



HIGH COURT OF AUSTRALIA

Public Information Officer

1 September 2005

MARIE MARGARET THEODORE v MISTFORD PTY LTD, MAX EGERTON VINES AND
VALERIE LYNETTE VINES

Mistford and the Vineses were entitled to rely upon the provision of Mrs Theodore's title deeds by her son Glen Theodore as security for outstanding payments for the purchase of their business, the High Court of Australia held today.

In 1996, Mr Theodore's company, Mobile Lab Pty Ltd, contracted with the respondents, Mistford and the Vineses, to buy their business, Air Monitoring Services, for \$66,500. The first \$20,000 was payable on completion and the remaining \$46,500 was payable by three instalments over two years with interest at eight per cent. Mr Theodore was guarantor for Mobile Lab's purchase. In support of the guarantee, he deposited with the Vineses' solicitors, Klar and Klar, the duplicate certificate of title to land owned by his mother at Buderim on the Sunshine Coast. The circumstances in which this occurred were the subject of factual disputes at the trial in the Queensland District Court. When Mr Theodore defaulted on his repayments in 1997, the respondents relied upon an equitable mortgage being created by the deposit of the duplicate title.

In the District Court Mrs Theodore sought a declaration that the respondents held the duplicate title as constructive trustees for her benefit. By counter-claim, the respondents sought orders that an equitable mortgage had been created in their favour. Judge John Robertson dismissed Mrs Theodore's claim and found for the respondents. Despite her denying any prior knowledge of her son's use of the title deed, Judge Robertson held that she had given authority for her son to use the deed as security for the purchase of the business.

The Queensland Court of Appeal, by majority, held that Mr Theodore, with the authorisation of his mother, had deposited the title deed to her land with Klar and Klar, and thereby secured by equitable mortgage the amount he still owed under the contract of sale. Mrs Theodore had by then sold the land and the proceeds were deposited in Klar and Klar's trust account. The Court of Appeal held that the respondents were entitled to have what they were owed paid to them from those proceeds, with the balance, if any, returned to Mrs Theodore. She appealed to the High Court.

The Court unanimously dismissed the appeal.

- *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.*