

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
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



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.

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

No VID 420 of 2025

**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 and another named in Schedule 1

Plaintiffs and Cross-Respondents

and

WHYALLA PORTS PTY LTD ACN 153 225 364

First Defendant and Cross-claimant

and

GOLDING CONTRACTORS PTY LTD (ACN 009 734 794)

Second Defendant

FIRST DEFENDANT'S POINTS OF REPLY

Capitalised terms are terms defined in the Whyalla Ports' points of claim dated 8 May 2025 (**Whyalla Ports Points of Claim**).

1. Whyalla Ports admits the allegations contained in paragraphs 2, 4, 6, 7, 8, 9, 10, 11 and 14, 15 and 20 of the plaintiff's points of claim dated 8 May 2025 (**OSM Points of Claim**).
2. Whyalla Ports takes issue with the balance of the OSM Points of Claim, relies on its Points of Cross-Claim and makes the following points more specifically.
3. To **paragraph 3**, Whyalla Port says to the extent OSM occupies land and structures on and around the port of Whyalla, it is subject to the terms of the Lease and other contractual arrangements between OSM and/or Whyalla Ports and other third parties.

4. To **paragraph 5**, Whyalla Port says that OSM’s authorisation to operate the port is not inconsistent with Whyalla Ports’ rights:
- (a) as under the Lease;
 - (b) to the ownership of the Port Assets; and
 - (c) under the Management Services Agreement and Administrative Services Agreement between Whyalla Ports and OSM.¹
5. To **paragraphs 12 and 13**, Whyalla Ports says:
- (a) clause 31 of the Consolidated Indenture concerns assignment; it does not prevent entry into a lease such as the Lease;
 - (b) the Lease does not “assign” or otherwise confer any right, power, benefit or privilege the subject of cl 31 of the Consolidated Indenture;
 - (c) to the extent that the Lease was executed without the consent of the State:
 - (i) the absence of the State’s consent does not render the Lease void *ab initio*, unenforceable or of no legal effect, and in that regard Whyalla Ports refers to paragraph 1(b) of its points of claim dated 8 May 2025; and
 - (ii) the State was put on notice of the existence of the Lease in July 2021 and June 2022 and did not object to the Lease or to its terms;² and
 - (d) the Lease remains valid and binding according to its terms.
6. To **paragraph 16**, Whyalla Ports says that at the time the Lease was executed, if not at an earlier date, OSF#2 had been constructed.
7. To **paragraph 17**, Whyalla Ports admits that OSF#2 is located on land of which OSM is the registered proprietor but says that the Premises including OSF#2 is clearly identified in Annexure A of the Lease.

¹ See Affidavit of Theunis Jacobus Victors affirmed on 17 April 2025 at [24].

² Annexure MAK-1 at 943.

8. To **paragraph 18** Whyalla Ports admits that the Tip Pocket is located on a Crown Lease but says that the Premises including the Tip Pocket is clearly identified in Annexure A of the Lease.
9. To **paragraph 19** Whyalla Ports says the shiploader is not located on Crown Lease 6213/636. It is located on the land described in the certificates of title named in the Lease.
10. To **paragraphs 21 and 22**, Whyalla Ports says:
 - (a) Annexure A of the Lease specifically identifies land that is the subject of the Lease, of which OSM is the registered proprietor (or lessee under a crown lease). The land the subject of the Lease is capable of precise identification. On its proper construction, the Lease cannot be said to be uncertain; and
 - (b) the parties have part performed the Lease, including by undertaking the steps described in paragraph 1(b)(iv) of the Whyalla Ports Points of Claim and by Whyalla Ports providing consideration equivalent to rent.
11. To **paragraph 23**, the Lease does not purport to apply to the land around the blue lines on the western part of the plan in part 2 of Annexure A, because the land the subject of the Lease that is identified in part 2 of Annexure A is limited to “the area directly underneath and 10 metres either side of the rail lines identified as (a) New Narrow Gauge Ore Rail Line; (b) New Standard Gauge Ore Rail Line; and (c) Realigned Standard Gauge Line ...” The blue lines on the western part of the plan in part 2 of Annexure A are identified as “New Standard Gauge – Loco Maintenance Facility”.
12. To **paragraphs 24 to 28**, Whyalla Ports says that:
 - (a) the Lease bears an execution date of 29 June 2018 and states that it commences on 1 January 2012;
 - (b) Whyalla Ports is holding over under the existing terms of the Lease and does not purport to have exercised an option;

- (c) in accordance with the intercompany loan arrangements in place between OSM and Whyalla Ports (comprising a loan facility agreement entered into between OSM and Whyalla Ports, and Whyalla Ports' practice of making payments by regularly "sweeping" its accounts in favour of OSM), Whyalla Ports made recurring bank account transfers to OSM with the net effect that as at 19 February 2025, OSM owed Whyalla Port approximately \$107 million; and
- (d) the matters set out in those paragraphs are in any event incapable of establishing that the Lease was a sham.

13. To **paragraphs 29 and 30**, Whyalla Ports:

- (a) denies that payment of rent was an essential term of the Lease, but says that the obligation to pay rent was satisfied by the matters described at para 12(c) above;
- (b) denies that any essential term of the Lease was breached; and
- (c) to the extent that any essential term of the Lease was breached (which is denied), OSM elected to affirm the continued legal operation of the Lease by continuing to rely on the existence of a valid Lease (see paras 1(b)(iii) and (iv) of Whyalla Ports' points of claim dated 8 May 2025). OSM is bound by that election.

14. To **paragraph 32**, Whyalla Ports says that the court should not exercise its discretion in favour of making orders under s 447A of the Corporations Act, because:

- (a) the exercise of the disclaimer power would cause prejudice to Whyalla Ports by depriving it of property of extraordinary value for no meaningful consideration;
- (b) the exercise of the disclaimer power would cause prejudice to creditors of Whyalla Ports, which could not have foreseen the existence or exercise of such a power when they agreed to deal with Whyalla Ports;

- (c) in particular, the exercise of the disclaimer power would prejudice **Golding Contractors Pty Ltd**. In November 2024, Golding became Whyalla Ports' largest creditor as a result of Whyalla Ports, at OSM's request, granting a guarantee and security to Golding in order to prevent Golding enforcing more than \$80 million of debts then owed to Golding by OSM for mining contracting services;³
- (d) to prejudice one particular creditor of OSM in that way is contrary to the objects of Part 5.3A of the Corporations Act;
- (e) the grant of s 447A relief is not necessary to achieve the objectives of Part 5.3A in respect of the voluntary administration of OSM; and
- (f) on 28 April 2025 Whyalla Ports sent open correspondence to OSM setting out the terms of an arrangement (**Offer**) that:
 - (i) allowed OSM to occupy the Land and use the Whyalla Ports Assets immediately;
 - (ii) provided for the surrender of the Lease and the transfer to OSM of the Whyalla Ports Assets;
 - (iii) allowed the Administrators to convey clear title to the Land and the Whyalla Ports Assets to an interested party;
 - (iv) allowed for the swift resolution of the dispute and the certainty ostensibly sought by the voluntary administrators of OSM in commencing this proceeding, avoiding any related delay to the sale or recapitalisation of OSM; and
 - (v) enabled Whyalla Ports to pay the debt owed to Golding; but
 - (vi) OSM failed to accept the Offer.

Date: 14 May 2025

Stewart J. Maiden

³ Affidavit of Theunis Jacobus Victors affirmed on 17 April 2025 at [41].

Christopher Hibbard