IN THE SUPREME COURT OF NEW ZEALAND

SC 111/2009
[2010] NZSC 15

BETWEEN	ALAN STANLEY PERKINS AND ADRIENNE ROSEMARY PERKINS Applicants
AND	TERE MOANA PUREA First Respondent
AND	TOM TANGI-TUAKE AND JUNE TANGI-TUAKE Second Respondents

SC 119/2009

BETWEEN	TERE MOANA PUREA Applicant
AND	ALAN STANLEY PERKINS AND ADRIENNE ROSEMARY PERKINS First Respondents
AND	TOM TANGI-TUAKE AND JUNE TANGI-TUAKE Second Respondents

Court: Elias CJ, Blanchard and McGrath JJ

Counsel: N W Woods for Applicants in SC 111/2009 and First Respondents in SC 119/2009
D G Smith for First Respondent in SC 111/2009 and Applicant in SC 119/2009
W G C Templeton and P J Stevenson for Second Respondents in SC 111/2009 and SC 119/2009

Judgment: 4 March 2010

JUDGMENT OF THE COURT

The applications for leave to appeal by the Applicants and the First Respondent are dismissed. Costs of $2,500 are to be paid by the Applicants to the Second Respondents. As between the First Respondent and the Second Respondents costs are reserved.

REASONS

[1] The Court of Appeal has affirmed the judgment of the High Court which concluded that:

(a) Mr Purea and his late wife had agreed with his daughter, Mrs Tangi-Tuaki, in 1988 that, if she and her husband took responsibility for the bank mortgage on the Pureas' home, Mrs Tangi-Tuaki would receive the property when, as happened in 2003, the mortgage was repaid;

(b) Mrs Tangi-Tuaki's equitable interest in the property prevailed over that of Mr and Mrs Perkins to whom Mr Purea in 2005 agreed to sell it (that transaction has not been settled because the Tangi-Tuakis have subsequently lodged a caveat to protect their interest);

(c) Mr Purea must transfer the property to Mrs Tangi-Tuaki (an order for specific performance);

(d) Mr Purea must pay damages of $88,000 to the Mr and Mrs Perkins.

[2] Mr and Mrs Perkins and Mr Purea now each seek leave to appeal to this Court. We are satisfied that leave should not be given as none of the proposed grounds provides an arguable case for disturbing the above conclusions and there is no appearance of any miscarriage of justice.

[3] Counsel for Mr and Mrs Perkins submits that his clients' interest has priority because of s 182 of the Land Transfer Act 1952, which provides that "no person contracting or dealing with or taking or proposing to take a transfer from the

registered proprietor of any registered estate or interest shall be required or in any manner concerned to inquire into or ascertain the circumstances in or the consideration for which that registered owner... is or was registered... or shall be affected by notice, direct or constructive, of any trust or unregistered interest... ". An interpretation which extended the reach of that section to an unregistered interest, i.e. which applied it before registration was achieved by the person of whom the section speaks, would however be radical and contrary to the established position in this country, and indeed in Australia, save where there has been legislative intervention.

[4] The problem which has existed between settlement and registration has now largely been removed because the great majority of transactions are settled by electronic conveyancing, where registration can be instantaneous. Mr and Mrs Perkins's appeal also could not succeed unless this Court were prepared not only to overturn a long line of cases but also to apply s 182 even before settlement. We are convinced that it would not and should not do that.

[5] It is suggested for both Mr and Mrs Perkins and Mr Purea that Mrs Tangi-Tuaki does not have an in personam claim arising from her performance of the 1988 bargain which should prevail against Mr Purea's registered title and against those who claim through him. On the contrary, however, the view taken by the courts below concerning the nature of that interest of Mrs Tangi-Tuaki is entirely orthodox. The courts below have analysed the question of priorities in accordance with established principle and have reach a view, based on the particular facts, which was well open to them.

[6] Mr Purea also seeks revisiting of the factual findings made by the High Court Judge concerning the 1988 agreement. Those factual findings were extensively reviewed by the Court of Appeal, which upheld them. On a second level appeal the Court will rarely be prepared to review such findings twice made below. Nothing is put forward which persuades us that it should do so in this case.

[7] We are uncertain whether Mr Purea is legally aided and have reserved the question of costs in his case. Counsel may file memoranda.

Solicitors:
Rice Craig, Papakura for Applicants
Frost & Sutcliffe, Auckland for First Respondent
Sellar Bone & Partners, Auckland for Second Respondents