



## Supreme Court of New Zealand

4 December 2009

### **MEDIA RELEASE – FOR IMMEDIATE PUBLICATION**

### **CASHMERE CAPITAL LTD v PATRICK KEVIN CARROLL AND OTHERS**

**SC 46/2009  
[2009] NZSC 123**

### **PRESS SUMMARY**

**This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at [www.courtsofnz.govt.nz](http://www.courtsofnz.govt.nz).**

The Supreme Court has allowed an appeal against a decision of the Court of Appeal concerning the priority of the conflicting rights of a mortgagee and the residents of an unregistered retirement village in Christchurch.

The appellant, Cashmere Capital Ltd, has a registered mortgage over the property. The seven respondents are residents of units who have rights of occupancy for life under agreements with the original operator of the village, which is now insolvent.

Under the Retirement Villages Act, the rights of residents generally have priority over those of registered mortgagees once the village has been registered under the Act. The Supreme Court has decided that, although the property was declared to be a retirement village by an Order in Council in 2008, that did not give it the status of a registered village. An application for

registration supported by full documentation has to be made. The Act requires the operator of the village to make it.

A mortgagee could in some circumstances become the operator of the village having all statutory obligations. The Supreme Court was not, however, satisfied that this had been established in the case of Cashmere by the affidavit evidence before the lower courts sufficiently to entitle the residents to summary judgment.

Likewise the Supreme Court was not persuaded that there was sufficient evidence to support the summary judgment on the basis of the residents' contention that Cashmere had lost its priority because at the time it made the loan it had consented to the residents' rights of occupancy for life of their units in the village.

The Supreme Court has set aside the Court of Appeal's decision to uphold the summary judgment given in favour of the residents in the High Court. The proceeding has been referred back to the High Court for hearing.

Contact person: Gordon Thatcher, Supreme Court Registrar (04) 914 3545