

IN THE SUPREME COURT OF NEW ZEALAND

SC 138/2016
[2017] NZSC 21

BETWEEN MARK ALBERT HORSFALL
Applicant

AND DIANA JANE POTTER
First Respondent

168 GROUP LIMITED
Second Respondent

Court: William Young, Glazebrook and Arnold JJ

Counsel: T G Stapleton QC for Applicant
J R Billington QC, R A Newberry and T Cleary for First
Respondent
R J B Fowler QC for Second Respondent

Judgment: 2 March 2017

JUDGMENT OF THE COURT

- A** The application for leave to appeal is granted (*Potter v Horsfall* [2016] NZCA 514).
- B** The approved question is whether the Court of Appeal was right to find that the disposition of the proceeds of the College Street property was made by the applicant to defeat the claim or rights of the first respondent for the purposes of s 44 of the Property (Relationships) Act 1976.
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REASONS

[1] One of the issues raised in this appeal is the principle discussed in *Potter v Potter* (and in subsequent cases).¹ Given that the principle is in issue as a result of the position adopted by the appellant for tax purposes, and that the principle has, in any event, wider public policy implications, we consider that we may be assisted by

¹ *Potter v Potter* [2003] 3 NZLR 145 (CA), aff'd *Potter v Potter* [2004] UKPC 41, [2005] 2 NZLR 1.

submissions from the Crown on the relevant policy considerations. Accordingly, we direct the Registrar to bring the appeal to the attention of the Solicitor-General so that she can determine whether the Attorney-General wishes to intervene to assist the Court in that regard.

Solicitors:

Langford Law, Wellington for Applicant

Sievwrights, Wellington for First Respondent

Thomas Dewar Sziranyi Letts, Lower Hutt for Second Respondent