

## LEGAL LINK: COMMERCIAL LITIGATION & DISPUTE RESOLUTION

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The *Commercial Litigation and Dispute Resolution Team* at Carroll & O'Dea Lawyers work hard to achieve the most practical and cost effective result for our clients, and if necessary vigorously fight for our clients at hearing. The *Commercial Litigation and Dispute Resolution Team* recently obtained favourable judgments in two commercial litigation matters which proceeded to hearing in the Supreme Court of New South Wales.

### BBB CONSTRUCTIONS PTY LTD V ALDI FOODS PTY LTD [2010] NSWSC 1352

Carroll & O'Dea acted for Aldi Foods Pty Ltd ["Aldi"] in defending a claim for in excess of \$14 million dollars made by BBB Constructions Pty Ltd ["BBB"], a developer and proprietor of land located at Alexandria. It was alleged by BBB that Aldi, in the course of protracted and ultimately unsuccessful negotiations for the leasing of basement space in the property being developed by BBB, engaged in conduct which was misleading or deceptive, or unconscionable, in contravention of s 52, 51AA and 51AC, of the Trade Practices Act 1974 [Cth]. In essence, BBB contended that throughout negotiations, Aldi represented that it would lease the premises and that it was committed to proceed to a binding agreement for lease.

Justice McDougall dismissed BBB's claim and awarded costs to Aldi. His Honour found that Aldi did not engage in conduct that was misleading or deceptive and that it had made it clear that neither party was bound until execution and exchange of the Agreement for Lease.

BBB's case for unconscionable conduct also failed with His Honour commenting that Aldi negotiated in good faith at all times.

### GREENAWAY V AUZHAI 1 PTY LTD & ORS [2010] NSWSC 1339

Carroll & O'Dea acted for Mr and Mrs Greenaway, retirees who had entered into various loan and shareholder agreements with entities owned and operated by members of the Gerace family. During the period 2002 to 2004, the Greenaways provided \$600,000 to Auzhair Supplies Pty Ltd, a company associated with the Gerace family. In the course of their dealings, the Greenaways were also recorded as holding 25% of shares in Auzhair 1 Pty Ltd (a second company associated with the Gerace family, involved in the importation of hairdressing products) upon the incorporation of that company in 2003.

In 2005 and 2006 members of the Gerace family took steps to deregister the company which owed \$600,000 (plus interest) to the Greenaways and to cancel the Greenaways' 25% shareholding in the second company

without notification and authority. Justice Ward found that the deregistered company had outstanding liabilities at the time of its deregistration and as such it should not have been the subject of a voluntary deregistration application. Her Honour also found that the second company had not complied with the requirements for shareholder approval in removing the Greenaways from the share register and that this conduct constituted a breach of s 232 of the Corporations Act 2005 (Cth).

Her Honour made an order to reinstate the deregistered company and upon its reinstatement a liquidator be appointed to wind up the company in insolvency, in order to ascertain what happened to the Greenaways' \$600,000. Her Honour also made an order to rectify the share register of the second company to reflect the Greenaways' 25% shareholding in that company and an order that the remaining shareholders of the second company purchase the Greenaways' shares at proper value.

If you have any questions regarding *Commercial Litigation and Dispute Resolution*, please do not hesitate to contact us.



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