

SUPREME COURT OF
VICTORIA
COMMERCIAL COURT
BULLETIN

No. 23/2011



Matter: *Sidameneo (No 456) Pty Ltd v Ward and Magarey*

Judge: Croft J

Date: 11/11/2011

Citation: [2011] VSC 559

Subject: COSTS – Application for leave to discontinue proceedings on the basis that costs would be paid on a party and party basis – Whether costs on an indemnity basis appropriate in the circumstances – *Supreme Court (General Civil Procedure) Rules 2005*, Rules 25.02(2)(b), 25.05, 63.15 – *Civil Procedure Act 2010*, 28(2) – *Manderson M & F Consulting v Incitec Pivot Ltd (No 3)* [2011] VSC 441 – *Thomson Land Ltd v Lendlease Shopping Centre Development Pty Ltd* [2000] VSC 140 – *Re Tetijo Holdings Pty Ltd v Keeprite Australia Pty Ltd* [1991] FCA 187.

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Matter: *Sportsco Pty Ltd v Singh Group Pty Ltd (No 2)*

Judge: Ferguson J

Date: 11/11/2011

Citation: [2011] VSC 576

Subject: CORPORATIONS – Appeal from Associate Judge dismissing application to set aside statutory demand – Whether genuine dispute and offsetting claim – Whether agreement subject to finance – No genuine dispute or offsetting claim – *Corporations Act 2001* (Cth) ss 459G, 459H.

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Matter: *Stolar Joinery (Aust) Pty Ltd v Charterarm Investments Pty Ltd (in liquidation)*

Judge: Ferguson J

Date: 15/11/2011

Citation: [2011] VSC 577

Subject: CORPORATIONS – Application to terminate winding up – Factors to be established – Solvency – Protection of future creditors – Commercial morality and public interest – Director’s failure to comply with liquidator’s requests for information and to provide books and records – Failure to comply with tax obligations – Continuation of litigation by director after company in liquidation – *Corporations Act 2001* (Cth), s 482(1)

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Matter: *Tony Long & Co Pty Ltd v Jadeja*

Judge: Ferguson J

Date: 15/11/2011

Citation: [2011] VSC 582

Subject: CORPORATIONS – Appeal from Associate Judge dismissing application to set aside statutory demand – Time for compliance with demand expired before hearing of appeal – Consequences of non-compliance attached when time for compliance not extended – Appeal rendered nugatory – Appeal dismissed – *Corporations Act 2001* (Cth) ss 459C(2)(a), 459F(1), (2)(a)(ii), 459G

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Matter: *CC Containers Pty Ltd & ors v Lee & ors*

Judge: Ferguson J

Date: 23/11/2011

Citation: [2011] VSC 537

Subject: PRACTICE AND PROCEDURE – Application to amend statement of claim – Whether proposed pleading should be allowed in the exercise of the discretion – Whether proposed statement of claim pleaded material facts – Claim of tort of conspiracy – Alleged breach of fiduciary duty by a director – Allegations of receipt of secret commission and fraud.

TORTS – Tort of conspiracy – Combination or agreement - Requirement for intention to injure – Overt acts said to be post injury.

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

Matter: *Peet Limited & Ors v Richmond*

Judges: NETTLE and NEAVE JJA and JUDD AJA

Date: 6/11/2011

Citation: [2011] VSCA 343

Subject: Restitution – Action for work and labour done – Recovery on a quantum meruit – Land development – Whether appellant entitled on a quantum meruit claim to 20% of the increase in land value the result of rezoning contributed to by appellant’s work – Whether judge erred in making specific deductions from claim for work and labour done.

Practice and procedure – Interest – Whether appellant entitled to pre-litigation interest in circumstances where no particularised claim made until first day of trial – Delay – Appellant’s expenses not detailed in a timely manner – s 60

Supreme Court Act 1986.

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