



HIGH COURT OF AUSTRALIA

23 June 2021

MATTHEW WARD PRICE AS EXECUTOR OF THE ESTATE OF ALAN LESLIE PRICE
(DECEASED) & ORS v CHRISTINE CLAIRE SPOOR AS TRUSTEE & ORS
[2021] HCA 20

Today, the High Court unanimously dismissed an appeal from a judgment of the Court of Appeal of the Supreme Court of Queensland. The principal question on appeal was whether the parties to a mortgage may agree that the mortgagor will not plead the statutory time limitation under the *Limitation of Actions Act 1974* (Qld) ("the Act") by way of defence to an action brought by the mortgagee or whether such an agreement was unenforceable as contrary to public policy. That question also concerned the terms of the clause in the mortgages and whether they were effective to prevent the appellants from pleading the statutory time limitation. Another question concerned whether s 24 of the Act operated automatically to extinguish title at the expiry of the time period.

Law Partners Mortgages Pty Ltd ("LPM") advanced \$320,000 to the appellants in 1998, secured by mortgages over land. The respondents, successors in title to LPM, brought proceedings as mortgagees in which they claimed monies owing under and secured by two mortgages, together with recovery of possession of land the subject of the mortgages. The appellants pleaded that the respondents were statute-barred from bringing the action for debt pursuant to ss 10, 13 and 26 of the Act. It was further alleged that the respondents' title under the mortgages had been extinguished by operation of s 24 of the Act. Section 24 of the Act provided, in effect, that where the relevant time period within which a person "may bring an action" to recover land had expired, "title" to that land "shall be extinguished". In reply, the respondents relied on cl 24 of each mortgage, which they contended amounted to a covenant on the part of the appellants not to plead a defence of limitation. The primary judge dismissed the respondents' application for summary judgment or for a strike out of the defences. The Court of Appeal allowed the appeal from that decision, finding that it was possible to contract out of the defences conferred by the Act and that s 24 did not apply in the circumstances of the case.

The High Court unanimously dismissed the appeal. The High Court held that the right to plead the expiry of the relevant time period as a defence was a benefit conferred upon individuals. It was not contrary to public policy for the relevant parties to agree to give up that right and such an agreement was enforceable. Clause 24, properly construed, was intended to apply to a benefit given by statute to a defendant by which the mortgagee's right could be defeated. Further, s 24 does not operate automatically at the end of the relevant time period to extinguish title; instead, it operates by reference to the plea. By agreeing to the terms of cl 24, the appellants effectively gave up the right to plead the expiry of the relevant time period, the respondents were not statute-barred and s 24 of the Act did not operate to extinguish the respondents' title. The Court further found that the respondents were not confined to an action in damages in the event of the appellants breaching cl 24.

- *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.*