

**SUPREME COURT OF VICTORIA
COMMERCIAL COURT BULLETIN**
No. 3/2010



Recent Judgments

Matter: Re Australian Business Colleges Pty Ltd

Judge: Davies J

Date: 2/03/2010

Citation: [2010] VSC 47

Subject: CORPORATIONS – Administrators – Personal liability of administrators for borrowed funds – Application by administrators for order as to operation of Pt 5.3A of the *Corporations Act 2001* (Cth) – Orders sought to relieve administrators of liability under s 443A of the *Corporations Act 2001* (Cth) – Administrators able to incur obligations without personal liability to facilitate company in administration to continue as a going concern so as to benefit creditors – Administrators to use borrowed funds for administration debts and administrators' remuneration – Ss 443A, 447A *Corporations Act 2001* (Cth).

NOTICE – Administrators decision to delay notifying creditors of orders sought – Best interest of creditors.

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Matter: Arnwell Pty Ltd v Teilaboot Pty Ltd & Ors

Judge: Croft J

Date: 12/04/2010

Citation: [2010] VSC 123

Subject: COMMERCIAL ARBITRATION — Domestic arbitration — Application to restrain arbitral proceedings from recommencing — s 47 of the *Commercial Arbitration Act 1984* (Vic) — Court's inherent power to prevent injustice — *Commonwealth of Australia v Cockatoo Dockyard Pty Ltd* (1995) 36 NSWLR 662 — *State of Victoria v Seal Rocks Victoria (Australia) Pty Ltd* [2001] VSCA 94; (2001) 3 VR 1 — Whether the Court can intervene in procedural matters

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Matter: Re Nillumbik Community Church Inc (in admin)

Judge: Davies J

Date: 16/04/2010

Citation: [2010] VSC 136

Subject: CORPORATIONS – Whether valid resolution to appoint an administrator – Whether administration should end because Church is insolvent – Standing to bring an application under ss 447A, 447C and 447E of the *Corporations Act 2001* (Cth).

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Matter: Mernda Developments Pty Ltd (in liq) & Anor v Alamanda Property Investments No 2 Pty Ltd & Anor

Judge: Pagone J

Date: 19/04/2010

Citation: [2010] VSC 132

Subject: CORPORATIONS LAW – Shadow Directors – Breach of duty – Avoidance of contract.

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Matter: Solak v Registrar of Titles & Ors (No 2)

Judge: Davies J

Date: 21/04/2010

Citation: [2010] VSC 146

Subject: ESTOPPEL – *Anshun* estoppel – Application for summary dismissal on ground of *anshun* estoppel – Original proceeding concerned fraudulent mortgage – Registrar of Titles was not a party to original proceeding – Whether unreasonable of the Plaintiff to refrain from raising his cause of action against the Registrar in the earlier proceeding – Possibility of conflicting judgments – Relitigation of issues

REAL PROPERTY – Torrens system – Mortgages – Registration of forged instrument – Indefeasibility of title – Entitlement to statutory indemnity – *Transfer of Land Act 1958* (Vic) ss 110(1)(b), (c) and 109(3).

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Matter: Thoroughvision Pty Ltd v Sky Channel Pty Ltd & Anor

Judge: Croft J

Date: 22/04/2010

Citation: [2010] VSC 139

Subject: ARBITRATION – Arbitration under the *Commercial Arbitration Act 1984* (Vic) – Judicial review of awards – Application for leave to appeal an award – s 38 of the *Commercial Arbitration Act 1984* (Vic) – Meaning of “manifest error of law on the face of the award” – Reference to arbitration of the question of construction of a document – *Anaconda Operations Pty Ltd v Fluor Australia Pty Ltd* [2003] VSC 275 – *Melbourne Harbour Trust Commissioners v Hancock* [1927] HCA 26; (1927) 39 CLR 570 – *Thiess Pty Ltd v ConnectEast Nominee Company Pty Ltd* [2008] VSC 287

Thoroughvision Pty Ltd v Sky Channel Pty Ltd & Anor (continued)

Subject: ARBITRATION – Arbitration under the *Commercial Arbitration Act 1984* (Vic) – Application to set aside the award – s 42 of the *Commercial Arbitration Act 1984* (Vic) – Meaning of “misconduct” – s 29(1)(c) of the *Commercial Arbitration Act 1984* (Vic) – Requirement for Arbitrator to give reasons – Standard of reasons required – *Oil Basins Ltd v BHP Billiton Ltd* [2007] VSCA 255; (2007) 18 VR 346 – *Gordian Runoff Limited v Westport Insurance Corporation* [2010] NSWCA 57

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Matter: Australian Leisure and Hospitality Group Ltd v Trust Company Fiduciary Services Ltd (No 2)

Judge: Judd J

Date: 23/04/2010

Citation: [2010] VSC 119

Subject: COSTS – Application for specific performance or costs agreement – Issues not pleaded – Apportionment - Parties elected to have the case decided on limited issues.

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Matter: Rentiers Pty Ltd & Anor v Wingara Wine Group Pty Ltd & Anor

Judge: Pagone J

Date: 27/04/2010

Citation: [2010] VSC 156

Subject: CONTRACT – Interpretation of terms – Payment of reasonable price – Implied term – Expert determination – Selection of expert – Obligation to abate management fees – Damages – *Mackay v Dick* (1881) 6 AC 251, *BP Refinery (Westernport) Pty Ltd v Shire of Hastings* [1977] HCA 40; (1977) 180 CLR 266.

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Matter: Buffalo Corporation Pty Ltd (Rec & man app'td) (in liq) v Primelife Corporation Limited & Ors (No 2)

Judge: Judd J

Date: 28/04/2010

Citation: [2010] VSC 151

Subject: COSTS – Application for leave to amend pleadings – Case Management Conference – *Supreme Court (General Civil Procedure) Rules 2005*, r 63.17(2).

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Matter: Re Saeco Australia Pty Ltd

Judge: Davies J

Date: 29/04/2010

Citation: [2010] VSC 161

Subject: PRACTICE & PROCEDURE – Appeal against orders of an Associate Justice – Whether leave is required – r 16.5 *Supreme Court (Corporations) Rules 2003*, r 77.06 *Supreme Court (General Civil Procedure) Rules 2005*.

PRACTICE & PROCEDURE – Principles governing grant of leave to appeal from a discretionary order where the appeal proceeds as a hearing de novo, if leave is granted.

Re Saeco Australia Pty Ltd (continued)

Subject: PRACTICE & PROCEDURE – Discovery – Non-compliance with orders – Summary dismissal of proceeding for non-compliance – Order setting aside the dismissal of the proceeding – Whether discretion wrongly exercised - Principles in *Jorgensen v Slater and Gordon Pty Ltd* [2008] VSCA 110 (Unreported, Maxwell ACJ, Forrest AJA, 18 June 2008) – Whether principles in *Aon Risk Services Australia Ltd v Australian National University* [2009] HCA 27; (2009) 239 CLR 175 should have been taken into account in the exercise of discretion – Decision not attended by sufficient doubt to warrant the grant of leave – Substantial injustice not shown – O 24.02 and O 24.06 *Supreme Court (General Civil Procedure) Rules 2005*.

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Matter: Oakton Services Pty Ltd v Tenix Solutions IMES Pty Ltd

Judge: Croft J

Date: 30/04/2010

Citation: [2010] VSC 176

Subject: ARBITRATION – Application for stay of Court proceedings – *Commercial Arbitration Act 1984*, s 53(1).

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