



Monday, 23 March 2015

Banking A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (1 minute read)

Lucisano v Westpac Banking Corporation (FCA) - injunction - possession - bank not restrained from taking possession of property

Citigroup Pty Ltd v Middling (No. 4) (NSWSC) - contract - mortgage - agency - contracts between borrower and lender not unjust

City of Subiaco v Homebase Management Pty Ltd (WASCA) - lease - construction of 'Fair Market Rent' - appeal allowed

Parker v BHP Billiton Iron Ore Pty Ltd (WASC) - application to set aside subpoena refused - application for further and better particulars granted - corporation joined as defendant to counterclaim

Summaries with links (5 Minute Read)

Lucisano v Westpac Banking Corporation [2015] FCA 243

Federal Court of Australia

Gordon J

Injunction - possession - applicant sought to restrain bank from taking steps to take possession of applicant's property - serious question to be tried - balance of convenience - held: facts and matters set out in affidavits and draft fast track statement did not raise any question of contravention of *National Consumer Credit Protection Act 2009* (Cth) which would enliven power in s177 and provide foundation for interim relief - in any event Court not persuaded balance of convenience lay in favour of Court making interim order of kind sought - application refused.

[Lucisano](#)

Citigroup Pty Ltd v Middling (No. 4) [2015] NSWSC 221

Supreme Court of New South Wales

Adamson J

Contract - loan agreement - agency - plaintiff claimed possession of property of which defendant borrower was registered proprietor - borrower filed cross-claim to which earlier lender (Perpetual) and plaintiff were cross-defendants - defendant granted leave to amend defence and cross-claim to include claims for relief under *Contracts Review Act 1980* (NSW) - proceedings between plaintiff and borrower resolved by deed of release - remaining matter for determination was cross-claim against Perpetual - held: Court not satisfied contracts between borrower and Perpetual were unjust - mortgage originator which prepared and submitted loan application to Perpetual's mortgage manager (Challenger) not acting as agent for Perpetual or Challenger - dishonest conduct of mortgage originator could not be imputed to Perpetual - judgment for Perpetual.

[Citigroup](#)

City of Subiaco v Homebase Management Pty Ltd [2015] WASCA 54

Court of Appeal of Western Australia

Martin CJ; Newnes & Murphy JJA

Contract - lease - rent review clause - appellant landowner granted lease to respondent lessee - lease provided for review of rental payable - rent payable be the highest of number of alternatives one of which was amount equal to 'Fair Market Rent' - parties each engaged valuers to provide advice with respect to amount equal to Fair Market Rent - dispute arose as to proper construction and effect of the relevant provisions - primary judge made declarations with respect to principles applicable to determination of Fair Market Rent - appellant appealed - proper construction of 'Fair Market Rent' - whether it must be taken into account that notional lessee must construct premises on land to enable it to be put to use to which lessee put Leased Premises - length of term of notional lease to be entered into at Review Date - commercial purpose - held: assessment of Fair Market Rent carried out on erroneous basis - primary



judge's decision set aside - appeal allowed.

[City](#)

Parker v BHP Billiton Iron Ore Pty Ltd [2015] WASC 95

Supreme Court of Western Australia

Edelman J

Discovery - pleadings - joinder - three applications - application to set aside subpoena to produce or restrict inspection of documents produced - application for further and better particulars of amended defence and counterclaim - application to join corporation as defendant to counterclaim - held: subpoena issued for legitimate forensic purpose and was not oppressive - application to set aside dismissed - defendants to replead paragraphs to provide required particulars - joinder of corporation would not have any substantial detrimental effect upon management and progress of proceeding - corporation joined.

[Parker](#)

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