



KING & WOOD
MALLESONS

2016 KING & WOOD MALLESONS
MOOTING COMPETITION
ROUND 1

IN THE COURT OF APPEAL
OF THE SUPREME COURT OF VICTORIA

No. 1 of 2016

BETWEEN:

URSZULA BOBROWSKI (APPELLANT)

And:

ALEXI KAMINSKI (RESPONDENT)

STATEMENT OF AGREED FACTS

1. Urszula Bobrowski is a 67-year-old widow. She was born in Poland and lived there until 2014. Her husband died in 2000. She has a son and a daughter. Alexi Kaminski is her uncle. He is now 90 years of age, suffering from dementia. His wife died a considerable time ago.
2. In 2005, Alexi made the following representations to Urszula:

Dear Urszula, my favourite niece, please come to Australia and stay with me and look after me. I want you to stay with me forever. When you come to Australia I will do everything for you. I will support you. I will provide everything for you. I want you to live in Australia forever. The house will be yours for your life. When I die, I want you to support my son Ivan and look after him.

3. Between 2005 and 2010 there were many further conversations during which Alexi reiterated his desire that Urszula should come to Australia to care for him. Prior to 2005 he told her:

Urszula, you will be the perfect carer for me. If my health deteriorates, you should study a course in nursing and caring for elderly people. This will assist you to care for me in my declining years.

4. From 2010, Alexi's health started to deteriorate and, partly as a consequence, Urszula enrolled in a course of nursing and caring for elderly people at Warsaw University. She obtained a Diploma of Nursing and Caring in June 2012.
5. 2013 was a difficult year for Urszula. In March her best friend died and in May her mother died. She told Alexi that she was not quite ready to come to Australia. He reiterated to her that when she came to Australia the house would be hers to live in for the rest of her life. He said she would always have her own home to live in. At that stage Urszula responded, once again, by saying:

I have family and friends in Poland. I would prefer to stay in Poland. I'm not young. It's not a good idea to come to Australia at my age.

6. During a brief visit from October – December 2013, where she lived with Alexi and cared for him by undertaking all of the cooking, cleaning, washing and ironing in the home for Alexi and his son. Alexi once again said to her on many occasions:

It would mean so much to me if you would be here with me and care for me for the rest of my life. I've told you before and I promise again that you will always have a home to live in, in Australia. All I wish is that you remain here with me and that you care for me and care for Ivan. My home is your home for your use for the rest of your life. You must feel it is your home. I want you to stay with me and care for me. You are an amazing cook. You are prolonging my life. You are my lifeguard.

7. Despite her son being very negative about the prospect, Urszula decided that she would finally accept Alexi's offer and make the move from Poland to Australia. She

committed herself to remaining with Alexi for the rest of his life in the belief she would have a home to live in for the rest of her life.

8. Urszula arrived in Australia in November 2014 with \$8,000 AUD and \$100 a month Polish pension to which she was entitled as a result of her prior career as a school teacher. She gave up her ties of friendship in Poland, her two children who remained in Poland and a lifetime of social and cultural connection with the country of her birth. And she incurred the unhappiness of her son who did not approve of her decision. She also gave up an apartment which she owned in Poland.
9. In 2015, Alexi started to suffer severe dementia and Ivan had evicted Urszula from the house and entered into a contract for the sale of the property.
10. Urszula brought an action in the Supreme of Victoria seeking:
 - a) There was a contract between the parties and she was entitled to stay in the house;
 - b) She had relied on the representation made by Alexi to her detriment, therefore, Ivan was estopped from evicting her from the house
11. At the trial, Sharp J dismissed Urszula's claim and held the following:
 - a) A binding contract never came into existence between the parties;
 - b) That there was no detrimental reliance to support an estoppel claim.
12. Urszula appeals all the findings of the learned trial judge to the Court of Appeal of Supreme Court of Victoria.