



## HIGH COURT OF AUSTRALIA

Public Information Officer

9 March 2005

VIRGINIO VIGOLO v WANDA MARY BOSTIN AND LEOPOLDO VIGOLO (as executors of the will of Lino Vigolo deceased), WANDA MARY BOSTIN, LEOPOLDO VIGOLO, NANCY CUNNINGHAM AND SANDRA GANGELL

Virginio Vigolo had no claim on the estate of his father, Lino Vigolo, as proper provision had already been made for his maintenance, support, education and advancement in life, so the Western Australian Supreme Court was correct to reject his application to have his father's will amended in his favour, the High Court of Australia held today.

Virginio Vigolo, 47, was the eldest of five children who had spent most of his working life farming with his parents near Albany in WA. When Lino Vigolo died in 1997 his estate, worth \$1.9 million, was divided among the other four children with no provision made for Virginio, or for his widow Rosario. Virginio left school at 16 to work on the farm while also taking other jobs. When he had saved \$10,000 he planned to buy his own farm but his father suggested they buy another farm together because when he died it would all be his son's. Virginio Vigolo said his father made many similar promises over the years, telling him his wages were low because he would eventually inherit. They bought the second farm in 1978 with Mr Vigolo and his parents as equal partners operating both farms. They later bought a third farm and the income generated by all three enabled them to buy as investments a produce market and a service station.

In 1988 the partnership became a company with Virginio Vigolo and his parents as equal shareholders. About this time, he and his wife bought a hairdressing business, which his wife ran, then a farm of their own. Virginio and his father fell out over this separate accumulation of assets. In 1993 the company was dissolved by a deed of settlement that divided up the assets based on market valuation. Rosario Vigolo gave her share of the original farm to her son and his wife and the couple then bought out the father's share at commercial rates. After settlement was completed Lino Vigolo drew up a new will. He left Virginio out of the will because he believed he had made adequate provision for him during his lifetime and because Mr Vigolo had received his mother's share of the farm. A year after his father's death in 1997, Virginio and his wife sold the farm for \$1.68 million.

Virginio Vigolo applied to the WA Supreme Court for an order under section 6 of the *Inheritance (Family and Dependants Provision) Act* which provides that a court may use its discretion to modify a will to make provision out of the deceased's estate for the proper maintenance, support, education or advancement in life of family members listed in section 7. Justice Carmel McLure rejected the application. She found that Mr Vigolo was adequately compensated for his contributions to the farming business and compared with his siblings he was given significant financial advantage by his parents. The Full Court of the Supreme Court dismissed an appeal. Mr Vigolo appealed to the High Court.

The Court unanimously dismissed the appeal. It held that Mr Vigolo was not entitled to an order under section 6 of the Act to vary his father's will in his favour because he was in a strong financial position and the 1993 deed of settlement rendered the promise to inherit no longer relevant. The Court held that he was not left without proper provision for his maintenance, support, education or advancement in life.

- *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.*