

10 **IN THE HIGH COURT OF AUSTRALIA**
ADELAIDE REGISTRY

No A30 of 2017

BETWEEN:

LEON PIPIKOS

Appellant



AND:

VELIKA TRAYANS

Respondent

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APPELLANT'S SYNOPSIS OF ARGUMENT

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Filed on behalf of the Appellant by
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FROM APPELLANT

- 10 1. Introduction.
2. The correct principle for taking a case out of s4 of the Statute of Frauds is the fraud principle.
3. The test of Lord Selborne is flawed.
4. The proof principle was only ever a Chancery principle of proof and procedure. Properly understood it did not relate to the Statute of Frauds.
- 20 5. In the Court of Chancery before the mid 19th Century had its own rules and practices for resolving factual disputes. These were complex and arcane.
6. Chancery had its own rules in relation to pleading, proof and evidence.
7. In that Court a peculiar practice arose unique to Chancery relating to proof of a plaintiff's case where that case had been specifically denied by the defendant in the "answer". The plaintiff was bound by that answer except in two circumstances.
8. A particular refinement of that practice was applied in the Court of Chancery to proof
30 of oral contracts by requiring proof of acts of part performance of the contract which unequivocally proved the contract.
9. At this time there also existed a species of the "engines of fraud" doctrine whereby Equity would not permit a defendant in a suit for specific performance to rely on the Statute of Frauds if the defendant had induced or allowed the other party to alter their position on the faith of the contract. The usual acts relied on by the plaintiffs were acts of part performance.
10. These two principles had quite separate areas of operation:
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 - (i) the proof principle related only to pleading and proof of the contract;
 - (ii) the fraud principle related only to the Statute of Frauds.

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11. Although the principles were quite separate they were apt to be confused in practice.

12. In the mid to late 19th Century, the principle of proof and procedure was abolished by the wholesale reforms to Chancery procedure. That abolition carried with it the abolition of the refinement the Court of Chancery applied to proof of oral contracts.

13. After these reforms, judges made two main errors by reason of misunderstanding the impact of the reforms:

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(i) some judges required oral contracts to be proved by acts of part performance unequivocally referable to the contract;

(ii) other judges held that an oral contract would only be taken out of the Statute of Frauds by acts of part performance unequivocally referable to the contract.

14. In truth, the only principle which takes a case out of the Statute of Frauds is the fraud principle.

15. In any event, the proof principle is flawed for a variety of reasons.

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16. Application to facts:

(i) Agreement was reached between (at least) Leon and George prior to the purchase of Penfield Road that Leon would fund the whole of the owners' contribution for a joint purchase of Penfield Road (\$74,883.62) plus pay \$8,000 in return for the sale of a half interest in the unimproved land at Clark Road: PJ[94] (AB 470-471), FC[5] (AB 491) and FC [68] (AB 508-509);

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(ii) Velika knew prior to purchase of Penfield Road property of the agreement reached between Leon and George: PJ[93]-[94] (AB 470-471), FC[6] (AB 491) and FC [57]-[59] (AB 503-506);

- 10 (iii) Leon paid the whole of the owners' contribution for the purchase of Penfield Road, including George and Velika's share: FC[13] (AB 492);
- (iv) Velika knew that Leon paid the whole of the owners' contribution for the Penfield Road property, including her and George's share: AB 258.14 – 258.31, AB 258.36–259.21, AB 260.30 – 261.18;
- (v) Velika and George accepted a half interest in the Penfield Road property with the knowledge referred to in (ii) and (iv) above: FC[13] (AB 492), AB 389, FC[58] (AB 506.8-.15);
- 20 (vi) Velika knew that without Leon's payment of the whole of the owners' corporation she and George would not have been able to purchase a half-share in the Penfield Road property: FC[58] (AB 505.19) see also AB 258.13-.30 and AB 259.1 - .22);
- (vii) Leon would not have been prepared to permit Velika and George to acquire a half-interest in Penfield Road (by paying the whole of the Owners' Contribution) without taking an interest in Clark Road: FC[5] (AB 491), FC[26] (AB 495).

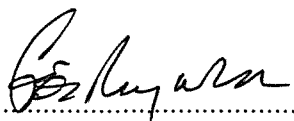
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17. Application of the unequivocal referability test to the facts.


18. Alternatives to the fraud principle.

19. Respondent's reliance on High Court precedent.

20. Appropriate orders.



G. O'L. Reynolds



Peter Scragg



M. J. O'Meara

40 DATED: 15 March 2018