



## HIGH COURT OF AUSTRALIA

5 December 2012

WESTFIELD MANAGEMENT LIMITED AS TRUSTEE FOR THE WESTART TRUST v AMP  
CAPITAL PROPERTY NOMINEES LIMITED AS NOMINEE OF UNISUPER LIMITED IN ITS  
CAPACITY AS TRUSTEE OF THE COMPLYING SUPERANNUATION FUND KNOWN AS  
UNISUPER

[2012] HCA 54

Today the High Court unanimously dismissed an appeal from a decision of the Court of Appeal of the Supreme Court of New South Wales regarding the terms of a unitholders' agreement between two corporations. The High Court held that the terms of the agreement did not fetter a party's statutory right to vote for the winding up of a managed investment scheme under the *Corporations Act 2001* (Cth) ("the Act").

Westfield and AMP Capital Property Nominees are the unitholders of a trust set up to acquire and operate a shopping centre in Perth. The trust is a managed investment scheme registered under the Act. AMP sought to invoke its right under the Act to vote on a resolution to direct that the scheme be wound up, and requested that a members' meeting be convened for that purpose. AMP was in a position to carry the resolution alone because it holds two-thirds of the units in the trust. Westfield opposed the resolution and obtained an injunction from the Supreme Court of New South Wales preventing AMP from voting in favour of it without Westfield's prior consent. Westfield relied upon two provisions of its unitholders' agreement with AMP. The first prohibits the sale of trust property without the written consent of the unitholders, and the second requires members to exercise their voting rights in a way that gives effect to the "intent and effect" of the agreement. The Supreme Court held that by voting for a winding up without Westfield's consent, AMP would breach the second provision because a winding up would inevitably lead to the shopping centre being sold.

AMP appealed to the Court of Appeal of the Supreme Court of New South Wales. The Court of Appeal held that "intent and effect" of the prohibition on selling trust property without consent did not include preventing a sale following a determination of the trust. Therefore, the restriction on how voting rights could be exercised did not preclude AMP from voting in favour of the resolution to wind up the scheme. The injunction was set aside.

Westfield appealed by special leave to the High Court. The High Court unanimously dismissed the appeal. The Court held that, on its proper construction, the prohibition on selling trust property without consent is directed to a sale during the continuance of the scheme; it does not apply where a resolution is passed by members to wind up the scheme, even if that would result in the trust property being sold.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*