

SUPREME COURT OF
VICTORIA
COMMERCIAL COURT
BULLETIN

No. 21/2011



Matter: *Grego v Copeland & Ors*

Judge: Ferguson J

Date: 20/10/2011

Citation: [2011] VSC 521

Subject: CORPORATIONS – Oppression – Application for leave to appeal from decision of Associate Judge – Exclusion from management and failure to make reasonable offer for shares – Characterisation of payments to company as shareholder loans rather than capital – Demand for injection of funds – Failure to hold shareholder meetings – Diversion of assets to new company – Failure to pay for expenses incurred on behalf of the company – Orders for purchase of shares – Date for valuation – Amount to be paid – *Corporations Act 2001* (Cth) s 232

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Matter: *In the matter of G R Finance Ltd*

Judge: Gardiner AsJ

Date: 21/10/2011

Citation: [2011] VSC 528

Subject: CORPORATIONS – External administration under [Part 5.3A](#) of the [Corporations Act 2001](#) (Cth) - Previous administrators resigned within day of their appointment and new administrators appointed, requiring meeting of creditors under [s 449C\(4\)](#) of the Act to be convened in close proximity to the first meeting of creditors required to be held under [s 436E](#) – Orders made pursuant to [s 447A](#) that [Part 5.3A](#) of the Act is to operate in regard to the administration such that the meetings could be held concurrently and that notice and advertising of the meeting required under [s 449C\(4\)](#) by [s 449C\(5\)](#) be dispensed with.

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Matter: *Owenlaw Mortgage Managers Limited v Shepparton Retail Investments Pty Ltd*

Judge: Gardiner AsJ

Date: 25/10/2011

Citation: [2011] VSC 544

Subject: CORPORATIONS – Application for winding up in insolvency under section 459P of the Corporations Act 2001 (Cth) – defendant presumed to be insolvent by reason of non compliance with statutory demand – defendant sought an adjournment of three months in order to produce audited accounts and enable debt to be paid – debt of \$24 million in respect of joint and several guarantee given by defendant for loan facility given to other member of corporate group which was now in liquidation - defendant contended that coguarantors would meet liability for payment from proceeds of sales of properties owned by them and that, “standing alone”, the defendant was solvent – defendant contended that court should exercise discretion not to make winding up order despite proof by plaintiff of matters required to be established – application for adjournment refused and winding up orders made.

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Matter: *Woodcroft-Brown v Timbercorp Securities Limited (in liq) & Ors (No 2)*

Judge: Judd J

Date: 27/10/2011

Citation: [2011] VSC 526

Subject: **CORPORATIONS** – Managed investment scheme – Group proceeding – Misleading or deceptive conduct claims - Common Questions – Costs – Final orders.

PRACTICE AND PROCEDURE – Group proceeding – Common Questions – Costs – Final orders.

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Matter: *Re Colorado Group Limited*

Judge: Gardiner AsJ

Date: 28/10/2011

Citation: [2011] VSC 552

Subject: CORPORATIONS – External administration under [Part 5.3A](#) of the [Corporations Act 2001 \(Cth\)](#) (“the Act”) – application by owners of property to enforce rights to possession of premises during administration of company pursuant to [s 440C\(b\)](#) of the Act– grant of leave not likely to materially effect the achievement of the objects of [Part 5.3A](#) of the Act – application granted.

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

Matter: Pamamull v Albrizzi (Sales) Pty Ltd (No 3)

Judges: NEAVE, HARPER and HANSEN JJA

Date: 25/10/2011

Citation: [2011] VSCA 320

Subject: COSTS – Appeal succeeded only to extent that costs order for \$1500 against appellant’s solicitor set aside - Appeal otherwise dismissed as no arguable defence on the merits – Whether costs ought follow event – Appeal arose primarily because unrepresented appellant was denied natural justice and adjournment at trial – Respondent’s lawyers’ conduct contributed to bringing of appeal – Circumstances justifying departure from ordinary rule - No order for costs of appeal – No order for costs of appellant’s application to set aside judgment given on day that adjournment was wrongly denied – Respondent’s application for indemnity certificate refused - [Appeal Costs Act 1998, s 4\(1\)](#).

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

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

Matter: *Central Pacific Holdings Pty Ltd & Anor v State of Victoria*

Judges: MANDIE and HARPER JJA, ROBSON AJA

Date: 28/10/2011

Citation: [2011] VSCA 322

Subject: CONTRACT – Sale of land – Sale of the Southern Cross Hotel site – Construction of contract of sale – Vendor agreed to indemnify the purchaser and any related body corporate against liability for payment of any land tax on the hotel site for the period prior to the date of sale – Whether indemnity extended to any related body corporate or only a related body corporate that was substituted as purchaser – In construing contract history of negotiations considered and purpose of the indemnity clause in light of previous land tax issues relating to the site – Held that indemnity only extended to a related body corporate that was substituted as purchaser – Appeal dismissed – s 3(5) of the *Melbourne Market and Park Land Act 1933*; *Land (Revocation of Reservations) Act 1994* considered.

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

Matter: *National Nominees Limited & Anor v Agora Asset Management Pty Ltd*

Judges: WARREN CJ, MANDIE JA and JUDD AJA

Date: 28/10/2011

Citation: [2011] VSCA 327

Subject: CONTRACT – Interpretation – Managed investment scheme – Public unit trust - Membership in trust by application contained in information memorandum – Constitution and information memorandum formed the contract – Discretionary imposition of an exit fee up to 5% authorised by constitution – Initial information memorandum specified nil exit fee and required 30 days’ written notice of “any proposed change” to fees – Whether notification that after 30 days there would be a withdrawal fee of up to 5% of the withdrawal proceeds at the absolute discretion of the responsible entity satisfied the notice requirement.

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