

## NOTICE OF APPEAL

### COURT DETAILS

Court Supreme Court of New South Wales, Court of Appeal  
Registry Sydney  
Case number 2023/00093752

FILED

23 MAY 2023



### TITLE OF PROCEEDINGS

Appellant Rose Marie Wild

First respondent Dominic Meduri

(S.G.)

Number of respondents (if more than two) 3

### PROCEEDINGS IN THE COURT BELOW

Title below Rose Marie Wild v Dominic Meduri & Ors  
Court below Supreme Court of New South Wales  
Case number below ~~2020/230952~~ 21/91132  
Dates of hearing 1, 2, 3, 8, 9, 10, 21 November, 6, 7, 8, 13 December 2022  
Material date 23 February 2023  
Decision of Hallen J

### FILING DETAILS

Filed for Rose Marie Wild, appellant  
Legal representative Anthea Jane McIntyre, McIntyre Legal  
Contact name and telephone Anthea Jane McIntyre, Tel: [REDACTED]  
Contact email [REDACTED]

### HEARING DETAILS

This notice of appeal is listed for directions at 9am on 14/6/23

### TYPE OF APPEAL

Declaration of trust in relation to real property that forms part of a deceased estate

### DETAILS OF APPEAL

- 1 This appeal is brought under section 101(1) of the *Supreme Court Act 1970* (NSW).
- 2 This notice of appeal is not filed pursuant to leave to appeal.

- 3 The appellant has filed and served a notice of intention to appeal, which was served on the prospective respondents on 22 March 2023.
- 4 The appellant appeals from the whole of the decision of the Honourable Justice Hallen below.

#### APPEAL GROUNDS

- 1 The trial judge erred in finding that the property located at [REDACTED] Kemps Creek (Lot 6 in Deposited Plan [REDACTED]) ("Kemps Creek property") is held on trust for the first and second respondents as tenants in common in equal shares.
- 2 Further to Ground 1 above, the trial judge erred in finding that:
  - a) the late Elisabetta Meduri ("**the deceased**") made, or acquiesced in, a clear and unequivocal promise that caused the first and second respondents to reasonably assume the existence of a particular legal relationship;
  - b) the first and second respondents relied on any promise or assurance to their detriment;
  - c) the first and second respondents carried out the improvements to the Kemps Creek property in reliance upon the asserted promise or assurance;
  - d) each of Giuseppe and the deceased, by making their respective Wills, regarded any promises made or assurances given as "more than a mere statement of present (revocable) intention"; and
  - e) it would be unconscionable, in all the circumstances, for the first and second respondents not to receive the Kemps Creek property out of the estate of the deceased.
- 3 The error in the trial judge's findings the subject of Grounds 1 and 2 above were caused, or contributed to, by his Honour:
  - a) giving excessive weight to the evidence of:
    - i. The first respondent
    - ii. The second respondent
    - iii. Giuseppe Bonarrigo
  - b) failing to give sufficient weight to the evidence of:
    - i. Anthony Meduri
    - ii. Kerry La Rue

iii. the appellant

iv. Alan Wild;

- 4 Further to Ground 3, the trial judge erred in failing to make any finding as to whether the deceased, in August and September 2009, had sufficient mental capacity to repeat the promise made or assurance given to the first and second respondents to the effect that the deceased would leave the Kemps Creek Property to the first and second respondents in her Will.
- 5 Further to Ground 3 above, the errors in the trial judge's findings the subject of Grounds 1 and 2 above were caused, or contributed to, by his Honour's failure to draw an inference in accordance with *Jones v Dunkel* against the first and second respondents by reason of their failure to call evidence from Connie Di Maria.
- 6 Further to Ground 3 above, or in the alternative, his Honour denied procedural fairness to the appellant by reason of the extent, nature, and frequency of his interventions in the cross-examination of the evidence of the appellant and witnesses called by the appellant (in contrast to his interventions in the cross-examination of the first and second respondents and the witnesses called by the first and second respondents) thus:
  - a) creating a real risk that the trial was unfair to the appellant; and
  - b) affecting his Honour's ability to properly assess the relative weight of the evidence of all witnesses.
- 7 Further, the trial judge erred in making the contingency finding that, if the deceased's estate was to be distributed on intestacy, adequate and proper provision was not made for the first and second respondents.

#### **Material facts**

- 8 Pursuant to rule 51.18(2) of the *Uniform Civil Procedure Rules 2005* (NSW), the appellant says the Court below should have found the following material facts:
  - a) Neither Giuseppe nor the deceased ever made, or acquiesced in, any promise to the first and second respondents that, if they moved to the Kemps Creek property, lived there for the rest of their lives, and did not receive any other properties from Giuseppe and the deceased, they would be entitled to live on the Kemps Creek property for the whole of their lives.

