

**SUPREME COURT OF VICTORIA
COMMERCIAL COURT BULLETIN**
No. 1/2011



Matter: Re VFS Group Pty Ltd (No 2); Re Perth Freight Lines Pty Ltd (No 2)

Judge: Davies J

Date: 16/12/2010

Citation: [2010] VSC 593

Subject: CORPORATIONS – Application to set aside a statutory demand — Whether offsetting claim – Whether “some other reason” - Alleged cross-claim arising by virtue of an entitlement to share in a distribution of company surplus upon completion of a voluntary winding up – Entitlement accruing under a transfer of shares - Whether transfer of shares void under [s 493A](#) of the [Corporations Act 2001](#) (Cth) – Whether equitable interest in distributable surplus– Assets of company said to include causes of action against former directors and related company – [Corporations Act 2001](#) (Cth) [ss 459G, 459J, 493A](#) – [Supreme Court \(Corporations\) Rules 2003 r 16.5\(1\)](#) – [Supreme Court \(General Civil Procedure\) Rules 2005 r 77.06\(7\)](#) – [Corporations Regulations 2001](#) (Cth) 5.6.70.

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Matter: Apartment Superstore Pty Ltd v Burstone Australia Pty Ltd
& Anor

Judge: Davies J

Date: 17/12/2010

Citation: [2010] VSC 592

Subject: CONTRACT – Commercial contract – Identification of contract –
Identification of terms –Whether special conditions part of contract –
Incorporation of terms by signature – Whether contract terminated –
Whether plaintiff estopped by conduct from denying termination.

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Matter: Commissioner of State Revenue v STIC Australia Pty Ltd & Anor

Judge: Davies J

Date: 17/12/2010

Citation: [2010] VSC 608

Subject: PRACTICE & PROCEDURE – Application for leave to appeal from VCAT – Whether question of law identified in the proposed notice of appeal – Jurisdiction of the Court under s 148 of the *Victorian Civil and Administrative Tribunal Act 1998*.

DUTIES ACT – “Just and reasonable” exemption in s 85 of *Duties Act 2000* – Scope of the dispensing power – Whether permissible to take into account that no change in beneficial ownership on a relevant acquisition – No error of law – *Challenger Listed Investment Ltd v Commissioner of State Revenue* [2010] VSC 464.

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Victorian Supreme Court of Appeal: Recent Appeals from Commercial Court Judgments

Matter: Kheirs Financial Services Pty Ltd & Anor v Aussie Home Loans Pty Ltd & Anor

Judges: Maxwell P, Tate JA and Habersberger AJA

Date: 20/12/2010

Citation: [2010] VSCA 355

Subject: **COSTS** – Third and fourth party proceedings – Where third parties and fourth parties succeed because defendant successful against plaintiff – Liability of plaintiff for costs restricted to issues raised by the statement of claim – Liability for the costs of third and fourth party proceedings - Whether usual rule of 'costs follow the event' applies – Whether costs should be apportioned by analogy with apportionment legislation – Whether costs should be allocated on an 'issues basis' – Need for judicial determination of issues before issues-based costs order can be made – *Johnson v Ribbins* [1977] 1 All ER 806, applied – *Spotless Group Ltd v Premier Building and Consulting Pty Ltd* [2008] VSCA 115, applied.

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