

AUSTRALIA / JUDGMENT

Rance v Dempsey (No 5)

[2026] NSWSC 270**COURT**

Supreme Court

DECIDED

26 March 2026

BEFORE

Cavanagh J

CASE / FILE NUMBER

2025/251209

Source: caselaw.nsw.gov.au · Research copy typeset by Esheria. Not court-issued or certified.

Source record

Supreme Court

New South Wales

Medium Neutral Citation: Rance v Dempsey (No 5) [2026] NSWSC 270**Hearing dates:** 26 February 2026**Decision date:** 26 March 2026**Jurisdiction:** Common Law**Before:** Cavanagh J

Decision:

(1) Order that pursuant s 66G of the Conveyancing Act 1919 (NSW) that Mr Anthony John Ryan, Solicitor Director of Ryan & Ryan Lawyers, and Mr John Gerard Ryan, Consultant Solicitor of Ryan & Ryan Lawyers (Trustees), be appointed jointly as trustees for the sale of the property situated at [redacted] East Gosford NSW 2250 (being Folio Identifier [redacted]) (Property).

(2) Order that the Property be vested in the Trustees subject to any encumbrances affecting the entirety of the Property but free from any encumbrances affecting any undivided share or shares therein to be held by the Trustees upon statutory trust for sale under Pt 4, Div 6 of the Conveyancing Act 1919 (NSW).

(3) Order that the defendant deliver up vacant possession of the Property to the Trustees within 7 days of orders being made or otherwise at such time as directed by the Trustees or ordered by the Court.

(4) Reserve to the Trustees liberty to apply on short notice for any orders or directions which may be required to obtain vacant possession of the Property, including the issue of a writ of possession.

(5) Order that the Trustees are authorised to:

(a) Do all things necessary to sell the Property, including engaging a real estate agent, marketing the Property for sale, arranging for inspections, and entering into a contract for sale at a price considered fair and reasonable by the Trustees in their absolute discretion;

(b) Undertake all reasonable repairs to the Property to prepare it for sale;

(c) Sign all documents necessary to effect the sale and transfer of title of the Property;

- (d) Charge all usual and proper charges at the usual hourly rates charged by the legal practice in which they are engaged and on the usual terms as to payment of that practice for their work as trustees for the sale of the Property; and
- (e) Retain the services of any other legal practitioner, accountant or other professional adviser where they consider it necessary to do so and to charge the costs incurred in having those services provided.
- (6) Direct that the parties approach my chambers within 14 days as to any further orders.

Catchwords:	LAND LAW – co-ownership – statutory trust for sale – application under s 66G of the Conveyancing Act 1919 (NSW) – whether basis to refuse to make order – quasi-proprietary rights – undercutting a statutory remedy – orders made for appointment of trustees
Legislation Cited:	Conveyancing Act 1919 (NSW) Pt 4 Div 6, ss 66F, 66G Land Acquisition (Just Terms Compensation) Act 1991 (NSW) Succession Act 2006 (NSW) Ch 4, ss 3, 58, 115, 117
Cases Cited:	Cain v Cain [2007] NSWSC 623 Callahan v O'Neill [2002] NSWSC 877 Dial A Dump Industries Pty Ltd v Roads and Maritime Services (2017) 94 NSWLR 554; [2017] NSWCA 73 Foundas v Arambatzis [2020] NSWCA 47 Hornsby Council v Roads and Traffic Authority of New South Wales (1997) 41 NSWLR 151 Ngatoa v Ford (1990) 19 NSWLR 72 NSW Trustee & Guardian as Executor of the Will of Michael Robert Walsh (Deceased) v Gregory [2012] NSWSC 681 Pascoe v Dyason [2011] NSWSC 1217 Rance v Dempsey (No 2) [2025] NSWSC 1220 Rance v Dempsey (No 3) [2025] NSWSC 1375 Rance v Dempsey (No 4) [2026] NSWSC 269 Rance v Dempsey [2024] NSWSC 1423 Ross v Ross [2010] NSWCA 301 Thorn v Boyd [2016] NSWSC 1344 Tory v Tory [2007] NSWSC 1078 Uzelac bht New South Wales Trustee and Guardian v Ilic [2011] NSWSC 511
Texts Cited:	Peter Butt, Land Law (6th ed, 2010, Thomson Reuters)
Category:	Principal judgment
Parties:	Jesse Scott Rance (Plaintiff) Glynis Annette Dempsey (Defendant)
Representation:	
Counsel:	N Simpson (Plaintiff) JC Rogers (Defendant)
Solicitors:	Southern Waters Legal (Plaintiff) McGirr & Associates (Defendant)
File Number(s):	2025/251209

