

**SUPREME COURT OF VICTORIA
COMMERCIAL COURT BULLETIN**
No. 4/2010



Recent Judgments

Matter: Allomak Limited & Ors v Allan & Ors

Judge: Davies J

Date: 6/05/2010

Citation: [2010] VSC 187

Subject: INTERLOCUTORY INJUNCTIONS – Application for discharge of freezing orders made inter partes – Whether arguably good case – Whether risk of dissipation of assets – Freezing of non-party assets – Whether should be discharged for material non disclosure on ex parte application – Whether Defendants have access to sufficient funds for payment of reasonable legal expenses – Whether undertakings as to damages sufficient – Prejudice on the basis that related companies cannot meet business expenses other than through the use of frozen assets – *Clout (Trustee) v Anscor Pty Ltd* [2001] FCA 174 (Unreported, Drummond J, 26 February 2001) – *Supreme Court (General Civil Procedure) Rules 2005 r 37A.05.*

[Click here for full text of judgment](#)

Matter: E-Fulfillment.com Pty Ltd v Panache Global Holdings Pty Ltd & Anor

Judge: Davies J

Date: 6/05/2010

Citation: [2010] VSC 188

Subject: INTERLOCUTORY INJUNCTIONS – Application for discharge of freezing orders made inter partes – Whether arguably good case – Whether risk of dissipation of assets – Freezing of non-party assets – Whether should be discharged for material non disclosure on ex parte application – Whether Defendants have access to sufficient funds for payment of reasonable legal expenses – Whether undertakings as to damages sufficient – Prejudice on the basis that related companies cannot meet business expenses other than through the use of frozen assets – *Clout (Trustee) v Anscor Pty Ltd* [2001] FCA 174 (Unreported, Drummond J, 26 February 2001) – *Supreme Court (General Civil Procedure) Rules 2005 r 37A.05.*

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Matter: AED Oil Limited & Anor v Puffin FPSO Limited

Judges: Buchanan and Bongiorno JJA and Croft AJA

Date: 7/05/2010

Citation: [2010] VSCA 109

Subject: COSTS – Application by the appellants for orders that the respondent pay the costs of the appeal and part of the costs of the proceeding below – *Supreme Court (General Civil Procedure) Rules 2005 (Vic) r 64.24(1)*

[Click here for full text of judgment](#)

Matter: Re ANZ Nominees Limited

Judge: Davies J

Date: 11/05/2010

Citation: [2010] VSC 197

Subject: TRUSTS – Plaintiff custodian of assets – Termination of custody agreements – Assets of agreement not yet transferred to successor custodian – Shares in a foreign corporation – Corporation nearing insolvency – Restructuring proposal – Instructions unable to be obtained – Application for the power to authorise and direct the execution of documents – Power of the Court to rule upon propriety of contemplated exercise of discretion – Whether it is expedient in the interests of the beneficiaries to order pursuant to s 63 of the *Trustee Act 1958* (Vic) the authority sought by the Plaintiff – *Hornsby v Playoust* (No. 2) [2005] VSC 125 – Trustee’s costs of the application on an indemnity basis – *Re Pasmenco Limited* [2004] FCA 656; 49 ACSR 470.

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Matter: BDO Group Investments (NSW-Vic) Pty Ltd & Ors v Ngo & Ors

Judge: Croft J

Date: 21/05/2010

Citation: [2010] VSC 206

Subject: INJUNCTION – Restraint of trade – Application to restrain defendants from working for any entity or person other than the second plaintiff or any of its subsidiaries or from carrying on, assisting, promoting or otherwise being engaged in or concerned in any business activity which competes with the business of the second plaintiff or any of its subsidiaries and from canvassing, soliciting, inducing or encouraging or enticing away from the second plaintiff or any of its subsidiaries the custom of any client of the second plaintiff or any of its subsidiaries without the prior written consent of the relevant plaintiff company or companies – Restraint contained in sale agreement for business, unitholder agreement and employment contracts – Whether the restraint was for the protection of the goodwill of the business or a restraint upon employment – Interlocutory injunctive relief granted pending early trial of the matter.

[Click here for full text of judgment](#)

Matter: Berndale Securities Limited v How Trading Pty Ltd & Anor

Judge: Judd J

Date: 26/05/2010

Citation: [2010] VSC 216

Subject: CONTRACT – Options trading – Default by client – Default powers – Liquidation of portfolio – Duty owed by broker to client – Duty of good faith – Duty to have regard to the interests of the client – Duty to act honestly and reasonably – Breach of duty when exercising default power – Limitations on liability of client to indemnify broker.

CORPORATIONS – Misleading or deceptive conduct – oral representations by a broker to its client – conduct by silence – *Australian Securities and Investment Commission Act 2000* (Commonwealth) s 12DA.

[Click here for full text of judgment](#)

Matter: Berndale Securities Limited v How Trading Pty Ltd & Anor (No 2)

Judge: Judd J

Date: 26/05/2010

Citation: [2010] VSC 218

Subject: PRACTICE AND PROCEDURE – Application to reopen trial – Fresh evidence unknown to defendants at the time of trial – Application allowed.

[Click here for full text of judgment](#)

Matter: Snowy Hydro Limited v Commissioner of State Revenue

Judge: Davies J

Date: 27/05/2010

Citation: [2010] VSC 221

Subject: DUTIES ACT 2000 (VIC) – Acquisition of an interest in a “landholder” – “Landholder” entitled to land and other property through a “linked entity” – “Linked entity” held land and other property under the terms of a joint venture – Construction of joint venture agreement – Joint venture parties owned the joint venture assets as tenants in common in proportion to their interests in the joint venture – Construction of s 74 of the *Duties Act 2000* (Vic) – Application of s 74 of the *Duties Act* to the joint venture – Joint venture not a “linked entity” – Joint venture not to be treated as if terminated – “Landholder” holds only the percentage interest in land and other property held by the “linked entity” under the joint venture – Unencumbered value of that interest – “Landholder” not “land rich” – No liability for duty – Ss 71(2), 74, 78, 79 of the *Duties Act 2000* (Vic)

WORDS AND PHRASES – “winding up”, “linked entity”

Snowy Hydro Limited v Commissioner of State Revenue (continued)

Subject: **FIXTURES** – Whether electricity generator units and ancillary plant chattels or fixtures – Applicable principles – Plant held to be fixtures

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Matter: J & G Knowles and Associates Pty Ltd v Crowncross Pty Ltd

Judge: Pagone J

Date: 28/05/2010

Citation: [2010] VSC 227

Subject: CONTRACT – Formation – Offer and acceptance – Exchange of letters – Contemplation of formal agreement – Whether parties intended to be immediately bound – Regard to surrounding circumstances.

[Click here for full text of judgment](#)

Matter: Re Orica Limited

Judge: Davies J

Date: 28/05/2010

Citation: [2010] VSC 231

Subject: CORPORATIONS – Proposed demerger – Application for convening of a meeting of shareholders – Function of the Court – s 411 of the *Corporations Act 2001* (Cth)

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