



HIGH COURT OF AUSTRALIA

12 September 2018

LEON PIPIKOS v VELIKA TRAYANS [2018] HCA 39

Today the High Court unanimously dismissed an appeal from the Full Court of the Supreme Court of South Australia. The High Court held that it would be inappropriate to relax the requirement of the doctrine of part performance that the acts relied upon as part performance must be unequivocally, and in their own nature, referable to an agreement of the kind alleged.

In 2002, the respondent and her then-husband George purchased a property at Clark Road, Virginia, South Australia, though the respondent was the sole registered proprietor of the property. The couple made improvements to the property. In 2004, the respondent, George, the appellant and his wife Sophie jointly purchased a property at Taylors Road, Virginia, South Australia, which was financed by way of contributions from both couples and a bank loan. The appellant and Sophie jointly held a half-interest in the property, and George held the other half in his name alone. Later in 2004, the two couples purchased a property at Penfield Road, Virginia, South Australia, which was financed in part by way of a bank loan. The appellant and Sophie paid the deposit and the balance of the purchase price.

In 2012, the appellant commenced proceedings in the District Court of South Australia, seeking a declaration that the respondent held a half-interest in the Clark Road property on trust for him, or, alternatively, an order that he be registered as joint proprietor of "one undivided moiety" of the property. The appellant claimed that in July 2004, he and George had agreed that the appellant would acquire half of the respondent's interest in the Clark Road property (but not the improvements) for \$45,000, to be paid largely by way of funding of George and the respondent's share in the purchase of the Penfield Road property. The only documentary evidence of any agreement was a handwritten note signed by the respondent. The agreement did not meet the formality requirements of s 26(1) of the *Law of Property Act* 1936 (SA). However, the appellant contended that the doctrine of part performance entitled him to a decree that the agreement be specifically performed. The trial judge dismissed the claim, and the Full Court of the Supreme Court of South Australia dismissed the appellant's appeal.

By grant of special leave, the appellant appealed to the High Court. The appellant submitted that it is sufficient for a contracting party seeking specific performance of a parol contract for the sale or disposition of an interest in land to show that he or she has knowingly been induced or allowed by the counterparty to alter his or her position on the faith of the contract. He submitted that it is not necessary, in order to satisfy the requirements of the doctrine of part performance, that the acts of part performance be unequivocally referable to an agreement of the kind alleged.

The High Court unanimously dismissed the appeal. The Court held that the doctrine of part performance requires acts which are unequivocally referable to an agreement of the kind alleged. The appellant's concession that he had not done acts that were unequivocally referable to an agreement of the kind alleged, combined with considerations of authority and principle, required that the appeal be dismissed.

- *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.*