

Monday, 1 December 2014

## Banking

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

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#### Executive Summary (1 minute read)

**ACES Sogutlu Holdings Pty Ltd (in liq) v Commonwealth Bank of Australia (NSWCA)** - mortgage - possession - no breach in bank's exercise of power of sale - appellant to explain presence of extra material in appeal books

**Halime v Singapore Airlines Ltd (NSWSC)** - carriers' liability - action commenced 22 years after event - claim extinguished by Warsaw Convention

**Australian Regional Wholesalers Pty Ltd v Gardiner (WASC)** - guarantee - goods purchased on credit - wholesaler entitled to amount owing under guarantees

#### Summaries with links (5 minute read)

**[ACES Sogutlu Holdings Pty Ltd \(in liq\) v Commonwealth Bank of Australia \[2014\] NSWCA 402](#)**

Court of Appeal of New South Wales  
Beazley P; Macfarlan & Leeming JJA

Mortgage - possession - bank lent money to ACES for purposes of buying property - bank obtained registered mortgage by ACES as trustee family trust over property and guarantee by company as trustee for unit trust supported by registered mortgage over commercial property held by it on trust - bank appointed agents to sell properties following ACES' default - bank successfully

sued ACES and guarantors for shortfall after sales - liquidator appointed to ACES and company - bank filed notice of discontinuance purportedly on behalf of companies - appellants denied notice effective - held: company guaranteed obligations of ACES - property held by company as trustee was properly the subject of exercise of power of sale - to be effective, a notice of discontinuance filed in appellate proceedings must be accompanied by notice from each party whose consent was required to the effect that that party consented to discontinuance - no breach of duty in exercise of power of sale - extraneous material inserted into appeal books - appellant to be given opportunity to explain presence of material - appeal dismissed.

[ACES Sogutlu Holdings Pty Ltd \(in liq\)](#)

### **Halime v Singapore Airlines Ltd [2014] NSWSC 1681**

Supreme Court of New South Wales

Adams J

Carriers' liability - limitations - plaintiff claimed he suffered psychological injury as result of engine exploding on flight in 1992 - plaintiff's action against airline arose from *Civil Aviation (Carriers' Liability) Act 1959* (Cth) which provided that Warsaw Convention was part of Australian law - liability of carrier under Convention - held: action could not succeed because of Art 29(1) of the Convention which provided that right to damages was extinguished if action not brought within two years reckoned to date of the arrival and destination, or from date on which aircraft ought to have arrived, or from date on which carriage stopped - carriage stopped at very latest on 29/5/92 - action for damages extinguished on 28/5/94 - statement of claim dismissed.

[Halime](#)

### **Australian Regional Wholesalers Pty Ltd v Gardiner [2014] WASC 439**

Supreme Court of Western Australia

Chaney J

Guarantee - plaintiff carried on business of wholesale of goods - company purchased goods on credit from plaintiff - defendants were directors of company - defendants executed 'guarantee and indemnity' in favour of plaintiff - company applied for credit with plaintiff by signing 'application for credit account' - plaintiff claimed directors were liable to pay sum under guarantees and legal fees - held: guarantees were components of single guarantee transaction - guarantees were enforceable - guarantees were not subject to any limitation by reference to credit application or otherwise - plaintiff's conduct did not have effect of discharging guarantors - plaintiff entitled to judgment in sum claimed.

[Australian Regional Wholesalers Pty Ltd](#)

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