

IN THE HIGH COURT OF NEW ZEALAND 11/10
AUCKLAND REGISTRY CP 2118/90

BETWEEN GRANT ANDREW BAGLEY of
Auckland, Naval Rating
Plaintiff

1961 AND DIANNE PAULINE LEACH
of Hamilton, Mother
Defendant

Hearing: 25 September 1991

Counsel: A.J.H. Witten-Hannah for Plaintiff
No appearance for defendant

Judgment: 25 September 1991

(ORAL) JUDGMENT OF HILLYER J

In 1985 the plaintiff and the defendant were living in a defacto marriage relationship. On or about 12 July a property was purchased at 127B Lynn Road, Glenfield, the property was put in the names of both plaintiff and defendant. The whole of the monies however, for the purchase of the property, were either provided by the plaintiff or obtained on the mortgage. The mortgages were obtained from the Housing Corporation, Metropolitan Life Assurance Association and the plaintiff's then employer the New Zealand Navy. He also borrowed substantial sums from his parents.

MEDIUM
PRIORITY

About three weeks after the purchase the plaintiff suffered a serious motorcar accident as a result of which he was in hospital for approximately six months. He had multiple fractures of his arms and legs. About two weeks after the accident the defendant visited the plaintiff in hospital and said that the relationship was over. She moved down to her parent's home and the parties have not lived together from that time onwards.

The plaintiff has repaid the monies borrowed from his parents, his then employers and on mortgage from the Metropolitan Life Association. He has made all the payments on the Housing Corporation mortgage together with the rates, insurance, maintenance etc for the house.

Correspondence took place between the parties' solicitors and then between the solicitor for the plaintiff and the defendant in which the plaintiff sought to have the property transferred to himself. A transfer was forwarded but the defendant refused or neglected to sign this. Finally in December 1990 these proceedings were issued, they were served on the defendant but she has filed no Statement of Defence. Service has been duly proved.

The plaintiff seeks an order that the property be transferred to him. His counsel has not referred to any reported cases in similar circumstances. In my view there would be power under s.52(g) of the Trustee Act

1956 to make an order vesting the whole of the property in the plaintiff, I think however it would be more convenient if I appointed, under s.58 of the Trustee Act, the Registrar of the High Court to convey the interest of the defendant in the land to the plaintiff.

I therefore under s.58 of the Trustee Act appoint the Registrar of the High Court to sign a transfer to be prepared on behalf of the plaintiff conveying the interest of the defendant in the land to the plaintiff so that that transfer may be registered on the title.

In the circumstances there will be no order as to costs.


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P.G. Hillyer J

Solicitors:
A.J.H. Witten-Hannah, DX 3023 for Defendant