



22 October 2014

PRESS SUMMARY

In the matter of the North East Property Buyers Litigation
Scott (Appellant) v Southern Pacific Mortgages Limited (Respondents) [2014] UKSC 52
On appeal from [2012] EWCA Civ 17

JUSTICES: Lady Hale (Deputy President), Lord Wilson, Lord Sumption, Lord Reed, Lord Collins

BACKGROUND TO THE APPEALS

This is an appeal in a test case arising from ‘sale and rent back’ transactions in the north east of England. Home owners like the appellant, Mrs Scott, were persuaded to sell their properties to purchasers who promised them the right to remain in their homes for years as tenants after the sale. The purchasers bought the homes with the assistance of mortgages from lenders such as the respondents, who were unaware of the promises made to the home owners. When the purchasers defaulted on the mortgages, possession proceedings were brought by the lenders. The issue arising in this appeal is whether the home owners have any rights entitling them to remain in occupation of their homes, in addition to any claims they may have against the purchasers who may have defrauded them and their legal advisers.

Mrs Scott agreed in 2005 to sell her house to an agent for North East Property Buyers (‘NEPB’) at a significant undervalue, in return for the right to remain in her home indefinitely as a tenant at a discounted rent, with the prospect of further capital sums after ten years. The nominee purchaser for NEPB, Ms Wilkinson, obtained a buy-to-let interest-only mortgage from the respondent (‘Southern Pacific’) on condition that only assured shorthold tenancies of up to one year could be granted and on the basis that there were no existing tenancies. In breach of the terms of the mortgage a two year tenancy was granted to Mrs Scott four days after completion of the sale. Three years later Mrs Scott discovered that a possession order had been made on 17 March 2009 in favour of Southern Pacific, following defaults by Ms Wilkinson on the mortgage.

Mrs Scott was joined as a defendant to the possession proceedings and argued that she had an equitable interest in the property from the moment of exchange of contracts, which amounted to an unregistered interest given priority by section 29(2)(a)(ii) of, and Schedule 3, paragraph 2 to, the Land Registration Act 2002 (‘the 2002 Act’) over the lender’s charges.

The courts below determined as a preliminary issue that she had not. Two questions arose: (i) whether Ms Wilkinson had been in a position at the exchange of contracts to confer equitable proprietary rights on Mrs Scott, as opposed to personal rights only, and (ii) whether, even if she had, the transaction of acquiring the legal estate and granting the charge was one indivisible transaction so that Mrs Scott could not assert against Southern Pacific an equitable interest which had only arisen on completion, in accordance with the decision of the House of Lords in *Abbey National Building Society v Cann* [1991] 1 AC 56 (‘*Cann*’).

JUDGMENT

The Supreme Court unanimously dismisses the appeal. Lord Collins, with whom Lord Sumption agrees, finds against Mrs Scott on both issues. Lady Hale, with whom Lord Wilson and Lord Reed agree, holds that the appeal must fail because Ms Wilkinson could not confer equitable proprietary rights on Mrs Scott at any time before completion of the purchase. On this basis the second issue does not arise, but they would have taken a different view on the indivisibility of the transaction had it done so.

REASONS FOR THE JUDGMENT

One of the main objectives of land registration is to create as complete a record of title as possible. Overriding interests, to which the land is subject but are not apparent from the register, are an obstacle to this, but the interests of occupiers continue to be protected in the 2002 Act [36].

The unregistered interests which override registered dispositions under the 2002 Act must be proprietary in nature [59]. A purchaser under a contract of sale is given statutory rights to enforce his or her interest against third parties by registration, but it does not follow that the purchaser can grant proprietary rights [65]. Mrs Scott acquired no more than a personal right against Ms Wilkinson when she agreed to sell her house on the basis of the promise made to her that she could remain in occupation and this is the principal ground on which her appeal fails. Her rights only became proprietary when Ms Wilkinson acquired the legal estate, at which time the grant of the charge in favour of Southern Pacific also took effect as part of one indivisible transaction. Accordingly, the lenders' rights are not subject to Mrs Scott's right to occupation [79].

It is not therefore necessary to decide whether the decision in *Cann* applies to a proprietary equitable interest arising at the time of a contract of sale and it is difficult to see how this question could arise in any future case [80]. The justices do, however, express their views on this as it was the main question canvassed in the courts below and at the hearing.

Lord Collins considers that it was implicit in *Cann* that not just the conveyance and mortgage, but also the contract, were all indivisible parts of the transaction. This does not depend on execution of all three on the same day [85]. Thus even if Mrs Scott had had equitable rights of a proprietary nature against Ms Wilkinson arising on exchange of contracts, the mortgage would have taken priority [89].

Lady Hale does not agree that the finding of an indivisible transaction in *Cann* extends to the contract of sale, and to include the contract would create confusion [120]. She acknowledges that the decision on the principal ground in the appeal produces a harsh result [95] and is uneasy with the 'all or nothing' approach of the present law. She is glad that the Law Commission is now subjecting the 2002 Act to a wide-ranging review, to include the impact of fraud [122].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.shtml>