



HIGH COURT OF AUSTRALIA

Public Information Officer

1 August 2007

STUART ALEXANDER BLACK, VAUGHAN LEE CHAPMAN AND ANDREW PHILIP
CARTER v BRYCE LACHLAN GARNOCK, SARAH JANE GARNOCK, ROBERT LEONARD
LUFF, LYNETTE ANNE LUFF, SHERIFF OF NEW SOUTH WALES AND MARILYN
CLAIRE SMITH

The sale of a farm in southern New South Wales was blocked by the registration of a judgment debt two hours before settlement, the High Court of Australia held today.

Ms Smith and her husband Peter Smith owned “Wanaka”, a 1600-acre property at Bukalong near Bombala. In September 2004, the judgment creditors (Mr Black, Mr Chapman and Mr Carter) obtained judgment in the NSW District Court for \$228,000 against the Smiths. On 15 July 2005, the Garnocks and the Luffs agreed to buy Wanaka from the Smiths for \$1 million with a deposit of \$100,000. Settlement was due to take place at 2pm on 24 August 2005. The day before settlement, the judgment creditors obtained a writ of execution from the District Court. That writ was recorded in the Torrens register at 11.53am on 24 August. In due course, the recording of the writ would entitle the Sheriff to sell the property to pay the judgment debt. Settlement proceeded at 2pm but the transfer could not be registered due to the writ.

The Garnocks and Luffs began proceedings in the NSW Supreme Court to stop the judgment creditors and the Sheriff from executing the writ and selling the land. Justice Joseph Campbell granted an interlocutory injunction restraining the execution the writ but in December 2005, Acting Justice David Lloyd dismissed the proceedings. The Court of Appeal allowed the purchasers’ appeal by majority and granted an injunction. The judgment creditors then appealed to the High Court. Neither the Sheriff nor Ms Smith played an active part in the appeal.

By a 3-2 majority, the High Court allowed the appeal. It held that the injunction granted by the Court of Appeal was inconsistent with the statutory scheme in the NSW *Real Property Act* and the system of title registration – including the recording of writs – that the Act created. The writ took priority because it was recorded before the attempted registration of the sale to the purchasers and it was irrelevant that the actual date that contracts were exchanged preceded the issue of the writ.

- *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.*