

NOTICE OF FILING

Details of Filing

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File Title: IN THE MATTER OF ONESTEEL MANUFACTURING PTY LIMITED
(ADMINISTRATORS APPOINTED) ACN 004 651 325
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Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



No. VID 420 of 2025

Federal Court of Australia
District Registry: Victoria
Division: Commercial and Corporations List

**IN THE MATTER OF ONESTEEL MANUFACTURING PTY LIMITED
(ADMINISTRATORS APPOINTED) ACN 004 651 325**

**SEBASTIAN DAVID HAMS, MARK FRANCIS XAVIER MENTHA, LARA LUISA
WIGGINS AND MICHAEL ANTHONY KORDA IN THEIR CAPACITY AS JOINT AND
SEVERAL ADMINISTRATORS OF ONESTEEL MANUFACTURING PTY LIMITED
(ADMINISTRATORS APPOINTED) ACN 004 651 325**

First Plaintiffs

**ONESTEEL MANUFACTURING PTY LIMITED (ADMINISTRATORS APPOINTED)
ACN 004 651 325**

Second Plaintiff

and

WHYALLA PORTS PTY LTD ACN 153 225 364

First Defendant

GOLDING CONTRACTORS PTY LTD ACN 009 732 794

Second Defendant

PLAINTIFFS' POINTS OF CLAIM

(filed in accordance with the orders of O'Callaghan J made on 29 April 2025)

Capitalised terms have the same meaning as those in the affidavit of Michael Anthony Korda dated 2 April 2025 unless otherwise stated.

Overview

1 The Second Plaintiff (**OneSteel**) has exclusive proprietary and other operational rights with respect to the port in Whyalla. It conducts its operations at the port in a geographically landlocked area. The rights asserted by the First Defendant (**Whyalla**

Filed on behalf of: the First and Second Plaintiffs

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Ports) to portions of land within the port are legally baseless but, also, practically nonsensical given the inability of any third party to physically access those areas.

OneSteel's business and the port

2 On 19 February 2025, the State Government of South Australia (**State**) appointed the First Plaintiffs as Administrators of OneSteel.

3 OneSteel occupies land and certain structures on and around the port of Whyalla as part of its business of mining, manufacturing and distributing steel products.

4 OneSteel:

(a) is the registered proprietor of much of but not all of the land comprising the port (better described as: Certificates of Title 6105/304, 6141/526, 5582/363, 5463/457, 5603/813 and 6144/964 and Crown Leases 6213/636, 6189/771 and 6268/422); and

(b) has been granted exclusive rights with respect to that land and the areas around it, including to:

(i) use, occupy, and maintain wharves and jetties constructed by OneSteel (pursuant to Perpetual Licence 319 under *The Broken Hill Proprietary Company Limited Hummock Hill to Iron Knob Tramways and Jetties Act 1900* (SA));

(ii) construct, use, occupy and maintain jetties and wharves, buildings, works, tramways and roads (by virtue of cl 7 of the Consolidated Indenture to the *Broken Hill Proprietary Company's Indenture Act 1937* (SA));

(iii) operate bulk shipping facilities, marinas and boating facilities (under Perpetual Licence 319A (Crown Lease 1013/20)); and

(iv) exclude persons from taking a vessel into specified waters in and around the port (pursuant to the *Harbours and Navigation Regulations 2009* (SA)).

5 The effect of the exclusive rights referred to in [4] above is that only OneSteel is authorised to operate the port.

The purported lease

- 6 A document purporting to be a lease with respect to certain areas within the port was apparently executed by One Steel and Whyalla Ports on 29 June 2018 (the **Lease**).
- 7 The Lease purports to grant exclusive possession to certain areas defined in the Lease as the **Premises**.
- 8 The Initial Term of the Lease is stated to be 1 January 2012 to 31 December 2018.
- 9 For the reasons set out below, the Administrators do not consider that the Lease is valid or otherwise of legal effect and, on 27 March 2025, the Administrators caused to be served on Whyalla Ports a Notice of Termination and Repossession.
- 10 On 28 March 2025 Whyalla Ports asserted that the Lease was operative.

