

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

CIV-2007-485-2001

BETWEEN HODGE TRUSTEE SERVICES LIMITED
Plaintiff

AND MIKE HUANG
First Defendant

AND CAROLINE ZHANG
Second Defendant

Hearing: 7 July 2008

Counsel: S M O'Sullivan and F Hesp for Plaintiff
No appearance for Defendants

Judgment: 8 July 2008

JUDGMENT OF GENDALL J

[1] Mr Huang and Ms Zhang, the first and second defendants entered into a large commercial arrangement with Hodge Trustee Services Limited, the plaintiff. The plaintiff advanced a very significant sum to the defendants. Improper actions by them resulted in the loss of that sum. The plaintiff obtained a summary judgment against the defendants for \$3,202,101.10, plus interest in costs, on 7 April 2008 in the High Court at Wellington.

[2] Separately, the defendants agreed to transfer, as part security or payment for lost funds, three properties that they owned in Wellington. So they executed transfers of those properties in favour of the plaintiff (named under its former name).

[3] These proceedings arise out of the transfers signed by the defendants on 22 January 2007 in China. They were witnessed by a representative of the plaintiff.

The transfers were brought to New Zealand and handed to the plaintiff's solicitor who signed them "correct". But before they could be registered against the titles of the properties concerned, the originals were lost and have not been found.

[4] The proceedings are brought pursuant to ss 56 and 57 of the Land Transfer Act 1952. They are rarely used sections. They enable the High Court to "investigate" cases of lost land transfer instruments before registration, and enable relief to be provided to a person entitled to be registered as proprietor if "the real justice" of the case so requires.

[5] Service on the defendants has been effected by substituted service and the matter proceeded before me as one of formal proof. By reason of the affidavits of the plaintiff's solicitor, and representatives of the plaintiff, the Court is satisfied that under s 56 it should investigate the case of the lost instruments of transfer.

[6] "Hodge China Limited" is the company described as being the transferee in what purport to be copies of the instruments. But that company in fact is the plaintiff, as it was known as Hodge China Limited until 15 June 2007 when its name was changed. Accordingly, it is open to Hodge Trustee Services Limited to seek an investigation under s 56, it claiming to be entitled to be registered as proprietor of the sole stratum estate in freehold in respect of two properties in Thorndon Quay, Wellington. The third property, in respect of which a transfer was also signed in favour of the plaintiff, has since been sold under a mortgagee sale.

[7] Section 57 of the Land Transfer Act 1952 provides:

The Court may order a claimant to be registered as proprietor.

(1) Upon proof to the satisfaction of the Court of the fact of such loss or destruction as aforesaid, and that such instrument as aforesaid has not being wilfully destroyed by or with the connivance of the applicant, and that the applicant is entitled to be registered as aforesaid, and that due notice of the application has been given to the registered proprietor of the land, estate, or interest intended to be affected, and to all other necessary parties, the Court may make an order defining and declaring the estate or interest of the applicant under the instrument, and requiring the Registrar to register him as proprietor thereof, and the Registrar shall obey the order.

(2)

- (3) The Court shall, in hearing and deciding upon any case under this section and the last preceding section, be guided by the real justice of the case, and shall direct itself by such evidence as may seem to it most suitable to the circumstances of the case.

[8] Photocopies of the transfers as executed by the defendants in China, in favour of the plaintiff as it was then known, were made by the plaintiff's solicitor after he signed them "correct". I am satisfied by the plaintiff's solicitor evidence that he has lost the originals and that this has not arisen through any wilful act on his part or that of the applicant.

[9] The witness to the defendants' signatures on the instruments made a statutory declaration as to the authenticity of the names and signatures contained on the copy instruments. Counsel for the plaintiff originally contended that although the instruments were not witnessed by either a Commonwealth representative or a Notary Public overseas, the Court was entitled to act upon the statutory declaration of the lay witness in line with clause 16 of the Land Transfer Regulations 2002. But, as I explained to counsel, what is registered under s 57 is not the instrument itself but rather the Court order. Nevertheless, the photostat document is tendered and received as a significant and compelling piece of evidence to enable the Court to make a decision pursuant to s 57.

[10] Under the Evidence Act 2006, the photostat copies are clearly documents and admissible in proceedings, (pursuant to s 7). That is, they are admissible as relevant evidence having a tendency to prove something of consequence to the determination of the proceedings, namely that original instruments were executed and existed. Their admission in these proceedings is not dependent upon execution in front of Notary Public or Commonwealth representative, or for that matter as instruments to be registered under s 157 of the Land Transfer Act 1952 and clause 16 of the Land Transfer Regulations 2002.

[11] I am well satisfied that the requirements of s 57(1) have been proved. The justice of the case requires that there be orders as sought by the plaintiffs. Whilst the section refers to the Court "requiring the Registrar" to act and that "the Registrar shall obey the order", I am advised from the bar that the present practical procedure undertaken in the registration of transfers, is by "E-dealing". Accordingly, the order

will be framed in such a way as to facilitate that, but nevertheless still requiring the Registrar to obey the order.

[12] Accordingly, this Court orders:

- (a) That the loss of the transfers executed by the first and second defendants on 22 January 2007 be, and is, investigated under s 56 of the Land Transfer Act 1952;
- (b) That pursuant to s 57 of the Land Transfer Act 1952, the Court defines and declares the plaintiff's estate or interest in the properties located at Unit 14 and Unit 17, 220 Thorndon Quay, Wellington (and more particularly described in para (d) hereof) to be the stratum estates in freehold held by Mike Huang and Caroline Zhang on each title;
- (c) Gray Stratton Thompson and the firm Thompson Vodanovich, solicitors, Wellington are authorised to carry out the registration of this order by E-dealing on behalf of both the plaintiff and the first and second defendants, and the Registrar is required to register the plaintiff as proprietor of the said stratum estates in freehold so as to comply with s 57(1) of the Land Transfer Act 1952;
- (d) The description of the properties over which the plaintiff is to be registered as proprietor are:
 - Unit 14 and Accessory Unit 31 and 1/22 share in Accessory Unit A and 1/22 share in Accessory Unit B and 1/22 share in Accessory Unit C and 1/22 share in Accessory Unit D and 1/23 share in Accessory Unit E deposited plan 86157, and all the land comprised and described in Certificate of Title WN53D/707.
 - Unit 17 and Accessory Unit 27 and 1/22 share in Accessory Unit A and 1/22 Accessory Unit B and 1/22 share in Accessory

Unit C and 1/22 share in Accessory Unit D and 1/23 share in Accessory Unit E deposited plan 86157, and all the land described in Certificate of Title WN53D/710.

“J W Gendall J”

Solicitors:
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