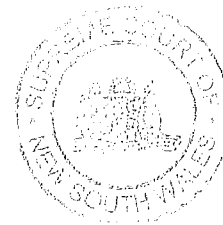


FILED

- 5 APR 2025



NOTICE OF APPEAL

COURT DETAILS

Court Supreme Court of New South Wales, Court of Appeal
Registry Sydney
Case number 2025 / 129 141

TITLE OF PROCEEDINGS

Appellant Michael May I Daniele Phair solicitor for the
Respondent Lila Costaras Appellant Certify this document
is suitable for publication.

PROCEEDINGS IN THE COURT BELOW

Title below Michael May v Lila Costaras
Court below Supreme Court of New South Wales
Case number below 2022/3211875
Dates of hearing 30 & 31 July 2024, 1 August 2024 and 26 September 2024
Material date 10 March 2025
Decision of Lindsay J

FILING DETAILS

Filed for Michael May, appellant [role of party eg appellant]
Filed in relation to The decision in relation to the plaintiff's claim below
Legal representative Proctor Phair Lawyers
Legal representative reference
Contact name and telephone Daniele Phair, 9299 9292
Contact email ppl@proctorphairlawyers.com.au

HEARING DETAILS

This notice of appeal is listed for directions at

9am

30/4/2025

TYPE OF APPEAL

Equity General List (other than Family Provision cases)

DETAILS OF APPEAL

- 1 This appeal is brought under s 101(1) of the *Supreme Court Act* 1970.
- 2 This notice of appeal is not filed pursuant to leave to appeal.

3 The appellant has not filed a notice of intention to appeal.

4 The appellant appeals from the decision below in relation to the plaintiff's claim.

APPEAL GROUNDS

1 Regardless of which party's version of events was accepted, His Honour should have held that the whole of the defendant's legal interest in the property was held subject to a resulting trust in favour of the plaintiff.

2 His Honour erred by failing to make a finding as to whether the constructive trust found at [125] of the reasons dated 25 February 2025 (*Reasons*) was a constructive trust based upon a failed joint endeavour or a constructive trust based upon a common intention.

3 To the extent that the constructive trust found at [125] was one based upon a common intention that the defendant's contributions to the 'Scott Street property' be recognised, his Honour erred by finding that either the plaintiff or defendant had that intention in circumstances where:

- a. neither party claimed in their evidence to have had such an intention;
- b. such an intention would have been inconsistent with both the plaintiff's claimed intention (that the defendant was allowed to go on title in anticipation of marriage) and the defendant's claimed intention (that she was allowed to go on title in anticipation of assisting with the development of the property); and
- c. it was never put to the plaintiff that he had such an intention.

4 To the extent that the constructive trust found was one based upon the failed joint endeavour found at [117] of the *Reasons*, his Honour erred by failing to make a finding as to whether the joint endeavour was for the acquisition and development of the 'Scott Street property', or a joint endeavour that included the acquisition and development of both the 'Scott Street property' and the 'Cumberland Reach property'.

5 To the extent that the constructive trust found was one based upon a failed joint endeavour that only included the acquisition and development of the 'Scott Street property', his Honour erred by taking into account contributions by the defendant that were not to the acquisition or development of that property.

6 To the extent that the constructive trust found was one based upon a failed joint endeavour for the acquisition and development of both the 'Scott Street property' and the 'Cumberland Reach property', his Honour erred by:

- a. finding such a constructive trust in circumstances where neither party alleged that there was any such joint endeavour;

- b. failing to take into account contributions by the plaintiff to the acquisition and development of the Cumberland Reach property;
- c. failing to make any findings as to which of the payments alleged by the defendant were contributions to any joint endeavour;
- d. failing to make any findings as to which of the financial contributions claimed by the defendant to that joint endeavour had already been the subject of a reimbursement or other payment to the defendant by the plaintiff; and
- e. failing to make any findings as to whether the financial or non-financial contributions by the defendant had resulted in any benefit to the plaintiff.

- 7 His Honour erred by finding that the respective proportions of the parties were two thirds and one third, rather than finding that the legal interests were held on constructive trust to repay the respective contributions of the parties to the joint endeavour, and as to the residue in such proportions as the Court deemed fit.
- 8 His Honour erred by making the factual findings at [108]-[110] without having regard to the contemporaneous written records relied upon by the plaintiff.
- 9 His Honour erred in assessing the defendant's credit at [97]-[98] by failing to make findings as to whether the defendant was the person who had created the false credit card statements relied upon by the defendant.

