

SUPREME COURT OF  
VICTORIA  
COMMERCIAL COURT  
BULLETIN  
**No. 7/2011**



**Matter:** Re AXA Asia Pacific Holdings Ltd (No 2)

**Judge:** Croft J

**Date:** 1/4/2011

**Citation:** [2011] VSC 102

**Subject:** CORPORATIONS – Schemes of arrangement - Acquisition of shares and cancellation of rights – Approval of scheme – Discretion - *Corporations Act 2001 (Cth)* ss 411(4), 411(11), 411(12) and 411(17) - *Re Coles Group Limited (No 2)* [2007] VSC 523; *Re Central Pacific Minerals NL* [2002] FCA 239; *Re Alabama, New Orleans and Pacific Junction Railway Co* [1891] 1 Ch 213; *Zenyth Therapeutics Ltd v Smith* (2006) 60 ACSR 548; *Re Lonsdale Financial Group Limited (No 2)* [2007] VSC 525; *Re Hostworks Group Ltd (No 2)* [2008] FCA 248; *Re Equinox Resources Ltd* (2004) 49 ACSR 692; *Re Rocksoft Ltd* [2006] FCA 1098.

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

**Matter:** Levy Schneider v Caesarstone Australia Pty Ltd & Anor

**Judge:** Davies J

**Date:** 4/4/2011

**Citation:** [2011] VSC 106

**Subject:** PRACTICE AND PROCEDURE – Application to split trial – Preliminary questions – Principles for exercise of discretion – Application refused – *Supreme Court (General Civil Procedure) Rules 2005 – Rule 47.04*

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

**Matter:** Re S&D International Pty Ltd (in liq) No 6

**Judge:** Robson J

**Date:** 4/4/2011

**Citation:** [2011] VSC 119

**Subject:** PRACTICE AND PROCEDURE – appeal from Associate Justice - application for a stay of execution of costs orders – debtor bringing further proceedings raising issues connected with proceedings in which costs orders made – relevant considerations for a stay - exceptional circumstances established – stay of execution granted on terms – Rules 1.14(b) and 66.16 of the *Supreme Court (General Civil Procedure) Rules 2005*

PRACTICE AND PROCEDURE – application to extend time to appeal under Rule 77(6) – one appeal in excess of three years out of time – leave refused – other appeal less than two weeks out of time – leave granted – Rule 77(6)

Continued next slide ...

## Re S&D International Pty Ltd (in liq) No 6 continued ...

**Subject:** PRACTICE AND PROCEDURE – application under Rule 66.16 where previous application for a stay of execution made and refused – jurisdiction of the Court to grant stay – whether jurisdiction exhausted by prior application – held jurisdiction not exhausted – stay granted – Rule 66.16

PRACTICE AND PROCEDURE – application to file and serve a charging summons – application granted on terms – Rules 1.14(b) and 73 of the *Supreme Court (General Civil Procedure) Rules 2005*

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

**Matter:** Eshuys v St Barbara Limited

**Judge:** Kaye J

**Date:** 6/4/2011

**Citation:** [2011] VSC 125

**Subject:** CONTRACT – Employment of managing director – Provision for payment of completion based performance amount on termination of employment – Waiver of condition for payment – Construction of contract – Use of background circumstances - Discretionary determination by one party of amount – Principles.

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

**Matter:** AED Oil Ltd v Puffin FPSO Ltd (No. 6)

**Judge:** Judd J

**Date:** 7/4/2011

**Citation:** [2011] VSC 115

**Subject:** Practice and procedure – Costs – Application to vary injunction -  
Injunction discharged – Proceeding stayed pending arbitration –  
Supervision of injunction

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

**Matter:** Mission Development Pty Ltd v Clover Dale Pty Ltd

**Judge:** Ferguson J

**Date:** 14/4/2011

**Citation:** [2011] VSC 148

**Subject:** CORPORATIONS – Winding up on grounds of insolvency - Appeal from Order of Associate Judge – standing to bring appeal – whether evidence sufficient to rebut presumption of insolvency – whether abuse of process or contrary to public interest and commercial morality - Appeal dismissed - s 471A *Corporations Act 2001*.