JUDGMENT

HIS HONOUR: This is the latest (fifth) judgment in the long-running dispute between the plaintiff and the defendant in respect of entitlements arising from the estate of the late Ian Scott Astill (“the deceased”). This time, the plaintiff, being the administrator of the estate of the deceased, seeks orders for the appointment of trustees under s 66G of the Conveyancing Act 1919 (NSW) in respect of a property at East Gosford (“the property”).

On the commencement of the hearing the defendant sought an adjournment, which I refused: see *Rance v Dempsey* (No 4) [2026] NSWSC 269.

Background

The property appears to have been the major asset of the deceased at the time he died. The plaintiff is the son of the deceased, and the defendant is the deceased's former de facto partner (or at least at one time the de facto partner).

For a period or periods which appear to be in dispute, the defendant and the deceased lived together. In 2018, they purchased the property as joint tenants.

At some point thereafter, they appear to have fallen out and, on the plaintiff's case, the defendant moved out of the property, ending her relationship with the deceased. The defendant disputes this characterisation of their relationship.

The defendant and the deceased never married, and it is asserted there were significantly differing contributions to the purchase of the property. In *Rance v Dempsey* [2024] NSWSC 1423 at [18] (“*Rance v Dempsey*”), Hmelnitsky J observed that the deceased contributed 82.43 per cent of the purchase price and the defendant's contribution was half of the bank loan (\$125,000).

The defendant does not live at the property. She resides in Dubai.

The deceased died on 1 December 2022 without leaving a will. Thereafter, the plaintiff filed a statement of claim seeking various orders and declarations including that the plaintiff be appointed as a representative of the estate from 3 November 2023 and that the defendant holds the property on a constructive trust for the estate of the deceased.

The defendant did not appear on the hearing on 6 November 2024, albeit she had been properly served. The orders sought by the plaintiff were made on 8 November 2024.

The defendant then filed an appearance (on 18 February 2025) and by notice of motion filed on 1 August 2025 sought a number of orders, including:

Restraining the plaintiff from taking any steps to the sell the property; and

Setting aside the declaration as to the resulting trust made on 8 November 2024.

Further, the defendant sought an order pursuant to s 58(2) of the Succession Act 2006 (NSW) extending the time to file an application for a family provision order from the estate under the Act.

The matter was again determined by Hmelnitsky J. On 17 October 2025, his Honour dismissed the motion, that is, his Honour declined to vary or set aside the orders originally made: see *Rance v Dempsey (No 2)* [2025] NSWSC 1220 (“*Rance v Dempsey No (2)*”). Further, his Honour declined to make any order extending time for the defendant to file an application for a claim under the Succession Act.

On 21 November 2025, his Honour delivered a further judgment dealing with costs, ordering the defendant to pay the costs of her motion: see *Rance v Dempsey (No 3)* [2025] NSWSC 1375.

In the meantime, on 2 July 2025, the plaintiff filed the summons leading to this matter being listed for hearing on 26 February 2026.

The plaintiff seeks an order pursuant to s 66G of the Conveyancing Act that two solicitors be appointed as trustees for the sale of the property and an order that the property be vested in the trustees subject to any encumbrances and be held by the trustees upon statutory trust for sale under Pt 4, Div 6 of the Conveyancing Act.

Further, the plaintiff seeks an order that the defendant deliver up vacant possession of the property to the trustees within 7 days of the orders and that, on completion of the sale of the property, the plaintiff is to distribute the proceeds of sale having regard to any encumbrances and disbursements and on the basis of 82.43 per cent of the net sale proceeds to the plaintiff in his capacity as the administrator of the estate, with the balance to be used to pay the costs of the plaintiff, in accordance with earlier orders of the Court and the balance to be paid into court subject to further order of the Court.