ORDERS SOUGHT

- 1 Appeal allowed.
- 2 Orders of the court below made on 10 March 2025 be set aside.
- 3 In place of the orders below:
 - a. declare that the whole of the defendant's interest in the property located at 9 Scott Street, Maryborough, Queensland (**Scott St property**) is subject to a resulting trust in favour of the plaintiff;
 - b. an order that the defendant sign a Transfer of Title transferring the title of the Scott St property solely into the plaintiff's name;
 - c. an order that the defendant do all other acts and things, including the signing of documents, necessary to give effect to a transfer of the Scott St property solely into the name of the plaintiff;
 - d. an order that in the event the defendant refuses or neglects within 7 days of being requested to comply with orders (b) and (c) above, the Registrar or a

Deputy Registrar of the Supreme Court of New South Wales be appointed pursuant to section 121 of the *Supreme Court Act* 1970 to execute all deeds and documents in the name of the defendant and do all acts and things necessary to give effect to these orders; and

- e. in the alternative to orders (a) to (d) above, a declaration that the legal interests in the Scott St property are held subject to a constructive trust to repay the contribution by the plaintiff to the acquisition and maintenance of the property (plus interest on those amounts), and as to the residue in such shares as the Court may deem fit.

4 Restitution of the amount of \$4157.75 paid to the respondent on 2 April 2025.

5 The respondent pay the appellant's costs of this appeal and of the proceedings below.

UCPR 51.22 CERTIFICATE

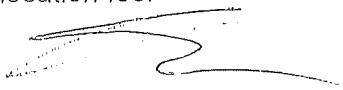
I certify under UCPR 51.22(2) that the amount in issue in this appeal exceeds the specified amount under s 101(2)(r) of the *Supreme Court Act* 1970.

SIGNATURE OF LEGAL REPRESENTATIVE

This notice of appeal does not require a certificate under clause 4 of Schedule 2 to the *Legal Profession Uniform Law Application Act 2014*.

I have advised the appellant that court fees will be payable during these proceedings. These fees may include a hearing allocation fee.

Signature



Capacity

solicitor on record

Date of signature

3 April 2025

Note:

1. This notice must be served personally unless non-personal service under UCPR 10.18 is permitted.
2. A copy of this notice must be filed in the court below in accordance with UCPR 51.42.

NOTICE TO RESPONDENT

If your solicitor, barrister or you do not attend the hearing, the court may give judgment or make orders against you in your absence. The judgment may be for the orders sought in the notice of appeal and for the appellant's costs of bringing these proceedings.

Before you can appear before the court, you must file at the court an appearance in the approved form.

HOW TO RESPOND

Please read this notice of appeal very carefully. If you have any trouble understanding it or require assistance on how to respond to the notice of appeal you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the notice of appeal from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

Court forms are available on the UCPR website at www.ucprforms.nsw.gov.au or at any NSW court registry.

REGISTRY ADDRESS

Street address	Supreme Court of New South Wales, Court of Appeal Law Courts Building Queen's Square Level 5, 184 Phillip Street Sydney NSW 2000
Postal address	GPO Box 3 Sydney NSW 2001
Telephone	1300 679 272

PARTY DETAILS

A list of parties must be filed and served with this notice of appeal.

FURTHER DETAILS ABOUT APPELLANT

Appellant

Name	Michael May
Address	13 Water Ski Parade Cumberland Reach NSW 2756

Legal representative for appellant

Name	Daniele Phair
Practising certificate number	50298
Firm	Proctor Phair Lawyers
Address	Level 2 352 Kent Street Sydney NSW 2000
Telephone	02 9299 9292
Email	ppl@proctorphairlawyers.com.au
Electronic service address	Not applicable

DETAILS ABOUT RESPONDENT

Respondent

Name	Lila Rasa Costaras
Address	2 / 58-60 Torquay Road Pialba Qld 4655

Service and Execution of Process Act 1992

NOTICE TO RESPONDENT

PLEASE READ THIS NOTICE AND THE ATTACHED DOCUMENT VERY CAREFULLY
IF YOU HAVE ANY TROUBLE UNDERSTANDING THEM YOU SHOULD GET LEGAL
ADVICE AS SOON AS POSSIBLE

Attached to this notice is a Notice of Appeal ("the attached process") issued out of the Supreme Court of New South Wales, Court of Appeal.

Service of the attached process outside New South Wales is authorised by the
Service and Execution of Process Act 1992.

YOUR RIGHTS

If a court of a State or Territory other than New South Wales is the appropriate court to determine the claim against you set out in the attached process, you may be able to: have the proceeding stayed by applying to the Supreme Court of New South Wales, Court of Appeal.

If you think the proceeding should be stayed or transferred you should get legal advice as soon as possible.

CONTESTING THIS CLAIM

If you want to contest this claim, you must take any action set out in the attached process as being necessary to contest the claim.