

Conveyancing Service

New South Wales
CURRENT BPR AND CASENOTES

Service BPR 201

May 2011

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[98441] *Allen Taylor & Co Pty Ltd (t/as Boral Timber) v Harrison*
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Uncertainty in description of charge in guarantee alleged — Whether caveatable interest charge arguably created — Form of caveat alleged to be defective due to misidentification of caveatee — Whether caveat requires amendment — Whether deficiencies in caveat can be disregarded under Real Property Act 1900 (NSW) s 74L — Deficiency not fatal to the validity of caveat — Deficiency disregarded — Whether caveat interferes with interests of both joint tenants as registered proprietors of the subject property — Only one registered proprietor joined as a party — No interference with interest or other joint tenant — Caveat may be extended without joining other joint tenant — Caveat extended

[98442] *Australian and New Zealand Banking Group Ltd v Aldrick Family Company Pty Ltd*

Banker and customer — ANZ discloses confidential information of customer to competitor seeking to have customer placed into liquidation — ANZ does not dispute that, in substance, ANZ employee conveyed to competitor that ANZ had concerns about group's present financial condition and that ANZ was contemplating enforcing its security — Customer contends that the disclosure was a breach of the common law duty of confidentiality/secretcy owed by ANZ as a banker to its customer, a breach of a statutory duty not to disclose confidential information to third parties, a breach of an implied contractual term to the same or similar effect contained in each of the relevant agreements, guarantees and mortgages, and otherwise was negligent

[98442] *Australian and New Zealand Banking Group Ltd v Aldrick Family Company Pty Ltd*

Banker and customer — ANZ seeks to recover the moneys owing from the defendants pursuant to agreements, guarantees and/or mortgages of land given by the defendants — ANZ also seeks orders for possession of various mortgaged properties — Defendants seek relief from their obligation to pay ANZ because of a claim for damages and various other relief claimed including breach of a duty or contractual term of confidentiality, unconscionability, unconscionable or misleading or deceptive conduct under the Trade Practices Act 1974 (Cth) and the Contracts Review Act 1980 (NSW)

[98442] *Australian and New Zealand Banking Group Ltd v Aldrick Family Company Pty Ltd*

Causation — Basic legal principle that plaintiff must prove its loss or damage was caused by the defendant's breach, whether the plaintiff grounds its case in contract, tort or statute — Causation a question of fact — Want of proper claimants — "Prudential principle", said to be derived from, denies to members of a company (a fortiori persons with more remote interests) the right to recover for themselves damages for wrongs done to the company, or damages reflective of damages suffered by the company.

[98442] *Australian and New Zealand Banking Group Ltd v Aldrick Family Company Pty Ltd*

Deeds — ANZ requires customers to enter into deed waving customers' rights in respect of the confidential information as a condition for ANZ advancing funds permitting customer to have access to legal advice in the ensuing litigation leading to winding up of customer group — Whether deed enforceable — Whether ANZ's conduct in requiring entry into the

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[98442] *Australian and New Zealand Banking Group Ltd v Aldrick Family Company Pty Ltd*

Misleading or deceptive conduct — Whether representations in question shown to be misleading or deceptive or likely to mislead or deceive at the time they were made — Whether relevant defendants demonstrated requisite reliance on alleged misleading and deceptive representations — Granting of relief under remedial provisions of Trade Practices Act 1974 (Cth) — Basal proposition that relief must be appropriate to any cause of action established

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Leases — Outgoing — Interpretation — Payment in lieu of land tax

[98444] *Helicopters Pty Ltd v Bankstown Airport Ltd*

Leases — Rent — Rent review — Where tenant does not have the right to give a dispute notice with respect to rent review if tenant has not paid all rent and other moneys payable under the lease — Whether penalty — Whether estoppel, waiver or election prevents lessor challenging dispute notice

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Licenses — Distinction between leases and licenses — Where licensee entered land pursuant to licence and constructed transmission tower and equipment shed — Trespass — Whether licensee was a trespasser after breaching implied term of licence agreement — Reasonable time to vacate premises — Fixtures — Whether transmission tower and equipment shed are chattels or fixtures

[98446] *MIWA Pty Ltd v Siantan Properties Pty Ltd*

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[98446] *MIWA Pty Ltd v Siantan Properties Pty Ltd*

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[98446] *MIWA Pty Ltd v Siantan Properties Pty Ltd*

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[98449] *K & K Real Estate Pty Ltd v Adellos Pty Ltd*

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complete served — Whether subsequent correspondence constituted waiver of essentiality of time — Whether purchaser dispensed with vendors' performance

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