

PROPERTY LAW GUIDEBOOK

SECOND EDITION

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CHAPTER 7

PROBLEM QUESTION 3

Two friends, Arthur and Terry, entered into negotiations concerning the sale of Arthur's plot of land. Upon conclusion of a contract of sale, a deed of conveyance was drawn up for the parties to sign. Without actually receiving the agreed purchase price of \$150 000 from Terry, Arthur signed a receipt on the deed of conveyance acknowledging that he had received the agreed purchase price. The transfer was completed and Terry became the registered owner of the property. Six months later Terry used the title to the property as security to obtain a loan of \$100 000 from All Star Banking Services, with the intention of using the money to build a house on the land. This mortgage, however, was not registered by All Star Banking Services. Terry is now in financial difficulty, having squandered the money gambling, with his only asset being the block of land he had bought from Arthur.

Discuss who should have priority in the dispute that has now arisen in regard to the property.

SUGGESTED ANSWER

The two issues in this problem are who has what interest in the property and who should have priority in any dispute in relation to the property.

Arthur originally had the legal interest in the property since he was the owner of the land. This legal interest was passed over to Terry, who obtained the legal interest in the property when it was transferred to him. Arthur, however, can argue that he has retained an equitable interest in the property by means of a vendor's lien as he is yet to be paid in full for the purchase of the land. The bank has meanwhile given Terry a mortgage, which is an equitable interest as it has not been registered.

The issue now is whether Arthur or the bank should have priority in regard to being repaid by Terry, which means that it involves a dispute between two equitable interests. The facts here

are similar to *Rice v Rice*, where George Rice sold land to his cousin, Michael, and signed a document stating that the purchase price had been paid in full when it had not. This allowed Michael to obtain a mortgage on the basis that he owed no money on the property. The later equitable interest was then held to have priority due to the conduct of George in signing the document stating that he had been paid in full. It was also held in that case that with competing equitable interests what needs to be examined first is whether the equities are equal and this involves looking at:

- 1 the nature and condition of the equitable interests
- 2 the circumstances of the case
- 3 the conduct of the parties.

If, after examining the equities, it is decided that they are equal, the maxim of last resort, that is, the first in time will prevail, is then applied. The facts here also have some similarities to *Heid v Reliance Finance*, where Heid signed documentation stating that he had been paid in full when he had not, and for this reason a later equitable interest had priority. *Barry v Heider* also involved a vendor's lien, and in that case Barry's equitable interest in the property, which arose from this vendor's lien, was held to have priority over one later equitable mortgage, but had lost priority to another later equitable mortgage.

Applying the principles of *Rice v Rice* to the present case would therefore indicate that Arthur's conduct in signing the document stating that he had been paid in full when he had not been paid means that the equities are not equal. It is therefore likely that the later equitable interest of All Star Banking Services would prevail over Arthur's earlier equitable interest. This would mean that the bank would have priority in regard to the proceeds of the sale of Terry's land should it be sold off, which seems likely.

COMMENTS ON THE ANSWER

The two issues that exist in a priorities question are first of all who has what interest in the property, and then who should have priority in any such dispute in relation to the property. Most of the rules, or the law, will therefore probably pertain to the second issue.

This problem also illustrates how cases should be used to illustrate both general principles and specific principles. *Rice v Rice* is a case that sets out the general principle relating to the question of priorities between two equitable interests and should therefore be used in relation to any problem relating to a priority dispute between two equitable interests. However, in this particular problem it is also a case on point, since the facts stated in the problem are very similar to *Rice v Rice*. This is why a brief outline of the facts from *Rice v Rice* should be mentioned, though when it is being used just as a general principle case, the facts will usually not be as relevant and do not necessarily have to be included in the answer. It is also a good idea to include some Australian cases in the answer to illustrate how the principles from *Rice v Rice* have been applied in Australia.