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

**Matter:** The Shell Company of Australia Limited v Commissioner of State Revenue

**Judge:** Davies J

**Date:** 14/4/2011

**Citation:** [2011] VSC 147

**Subject:** TAXATION – Whether Fire Service Levies paid by an insured directly to the Country Fire Authority and Metropolitan Fire and Emergency Services Board are dutiable under [s 179](#) of the [Duties Act 2000](#) (Vic) – Construction of [Part 2](#), Chapter 8 of the [Duties Act 2000](#) (Vic) – Definition of “premium” and “premium paid” – [Country Fire Authority Act 1958](#) (Vic) [s 80A](#) – [Metropolitan Fire Brigades Act 1958](#) (Vic) [s 44A](#) – ss 175 - 181, 184, 190 - 191 [Duties Act 2000](#) (Vic).

STATUTORY CONSTRUCTION – “premium”, “premium paid” – [Part 2](#) of Chapter 8 of the [Duties Act 2000](#) (Vic) [ss 177](#) – [181](#).

WORDS AND PHRASES – “means” and “includes”, “premium”, “premium paid”.

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

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

**Matter:** **Commissioner of State Revenue Victoria v Gas Ban Pty Ltd (in liq) formerly Capital Securities (Aust) Pty Ltd**

**Judges:** NETTLE and MANDIE JJA and HARGRAVE AJA

**Date:** 6/4/2011

**Citation:** [2011] VSCA 89

**Subject:** TAXATION – Payroll tax – Notices of assessment – Reassessments – Validity – Conclusiveness – Claim that assessments glaringly erroneous – Provision making assessments valid notwithstanding failure to comply with provisions of the Act – Provision making notice conclusive evidence of due making of assessment – Commissioner of Taxation of the Commonwealth of Australia v Futuris Corporation Ltd [\[2008\] HCA 32](#); [\(2008\) 237 CLR 146](#), applied – [Taxation Administration Act 1997](#) (Vic), [ss 17](#), [127](#), [96\(2\)](#).

TAXATION – Payroll tax – Collection and recovery – Statutory demand issued by Commissioner to recover tax – Effect of claim that assessments glaringly erroneous where application made to set aside statutory demand – [Taxation Administration Act 1997](#) (Vic) [ss 44](#) and [45](#); Corporations Act 2001 (C'th), [ss 459G](#), [459H\(1\)\(a\)](#), [459J\(1\)\(b\)](#)

Continued next slide ...

## Commissioner of State Revenue Victoria v Gas Ban Pty Ltd (in liq) formerly Capital Securities (Aust) Pty Ltd continued ...

**Subject:** CORPORATIONS – Winding up – Insolvency – Statutory demand – Statutory demand issued by Commissioner to recover tax – Genuine dispute as to existence of amount of debt – Whether claim that assessments glaringly erroneous can give rise to genuine dispute or constitute proper basis for exercise of power to set aside statutory demand for some other reason – Deputy Commissioner of Taxation v Broadbeach Properties Pty Ltd [\[2008\] HCA 41](#); [\(2008\) 237 CLR 473](#), applied – Corporations Act 2001 (C'th), ss 459G, 459H(1)(a), 459J(1)(b); [Taxation Administration Act 1997](#) (Vic), [ss 17, 44, 45, 96\(2\), 104, 110, 126, Part 10.](#)

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

# Current Cases

To access a list of upcoming trials in the Commercial Court please click the link:  
**[Commercial Court – Upcoming Trials](#)**

To access the list of current cases in the Commercial Court please click on the link:  
**[Supreme Court of Victoria - Commercial Court Current Cases](#)**

Information about the Commercial Court is available on the Supreme Court website at:  
**<http://www.supremecourt.vic.gov.au>**

# Further Information

For further information about this publication or to make changes to your mailing address (including removal from the mailing list) – please contact the Supreme Court Library.

Telephone: (03) 9603 6282

Facsimile: (03) 9642 0159

Email: [sclib@supremecourt.vic.gov.au](mailto:sclib@supremecourt.vic.gov.au)