

YOU AND YOUR PROPERTY

IN EACH ISSUE RESIDENTIAL PROPERTY LAWYER, MICHAEL HOFMANN-BODY COMMENTS ON A RESIDENTIAL PROPERTY CASE WHICH HAS COME BEFORE THE COURTS. IN THIS ISSUE HE LOOKS AT THE CASE OF PERKINS v PUREA, A DECISION OF THE HIGH COURT ILLUSTRATING THE PROBLEMS WHICH CAN ARISE WITHIN FAMILIES WHEN PROPERTY TRANSACTIONS ARE NOT PROPERLY DOCUMENTED.



Mr Purea and his wife purchased a home in Manurewa in 1970. In 1988 they borrowed from the ASB against the property. Shortly afterwards they decided to move to Sydney with their daughter and son-in-law, Mr and Mrs Tangi-Tuake, moving into the property where they continued to live until the date of the Court case.

The Tangi-Tuakes met all the loan payments to the ASB which over the period they were living in the property came to more than \$180,000.00. With the assistance of a life insurance payment when Mrs Purea died the ASB was completely paid off. They also maintained and improved the property, adding a new bathroom and other improvements at a cost of more than \$30,000.

The Tangi-Tuakes claimed they were the owners of the property under a verbal agreement with the Pureas that if they paid off the mortgage to the ASB the property would be theirs. Mr Purea denied this. He claimed they were always only tenants. Still on the title, no doubt oblivious to the legal niceties of competing equitable interests, he asserted legal ownership and proceeded to enter into a sale agreement with Mr and Mrs Perkins.

As they were dealing with the legal owner the Perkins understandably thought they were in a strong position. Not so. The case came before the Court with the Perkins

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seeking to enforce their agreement with Mr Purea. The sale was held up by a caveat placed on the title by the Tangi-Tuakes. The Court heard evidence from family members and concluded there was indeed an agreement if the Tangi-Tuakes paid off the property it would be transferred to them by the Pureas. The Court then had to decide whether or not the Perkins' contract with the legal owner, Mr Purea, would take priority

over the longstanding but informal contract between Mr Purea and his daughter.

The Judge held both the Tangi-Tuakes and the Perkins had equitable claims to the property. After the application of a number of legal principles relating to competing equitable (non contractual) rights, he determined Mrs Tangi-Tuake had a prior equitable interest which prevailed ahead of that of the Perkins. The Court further held Mr Purea had not been entitled to enter into the contract with the Perkins in the first place. As a result he was held liable in damages to the Perkins for their loss, which represented the change in value of the property. The Perkins were awarded \$88,000 in damages against Mr Purea.

The message to be taken from this case is clear. If you are entering into property arrangements with members of your family you should contact a solicitor and make sure it is properly documented. Apart from the inevitable cost of litigation and financial liability the whole process is destructive of family relationships.

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