



**Supreme Court of New Zealand  
Te Kōti Mana Nui**

**21 December 2017**

**MEDIA RELEASE – FOR IMMEDIATE PUBLICATION**

**MARK ALBERT HORSFALL v DIANA JANE POTTER AND 168  
GROUP LIMITED**

**(SC 138/2016) [2017] NZSC 196**

**PRESS SUMMARY**

**This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest [www.courtsofnz.govt.nz](http://www.courtsofnz.govt.nz)**

Pursuant to s 35A of the Property (Relationships) Act 1976, any report of this proceeding must comply with ss 11B to 11D of the Family Courts Act 1980.

Mr Horsfall and Ms Potter were married in October 2002 and separated in April 2008. They were unable to agree upon a division of their property under the Property (Relationships) Act 1976 (the Act) and this resulted in litigation.

Relevant to the appeal was a property in College Street, Wellington. This property was acquired in 2003 in the joint names of Mr Horsfall and Ms Potter. It was sold in 2004 and Mr Horsfall transferred virtually all the proceeds of sale to the second respondent, 168 Group Ltd.

Ms Potter contends that the property, and therefore the proceeds, were relationship property and that the transfer of the proceeds to 168 Group defeated her rights in said proceeds. On her argument, the courts should have made an order under s 44 of the Act, a section which provides for the court to undo the impact of a disposition which defeats the property rights of any person under the Act.

Mr Horsfall maintained that the property was beneficially owned by 168 Group and that the use of his and Ms Potter's names was to limit the risk of adverse tax consequences. Thus, Ms Potter had no rights in the property so the transfer of the proceeds of sale did not engage s 44 of the Act.

The Family Court found in favour of Ms Potter. This judgment was reversed on appeal to the High Court but reinstated by the Court of Appeal.

The Court has, by a majority, dismissed Mr Horsfall's appeal from the Court of Appeal decision. The majority judgment was delivered by William Young J on behalf of himself, Glazebrook, O'Regan and McGrath JJ. The Chief Justice has dissented.

Mr Horsfall's case proceeded on the basis that he and Ms Potter acquired the College Street property pursuant to an informal oral agreement that they would do so jointly so as to conceal the identity of the true owner which he claimed was 168 Group.

The conclusion of the majority was that Mr Horsfall's case should be rejected on the facts. This was consistent with the overall findings of the Family Court Judge and also with the majority's own assessment of the evidence. This meant that the property was relationship property as it was acquired by Mr Horsfall and Ms Potter jointly after their marriage. On this view of the facts, Mr Horsfall's transfer of the proceeds of sale to 168 Group engaged s 44 of the Act.

The case is remitted to the Family Court for consideration of outstanding matters as to the application of s 44.

The Chief Justice agreed with the High Court Judge that the parties did not acquire the property as beneficial owners and considered that, on that basis, there was insufficient evidence to apply s 44.

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