the Court of Appeal's conclusion that the Family Court order was otherwise properly made. It was a proper reflection of how to satisfy Mrs Ward's reasonable expectations of the Trust in the changed circumstances brought about by the dissolution of the parties' marriage.

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