

Russell v Klinac 10/9/02, Baragwanath J, HC Whangarei AP14/02

Successful application for special leave to appeal against decision declining leave to appeal against default judgment - respondent executed agreement for sale and purchase in favour of Lehmann Family Trust - applicant was a trustee - - respondent sought unpaid purchase price - applicant and other trustees brought counterclaim for surplus funds following mortgagee sale - claim that charging orders registered by respondent unlawful - existence caused loss to trust by preventing it from refinancing so property sold at a loss at mortgagee sale.

Held, applicant did not ratify contract entered into by respondent, who purported to act as his agent - however, he did execute memorandum of transfer - evidence could have supported belief that other trustee had contracted personally to buy property - appeal allowed.