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HIGH COURT DECISION UPS THE ANTE FOR PROPERTY BUYERS



Court of NSW against the vendor. The writ was obtained in an attempt to satisfy a judgment by creditors of the Vender in a case in the District Court of NSW. On the day of settlement, the creditors had the writ registered at the Office of Land and Property Information (formerly the Land Titles Office) against the title to the property, without informing the purchasers that they had done so. Only several hours later, settlement of the contract took place.

On 1 August 2007, the High Court of Australia handed down its decision in the case of Black v. Garnock. The majority of the Court held that an earlier interest in a property that was unregistered against the title to the property was defeated by a subsequently registered writ for the levy of the property.

The decision raises real issues for purchasers of property in the period between exchange of contracts and completion of the purchase. Usually, this is a period of some five or six weeks.

Briefly, the facts of the decision were that on 15 June 2005 contracts were exchanged for the sale/purchase of a rural property in New South Wales. Settlement of the contract was scheduled to take place on 24 August 2005. On 23 August 2005 a writ for the levy of property was obtained from the District

The issue in the case was whether the interest of the purchasers of the property which arose as a result of the exchange of contracts was defeated by the registration of the writ. The Court held that it was.

The decision of the High Court means that purchasers and their solicitors now need to be extremely careful in the period between exchange of contracts and settlement of the sale/purchase to ensure that the purchaser's rights under the exchanged contract are not defeated by a subsequent transaction or dealing affecting the property which is registered before settlement.

Prudent conveyancing practice may now require purchasers to lodge caveats on the title to the property following exchange of contracts to protect their position. The effect of lodging a caveat is to notify any subsequent third party dealing with the property of the purchaser's unregistered equitable interest in the property.

The case highlights the increasing complexity in this area of the law and the need for property purchasers to obtain detailed legal advice during the course of the property transaction.



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