

Conveyancing Service

New South Wales
CURRENT BPR AND CASENOTES

Service BPR 295

March 2025

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In this Service:

[99021] *Hartnett (t/as Hartnett Lawyers) v Bell (as executor of the estate of the late Deakin-Bell)*

Mortgages and guarantees — Mortgages — Mortgagees' costs — Clause in mortgage instrument permitting mortgagee to recover legal costs incurred in reference to security to be paid by mortgagor — Solicitor acted for mortgagee in undefended possession proceedings — Solicitor for mortgagee engaged in exorbitant overcharging of mortgagee — Property was sold pursuant to possession orders — Solicitor paid himself exorbitant legal fees from proceeds of sale — Mortgagor sought to be relieved from payment of mortgagee's solicitor's exorbitant legal fees — Proper

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approach to inherent supervisory and disciplinary jurisdiction of Supreme Court over solicitors with respect to charging of clients — Proper exercise of jurisdiction to require solicitor to pay amount to mortgagor — (NSW) Legal Profession Uniform Law 2014 s 264 — (NSW) Legal Profession Uniform Law Application Act 2014 Sch 2 cl 6.1 — (NSW) Supreme Court Act 1970 s 23 — (QLD) Legal Profession Act 2007 ss 300, 308, 313, 315, 316, 317, 323, 324, 335

[99021] *Hartnett (t/as Hartnett Lawyers) v Bell (as executor of the estate of the late Deakin-Bell)*

Words and phrases — “inherent jurisdiction” — “disciplinary jurisdiction” — “supervisory jurisdiction” — “exorbitant overcharging”

[99022] *Kramer v Stone*

Equity — Proprietary estoppel — Estoppel by encouragement — Knowledge of detriment — Where deceased promised to leave property to sharefarmer who had worked on property for approximately 40 years — Where deceased’s Will did not do so — Where sharefarmer continued to share farm on property in reliance on representation Whether deceased needed to have actual knowledge of detrimental reliance on representation for estoppel to be established

[99022] *Kramer v Stone*

Procedure — Appeals — Further evidence — Evidence adduced at subsequent hearing before final orders made — Whether such evidence “further evidence” for purposes of s 75A of Supreme Court Act 1970 (NSW) — Whether appellant should be permitted to rely on such evidence following first hearing to impugn findings made after first hearing

[99023] *Property Holdings Group Pty Ltd v Rosehill Panorama Pty Ltd (in its capacity as trustee of the Rosehill Panorama Unit Trust)*

Mortgages and securities — Real securities — Charges Equitable charges — Creation of equitable charges by agreement — Where parties execute deed terms of which entitle plaintiff to payment of fee by first defendant upon occurrence of certain event — Where event in question consists of receipt of development consent as defined in deed to residential and commercial development scheme — Where first defendant covenants to lodge and pursue development application as defined in deed and to take all necessary steps to obtain development consent as defined — Where parties agree that pending payment of fee plaintiff shall be entitled to charge upon extant options or contracts to purchase properties comprising development scheme or properties themselves — Where first defendant covenants not to deal with such options or contracts or properties pending payment of fee — Where first defendant breaches covenant by submitting alternative development scheme discordant with terms of deed — Where no development consent as defined received prior to first defendant’s entry into administration — Where preconditions to plaintiff’s entitlement to payment of fee remain unsatisfied — Whether plaintiff holds charge over properties comprising development scheme pending payment of fee — Whether clause purporting to charge such properties amounts to agreement to grant charge in future

[99023] *Property Holdings Group Pty Ltd v Rosehill Panorama Pty Ltd (in its capacity as trustee of the Rosehill Panorama Unit Trust)*

Equity — Maxims — Equity regards as done that which ought to be done — Where precondition to plaintiff’s entitlement to payment of fee by first

In this Service — continued

defendant unsatisfied by reason of first defendant's breaches of covenant — Where plaintiff asserts entitlement to payment of fee by application of maxim that equity regards as done that which ought to be done — Where that which plaintiff contends ought to be done consists of first defendant's performance of contractual preconditions to payment of fee — Whether plaintiff entitled to circumvent such preconditions by application of maxim [99023] *Property Holdings Group Pty Ltd v Rosehill Panorama Pty Ltd (in its capacity as trustee of the Rosehill Panorama Unit Trust)*
Equity — Maxims — Party is not entitled to take advantage of its own wrong — Where plaintiff asserts entitlement to payment of fee by application of maxim that party is not entitled to take advantage of its own wrong — Where wrong in question consists of first defendant's breaches of covenant disentitling plaintiff to payment of fee — Whether plaintiff entitled to circumvent preconditions to payment by application of maxim [99023] *Property Holdings Group Pty Ltd v Rosehill Panorama Pty Ltd (in its capacity as trustee of the Rosehill Panorama Unit Trust)*
Words and phrases — "shall"

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