



HIGH COURT OF AUSTRALIA

Public Information Officer

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HILLPALM PTY LTD v HEAVEN'S DOOR PTY LTD

Hillpalm was not bound to provide an easement over its property despite a proposed easement having been approved by Tweed Shire Council, the High Court of Australia held today.

Hillpalm and Heaven's Door in 1998 bought adjoining blocks of land, Tanglewood and Emerald Mountain respectively, which were once part of a larger banana farm which had been subdivided and sold off by its former owners, Winchcombe Carson Trustee Co (Canberra) Ltd. The subdivision plan showing a proposed right of way from Heaven's Door's land across a corner of Hillpalm's land to join Clothiers Creek Road was registered by the New South Wales Registrar-General in 1979. The Tweed Shire Council approved the subdivision in 1977. Further subdivisions were made of the section of land which includes Tanglewood. Hillpalm was unaware that the owners of Emerald Mountain had any easement or right of way over its land. Heaven's Door contended that it was entitled to a declaration that Hillpalm was in breach of a condition of the council's consent for the original subdivision and to orders requiring Hillpalm to create a right of carriageway and to construct a track within the carriageway. The NSW Land and Environment Court made the declaration and orders sought. Hillpalm appealed unsuccessfully to the NSW Court of Appeal and appealed to the High Court.

Heaven's Door accepted it had no easement over Tanglewood or other interest in the property, but it contended it was entitled to compel Hillpalm to perform conditions imposed by the shire council when the land was subdivided by Winchcombe Carson. The plan lodged with the Registrar-General bore the Shire Clerk's certificate that *Local Government Act* requirements had been met, but the High Court held that this certificate showed only that conditions which had to be met before the subdivision was certified had been met. The certificate could not specify whether conditions to be fulfilled after the subdivision had been put into effect were actually satisfied. On its face, the plan did no more than indicate that Winchcombe Carson had intended at some future time to create an easement. Whatever might have been the commercial significance to a party buying the land from Winchcombe Carson of its stated intention on the plan, nothing in the *Local Government Act* obliged it to give effect to that intention. Such an intention was not binding on Hillpalm. Any conditions imposed by the council when it approved the subdivision were also not enforceable against Hillpalm. When it bought Tanglewood it obtained a registered title free from any encumbrance or interest of the kind which Heaven's Door contended it was now entitled to have created.

The Court, by a 3-2 majority, allowed the appeal with costs.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*