

## **PIPIKOS v TRAYANS (A30/2017)**

Court appealed from: Full Court of the Supreme Court of South Australia [2016] SASCFC 138

Date of judgment: 16 December 2016

Date special leave granted: 18 August 2017

The appellant is the former brother in law of the respondent. The appellant and his wife, and the respondent and her husband agreed to purchase a property in Penfield Road, Virginia together. The appellant paid the deposit as well as the balance of the purchase price and the transaction costs ('the settlement costs'). The appellant claims that because the respondent and her husband could not afford to contribute to the settlement costs they agreed that the respondent would sell them a half interest in another property owned by the respondent ('the Clark Road property'). The value of that half interest in the respondent's property was slightly higher than the amount owed by virtue of the agreement so the appellant would pay the respondent \$8000. The appellant brought proceedings in the District Court of South Australia, seeking orders that he be registered as a joint proprietor of "one undivided moiety" of the Clark Road property, or a declaration that the respondent held one half of her interest in that property on trust for him.

The trial Judge (Judge McIntyre) found in favour of the respondent. Her Honour found that the appellant had not established that there was an oral agreement between the appellant and the respondent to sell an interest in the Clark Road property. Further, even if there was such an agreement, the appellant had not identified its subject matter or the parties to the agreement; it was vague and ambiguous and it failed to meet the requirements of s 26 of the *Law of Property Act 1936 (SA)* ('the Act'). The Judge also found that, if there was an oral agreement, it was not enforceable because there was no part performance.

The appellant appealed to the Full Supreme Court (Kourakis CJ, Kelly and Hinton JJ), on the grounds that the trial judge erred in finding that the agreement was not fully concluded. He submitted that the respondent had knowledge of the agreement, and on the basis of that knowledge executed the transfer by which the property was purchased. The appellant argued that a handwritten note of the respondent, made some considerable time after the transaction, was evidence of the respondent's knowledge and acceptance of the agreement and also fulfilled the statutory requirements that a contract for the sale of land be in writing.

The Full Court found that there was an agreement between the appellant and the respondent. It was improbable that the appellant would have agreed to purchase the Penfield Road property with the respondent and her husband without securing the agreement to receive a half interest in the Clark Road property. The Court noted that the respondent conceded in cross-examination that she accepted the transfer of the Penfield Road property with the knowledge that her husband had agreed to finance that transfer by giving the appellant a half share in the Clark Road property. By acting with that knowledge the respondent bound herself to the agreement.

However, the agreement was not in writing as required by the Act. The handwritten note did not refer to any written documents nor to the essential terms of the transaction. There was no complete record of agreement. There was no part performance. The purchase of the new property did not refer to any agreement and was complete in and of itself. The agreement was therefore not enforceable.

The grounds of the appeal include:

- The Full Court erred in holding that the actions of the appellant in performance of the agreement did not amount to part performance of the same sufficient to entitle him to declarations and orders compelling the respondent to perform the agreement, notwithstanding that there may be an insufficient written memorandum of the same as required by s 26 of the *Law of Property Act 1936 (SA)*.

The respondent has filed a cross-appeal on the grounds that the Full Court erred in finding that there was an enforceable agreement to which the respondent was a party by her conduct, and that the trial judge was in error in refusing to grant the appellant leave to amend his pleadings. In the premises, the respondent claims that the Full court erred in reducing her costs on the appeal by 15%.