An issue was raised by the defendant during the hearing that, despite the orders sought including that the money would be paid into court, the plaintiff might distribute or disperse the money. The plaintiff provided an undertaking to the Court during the hearing, the effect of which is that the money would not be distributed.

The defendant maintains that she was the spouse of the deceased and would be entitled to her statutory entitlement under the Succession Act and a further amount as assessed.

The plaintiff disputes that the defendant was the spouse of the deceased at the time of his death and says further that this issue has already been determined by Hmelnitsky J: see *Rance v Dempsey No (2)* at [85].

Since her unsuccessful attempt to set aside the orders made in November 2024, and the refusal by his Honour to grant leave to extend the time to pursue an application under the Succession Act, the defendant has, through her solicitors, been foreshadowing an appeal. However, she has not pursued an appeal and indicated at the hearing that she would not be pursuing an appeal.

Rather, on 20 February 2026, the defendant filed a summons in the Probate and Family Provisions List of this Court seeking:

Interim relief in the nature of an order restraining the plaintiff as the administrator of the estate or any trustees appointed by the Court from disposing of the estate or the notional estate of the deceased including by taking any steps to sell the property;

Substantive relief in the nature of a declaration that the defendant is the spouse of the deceased within the meaning of Ch 4 of the Succession Act and an order pursuant to s 117 of that Act that the time in which the defendant may elect pursuant to s 115 of that Act to acquire the property be extended up to and including the date three months after the date in which the declaration that she is the spouse is made.

Further, she seeks an order pursuant to s 58 of the Act for an extension of time to commence the proceedings.

The substantive issue

Section 66G of the Conveyancing Act is relevantly in the following terms:

“66G Statutory trusts for sale or partition of property held in co-ownership

- (1) Where any property (other than chattels) is held in co-ownership the court may, on the application of any one or more of the co-owners, appoint trustees of the property and vest the same in such trustees, subject to incumbrances affecting the entirety, but free from incumbrances affecting any undivided shares, to be held by them on the statutory trust for sale or on the statutory trust for partition.”

Section 66F(1) defines “co-ownership” and “co-owner” as follows:

“... Co-ownership means ownership whether at law or in equity in possession by two or more persons as joint tenants or as tenants in common; and co-owner has a corresponding meaning and includes an incumbrancer of the interest of a joint tenant or tenant in common.”

The deceased and the defendant were co-owners. The plaintiff is the administrator of the estate of the deceased and thus may bring an application under s 66G.

Whilst the Court's power is discretionary, an applicant is generally entitled to a s 66G order almost as of right, subject to a limited discretion to refuse the application: see *Callahan v O'Neill* [2002] NSWSC 877 at [8]; *Tory v Tory* [2007] NSWSC 1078 at [42]; *Ross v Ross* [2010] NSWCA 301 at [36]; *Ngatoa v Ford* (1990) 19 NSWLR 72.

In *Foundas v Arambatzis* [2020] NSWCA 47 (“*Foundas v Arambatzis*”), White JA (with whom Bell P and Basten JA agreed) observed, at [63]:

“Although an order under s 66G is discretionary, such an order is almost as of right, unless on settled principles it would be inequitable to make the order. An order may be refused if the appointment of trustees for sale would be inconsistent with a proprietary right, or the applicant for the order is acting

in breach of contract or fiduciary duty, or is estopped from seeking or obtaining the order (Re McNamara and the Conveyancing Act (1961) 78 WN (NSW) 1068 at 1068; Ngatoa v Ford (1990) 19 NSWLR 72 at 77; Williams v Legg (1993) 29 NSWLR 687 at 693; Hogan v Baseden (1997) 8 BPR 15,723 at 15,726-15,727; Tory v Tory at [42]). Hardship or general unfairness is not a sufficient ground for declining relief under s 66G (Hogan v Baseden (1997) 8 BPR 15,723 at 723; Ferella v Official Trustee in Bankruptcy at [36]-[40]).”

