



Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

4 SEPTEMBER 2026

MEDIA RELEASE

NIGEL DAVID RIMMER AND NICOLA RIMMER v CAROLYN MARY WILTON AS
ADMINISTRATOR OF THE ESTATE OF DAVID RIMMER

(SC 97/2025) [2026] NZSC 122

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.

What this judgment is about

This judgment concerns whether, if spouses or partners make an agreement contracting out of the Property (Relationships) Act 1976 (PRA) and one partner then dies, the surviving partner is entitled to receive their entitlements under that agreement as well as those under the intestacy provisions of the Administration Act 1969.

Background

The respondent, Ms Wilton, was the de facto partner of Mr Rimmer. They lived at a property in Hūnua, Auckland (the Moumoukai Road property), which they owned together as tenants in common in equal shares. In June 2002, Ms Wilton and Mr Rimmer entered into a contracting-out agreement under section 21 of the PRA (the Agreement). The Agreement identified what was each party’s separate property and what was relationship property—the latter including the Moumoukai Road property.

Clause 4.2 of the Agreement provided that, if the parties separated or ceased to live together as parties to a de facto relationship, then the relationship property was to be divided proportionately to the value of each of their capital contributions to the property. Clause 4.4 provided that, in the event of either party’s death, the surviving party was granted a lifetime occupancy in the other party’s share of Moumoukai Road property. In clause 5.1, the parties agreed that the agreement was “in full and final settlement of all claims which each of them may have against the other” under statute or common law, or at equity.

In March 2016, Mr Rimmer died intestate (without a will). He was survived by Ms Wilton and the appellants (his two now-adult children).

Under section 61 of the PRA, when one spouse or de facto partner dies, the surviving partner may choose one of two options. Option A is to apply for a division of relationship property pursuant to the PRA. Option B is to choose not to make such an application and to instead receive any beneficial interest the surviving partner is entitled to under the will or on the intestacy of the deceased partner.

In April 2016, Ms Wilton chose option B. In May 2016, she was appointed administrator of Mr Rimmer's estate. She then made numerous distributions from the estate. These distributions reflected Ms Wilton's position that she was entitled to her share of the Moumoukai Road property under the Agreement and an additional share under the intestacy provisions of the Administration Act.

Lower courts

In August 2022, the appellants brought a claim against Ms Wilton in the High Court alleging she had breached her fiduciary duty to them. The High Court dismissed the appellants' claim on 1 June 2023. They appealed to the Court of Appeal, claiming that Ms Wilton could not rely on her entitlements under both the Agreement and section 77 of the Administration Act. On 30 July 2025, the Court of Appeal dismissed their appeal against the High Court decision.

On 31 October 2025, the Supreme Court granted the appellants leave to appeal. The approved question was whether the Court of Appeal was correct to dismiss the appeal.

Before the Supreme Court, the appellants' position was that the terms of the Agreement defined Ms Wilton's only entitlements to Mr Rimmer's estate and that she had no further entitlements under the intestacy provisions of the Administration Act. The respondent, by contrast, submitted that she was entitled to receive entitlements under the Agreement as well as on Mr Rimmer's intestacy.

Supreme Court decision

The Supreme Court has unanimously allowed the appellants' appeal.

The outcome of the appeal turned on the correct interpretation of the terms of the Agreement in light of the provisions of the Administration Act and the PRA. As the Agreement was of the kind contemplated by section 21 of the PRA, the questions of contractual and statutory interpretation were inherently interlinked. The Court accepted the appellants' submission that the PRA generally preserves the right of the parties to agree on their property rights, subject to statutory safeguards (see at [42]–[44]).

The Court held that, read together, clauses 4.4 and 5.1 of the Agreement made clear that Ms Wilton's entitlement to the Moumoukai Road property was limited to her share, with no entitlement to Mr Rimmer's share apart from the life interest given in clause 4.4. These clauses, and others, reflected a comprehensive disentitlement to a beneficial interest in the other party's share, and were plainly intended to regulate the position after death. This was confirmed by clause 6.1, which specified that the Agreement was binding on the parties' "executors, administrators and personal representatives" (see at [51]–[54]).

As to the key issue—whether the terms of the Agreement prevented Ms Wilton from claiming an entitlement to Mr Rimmer’s share of the relationship property under the Administration Act—the Court held that Ms Wilton receiving such a share would be inconsistent with clause 5.1. While it would have been possible for Mr Rimmer to transfer an interest in his share to Ms Wilton prior to his death, or to bequeath such an interest to her in a will, he did not do so (see at [55]–[57]). The Court held that it is possible to contract out of rights to succeed on an intestacy. This was consistent with existing legal authority, the contracting-out provisions of the PRA and section 81(6) of the Administration Act (see at [58]–[61]).

These conclusions were confirmed when the Agreement was considered in light of sections 1M(c) and 21D(1)(c) of the PRA, which made clear that a section 21 agreement may provide for the division of relationship property on death. Importantly, the wording of section 21D(1)(c) was included in recital E(c) of the Agreement (see at [64]–[66]). The broader scheme of the PRA was also consistent with this view. There was nothing in the PRA suggesting that an agreement made under any of sections 21–21B was only binding if option A was chosen. The statutory scheme was comprehensive, and the Agreement was consistent with that scheme. The Court therefore accepted the New Zealand Law Society | Te Kāhui Ture o Aotearoa’s submission that, when there is an agreement that comprehensively determines entitlements to property, the choice referred to in section 61 is less practically significant and may become irrelevant (see at [67]–[74]).

Contact person:

Sue Leaupepe, Supreme Court Registrar (04) 914 3613