

SIDHU v VAN DYKE (S312/2013)

Court appealed from: New South Wales Court of Appeal
[2013] NSWCA 198

Date of judgment: 1 July 2013

Special leave granted: 13 December 2013

Mr Prithvi Sidhu and his wife, Mrs Lajla Sidhu, lived in the main homestead of a property (“the Homestead Block”) which they owned as joint tenants. The Homestead Block was part of a larger property known as Burra Station. From 1996 Ms Lauren Van Dyke and her husband (Mrs Sidhu’s brother) lived in a house on the Homestead Block known as Oaks Cottage, which they rented from Mr and Mrs Sidhu. In 1997 Mr Sidhu and Ms Van Dyke commenced a romantic and sexual relationship. In January 1998, Mr Sidhu told Ms Van Dyke that he would arrange for title in the Oaks Cottage to be transferred to her after a planned subdivision of Burra Station had been carried out.

Ms Van Dyke then separated from her husband (after he had learnt of her affair with Mr Sidhu) and in 1999 they divorced. Ms Van Dyke did not however seek a property settlement with her former husband. Mr Sidhu had previously said to her, “*Lauren, you have the Oaks, you do not need a settlement from him.*”

Ms Van Dyke (and her young son) continued to live in Oaks Cottage, for which she paid below-market rent. She also assisted in the running of Burra Station in various ways. During 2004 and 2005 Mr Sidhu repeatedly promised to transfer to Ms Van Dyke both Oaks Cottage and a surrounding area of 7.3 hectares (“the land”). A subdivision of the Homestead Block was conditionally approved by the local council in 2005. In February 2006 however a fire destroyed Oaks Cottage, for which Mr and Mrs Sidhu received an insurance payment of \$175,000. Ms Van Dyke then moved into a relocatable cottage, before leaving Burra Station in July 2006 after her relationship with Mr Sidhu had broken down. At around that time, Mr Sidhu told Ms Van Dyke that he would not transfer the land to her as promised. Mrs Sidhu (whom Mr Sidhu had asserted would give her necessary consent as joint tenant) also indicated that such a transfer would not take place.

Ms Van Dyke commenced proceedings against Mr Sidhu for the transfer to her of the land (or either a charge over it or the declaration of a constructive trust), plus compensation for the value of Oaks Cottage. Alternatively she sought compensation for the detriment she had suffered in reliance on his promise to transfer the land to her. That detriment was said to comprise the non-payment of wages for the work she had performed for Burra Station and other opportunities she had forgone. Those opportunities were a potential payment resulting from a property settlement with her ex-husband, and payment for full-time work from 1998 to 2006 and/or the acquisition of other land.

On 23 February 2012 Justice Ward dismissed Ms Van Dyke’s claim. Her Honour found that Ms Van Dyke had relied upon Mr Sidhu’s promise insofar as she did not seek a property settlement with her former husband. Justice Ward held that Ms Van Dyke’s claim must fail however because Mr Sidhu’s promise involved

conditions beyond his control (the subdivision of land and Mrs Sidhu's consent), such that it was not objectively reasonable for Ms Van Dyke to have relied on that promise. Her Honour also found that Mr Sidhu's departure from his promise was not unconscionable in the circumstances.

On 1 July 2013 the Court of Appeal (Basten & Barrett JJA, Tobias AJA) unanimously allowed Ms Van Dyke's appeal. Their Honours found that Ms Van Dyke's reliance on Mr Sidhu's promise was objectively reasonable, as there was no evidence to suggest that the subdivision might not take place or that Mrs Sidhu might not consent to the transfer. The Court of Appeal held that Ms Van Dyke ought to have had the benefit of a presumption of reliance, as it could be inferred that Mr Sidhu's promise was at least part of the reason for her continuing to live and work on Burra Station instead of seeking out alternatives. The onus of proof then shifted to Mr Sidhu, whose case could not rebut the presumption. Their Honours found that Ms Van Dyke's reliance had been to her detriment, in terms of the opportunities she had forgone. The Court of Appeal also found that in the circumstances it was unconscionable for Mr Sidhu to depart from his promise. Their Honours then ordered that Mr Sidhu pay Ms Van Dyke compensation, in an amount to be determined by the Supreme Court of New South Wales.

The grounds of appeal are:

- The Court of Appeal erred in holding that the trial judge should have applied a "presumption of reliance" in determining whether the respondent relied on the promises made by the appellant and in holding that the trial judge, applying that presumption, should have found that the respondent did rely on the appellant's promises to her detriment, sufficient to establish a proprietary estoppel.
- The Court of Appeal erred in granting relief which was not connected to or proportionate with the detriment the respondent suffered in relying on the appellant's promises, and which created an obligation of a relevantly different and more onerous character than the appellant's promises.