The Lease is prohibited by statute

- 11 Clause 31 of the Consolidated Indenture to the *Whyalla Steel Works Act 1958* (SA) provides, inter alia, that 'rights, powers, benefits or privileges conferred on [OneSteel] by virtue of this indenture' or 'any mineral or other lease held by [OneSteel] at the date of the ratification of this Indenture or acquired by [OneSteel] pursuant to this Indenture' may be assigned by OneSteel 'with the consent of the State'.
- 12 On the proper construction of cl 31:
- (a) OneSteel may only assign the relevant rights, powers, benefits, privileges or leases with the consent of the State; and
 - (b) any purported assignment of rights, powers, benefits, privileges or leases without such consent is void *ab initio*, unenforceable or of no legal effect.
- 13 The Lease:
- (a) purports to assign rights, powers, benefits or privileges and/or a lease the subject of cl 31 of the *Whyalla Steel Works Act 1958* (SA) Consolidated Indenture;
 - (b) purports to exclude OneSteel from the land and fixtures over which it has exclusive rights to operate its business;
 - (c) was executed without the consent of the State and, accordingly,
 - (d) is void *ab initio*, unenforceable or of no legal effect.

The Lease is void for uncertainty

- 14 The Lease defines the Premises as 'the portion of the land in [Certificates of Title 6105/304, 6141/526, 5582/363, 5463/457 and 5603/813] described in Annexure A'.
- 15 Annexure A comprises two parts:
- (a) The first part of Annexure A is '[t]he area directly underneath the structures':
 - (i) identified as
 - (A) OSF #2; and
 - (B) Tip pocket; and
 - (ii) the shiploader extending from OSF #2,
as identified in the plan attached as Part 1 of Annexure A.
 - (b) The second part of Annexure A is 'the area directly underneath and 10 metres either side of the rail lines identified as [three specified railway lines]' as identified in the plan attached as Part 2 of Annexure A.
- 16 OSF#2 is the Outer Storage Facility. OSF#2 was not built at the time the Lease purported to operate.
- 17 OSF#2 is:
- (a) located on land of which OneSteel is the registered proprietor, namely, CT6144/964, CT5463/457 and CT5582/363; but
 - (b) largely located on CT6144/964, which Certificate of Title is not specified in the definition of Premises or otherwise referred to in the Lease.
- 18 The Tip Pocket is located on Crown Lease 6213/636, which Crown Lease is not referred to in the Lease
- 19 Portions of the shiploader are also located on that Crown Lease 6213/636. The shiploader otherwise appears on land for which the Second Plaintiff is the registered proprietor, namely, CT5603/813, CT5582/363, CT5463/457 and CT6144/964. The Certificates of Title are named in the Lease.
- 20 The Lease includes reference to rail assets which were not in existence at the commencement of the Initial Term.

- 21 The areas purportedly comprising the Premises in Annexure A to the Lease include land which is on Certificates of Title not referred to in the definition of Premises or otherwise referred to in the Lease.
- 22 In those circumstances, an essential element of the Lease, namely the land in respect of which it purported operates, is uncertain and the Lease is accordingly void and unenforceable.
- 23 Additionally, some of the rail assets referred to in the second part of Annexure A (comprising the area around the blue lines on the western part of the plan in part 2) are not on land over which OneSteel has any proprietary right. OneSteel plainly cannot purport to lease land over which it does not itself have exclusive possession.

The Lease is a sham

- 24 The Lease purports to cover a time period during which the Administrators were previously the administrators of the Arrium Group (which included OneSteel), and the Administrators did not know and were not aware of any lease over the relevant areas existing between OneSteel and Whyalla Ports during that time.
- 25 The rent provided for under the Reference Schedule and cl 5 of the Lease, being \$1,000 per month inclusive of outgoings, is uncommercial.
- 26 Rent was not in fact paid by Whyalla Ports under the Lease.
- 27 There are conflicting accounts as to whether Whyalla Ports exercised a purported 99 year option.
- 28 In the circumstances set out in [11] to [27] above it is to be inferred that the parties did not intend to create legal relations in entering into the Lease, that there was no lease during the Initial Term or subsequently, and that the Lease is a sham.

The Lease was repudiated

- 29 By reason of Whyalla Ports' breaches of essential terms under the Lease, including the failure to pay rent, Whyalla Ports evinced an intention not to be bound by the Lease and repudiated it.
- 30 The Plaintiffs accepted the repudiation by virtue of the Notice of Termination and Repossession and the Lease has therefore been terminated.

Relief sought

31 The Administrators seek a declaration that the Lease is void *ab initio*, unenforceable or of no legal effect, or alternatively has been terminated by virtue of the Notice of Termination and Repossession.

32 In the alternative, and in the circumstances, the Administrators seek an order pursuant to s 447A(1) of the *Corporations Act* or s 90-15 of the *Insolvency Practice Schedule (Corporations) 2016* that Part 5.3A of the *Corporations Act* is to operate in relation to OneSteel as if the disclaimer provisions in s 568 of the *Corporations Act* apply to it.

Date: 8 May 2025



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Signed by Leon Zwier

Lawyer for the First and Second Plaintiffs