

# Slander of title: neighbour held responsible for damage

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In the case of *Blythe v Willis* [2018] NSWSC 131, the Supreme Court considered a common law action for slander of title and trespass caused by an adjoining neighbour.

Slander of title involves the making of a false and malicious statement, whether by spoken words or in writing, with reference to a person's title to some right of property, which is disparaging of his or her title to that right of property (*Hall-Gibbs Mercantile Agency v Dun* (1910) 12 CLR 84). Under common law, slander of title has been recognised as an actionable tort where special damage results from the defendant's interference (*Palmer Bruyn & Parker Pty Ltd v Parsons* [2001] HCA 69 per Gummow J at [57]). Slander of title exists separately from the tort of defamation, which seeks to protect *individual* reputation. Slander of title protects legal rights accruing by reason of ownership or possession of property. This case note considers two Supreme Court decisions concerning slander of title – each with different outcomes.

## ***Blythe v Willis* [2018] NSWSC 131**

The plaintiff, Mrs Blythe, owned land that was part of a larger subdivision at Yowie Bay, NSW. Another lot within that parcel belonged to Mrs Willis, the first defendant.

The second defendant, Mr Stan Muzica, claimed that he purchased the waterfront portion of Mrs Willis's land with the understanding that the land would be subdivided into two lots, enabling him to obtain title to the waterfront portion. He also alleged he had the benefit of an easement for a right of carriage-way over the 'waterfront track' on Mrs Blythe's land leading into Mrs Willis's land. This alleged right was never registered.

In March 2016, Mrs Blythe contracted to sell the land to a purchaser for over \$7 million. She intended to use the proceeds to assist in repaying a loan to fund her future accommodation and to assist her son and daughter-in-law to purchase a home.

When Mrs Blythe and Mr Muzica took contentious positions about the right of carriage-way, Mrs Blythe withdrew consent for

## Snapshot

- In the recent case of *Blythe v Willis*, the Supreme Court held that a neighbour's allegations to the purchaser of adjoining land were false and malicious, holding him responsible for damages in an action for slander of title.
- Where special damage can be shown, an action for slander of title will lie for the malicious publication of a false imputation disparaging the plaintiff's title.
- In neighbourhood disputes, solicitors should caution clients against making untrue and disparaging statements to potential purchasers, where those statements might deter purchasers from completing a sale or interfere with the sales process.

Mrs Willis to use the waterfront track on her property. However, Mr Muzica and others continued to travel across the waterfront track. He also went so far as to contact the party who had contracted to purchase Mrs Blythe's block, to inform them of his legal right to use the waterfront track.

The purchaser subsequently attempted to rescind the contract on the basis that, in the circumstances, Mr Muzica's claims to a 'private right or accommodation track' represented a latent defect. Mrs Blythe initially resisted the rescission and issued a notice to complete, but she eventually opted to terminate the contract instead. The dispute was settled, with a portion of the deposit being returned to the purchaser, and the balance being forfeited to Mrs Blythe.

Mrs Blythe then commenced proceedings in the Supreme Court against Mr Muzica for slander of title and trespass. Emmett AJA considered: (a) whether the

allegations which Mr Muzica made to the purchaser concerning the waterfront track constituted slander of title, thereby entitling Mrs Blythe to damages; (b) whether the alleged acts constituted trespass and, if so, the damages to which Mrs Blythe was entitled; and (c) if Mr Muzica's application for a court-imposed easement pursuant to section 88K *Conveyancing Act 1919* should be granted.

## Decision and reasoning

The Court gave judgment for Mrs Blythe with costs. Emmett AJA held that Mrs Blythe was entitled to damages against Mr Muzica for slander of title for interest on the money she borrowed, less the amount which was forfeited from the purchaser. The Court also awarded Mrs Blythe \$7,391.10 in damages for trespass. Mr Muzica's application for a court-imposed easement was dismissed.

The Court was satisfied that Mr Muzica's claims lead to the purchaser's attempt to rescind the contract. It was also held that Mr Muzica published material which was false, by asserting that he had legal rights over Mrs Blythe's land, in circumstances where he had no genuine or rational basis for that belief. Furthermore, that falsity concerned Mrs Blythe's land and was calculated to induce the purchaser not to deal with Mrs Blythe in relation to the land.

The Court was also satisfied that malice was established as Mr Muzica had made the assertions with the intention of interfering with the sale in order to obtain some concession in relation to the right of way. That was sufficient to constitute malice, as at common law, malice is a question of motive, intention or state of mind.

On assessment of damages, the Court accepted that Mrs Blythe incurred interest or lost income after the contract was not completed, and that interest or lost income was the natural and probable consequence of the contract not proceeding. The Court did not award damages to Mrs Blythe for her son and daughter-in-law's forfeited deposit due to their inability to complete on the property. That loss was her son and daughter-in-law's, not Mrs Blythe's.

In the claim for trespass, the Court upheld the old adage that a person's home is their castle (at [64]) and, although Mrs Blythe's land was substantial in area and the waterfront track was some distance from the home, thereby not necessarily affecting the privacy of the occupiers in their residence, the trespass was nevertheless a deliberate invasion. It was not trifling and was an affront to the plaintiff's right to 'enjoy exclusive and quiet possession' (at [66]).

It is also worth revisiting another slander of title case, albeit with a different outcome. In *Young v Owners - Strata Plan No. 3529* [2001] NSWSC 1135, the defendant's solicitor sent a letter to the auctioneer of a number of strata title lots for the purposes of warning potential buyers that it intended to pass a by-law which would

effectively extinguish the plaintiff's use (and thereby any subsequent purchaser's use) of the common property which included a pool. Santow J considered whether the letter was a slander of the title, finding that it was a representation as to the effect of the by-law and not a representation of the title, and thus did not constitute a slander of the title. In any event, the element of malice was not made out. This decision highlights the wider scope to which an allegation for slander of title can apply, and the caution required to be exercised by solicitors and their clients when communicating with agents and auctioneers during the sales process.

### Significance of the decisions

- These decisions confirm that slander of title is actionable in NSW and the wider context in which the cause of action may apply.
- Solicitors should moderate their client's communications in disputes that involve the sale of land. Clients should be cautioned about making untrue representations to potential purchasers and the risk of providing disparaging information about the property, which can have a detrimental effect on the sale of the land.
- *Blythe v Willis* is also a reminder of the importance of registration of an easement. Had the easement been registered, then that legal interest would have been indefeasible. In the absence of registration, a licence can be immediately revoked by the landowner, as such right does not usually run with the land. **LSJ**



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