As an applicant is generally entitled to a s 66G order almost as of right, the onus of persuading the Court that no such order should be made would generally rest with the party seeking to resist the order: see *Thorn v Boyd* [2016] NSWSC 1344 at [60] (“*Thorn v Boyd*”); *NSW Trustee & Guardian as Executor of the Will of Michael Robert Walsh (Deceased) v Gregory* [2012] NSWSC 681 at [44].

In *Cain v Cain* [2007] NSWSC 623 at [9], Young CJ in Eq suggested that an order should be made unless the Court is persuaded by cogent arguments from those opposed to the orders. As identified in *Foundas v Arambatzis*, the circumstances in which an order will not be made are limited, including if the making of an order would be inconsistent a proprietary right or contractual or fiduciary obligation: see also *Pascoe v Dyason* [2011] NSWSC 1217 at [6] (Black J).

Unfairness or hardship is not a ground for refusing to make the orders and that is not a ground raised by the defendant in these proceedings.

Determination

As the plaintiff would be entitled to the orders sought almost as of right (there being no issue as to co-ownership), the question which arises for determination is whether any of the grounds raised by the defendant to oppose the orders provide a sufficient basis for declining to make the orders.

There was some uncertainty as to the grounds relied upon by the defendant and during the hearing the plaintiff complained that they had never been properly articulated. As such, I asked counsel for the defendant to outline the basis on which he suggested the orders should not be made. He said:

There is a quasi-proprietary right that is created in favour of a spouse of a deceased who dies intestate such that the circumstances of this matter fall within the categories that provide a basis for resisting a s 66G application; and

The plaintiff is acting as the administrator of the estate and has fiduciary obligations against both beneficiaries and claimants against the property and it would be inequitable in those circumstances to make the orders sought.

At least during the hearing, counsel for the defendant was unable to point to any case which might support the first of his propositions. I thus gave him leave to provide further written submissions. He did so (and the plaintiff responded). In his further written submissions, he identified another basis on which the orders should not be made, being that the making of the orders would undercut a statutory remedy available to the defendant.

In his further written submissions, counsel for the plaintiff complained about the introduction of this new argument. There is certainly merit in the plaintiff's complaint in the sense that the plaintiff was entitled to know the case he was required to meet before the hearing started, rather than after the hearing, but the new issue raised is only a matter of legal argument and no further evidence or factual issue arises from the raising of the new argument. Further, the plaintiff made written submissions in response.

I will thus determine the matter on the basis of the three matters raised by the defendant as being the grounds for resisting the application.

I will deal briefly with the second issue, being the suggestion of breach of fiduciary duty. The basis on which the plaintiff was said to be in breach of any fiduciary duty which might be owed was not specified. A general suggestion of inequity was made, but it is not clear how there could be any inequity in circumstances in which a plaintiff has appropriately sought orders from the Court and the defendant's application to restrain the plaintiff from pursuing sale has already been rejected by the Court. Further, the plaintiff is not seeking to distribute the funds and has undertaken to hold them pending the defendant's Succession Act claim.

The two matters of substance argued by the defendant are thus:

The defendant has a quasi-proprietary interest in the property; and

The making of the order would undercut a statutory remedy available to the defendant.

Quasi-proprietary right

The defendant accepts that she does not have a proprietary right and that none of the other types of rights or interests commonly referred to in other cases would apply. However, the defendant says the appointment of trustees for sale would be inconsistent with her quasi-proprietary right. In this regard, she relies on the description of quasi-proprietary rights in cases considering an interest in land for the purposes of compulsory acquisitions.

In *Hornsby Council v Roads and Traffic Authority of New South Wales* (1997) 41 NSWLR 151 at 155 ("Hornsby Council"), Meagher JA (with whom Mason P and Powell JA agreed) described a quasi-proprietary right as being an interest "less than a fully-fledged estate, that is easements, charges, profits à prendre, profits à rendre, licences coupled with interests, etc".

In *Dial A Dump Industries Pty Ltd v Roads and Maritime Services* (2017) 94 NSWLR 554; [2017] NSWCA 73 (“Dial A Dump”) the Court rejected a submission that a quasi-proprietary right must be limited to those matters referred to by Meagher JA in *Hornsby Council*. As Beazley P said, at [156], such interests could include “powers or privileges” in connection with land.

