



with
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PUBLIC DEFENDER

Q I BOUGHT a business with my mother six years ago. On all paperwork she is an equal owner, but couldn't borrow any money and I paid her share of the total \$169,000. She walked out in December 2007 and I haven't spoken to her since. I contacted a solicitor in a bid to get the money back and found my mother had transferred title of her house into my dad's name. She only resigned as a director of the company in October 2010. Where do I stand?

Name supplied, Pascoe Vale South

A THE fact your mother sold the house is not necessarily a bar to recovering the money. As unpalatable as this sounds, you could issue proceedings against your mother, alleging she owes you the money pursuant to a (presumably unwritten) agreement to



LEGAL WRANGLES

re-pay you the money loaned. If you were successful in obtaining a legal judgment against her, you could be bankrupted. The trustee in bankruptcy could then use the specific powers granted to them to recover the property that was transferred out of her name.

Q MY builder fitted a dishwasher in my new house, which was completed last June. I have since discovered the manufacturer went into liquidation in 2008

and will have no warranty obligation if something goes wrong. Is the builder responsible for any repairs or replacement of the dishwasher and how could I get him to fulfil his responsibilities?

Chris Hill, Wyndham Vale

A IN your case you would be able to rely on provisions in the Victorian Fair Trading Act, 1999. In the event of a fault arising, you would have an action for breach of the

COMPLAINT OF THE WEEK

Q I DROVE a vehicle purchased from a dealer for three weeks until the engine failed. Now it needs a new engine costing \$7000.

I believe it should be covered under a statutory warranty, but the dealer is refusing to pay, leaving me without a car as I traded my previous one.

Consumer Affairs Victoria agreed I have a case, but could not enforce the dealer to pay for anything.

Michael Nicholson, Mordialloc

A PUBLIC Defender has contacted the dealer. They claim the damage was caused by driving the vehicle against advice, so the issue of fault is obviously in dispute.

As the matter already has been dealt with by Consumer Affairs your options are limited.

You could take the matter to VCAT, as I believe you have decided, but be mindful you must provide evidence to back your claim.

guarantees against the person or business from whom the dishwasher was purchased.

If the dishwasher was bought from the manufacturer, then unfortunately you would not be able to pursue any rights.

However, if you bought the dishwasher from another party — the builder or a separate retailer — you could demand they pay for the repair or replacement.

If a fault arises as a result of installation you could pursue the builder for rectification of the fault.

Limit on public liability

ANDREW DIMSEY



PRINCIPAL LAWYER, MAURICE BLACKBURN

WEDNESDAY'S *Herald Sun* included a tragic story of a grandmother who fell down stairs while holding her five-month-old granddaughter.

The impact resulted in the baby receiving permanent head injuries. The child's parents are now suing the grandmother for negligence.

In turn, the grandmother, together with the child's parents, are suing builders who completed renovations to the family's holiday home.

This case is an example of a law commonly known as "public liability".

Essentially, public liability law says an occupier owes a duty of care to visitors to ensure a person won't suffer injury because of the condition of the premises.

Examples include school-yard accidents and falls at supermarkets. It doesn't matter if the property is privately or publicly owned.

The occupier does not need to be in direct control or have knowledge of people on the site to be liable.

The law was altered in 2003 in response to a perceived "insurance crisis", and the federal and most state governments introduced limits on what could be claimed and thresholds for pain and suffering.

This dramatically reduced the number of claims and increased insurers' profits.

Legal advice is general in nature and is not to be regarded as legal advice from Maurice Blackburn.

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Fine mess for innocent Erin

AN innocent resident being bombarded daily with up to 25 fines, overdue bills and letters for former tenants is battling bureaucracy to stop the barrage.

Erin Thompson said the letters hadn't stopped since she moved into her Sunbury home in August, despite initially returning them and advising authorities.

Most of the letters are infringements for one man's unpaid CityLink tolls.

"First of all, I didn't think it was going to be a big deal, because it was just a couple of letters from CityLink," Ms Thompson said.

"Then, because he hasn't paid the fines, it's gone through to Victoria Police and the infringements court, and they just keep coming in and piling up."

Attempts to stop the flood of notices has been a bureau-

Wes Hosking

cratic nightmare, with the courts advising they are powerless to do anything until the offending driver updates his registration details with VicRoads.

CityLink also relies on VicRoads data to send late toll notices.

"I'm terrified one day I'm going to come home and they will have clamped our car or taken some of our property," Ms Thompson said.

The Public Defender found trying to fix the mess a complicated business.

A Department of Justice spokesman said it was looking into Ms Thompson's case, but confirmed: "Sheriff's officers will only ever take action against the person named on the infringement warrant."



Bombarded: Erin Thompson with letters for previous tenants. Picture: NORM OORLOFF

If you have to fight the system, don't fight it on your own.

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