



HIGH COURT OF AUSTRALIA

Public Information Officer

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PICO HOLDINGS INC v WAVE VISTAS PTY LTD (formerly Turf Club Australia Pty Ltd) AND NATIONAL AUSTRALIA BANK

Pico has a valid claim over property formerly belonging to Turf Club Australia which must now compete for priority against interests held by the National Australia Bank, the High Court of Australia held today.

Pico is a Californian corporation which had dealings over several years with various companies controlled by Peter David Voss, including Dominion Capital Pty Ltd. On 22 December 2000, in great urgency, Pico lent Dominion Capital \$US1.2 million, repayable a fortnight later, secured by collateral of 400,000 shares in Dominion Wines. Terms were recorded in a non-negotiable secured promissory note. No share certificate was sent and the loan was not repaid, despite an extension to 30 April and Mr Voss's repeated promises.

On 25 April 2001, Pico director John Hart told Mr Voss that Pico required security before another month's extension could be made. Mr Voss offered a property at Nerang on the Gold Coast which he said was worth twice the value of the loan. He agreed to send Mr Hart the title deeds and a recent valuation and faxed Pico a letter on Dominion Capital letterhead to that effect on 4 May 2001, along with a copy of a certificate of title showing the land was owned by Turf Club Australia, of which Mr Voss was the sole director. However he had already given NAB a mortgage over the land. He told NAB he was selling the land for \$3-\$3.1 million. The certificate of title was held by a Gold Coast law firm for unpaid fees, later paid by NAB which then held the certificate. For two months, Pico sought confirmation that Dominion Capital's Sydney solicitors held the certificate of title in trust for Pico and sought delivery of the certificate. Its demands for the certificate and for repayment were unmet.

Pico obtained judgment against Dominion Capital in the Victorian Supreme Court for recovery of the loan, then instituted proceedings in the Queensland Supreme Court against Turf Club, seeking declarations that it had an equitable charge over the land and that that charge had priority over NAB's mortgage. However Justice John Helman held there was merely an oral agreement and that Turf Club was not a party to it. Even if it were, the agreement was unenforceable because of non-compliance with the *Property Law Act* which required that contracts for the transfer of land be in writing. The Queensland Court of Appeal dismissed the appeal. Pico appealed to the High Court.

The Court unanimously allowed the appeal. It held that Mr Voss had authority to commit Turf Club Australia to a promise to supply a certificate of title over its land. The Court held that the promise to deliver the certificate of title, in exchange for Pico extending the repayment period, was specifically enforceable. The May 4 2000 letter was a note of the contract, fulfilling the requirements of the *Property Law Act*. The Court declared that Pico has an interest in the proceeds of sale of the land corresponding with an equitable mortgage created by the contract between Pico, Turf Club and Dominion Capital arising from the oral promises of 25 April 2001, the letter of 4 May 2001 and an addendum, regarding the extension, to the promissory note of 22 December 2000. The Court ordered that the matter be remitted to the Court of Appeal to determine whether Pico's equitable mortgage over the property takes priority over any interests held by NAB.

- *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.*