



SNAPSHOT *Price v Spoor* [2021] HCA 20

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Overview: In an action to recover principal and interest owed under two mortgages, and for possession of the land secured by the mortgages, the appellants pleaded statutory limitations defences. This was despite the mortgages containing a covenant excluding the operation of all statutes which defeat the rights, powers and remedies of the respondents; the *Limitations of Actions Act 1974* (Qld) was said to be such a statute. This appeal to the High Court raised for consideration four issues.

Public policy issue: Whether a contractual promise made in a mortgage and before the accrual of a cause of action to not plead a limitations defence was compatible with public policy and enforceable. The Court affirmed the proposition that a person can contract away the right to plead a statutory limitations defence. An agreement to do so is enforceable whether it is entered into prior to or after the accrual of the cause of action.

Construction issue: Whether, on the proper construction of cl 24 of the mortgage, the operation of the *Limitations of Actions Act 1974* (Qld) was expressly excluded. The Court reinforced the principle that an objective approach is required to determine the rights and liabilities of parties to a commercial contract, having reference to its text, context and purpose, and the meaning given to the terms is to be determined by reference to the understanding of a reasonable businessperson. In doing so, the Court accepted the pleading of a statutory limitations defence had the consequence of defeating the rights, remedies and powers of the respondents as mortgagees; the defence was therefore excluded.

Extinguishment issue: Whether, on its proper construction, s 24 of the *Limitations Act* operated to extinguish the respondents' title notwithstanding the promise not to plead a limitations defence. The Court accepted that ss 13 and 24 were to be read together; s 13 prescribed the limitations period and the s 24 extinguished a mortgagees' 'title' on the expiration of it. But where the raising of the limitations period was excluded by contract, s 24 did not operate to independently extinguish title.

Remedy issue: Whether the respondents were limited to damages for breach of the covenant not to plead a limitations defence. While the right to damages for breach of warranty is a common law right, in equity, a party may restrain a breach of contract by injunction. However, the injunction need not issue; the equitable basis for the injunction can instead be pleaded directly in answer to the defence.



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