



**SUPREME COURT
OF WESTERN AUSTRALIA**
Stirling Gardens
Barrack Street
Perth WA 6000

Media Contact: Manager, Media & Public Liaison
Ph: (08) 9421 5303; Pager: (08) 9324 4319

***WESTPAC BANKING CORPORATION -v-
THE BELL GROUP LTD (IN LIQ) [2012] WASCA 157
CACV 52 of 2009***

SUMMARY

This summary issued by the Court is provided as an aid to obtaining a prompt understanding of the outcome of the lengthy reasons for decision delivered in this matter. It is not an addition to, or qualification upon, those reasons and has no purpose or effect beyond that stated.

In the appeal and cross-appeals from the orders made by Justice Owen in this matter the Court has decided that, in the main, the orders made by his Honour are to stand save for several amendments and additions thereto. Justices Lee and Drummond determined that the principal orders made by his Honour were properly based on findings by his Honour of breaches of fiduciary duty by directors and of knowledge of those breaches held by the appellants. Justice Carr dissented from that conclusion, finding that no breaches of fiduciary duty had occurred. However, Justice Carr agreed with Justice Lee that if it had been necessary for his Honour the trial judge to have made such a finding, his Honour would have been required to find that transactions between the appellants and respondents, and others, which transferred property of the Bell group to the appellants in 1990, were void under the *Corporations Act 2001* (Cth) as securities granted by insolvent corporations and that the respondents were entitled to like orders, in any event, based on those findings.

Justices Lee and Drummond determined that his Honour erred in the findings his Honour made on a question described by his Honour as the 'issue of

subordination' and that the declarations made by his Honour in that regard must be set aside. Justice Carr dissented from that conclusion and agreed with the findings of the trial judge.

In respect of the orders for monetary relief, Justices Lee and Drummond agreed that his Honour erred in applying a deflated multiplier and the orders have been amended accordingly. Justice Carr dissented from that conclusion and would have reduced substantially the quantum of the sum calculated by his Honour.

With regard to injunctive relief sought by the respondents, Justices Lee and Drummond agreed that his Honour erred in declining to make orders that restrained the appellants from purporting to enforce, to the detriment of the respondents and/or others, the terms of transactions executed by Bell Participants not parties to this proceeding, those transactions or like transactions having been declared by his Honour to be void as between the respondents and the appellants. Justice Carr dissented on this issue and agreed with the conclusions of the trial judge.

The full judgment of the Court of Appeal is available on the Supreme Court of Western Australia website at www.supremecourt.wa.gov.au