

**SUPREME COURT OF VICTORIA
COMMERCIAL COURT BULLETIN**
No. 5/2010



Recent Judgments

Matter: Solak v Registrar of Titles (No. 3)

Judge: Davies J

Date: 31/05/2010

Citation: [2010] VSC 235

Subject: PRACTICE & PROCEDURE – Costs – Whether unsuccessful plaintiff to pay defendants and third party costs – Whether party/party costs or indemnity costs to be awarded – Meaning of “full costs” – s 110(5) Transfer of Land Act 1958 (Vic)

PRACTICE & PROCEDURE – Whether third party claim should be dismissed as no order made on the disposition of that proceeding.

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Matter: Freestyle Energy Limited v Renewtek Pty Ltd

Judge: Ferguson J

Date: 8/06/2010

Citation: [2010] VSC 244

Subject: CORPORATIONS – Statutory demand – Appeal from Associate Judge setting aside statutory demand – dispute established – Appeal allowed – *Corporations Act 2001*.. Whether Sections 459G(1), 459H order of genuine 459H

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Matter: Groeneveld Australia Pty Ltd and ors v Wouter Nolten and ors

Judge: Ferguson J

Date: 9/06/2010

Citation: [2010] VSC 249

Subject: PRACTICE AND PROCEDURE - Whether leave to appeal should be granted from orders of Associate Judge dismissing application for joinder of further plaintiff and staying paragraphs of further amended statement of claim – whether decisions attended with sufficient doubt – whether substantial injustice if decisions not reversed.

PRACTICE AND PROCEDURE – application for joinder of New Zealand company seeking to sue in Victoria in respect of New Zealand claims – defendant resident in Victoria - whether forum inappropriate – availability of relief in New Zealand – existing proceedings in New Zealand and Victoria

PRACTICE AND PROCEDURE – declaration – utility when no damages to be recovered

Groeneveld Australia Pty Ltd and ors v Wouter Nolten and ors (Continued)

Subject: CORPORATIONS – shareholder – whether shareholder can sue for loss where separate duty owed to it – whether loss is a reflective loss suffered by the company

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Matter: Re Maryvell Investments Pty Ltd (In Liquidation) Judge:

Judge: Davies J

Date: 11/06/2010

Citation: [2010] VSC 278

Subject: PRACTICE AND PROCEDURE – Application for leave to commence a proceeding – Order in place restricting right to commence a proceeding – Leave refused – Insufficient material put to the Court to make out claim

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Matter: A.B.C. Developmental Learning Centres Pty Ltd v B.M. Children's Services Pty Ltd & Ors

Judge: Pagone J

Date: 16/06/2010

Citation: [2010] VSC 262

Subject: RETAIL LEASES – Section 89(4) [Retail Leases Act 2003](#) (Vic) – [Section 85 Constitution Act 1975](#) (Vic) – Jurisdiction conferred to Supreme Court – Relief against forfeiture claim – Whether court has accrued jurisdiction to hear related matters – *Xiao v Perpetual Trustee Company Ltd* [\[2008\] VSC 412](#) not followed.

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Matter: Metacorp Australia Pty Ltd v Andeco Construction Group Pty Ltd & Ors (No.2)

Judge: Vickery J

Date: 17/06/2010

Citation: [2010] VSC 255

Subject: BUILDING CONTRACTS - Finding of breach of the rules of natural justice in respect of an adjudication under the Building and Construction Industry Security of Payment Act 2002 (Vic) (the "Act") – Consequential finding that the adjudication determination was invalid – Relief in the nature of certiorari granted - Adjudication determination quashed – Adjudication application remitted back to the nominating authority appointed under the Act for reference to an adjudicator to be determined in accordance with law.

ADMINISTRATIVE LAW - Finding of breach of the rules of natural justice in respect of an adjudication under the Building and Construction Industry Security of Payment Act 2002 (Vic) (the "Act") – Consequential finding that the adjudication determination was invalid – Relief in the nature of certiorari granted - Adjudication determination quashed – Adjudication application remitted back to the nominating authority appointed under the Act for reference to an adjudicator to be determined in accordance with law.

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Matter: Perpetual Trustees Aust Ltd v Schmidt & Anor (No 3)

Judge: J Forrest J

Date: 17/06/2010

Citation: [2010] VSC 261

Subject: COSTS – Issue based orders – Solicitor/client costs order consequential on contractual indemnity.

INDEMNITY – Scope of indemnity – What costs and expenses form the subject of the indemnity.

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Matter: Buffalo Corp P/L v Lendlease Primelife Corp Ltd & Ors (No 3)

Judge: Judd J

Date: 21/06/2010

Citation: [2010] VSC 263

Subject: PRACTICE AND PROCEDURE – Security for costs – Relevance of litigation funder

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Matter: Buffalo Corp P/L v Lendlease Primelife Corp Ltd & Ors (No 4)

Judge: Judd J

Date: 21/06/2010

Citation: [2010] VSC 264

Subject: PRACTICE AND PROCEDURE – Application to strike out pleading as embarrassing and vexatious – Application to amend pleading to allege a crime as litigation misconduct.

COSTS – Application for costs of application for costs of application for leave to amend statement of claim.

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Matter: Re Brighter Directions Pty Ltd

Judge: Davies J

Date: 23/06/2010

Citation: [2010] VSC 287

Subject: CORPORATIONS – Derivative Action – Application for interim order for leave to bring proceeding on behalf of a company – Relevant criteria in granting leave – Whether applicant acting in good faith – Whether in best interests of company that leave be granted – Whether proposed proceeding involves serious issues to be tried – Whether leave can be granted nunc pro tunc – Corporations Act 2001 (Cth) ss 237, 241)

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Matter: Re Kallawar Holdings Pty Ltd

Judge: Davies J

Date: 24/06/10

Citation: [2010] VSC 288

Subject: CORPORATIONS – Statutory demand – Application to set aside – Claim of genuine dispute about existence of debt – Claim that “some other reason” why the demand should be set aside – Whether demand specified a fixed sum payable – Whether amount payable sufficiently verified – Corporations Act 2001 (Cth) ss 459G, 459H, 459J

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Matter: Environinvest Ltd v Marko Yuri Miski & Ors

Judge: Judd J

Date: 30/06/10

Citation: [2010] VSC 301

Subject: COMMERCIAL AND EQUITY – Managed Investment Scheme– Winding up by a person appointed under s 601NF(1) of the Corporations Act 2001 (Cth) – Conflict of duty – Person appointed to wind up the schemes also the liquidator of the responsible entity – Directions in winding up under s 601NF(2) of the Corporations Act.

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