



# New Law Bulletin

## Contracts or Agreements – Have you got it right?

Decision of Supreme Court of Donaghue v Donaghue and Anor [2015] QSC54. In this case Mr D owned a property at Shorncliffe. He was in financial problems and his bank was about to foreclose on the house.

In order to save this from happening, he entered into an agreement with his daughter the Defendant, whereby it was agreed that he would “sell” his interest in the house to her. The second Defendant was required to be a party to the transaction to enable the bank to loan sufficient funds for this transaction to occur.

The difficulty for the Plaintiff was that the transaction occurred at a considerable under-value, being approximately 1/3 of what the house was subsequently valued at.

The transaction went through and Mr Donaghue’s bank was paid out and foreclosure action was ceased.

However, a dispute then arose between the parties.

The father claimed that upon him meeting expenses and paying rent that at the conclusion of the mortgage being paid out he had the right to have the property transferred back to him. His daughter (and her de facto partner) disagreed and said that they were the owner of the house and had paid an agreed value for it and should not have to transfer it back.

The parties dealings were somewhat convoluted and the Judge carried out a lengthy examination of various things that occurred between them to determine whose case he accepted and whose case he did not accept.

His Honour in his Judgment said that for the Defendants to maintain that they owned the property absolutely was “a species of equitable fraud”.

Accordingly, the Court found that although the house was now in the name of the daughter and her de facto partner, that they held the house on a trust for the father upon the condition that the father meets all expenses and liabilities including any monies due to the bank under the loan.

The moral of this story is that in dealings with important assets such as a house property, even amongst family members, that the parties should put all of the terms and conditions thereof into writing so that there cannot be dispute later on.

If the parties had spent a nominal sum on solicitors drawing up a document to give effect to this arrangement, they would have saved many tens of thousands in legal fees in litigating their dispute.