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March 2011 Newsletter

>> RISKS OF SELF REPRESENTATION

The risks of appearing before the Courts without a lawyer...

Mr and Mrs Luo lose their case against the Bank of Western Australia...

Mr and Mrs Luo borrowed \$2,800,000.00 from the Bank of Western Australia to refinance a loan. To secure the loan they gave a mortgage.

After Mr and Mrs Luo defaulted, the bank claimed possession of the property so that they could sell it and recover the money owing.

Mr and Mrs Luo defended the bank's claim on the basis that the loan was void or voidable and should be set aside because it was entered into under undue influence or because it was unconscionable under the general law or under section 51AA of the Trade Practices Act.

The Judge who heard the case allowed Mr Luo to tell his story before the Court without interruption. Mr Luo carried out some cross examination of the bank's witnesses and was extensively cross examined himself.

In May 2008, Mrs Luo saw an advertisement from a broker suggesting that the Bank of Western Australia offered loans at lower rates than the market.

Mr and Mrs Luo made an application for \$2,800,000.00 for one of these loans and the loan was granted.

When the first documents were signed, the bank forgot to have Mrs Luo sign them and new documents were presented that were signed in October 2008.

No payments were made by Mr and Mrs Luo after 21 November 2008 and the bank started proceedings in February 2009.

Mrs Luo argued that she was not bound by the contract because she did not read or understand the documents.

Both defendants said that they were induced to sign the documents by misrepresentations that were in breach of the Trade Practices Act, that the signatures were obtained by undue influence and that it would be unconscionable to allow the bank to enforce the agreement.

His Honour listened very carefully to the evidence given by Mr Luo and found it completely unsatisfactory and said that he would not believe anything in his evidence except if it was corroborated by a document. His Honour made the same finding in relation to the evidence given by Mrs Luo.

His Honour then examined each of the defences that had been raised by Mr and Mrs Luo. The defence that the Mrs Luo was not bound by the document because she could not read or understand it failed completely because His Honour held that Mrs Luo had every opportunity to seek advice about the documents and if she was careless in not getting this advice, she could not rely on this defence.

In relation to the misrepresentation that was claimed to be a breach of section 52 of the Trade Practices Act, His Honour explained that the claim was that a promise had been made that that loan funds would be available at a certain time. This defence failed completely because it was said that the promise was made by the broker and His Honour found that the broker was the broker of Mr and Mrs Luo not the bank.

Mr and Mrs Luo went on to claim that because monies were not available by a certain date, their company lost money. This claim failed for a number of reasons. The first was that the company was the party that was entitled to make the claim not Mr and Mrs Luo and in any event there was no contract to provide the money by a certain day. His Honour found that there may have been a request but that did not make a contract.

His Honour found that the claims that were made for unconscionability and undue influence failed for the same reasons.

It is clear when reading the judgment of the Court that Mr and Mrs Luo were very upset by what had happened with the bank. However, it is also clear that they did not put their case forward in the best way. It is impossible to know whether or not they would have succeeded had they been legally represented but the result may have been different.

>> CARBON CONSTRAINED ECONOMY

Operating in the Carbon Constrained Economy...

Readers of this newsletter and clients of Jackson Lalic know of the firm's interest in climate change and the need for something to be done about the problems associated with it.

Early in 2011, the decision was made by Peter Jackson and David Lalic to widen the services that are available to existing clients of the firm and new clients who have an interest in this area. To achieve this, Dominic Green commenced employment at Jackson Lalic on 14 February 2011. Dominic holds a Bachelor of Laws and Graduate Diploma in Legal Practice. He holds a Bachelor of Commerce (majoring in Economics), and was one of the first students to obtain Certificates in both Carbon Accounting and Carbon Accounting for Forestry Sequestration from the National Centre for Sustainability. More recently, he completed a Post-Graduate Diploma in Energy and Environment (Global Warming and Climate Science).

Dominic is experienced in financial and economic modelling, computer and environmental modelling, policy critique and analysis, atmospheric and earth system science and renewable energy and carbon abatement technologies, enabling him to provide a superior level of understanding and efficiency to clients operating in these fields.

We are confident that Dominic is well placed to provide superior services to our clients in this area. He has had extensive experience in legal and commercial advisory, ranging across most (if not all) of our new service sub-groups. He has remained at the cutting edge of legal, regulatory, political, scientific and technological developments in the field. He has developed exceptional and innovative services and products for a variety of notable clients.

The new division of the firm will provide services and advice in the following areas:

- Renewable and alternative energy and resources.
- Carbon abatement and litigation.
- Commercialisation and strategic advice.
- Marketing and interest advancement.
- Land use and conservation.
- Reporting and compliance

If anyone would like to talk to Dominic about the new division of the firm, he would be more than happy to take phone calls and share his knowledge and experience.



The articles contained in this newsletter are in the nature of general comment only. The articles are neither intended nor should be taken to be, advice in respect of any particular matter. Advice should be sought in relation to particular circumstances.

If you would like to be removed from the newsletter mailing list please contact Jackson Lalic Lawyers at info@jacksonlalic.com.au.

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>> LEGAL TERMS

Repudiation

Repudiation will occur where a party, by words or conduct, shows an intention no longer to be bound by a contract, or an intention to fulfill it only in a manner substantially inconsistent with its obligations and not in any other way.

>> NAME CHANGE

Change of name of legislation...

On 1 January 2011, the Trade Practices Act changed its name to the Competition and Consumer Act. The Australian Consumer Law, which is contained in schedule 2 of the new Act, came into effect on the same day.

>> OTHER NEWS

Projects In Romania...

Peter Jackson and Dominic Green are working with a client to establish a solar energy project in Romania and the introduction of a Biomass energy program for farmers in Romania. We have been assisted by Costin Stan, a second year student at the Finance, Banking and Accounting Faculty at Crestin University, "Dimitrie Cantemir".