

Conveyancing Service

New South Wales

CURRENT BPR AND CASENOTES

Service BPR 241

November 2017

In this Service:

[98797] *Xabregas v St George Bank Ltd — A Division of Westpac Banking Corporation*

Real property — Caveats — Caveat lodged by registered proprietor claiming improper exercise of power of sale by mortgagee — Caveat lapses — Application for leave to lodge further caveat in respect of same interest — Grounds for interlocutory injunction to restrain completion of sale made by mortgagee not established — Leave to lodge further caveat refused — (NSW) Real Property Act 1900 s 74O

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[98798] *Chamberlain Early Learning Centre Pty Ltd v Precious 1 Pty Ltd (in its own right and as trustee for the 4 Chamberlain Holdings Family Trust) and Another*

Landlord and tenant — Rent — Equitable set-off — Where claimant claiming arrears in rent for period subsequent to registration of lease — Where lack of mutuality — Where claim and counter-claim not directly connected — Inequity in allowing claim without taking into account counter-claim — (NSW) Conveyancing Act 1919 ss 12 117(NSW) Real Property Act 1900 ss 46 51 52

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[98799] *Laris v Lin*

Damages — Quantification of damages for trespass — Compensatory cross-defendant liable for acts of trespass by cross-defendant's tenants — Whether cross-defendant authorised, caused or permitted tortious acts by tenant — Whether cross-defendant's conduct justifies award of exemplary damages

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[98800] *5 Ridge Pty Ltd v Tryname Pty Ltd*

Deposit — Statutory discretion for return of deposit — Role of misrepresentation in exercise of statutory discretion — Construction of contractual term regarding deposit — (NSW) Conveyancing Act 1919 s 55(2A)

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[98801] *Ebadeh-Ahvazi v Namrood*

Conveyancing — Contract for sale of land — Purported termination by both parties — Obligations on vendor to perform works by completion — Whether performance required by completion date under contract or time of actual completion — Whether vendor complied with obligations — Validity of notice to perform — Validity of notice to complete — Whether vendor engaged in misleading and deceptive conduct — Whether deposit should be returned

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[98802] *Towers v Stolyar*

Easements — Validity — Easement for parking and garaging — Whether easement capable of forming the subject matter of a grant — Extent of deprivation of use of the servient tenement

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[98803] *Baker-Crooks v Separovich*

Mortgages — Unregistered mortgage — Breach of obligation to produce certificate of title to enable mortgage to be registered — Default of mortgagor—Remedy of mortgagee—Whether power to enter possession incorporated in mortgage — (NSW) Real Property Act 1900 s 60

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[98804] *Woolworths Ltd v About Life Pty Ltd and Others*

Contracts — Construction and interpretation of contracts — Deed conferring right of first refusal — Whether relevant clause void for uncertainty — Whether relevant clause constituted breach of undertaking made pursuant to s 87B of Competition and Consumer Act 2010 (Cth) — Whether relevant clause void or unenforceable by reason of illegality — Whether relevant clause void as impermissible restriction on alienability of land

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[98804] *Woolworths Ltd v About Life Pty Ltd and Others*

Equity — Priority and notice — Whether plaintiff or second defendant enjoyed better equity — Point at which equitable interest in subject matter of agreement arose — Whether plaintiff engaged in postponing conduct through breach of undertaking made pursuant to s 87B of Competition and Consumer Act 2010 (Cth) — Whether plaintiff engaged in postponing conduct through failure to take steps to put potential assignee on notice of plaintiff's interest

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Service issues to date

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Conveyancing

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SERVICE 241

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18 BPR 12 CASENOTES

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