JUDGMENT RE-ISSUED TO CORRECTLY RECORD PANEL

IN THE SUPREME COURT OF NEW ZEALAND

SC 157/2016
[2017] NZSC 64

BETWEEN	LYNDA ROSE BARRY Applicant
AND	FRANCIS CARLISLE Respondent

Court: William Young, O'Regan and Ellen France JJ

Counsel: Applicant in person
M G Locke for Respondent

Judgment: 4 May 2017

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B The applicant is to pay costs of $2,500 to the respondent.

REASONS

[1] The case arises out of an attempt by the applicant to enforce a deed which she and the respondent entered into in 2002 under which she was to have a half interest in a property owned by the respondent in Marlborough. In the High Court, Brown J held that there was no consideration for the deed and that it was therefore not enforceable by specific performance.[1] He also held that the deed should be set aside as unconscionable.[2] In both respects, his judgment was upheld by the Court of Appeal.[3]

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1 *Barry v Carlisle* [2015] NZHC 1554, (2015) 16 NZCPR 449 (Brown J) [*Barry* (HC)] at [106]–[121].
2 At [130]–[134].
3 *Barry v Carlisle* [2016] NZCA 551 (Randerson, Duffy and Whata JJ) at [48]–[60] and [61]–[72].

[2] For the purposes of the present application, it is sufficient to address only the proposed ground of appeal relating to the setting aside of the deed.

[3] The applicant and respondent had a relationship which, on the findings of fact in the courts below, lasted for approximately 18 months and concluded in August 1992. They had a continuing association up until 2011. In 1997 the respondent purchased the Marlborough property. Although named as a purchaser on the agreement for sale and purchase, the applicant did not commit any funds towards the purchase and title was taken in the respondent's name. Later a house was built on the property. Although the applicant lived there from time to time and met some living expenses, the courts below held that she made no contribution to the costs of acquiring the land or the improvements placed upon it. The 2002 deed is an unusual document. The respondent said in evidence that he could not remember signing it and the applicant's evidence as to the context would appear not to have been accepted by the trial judge.

[4] On the findings of fact in the High Court:[4]

(a) the respondent was not well at the time the deed was signed and was significantly compromised in terms of cognitive ability;[5]

(b) the applicant was well aware of this; and

(c) she took advantage of his disadvantage by inducing him to enter into a bargain which was improvident from his point of view.

[5] These findings were upheld by the Court of Appeal.

[6] In her submissions in support of her application for leave to appeal, the applicant advances many challenges to the concurrent findings made by the High Court and Court of Appeal. She also challenges the rejection by of the Court of Appeal of new evidence which she wished to rely on. At her request we allowed her to file a second set of submissions to which the respondent replied. The applicant's

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4 *Barry* (HC), above n 1, at [132].

5 See also the relevant material as to the respondent's health at [3] and at [39]–[42].

further submissions contain summaries of what she says are opinions given to her by lawyers (albeit that they are not identified), additional factual material, including discussion of the procedural history of her disputes with the respondent, and extracts of the transcript of the Court of Appeal hearing which she has annotated. The volume and nature of the material she has submitted emphasise the essentially factual nature of the dispute between the parties.

[7] In concluding that the agreement should be set aside, the High Court and Court of Appeal applied well-settled principles. Their application of those principles does not give rise to any question of public or general importance. Nor do we see any appearance of a miscarriage of justice in the findings of fact made by the High Court and Court of Appeal.

[8] Accordingly, the application for leave to appeal is dismissed. We award costs of $2,500 to the respondent.

Solicitors:
Lundons Law, Blenheim for Respondent