

## **PELDAN & ANOR v. ANDERSON & ANOR (B110/2005)**

Court appealed from: Federal Court of Australia

Date of judgment: 25 August 2005

Date of grant of special leave: 16 December 2005

On 11 September 2003, Mr and Mrs Pinna executed a transfer in relation to a property of which they were joint tenants for the purpose of severing the joint tenancy. Upon registration of the instrument of transfer, Mr and Mrs Pinna held title as tenants in common in equal shares. On 12 January 2004, Mrs Pinna died. On 21 April 2004, Mr Pinna was declared bankrupt. He had been insolvent at the time of execution of the transfer. Mrs Pinna's interest in the property passed to her children under her will.

On 22 February 2005, Jarrett FM of the Federal Magistrates Court held that the transfer of the bankrupt's interest in the property was void against the trustees of the bankrupt estate, pursuant to section 121(1) of the *Bankruptcy Act 1966* (Cth). The respondents, who are the executors of Mrs Pinna's estate, appealed to the Federal Court of Australia (Kiefel J sitting as a Full Court). The Court held that the instrument of transfer effected a severance of the joint tenancy and a transfer of an interest in the property from each joint tenant to him or herself. The Court held that this did not amount to a transfer "to another person" as required by section 121(1)(a) of the *Bankruptcy Act 1966* (Cth). The Court observed that the purpose of section 121 is to prevent fraudulent dispositions of property and to protect creditors from such dealings, but not to enlarge creditors' interests because of some unforeseen event such as, here, the particular sequence of the severance of the joint tenancy, followed by Mrs Pinna's death, then by Mr Pinna's bankruptcy.

The grounds of appeal include:

- Whether a severance of a joint tenancy constitutes a transfer of property for the purposes of section 121 of the *Bankruptcy Act*;
- Whether the severance of the joint tenancy was void as against the appellant, by reason of section 121 of the *Bankruptcy Act*; and
- Whether the purpose of section 121 of the *Bankruptcy Act* is to protect creditors by preventing fraudulent dispositions of property.