HIGH COURT OF AUSTRALIA

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QUEENSLAND PREMIER MINES PTY LTD, FRANK GEORGE BECKINSALE, HELEN MARY BECKINSALE AND MARMINTA PTY LTD v WALTER MURDOCH FRENCH

Registration of a transfer of a mortgage does not necessarily assign the right to recover money owed under a separate loan agreement, the High Court of Australia held today.

In 1989, Seventeenth Febtor Pty Ltd loaned $415,000 to Queensland Premier Mines (QPM) and Mr and Mrs Beckinsale and $560,000 to QPM. The loans were for acquiring and developing land at Yeppoon on the central Queensland coast. Interest of 24 per cent was charged and the loans were collaterally secured by mortgages over specified land. The mortgages were granted by QPM in favour of Seventeenth Febtor. The Beckinsales were not a party to them. By a deed dated 18 December 1992, Seventeenth Febtor assigned its rights and interests in the mortgages and loan agreements to Mr "Rusty" French. No money was repaid. In 1999 Mr French told Mr Beckinsale he planned to sell the land covered by the mortgages. The outstanding principal and interest due under the loan agreements was $4 million. In 2000, Mr French accepted Mr Beckinsale's offer on behalf of Marminta to buy back the mortgages for $950,000, but a dispute arose. Marminta commenced action in the Queensland Supreme Court for specific performance of the buy-back agreement. Mr French brought proceedings in the Victorian Supreme Court in 2002 to recover the money due under the loan agreements from QPM and the Beckinsales. QPM agreed to sell the development site, which included the mortgaged land, to Unison Properties for $2.44 million.

Marminta was initially unsuccessful in its claim for specific performance but succeeded on appeal. The Queensland Court of Appeal ordered Mr French to do all that was necessary to enable Marminta to become the registered proprietor of the mortgages. In January 2004, a transfer of the mortgages to Marminta, Marminta's release of mortgage, and a transfer of the estate to Unison Properties were registered. In the Victorian proceedings, which became the subject of the appeal to the High Court, Marminta contended that the right to sue upon the mortgages and to recover any debt under them vested in it when the transfer of the mortgages to it was registered which meant Marminta became the creditor of QPM and the Beckinsales of what was owed under the loan agreements. The Supreme Court made declarations sought by Marminta but the Victorian Court of Appeal unanimously gave judgment for Mr French for the balance owing by QPM and the Beckinsales under the loan agreements and for the rates and taxes he had been obliged to pay.

QPM, the Beckinsales and Marminta appealed to the High Court, which unanimously dismissed the appeal. The appellants argued that the registration of a transfer of a mortgage effects an assignment of the right to recover money owed under a separate loan agreement secured by the bill of mortgage. They argued that this is so under section 62 of Queensland's *Land Title Act*, which provides that, on registration of an instrument of transfer for interest in a lot, all the transferor's rights vest in the transferee. However, the Court held that there were two separate and distinct covenants to pay: one contained in the loan agreement, which is freestanding and enforceable in its terms, and another under the mortgage. Section 62 did not justify a construction which allows the right to recovery of a debt merely collaterally secured by the mortgage. The debt sought to be recovered by Mr French arose under the loan agreements, not under the mortgage. He was assigned the right to recover the money owing under the loan agreements and Marminta was not an assignee from him. He retained the right to sue and recover that money from QPM and the Beckinsales.

- *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.*

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