- b) The first and second respondents both moved to the Kemps Creek property and commenced renovation works before the alleged promises were made or assurances given.
- c) The first and second respondents carried out improvements to the Kemps Creek property independently of the alleged promises made or assurances given.
- d) That the first and second respondents colluded in the preparation of their evidence in these proceedings.

9 Pursuant to rule 51.18(2) of the *Uniform Civil Procedure Rules 2005* (NSW), the appellant says the Court below should not have found the following material facts:

- a) That Giuseppe, in the presence, and with the apparent acquiescence, of the deceased, asked both the first and second respondents whether they would be happy to keep the Kemps Creek property, live there for the rest of their lives, and not receive any other properties from Giuseppe and the deceased, even if the Kemps Creek property was later taken by the government for parks, and say, if they did so, and paid the rates for the land purchased, that they would be entitled to live, with their families, on the land purchased, for the whole of their lives. [J 976]
- b) That Giuseppe and the deceased assured the first respondent that he could keep the Kemps Creek property before the first respondent moved from Crookwell to the Kemps Creek property. [J 557]
- c) That the first and second respondents spent a "reasonable amount" of money on renovations to the Kemps Creek Property. [J 567, 985]
- d) That the first and second respondents would not have carried out improvements to the Kemps Creek property but for the promise made or the assurance given. [J 978]

#### **ORDERS SOUGHT**

- 1 Appeal allowed.
- 2 The Judgment of the Court below be set aside.
- 3 The Further Amended Statement of Claim be dismissed.
- 4 The third respondent's costs, calculated on the indemnity basis, of the proceedings, be paid, or retained, as the case may be, out of the estate of the deceased.

- 5 The first and second respondents pay the appellant's costs in the Court of Appeal and in the Equity Division.

**UCPR 51.22 CERTIFICATE**

The right of appeal is not limited by a monetary sum.

**SIGNATURE OF LEGAL REPRESENTATIVE**

This notice of appeal does not require a certificate under clause 4 of Schedule 2 to the Legal Profession Uniform Law Application Act 2014.

I have advised the appellant that court fees will be payable during these proceedings. These fees may include a hearing allocation fee.

Signature

Capacity

Date of signature

Solicitor on record

23 May 2023

**Note:**

1. This notice must be served personally unless non-personal service under UCPR 10.18 is permitted.
2. A copy of this notice must be filed in the court below in accordance with UCPR 51.42.

## NOTICE TO RESPONDENT

If your solicitor, barrister or you do not attend the hearing, the court may give judgment or make orders against you in your absence. The judgment may be for the orders sought in the notice of appeal and for the appellant's costs of bringing these proceedings.

Before you can appear before the court, you must file at the court an appearance in the approved form.

## HOW TO RESPOND

**Please read this notice of appeal very carefully. If you have any trouble understanding it or require assistance on how to respond to the notice of appeal you should get legal advice as soon as possible.**

You can get further information about what you need to do to respond to the notice of appeal from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at [www.lawaccess.nsw.gov.au](http://www.lawaccess.nsw.gov.au).
- The court registry for limited procedural information.

Court forms are available on the UCPR website at [www.ucprforms.nsw.gov.au](http://www.ucprforms.nsw.gov.au) or at any NSW court registry.

## REGISTRY ADDRESS

|                |  |
|----------------|--|
| Street address | Supreme Court of New South Wales, Court of Appeal<br>Law Courts Building<br>Queen's Square<br>Level 5, 184 Phillip Street<br>Sydney NSW 2000 |
| Postal address | GPO Box 3<br>Sydney NSW 2001   |
| Telephone      | 1300 679 272   |

## PARTY DETAILS

A list of parties must be filed and served with this notice of appeal.

**FURTHER DETAILS ABOUT APPELLANT****Appellant**

Name Rose Marie Wild

Address

**Legal representative for appellant**

Name Anthea Jane McIntyre

Practising certificate number



Firm McIntyre Legal Pty Ltd

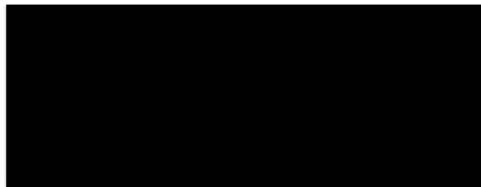
Address 1/744 Military Road

Mosman NSW 2088

Telephone

Email

Electronic service address

**DETAILS ABOUT RESPONDENTS****First respondent**

Name Dominic Meduri

Address

**Second respondent**

Name John Meduri

Address

**Third respondent**

Name Richard John Neal

Address c/o Teece Hodgson & Ward Solicitors  
Level 10, 1 Chifley Square  
Sydney NSW 2000

