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Bullerworth
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IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

M422/84

1240

BETWEEN MARION GRACE PARKER
Plaintiff
AND HELENA WAKEFIELD
Defendant

Hearing: 13 September 1984
Counsel: Mr Millar for plaintiff
 Mrs Wakefield in person
Judgment: 13 September 1984

JUDGMENT OF HILLYER J

This is a motion for orders under Sections 56 and 58 of the Trustee Act, 1956. The applicant is Marion Grace Parker, a married woman of Auckland. On 15 August 1979 she entered into an agreement with her aunt, Helena Wakefield of Auckland, Widow, to purchase a property owned by Mrs Wakefield at 8 Dempsey Street, Remuera. The terms of the agreement were clearly influenced by the relationship between Mrs Wakefield and Mrs Parker, but briefly, they were that the property would be sold for the sum of \$39,000 which was to be paid at the rate of \$50 per week, provided that, if a total of \$25,000 was paid within five years, that \$25,000 would be accepted in full satisfaction as the purchase price of the property.

On 9 November 1983, following a hearing before Hardie Boys J on 1 and 2 June 1983, His Honour gave judgment decreeing specific performance of that agreement. No appeal has been lodged against that order, but Mrs Wakefield has refused to transfer the property pursuant to that judgment.

S.56 of the Trustee Act provides that where judgment is given for specific performance of a contract, the Court in certain circumstances may declare that any of the parties to the action are trustees of any interest in the land within the meaning of the Act. S.58 provides that in cases where a vesting order can be made under the provisions of the Act, the Court may, if it is more convenient, appoint a person to convey the land or any interest therein. Such an order is to have the same effect as a vesting order. It appears to be a procedure open in the circumstances, and an appropriate procedure.

I therefore make orders pursuant to S.s 56 and 58 in accordance with the provisions of the Trustee Act.

The matter has not been argued before me, and I have been given no authority in relation to the fact that the five year period referred to in the agreement has now expired. The motion for the orders was however filed well before the expiration of the five year period, and the normal rule would be parties should not suffer because of delays in the hearing of a motion that had been filed.

If however, on this or on any other point the Registrar, after taking such advice as he thinks fit, wishes to obtain the further direction of the Court, leave is hereby reserved to him to apply for directions. Leave is reserved also to any other party to apply.

There will be no costs on the application.



P.G. Hillyer J.

Solicitors

Peak Rogers for Plaintiff