

SPEED.VALUE.QUALITY.COMMITMENT

February 2008 Newsletter

>> **This is the first newsletter of Jackson Lalic Lawyers.**

Jackson Lalic Lawyers is a new partnership between Peter Jackson and David Lalic. David has been a member of Peter's team for seven years and will now work together with Peter to assist old and new clients. Peter and David look forward to continuing to meet the needs of their clients.

>> **Short Case Note:**

The Way Properties Were Marketed in Queensland Meant That The Market Price Was Not Obtained...

The Receiver was held responsible for the loss suffered by the borrower....

When a Receiver is selling property under the powers given to it under the Corporations Act, or when property is sold in Queensland under the Property Law Act, the duty on the seller is to obtain not less than the market value or otherwise the best price that was reasonably obtainable, if there was no market value.

In New South Wales, if it is not a Receiver selling, the duty is to act in good faith. In the case of Glodale Pty Ltd happened in New South Wales and it was a private seller, the result may well be different.

In March 2003, Investec Bank appointed Receivers to sell property at Port Douglas in Queensland. The Receivers sold the two properties in one line. That is, they sold the two blocks of units rather than selling the individual units. The allegation was that the Receivers and the bank did not get the best price by selling in the way that they did.

The Judge who heard the case put the bank's case:- the debt was increasing rapidly, there had been attempts to sell which had failed, and the risk of being left with some apartments which may be hard to sell.

The conclusion of the Judge was that if the bank had conducted the sale properly, there would be no problem with selling in one line.

The difficulty however, was that the marketing was not done in a way that achieved the market price. The Judge pointed out for example, that no local Port Douglas real estate agent was involved in the sale. He accepted evidence that the Port Douglas real estate market was special and it would have been helpful if there had been a local agent. The Judge looked at the tender documents for the sale and thought that they were not calculated to obtain the best price for the properties. They included information that was harmful to the sale with no balanced full picture as to how problems might be dealt with. Among other things, the Judge referred to the overstatement in significance of some of the difficulties. He pointed out the reference to 'illegal' decking and the landscaping non-compliance and the fact that nothing had been done to rectify the problem or to determine what was needed to rectify the non-compliance or the costs of compliance.

The Judge's conclusion was that the sale price received did not satisfy the duty under the Queensland legislation or the Corporations Act. The damages were calculated as the difference between the sale price and the valuation - \$2,714,250.00.

Care should be taken in a sale like this, to ensure that the marketing campaign is directed to obtaining the market price, or if there is no market price, the best price reasonably obtainable.



Australia Ratifies Kyoto Protocol...

Australia's ratification of the Kyoto Protocol will not only help all Australians survive the devastating effects of climate change, but will open up opportunities to Australian business. Sixty percent of all Clean Development Mechanism projects occur in China with a value of approximately 5 billion US dollars. It is hoped that Australians will share in these business opportunities.

In August 2007 Western Australia's Environment Minister, David Templeman, Announced that the State Government of Western Australia had Joined with Local Governments in Signing a Climate Change and Sustainability Partnership Agreement...

Under the Agreement, a Council will be formed with high level representation from the State and Local government. This Council will consider significant climate change issues at the highest levels of State and Local government and will examine joint policies and actions to be developed and implemented.

This agreement is another sign that climate change issues are becoming more and more part of Australian business and political life.

>> Superannuation Tip...

Should You Have A Binding Nomination For a Self Managed Super Fund...

The Problems That Can Arise For Families Who Have A Self Managed Super Fund Can be Seen In the Following Example...

Bill and Mary had three children and over \$2,000,000 combined in their fund.

Bill and Mary died in a house fire.

Bill and Mary left wills stating that their estates and their super fund benefits were to be divided equally between their son Jack and his two sisters.

Jack was a member of the fund and one of the trustees, so on the death of Bill and Mary, Jack was the surviving Trustee of the fund.

Without a Binding Nomination stating the intended beneficiaries of the super fund on your death, the Trustee has an absolute discretion in distributing death benefits from the fund.

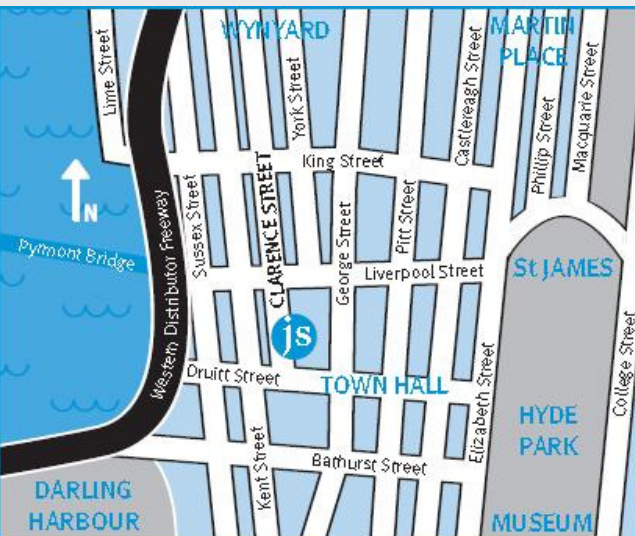
Bill and Mary did not have Binding Nominations in place.

Jack exercised his discretion as the Trustee to pay out the entire \$2,000,000 to himself. His sisters could do nothing to recover their "share" of their parents' super benefits.

Even if you have nominated beneficiaries, if your fund was set up before December 1999 and you have not amended the deed since that time to add provisions about Binding Nominations then your wishes may not be carried out.

A Binding Nomination must be renewed every 3 years by signing a simple form and keeping it with the fund paperwork to remain valid.

Don't risk it. Make sure your fund deed and your Binding Nomination is up to date.



>> Legal Terms Relating to Leases Explained...

Lessor The party who is leasing the property to a tenant or lessee.

Sub-Lessor A party who is himself leasing, but has the right to be a lessor and lease the premises that he or she is leasing to someone else.

Lessee The party who is leasing the property from a landlord or lessor.

Sub-Lessee The party who is leasing from a sub-lessor.

Landlord A title also given to the lessor.

Tenant A title also given to the lessee.

Bond A bond is a sum of money or a bank guarantee lodged with the landlord to protect the landlord against losses he or she might suffer because of damage or loss of rent.

Rental Bond Board The Board where bonds are lodged in residential tenancies.

Permitted Use This is the expression used for the activities that the tenant can do in the leased premises.

Outgoings The outgoing are those expenses that the tenant must pay to the landlord. Often the tenant pays a percentage of the outgoing. These include such things as electricity and water supply.

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