



HIGH COURT OF AUSTRALIA

8 November 2017

THORNE v KENNEDY
[2017] HCA 49

Today the High Court unanimously allowed an appeal from the Full Court of the Family Court of Australia. The High Court held that two substantially identical financial agreements, a pre-nuptial agreement and a post-nuptial agreement, made under Pt VIIIA of the *Family Law Act 1975* (Cth) should be set aside.

Mr Kennedy and Ms Thorne (both pseudonyms) met online in 2006. Ms Thorne, an Eastern European woman then aged 36, was living overseas. She had no substantial assets. Mr Kennedy, then aged 67 and a divorcee with three adult children, was an Australian property developer with assets worth over \$18 million. Shortly after they met online, Mr Kennedy told Ms Thorne that, if they married, "you will have to sign paper. My money is for my children". Seven months after they met, Ms Thorne moved to Australia to live with Mr Kennedy with the intention of getting married.

About 11 days before their wedding, Mr Kennedy told Ms Thorne that they were going to see solicitors about signing an agreement. He told her that if she did not sign it then the wedding would not go ahead. An independent solicitor advised Ms Thorne that the agreement was drawn solely to protect Mr Kennedy's interests and that she should not sign it. Ms Thorne understood the advice to be that the agreement was the worst agreement that the solicitor had ever seen. She relied on Mr Kennedy for all things and believed that she had no choice but to enter the agreement. On 26 September 2007, four days before their wedding, Ms Thorne and Mr Kennedy signed the agreement. The agreement contained a provision that, within 30 days of signing, another agreement would be entered into in similar terms. In November 2007, the foreshadowed second agreement was signed. The couple separated in August 2011.

In April 2012, Ms Thorne commenced proceedings in the Federal Circuit Court of Australia seeking orders setting aside both agreements, an adjustment of property order and a lump sum spousal maintenance order. One of the issues before the primary judge was whether the agreements were voidable for duress, undue influence, or unconscionable conduct. The primary judge set aside both agreements for "duress". Mr Kennedy's representatives appealed to the Full Court of the Family Court, which allowed the appeal. The Full Court concluded that the agreements should not be set aside because of duress, undue influence, or unconscionable conduct. By grant of special leave, Ms Thorne appealed to the High Court.

The High Court unanimously allowed the appeal on the basis that the agreements should be set aside for unconscionable conduct and that the primary judge's reasons were not inadequate. A majority of the Court also held that the agreements should be set aside for undue influence. The majority considered that although the primary judge described her reasons for setting aside the agreements as being based upon "duress", the better characterisation of her findings was that the agreements were set aside for undue influence. The primary judge's conclusion of undue influence was open on the evidence and it was unnecessary to decide whether the agreements could also have been set aside for duress. Ms Thorne's application for property adjustment and lump sum maintenance orders remains to be determined by the Federal Circuit Court.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*