The defendant submits that as a spouse, she would have a right to elect to acquire the property pursuant to s 115 of the Succession Act. That right is said to be a quasi-proprietary right. Her interest is said to be a contingent interest in the property. The right to acquire the property at a 2022 price is said to be a valuable benefit to the defendant and fall within the definition of “property” contained in s 3 of the Succession Act.

In my view, there are several problems with this ground being relied upon by the defendant as a reason for not exercising the discretion to make the orders.

Firstly, the defendant appears to be seeking to extend the limited circumstances in which the Court might not make a s 66G order to a new category of case. That is, the basis of the defendant’s contention must be that a potential (but as yet undetermined and disputed) right to acquire property arising from contested litigation, is something that must be described as a quasi-proprietary interest in land. To say the least, this seems doubtful. Such an interest, being a potential right to do something with the land, would not be a proprietary interest and is hardly akin to the interest in land referred to (for the purposes of the Land Acquisition (Just Terms Compensation) Act 1991 (NSW)) in either *Hornsby Council* or *Dial A Dump*, or any other case to which I have been referred. The addition of “quasi” to “proprietary” does not justify such a broad approach to the term.

Secondly, as submitted by the plaintiff, examples which generally support a proprietary or quasi-proprietary interest generally require the existence of rights which are either corporeal or incorporeal hereditaments. As observed by the author in Peter Butt, *Land Law* (6th ed 2010, Thomson Reuters) (“Butt’s Land Law 6th ed”) at par [1602], a restrictive, rather than expansive, approach has been taken to these rights.

I am unable to accept that having a possible right to elect to acquire land, depending on the outcome of contested litigation and the defendant having the capacity to acquire the land, could be described as having any interest in the land at this time. The label placed upon it by the defendant, that, is, contingent, takes the matter nowhere. It does not assist the defendant.

Leaving aside the fact that she is a co-owner (which of course is the basis of the s 66G application), the defendant has no other right or interest in the land at this time which would provide a basis for the Court declining to make the orders sought.

The orders would undercut a statutory remedy

This ground has been identified as a ground which may lead the Court to decline to make an order for sale. In *Thorn v Boyd Sackar J*, at [60], quoting Butt's *Land Law* 6th ed at 267, suggested that situations where the Court may decline to make an order include where a sale would undercut a party's right to seek remedies under legislation.

Similarly, in *Uzelac bht New South Wales Trustee and Guardian v Ilic* [2011] NSWSC 511 Brereton J observed, at [5]:

“Further, as a matter of discretion, if there were pending or contemplated proceedings for alteration of property interests under the (CTH) Family Law Act (1975) or the (NSW) Property (Relationships) Act, and it was conceivable that the result of those proceedings might be that one party would become the sole owner of the property, or would be in a position to buy out the other, then the court might decline, at least for the time being, to appoint trustees for sale.”

I accept that the Court might refuse to make the orders if to do so would undercut a statutory remedy. However, in the particular circumstances of this matter, I do not consider that the Succession Act proceedings and the potential consequences of orders depriving the defendant of a right to elect to acquire the property are such that I should decline to make the orders.

I say this for the following reasons:

The Court should be cautious before declining to make the orders sought merely because the defendant has filed other proceedings, in this case the Succession Act proceedings. The mere filing of other proceedings could not of itself be sufficient to justify a refusal to make the orders. At the very least, a qualitative assessment of the claims made in the proceedings is required.

It is difficult to form any positive view as to the defendant's prospects of success in the Succession Act proceedings, having regard to the evidence adduced in these proceedings. The defendant did not herself give evidence, rather, relying on evidence from her solicitor. That evidence did not include any information on which it might be accepted that the defendant would ever have the capacity to acquire the property should she be found to have a right to do so. She was not living at the property. She does not live in Australia. I am left in the position that, whilst she has filed the Succession Act proceedings (only days before this hearing), she has not adduced any new evidence in these proceedings which might enable me to form a view as to the strength of her case.

