

COMPANY AND SECURITIES LAW JOURNAL

Volume 31, Number 5

August 2013

EDITORIAL 275

ARTICLES

Directors' fiduciary duties and oppression in closely-held corporations – *Ryan J Turner*

The jurisprudential landscape for the regulation of wrongful conduct by directors of closely-held corporations has shifted in recent years. Yet, it is a shift that has passed quietly without academic scrutiny. Through an analysis of recent case law on the statutory oppression remedy and directors' fiduciary duties, this article demonstrates how the two actions have become intertwined in practice so as to afford shareholders comprehensive relief from the wrongful conduct of directors. As a result, proof of breach of fiduciary duty may give rise to an equitable remedy and a remedy for oppression under s 233 of the *Corporations Act 2001* (Cth). The upshot of this shift in corporate law is an increase in the private regulatory power of the shareholders of closely-held corporations and the augmentation of the prophylactic function of fiduciary rules. 278

A year with the Personal Property Securities Act 2009 (Cth): The Personal Property Securities Register, amendment demands and judicial proceedings – *Nicholas Mirzai*

The *Personal Property Securities Act 2009* (Cth) and corresponding Personal Property Securities Register have brought some significant procedural and compliance issues over the first year of their operation. With millions of existing registrations (and growing), dealing with the registration process and maintaining the accuracy of what is contained on the register is integral to the preservation of rights under the regime. The reality is, there is little point undergoing the process of obtaining a security interest if it is ultimately found defective for want of proper registration. This article explores some of the detail of the registration process and how to address some of the difficulties uncovered to date to ensure that those involved are protected. 295

Equitable remedies for participation in a breach of directors' fiduciary duties: The mega-litigation in *Bell v Westpac* – *Dan Butler*

The extension of *Barnes v Addy* liability to participation in breaches of fiduciary duty has proved significant in modern commercial life. Where this has occurred, banks are often defendants to equity suits deployed using *Barnes v Addy* causes of action. This article focuses on the scope of equitable relief available under *Barnes v Addy*, with particular reference to the recent Western Australia Court of Appeal decision in *Bell v Westpac (No 3)* (2012) 270 FLR 1; [2012] WASCA 157. The decision in *Barnes v Addy* itself is revisited, together with its modern-day interpretation by the High Court in commercial contexts. Following that, the decision in *Bell* is discussed. In granting a multi-billion dollar judgment against a syndicate of banks, the Court of Appeal addressed three controversies concerning the scope of equitable relief under *Barnes v Addy*. These controversies, and their treatment in *Bell*, are considered. The article concludes with some practical considerations from *Bell* when pursuing a *Barnes v Addy* claim. 307

TAKEOVERS AND PUBLIC SECURITIES – <i>Simon McKeon and Jonathan Farrer</i>	
“Disposal” standstills: An emerging trend for public M&A transactions? – <i>Alberto Colla</i>	317
Bid rigging and misleading conduct in M&A: Vendors and purchasers beware – <i>Jonathan Farrer and Jackie Mortensen</i>	320
DIRECTORS’ DUTIES AND CORPORATE GOVERNANCE – <i>Geof Stapledon and Jon Webster</i>	
Oppression proceedings and trust remedies: What are the limits? – <i>Braydon Heape</i>	325
CURRENT DEVELOPMENTS – LEGAL AND ADMINISTRATIVE – <i>Herbert Smith Freehills</i>	
The dangers of asking the courts to “rubber stamp” settlements by ASIC – <i>Robert Baxt</i>	332