



The law requires you to keep your promises

A 2014 decision of the Supreme Court in *Bryant v Bryant* [2014] NSWSC 374 concerned a dispute about ownership of a family home and whether or not a promise was made to transfer interest in the home.

The First and Second Plaintiffs were mother and son. The Defendant was the father of the son and former husband of the mother.

The parties married in 1973 and purchased the property concerned in 1981. They both actively worked, and made financial contributions to the home until 1984 when the father went to Queensland and the mother took over as the family's sole breadwinner. In 1986 the separation was formalised and in 2000 they were divorced.

After the separation, in 1992 and at other times, the mother claimed that the father orally promised that she could continue living at the property and that, upon their son reaching 21 years of age, the father would transfer his interest in the property to the son. The son corroborated this evidence, saying that the father told him that the property would be his multiple times during his youth. The mother also claimed she did not institute family law proceedings or pursue child support due to reliance on this promise.

The father admitted that it was his intention for the mother and son to live at the property and, if the son survived him and the mother, to leave the property to the son in his will. The father denied any conversations regarding transfer of the property when the son reached 21 years of age. Following a falling out between father and son, the father changed his mind and said he would not leave the property to his son.

Law

Justice Lindsay was satisfied that the mother's conversations with the father occurred mostly as she recounted them. In his assessment, Justice Lindsay said the father led and allowed the mother to believe that he would transfer his interest in the property to the son when he attained 21 years of age. He said this was done in a calculated manner, to counter his obligation to provide maintenance and other financial support and called it "unconscionable for the [father] to resile from a promise, upon which he had induced the [mother] to rely".

Justice Lindsay went on to discuss the principles governing estoppel in relation to a non-contractual promise to grant an interest in land, and confirmed an assurance or encouragement which creates an expectation that an interest will be granted is sufficient to give rise to the expectation that the promise will be made good. He held that the Court should enforce a reasonable expectation which the father created or encouraged.

Decision

Justice Lindsay determined that the father held his interest in the property on trust for the son and ordered a transfer of his interest in the property to the son.

The claim was successful.