Further, at best for the defendant, the Court has in earlier proceedings already not accepted the suggestion that she was the spouse of the deceased at the time of his death (see *Rance v Dempsey* (No 2) at [85]). It is not necessary that I consider whether there may be an issue estoppel. It is only necessary to observe that there is evidence which will at the very least cast significant doubt on the defendant's claim to have been a “spouse” as that term is defined in the Succession Act.

The defendant has already sought and been refused leave to pursue her claim under the Succession Act out of time. While she is not precluded from pursuing a further application for leave, she has not adduced evidence before me which might suggest that there is any basis upon which she would be permitted to pursue a fresh application or succeed in that application.

There has been significant delay on the part of the defendant in filing the Succession Act proceedings. The orders appointing the plaintiff as administrator of the estate were made on 8 November 2024. The defendant did not file her motion until 1 August 2025. Her motion was dismissed on 17 October 2025, and she only filed the Succession Act proceedings days before this hearing.

Perhaps her strategy was laid bare when her counsel indicated that if the s 66G orders were not made at this time, the parties could get to a mediation in the Succession Act claim. Endeavouring to settle a dispute may be commendable, but the defendant's desire to get to a mediation before the s 66G orders are made does not provide a basis for refusing to make the orders sought.

Nothing I say in this judgment will impact upon the defendant's right to pursue her Succession Act claim, should she obtain leave to do so. The issue I am considering is whether I should decline to make the s 66G orders having regard to the Succession Act proceedings.

The power to make the orders is discretionary. In the end, I am left with the mere fact of the very late commencement of the Succession Act proceedings and the defendant's claim to have been the spouse as pleaded in that case as being the grounds for resisting the s 66G orders.

For the reasons I have set out, I do not consider that the filing of the Succession Act proceedings should cause me to decline to make the orders sought.

Indeed, none of the matters raised by the defendant are such that I should decline to make the orders sought.

In the circumstances, the plaintiff is entitled to orders (1)-(5) sought in the summons. As for the balance of the orders, I will hear from the parties as to the form of orders, including as to costs.

Therefore, I make the following orders:

Order that pursuant s 66G of the Conveyancing Act 1919 (NSW) that Mr Anthony John Ryan, Solicitor Director of Ryan & Ryan Lawyers, and Mr John Gerard Ryan, Consultant Solicitor of Ryan & Ryan Lawyers (Trustees), be appointed jointly as trustees for the sale of the property situated at [redacted] East Gosford NSW 2250 (being Folio Identifier [redacted]) (Property).

Order that the Property be vested in the Trustees subject to any encumbrances affecting the entirety of the Property but free from any encumbrances affecting any undivided share or shares therein to be held by the Trustees upon statutory trust for sale under Pt 4, Div 6 of the Conveyancing Act 1919 (NSW).

Order that the defendant deliver up vacant possession of the Property to the Trustees within 7 days of orders being made or otherwise at such time as directed by the Trustees or ordered by the Court.

Reserve to the Trustees liberty to apply on short notice for any orders or directions which may be required to obtain vacant possession of the Property, including the issue of a writ of possession.

Order that the Trustees are authorised to:

Do all things necessary to sell the Property, including engaging a real estate agent, marketing the Property for sale, arranging for inspections, and entering into a contract for sale at a price considered fair and reasonable by the Trustees in their absolute discretion;

Undertake all reasonable repairs to the Property to prepare it for sale;

Sign all documents necessary to effect the sale and transfer of title of the Property;

Charge all usual and proper charges at the usual hourly rates charged by the legal practice in which they are engaged and on the usual terms as to payment of that practice for their work as trustees for the sale of the Property; and

Retain the services of any other legal practitioner, accountant or other professional adviser where they consider it necessary to do so and to charge the costs incurred in having those services provided.

Direct that the parties approach my chambers within 14 days as to any further orders.

DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated.

Decision last updated:

26 March 2026

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.caselaw.nsw.gov.au/decision/19d225691e425fa815b3b495>

CASE PAGE <https://chat.esheria.ai/case-law/australia/rance-v-dempsey-no-5-2026>

Prepared on 29 October 2026 · Esheria