



Friday, 26 April 2024

Daily Construction A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (One Minute Read)

Giddings v Sharp (NSWSC) - Court declined to make an order pursuant to s94 of *the Civil Procedure Act 2005* (NSW) that the Register-General sign transfers on behalf of the vendor, but ordered the vendor to complete the transfers

HABEAS CANEM

Country smile



Summaries With Link (Five Minute Read)

Giddings v Sharp [2024] NSWSC 344

Supreme Court of New South Wales

Peden J

Specific performance - Riley (as purchaser) and Sharp (as vendor) executed a contract for the sale of two lots for \$50,000 - the date for completion was left blank - Riley paid Sharp the purchase price in full - Riley's parents, the Giddings (as purchasers) and Sharp (as vendor) executed a contract for the sale of another lot for \$25,000 - the date for completion was again left blank - the Giddings paid Sharp the purchase price in full - Riley and the Giddings (as purchasers) and Sharp (as vendor) then executed a contract for the sale of three further lots for \$66,000 - a date for completion was stated - the purchasers paid Sharp the purchase price in full - Sharp executed paper transfer forms, but they could not be used as the transfer had to take place using PEXA - settlement could not be effected, even after services of notices to complete, and Sharp could not be contacted - the purchasers commenced proceedings, seeking specific performance, and effected substituted service - the purchasers sought that the Registrar-General sign the transfers pursuant to s94 of *the Civil Procedure Act 2005* (NSW) so that the transfers could be registered - held: no submissions were made as to the validity of the notices to complete in circumstances where there was no completion date two contracts and it appeared the entry of a completion date on the contract for sale of the three lots must have been an error - had the paper transfers been taken and registered before PEXA came into operation, no assistance of the Court may have been necessary - there was no evidence from the purchasers as to what is required in the current situation where the transfer has not been lodged and PEXA is now the general conveyancing platform - the plaintiffs expressly disavowed any prayer for relief to order Sharp to finalise his obligations under the contracts for sale - the plaintiffs therefore had to fail, as s94 would not operate until Sharp failed to comply with an order to do something - an order under s94 should not be made where there is merely an anticipated refusal to execute a document, and no submission had been made that an order ought nevertheless be made because of the futility of an order against Sharp - it was appropriate to make an order compelling Sharp to specifically perform all of the contracts, including to complete the transfers via PEXA - if Sharp does not comply with his obligations in the time that will be ordered, the Court noted it would then be prepared to make an order pursuant to s94.

[View Decision](#)



Poem for Friday

The Song of a Comet

By: Clark Ashton Smith (1893-1961)

A plummet of the changing universe,
Far-cast, I flare
Through gulfs the sun's uncharted orbits bind,
And spaces bare
That intermediate darks immerse
By road of sun nor world confined.
Upon my star-undominated gyre
I mark the systems vanish one by one;
Among the swarming worlds I lunge,
And sudden plunge
Close to the zones of solar fire;
Or 'mid the mighty wrack of stars undone,
Flash, and with momentary rays
Compel the dark to yield
Their aimless forms, whose once far-potent blaze
In ashes chill is now inurned.



A space revealed,
I see their planets turned,
Where holders of the heritage of breath
Exultant rose, and sank to barren death
Beneath the stars' unheeding eyes.
A down contiguous skies
I pass the thickening brume
Of systems yet unshaped, that hang immense[67]
Along mysterious shores of gloom;
Or see—unimplicated in their doom—
The final and disastrous gyre
Of blinded suns that meet,
And from their mingled heat,
And battle-clouds intense,
O'erspread the deep with fire.

Through stellar labyrinths I thrid
Mine orbit placed amid
The multiple and irised stars, or hid,
Unsolved and intricate,
In many a planet-swinging sun's estate.



Ofttimes I steal in solitary flight
Along the rim of the exterior night
That grips the universe;
And then return,
Past outer footholds of sidereal light,
To where the systems gather and disperse;
And dip again into the web of things,
To watch it shift and burn,
Hearted with stars. On peaceless wings
I pierce, where deep-outstripping all surmise,
The nether heavens drop unsunned,
By stars and planets shunned.
And then I rise
Through vaulting gloom, to watch the dark
Snatch at the flame of failing suns;
Or mark
The heavy-dusked and silent skies,[68]
Strewn thick with wrecked and broken stars,
Where many a fated orbit runs.
An arrow sped from some eternal bow,
Through change of firmaments and systems sent,

And finding bourn nor bars,

I flee, nor know

For what eternal mark my flight is meant.

Clark Ashton Smith was born on 13 January, 1893, in Long Valley, Placer County, California. Largely self-taught, he began writing at a very young age, acquiring an exceptionally large vocabulary by reading the dictionary from cover to cover. A protégé of the San Francisco poet George Sterling, Smith achieved recognition at the age of 19 for his collection of poems *The Star Treader* (1912), influenced by Baudelaire, Poe and Sterling. Smith always considered himself a poet first and foremost, however, following the Great Depression, he later turned to writing short stories for pulp magazines such as *Weird Tales* as this was a more lucrative source of income to support himself and his aging parents. He wrote more than 100 short stories between 1929 and 1934, and it is this, along with his friendship with fellow *Weird Tales* contributor H. P. Lovecraft, for which he is remembered today. Smith lived most of his life in Auburn, California, and passed away in his sleep on 14 August 1961, at the age of 68. In addition to his literary activities, he created a large number of drawings, paintings and sculptures which reflected the otherworldly atmosphere of his tales.

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