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(ADMINISTRATORS APPOINTED) ACN 004 651 325
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A handwritten signature in blue ink that reads "Sia Lagos".

Registrar

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Second Defendant's Points of Reply

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

WHYALLA PORTS PTY LTD ACN 153 225 364

First Defendant

GOLDING CONTRACTORS PTY LTD ACN 009 732 794

Second Defendant

Filed on behalf of (name & role of party)	Second Defendant		
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A. SECOND DEFENDANT'S POINTS OF REPLY TO PLAINTIFFS' POINTS OF CLAIM

1. As to paragraph 1 of the Plaintiffs' Points of Claim (**PPoC**):
 - (a) the Second Defendant (**Golding**) denies the Second Plaintiff (**OneSteel**) has exclusive proprietary and other operational rights with respect to the port at Whyalla;
 - (b) at all material times before the First Plaintiffs (**Administrators**) were appointed as administrators of OneSteel on 19 February 2025, the First Defendant (**WP**) conducted the business of logistics and port operations at the port at Whyalla as a separate entity, separate from OneSteel;
 - (c) **Golding** also denies the other allegations in the paragraph.
2. As to paragraph 2 of the PPoC:
 - (a) on 19 February 2025, the *Whyalla Steel Works (Charge on Property) Amendment Act 2025* (SA) amended the *Whyalla Steel Works Act 1958* (SA) (by inserting s 3A) to give the State Government of South Australia, for the first time, a "first ranking charge" over all of OneSteel's property "securing payment" of any amount owed to the State;
 - (b) on the same day, 19 February 2025, the State then purported to appoint the First Plaintiffs as the Administrators of OneSteel.
3. As to paragraph 3 of the PPoC:
 - (a) at all material times before the Administrators were appointed, WP occupied land and owned property on and around the port at Whyalla as part of its separate business of logistics and port operations;
 - (b) OneSteel also occupies land and certain structures on and around the port at Whyalla as part of its separate business.
4. As to paragraph 4 of the PPoC:
 - (a) **Golding** admits that:
 - (i) OneSteel is the registered proprietor of Certificates of Title 6105/304, 6141/526, 5582/363, 5463/457, 5603/813 and 6144/964;
 - (ii) OneSteel is the Crown Lessee of Crown Leases 6213/636, 6189/771 and 6268/422;

- (b) Golding admits that OneSteel has the right to occupy, maintain and use jetties, wharves and quays situated in the area the subject of Perpetual Licence 319 granted under s 23 of *The Broken Hill Proprietary Company, Limited's Hummock Hill to Iron Knob Tramways and Jetties Act 1900* (SA);
 - (c) the area the subject of Perpetual Licence 319 is not a relevant area for the purpose of these proceedings;
 - (d) Golding:
 - (i) admits that OneSteel has the right to occupy, maintain and use all jetties, wharves, works, buildings, approaches, roads, ways, tramways and conveniences in the area the subject of Perpetual Licence 319A (being Crown Lease 6213/636 (formerly Crown Lease 1013/20)), which were constructed pursuant to cl 7 of the Indenture (**1937 Indenture**) set out in Schedule 1 and Schedule 2 of the *Broken Hill Proprietary Company's Indenture Act 1937* (SA);
 - (ii) does not admit that Perpetual Licence 319A grants the exclusive right to operate bulk shipping facilities, marinas and boating facilities;
 - (e) Whyalla's property (including the item identified as the "Tip pocket"; part of the system of conveyors and transfer towers linking the Tip pocket to the Outer Storage Facility (or OSF #2) (**Ore Storage Sheds Infeed System**); and part of the standard gauge line and narrow gauge rail line) is in the area the subject of Perpetual Licence 319A (being Crown Lease 6213/636 (formerly Crown Lease 1013/20));
 - (f) reg 10 of the *Harbors and Navigation Regulations 2023* (SA) (**2023 Regulations**) (which revoked the *Harbors and Navigation Regulations 2009* (SA)) provides that a person who, without the approval of the Chief Executive of the Department for Infrastructure and Transport, takes any "control" identified in Part 2 of Schedule 5 of the 2023 Regulations (including taking a vessel or operating a vessel in the area), in areas identified in Part 1 of Schedule 5 of the 2023 Regulations at the port at Whyalla, is guilty of an offence;
 - (g) Golding does not admit that OneSteel may exclude persons from taking a vessel in specified waters in or around the port at Whyalla.
5. Golding does not admit paragraph 5 of the PPOC.
 6. As to paragraph 6 of the PPOC:
 - (a) on 29 June 2018, OneSteel and WP executed a lease (**Lease**) to give WP a lease over certain areas at the port at Whyalla (Lease, cl 2.1(a)) where WP's property

is located and where WP had been in occupation before the execution of the lease (Lease, Schedule 1 – Special Conditions, cl 1(a));

- (b) the Lease is effective on its terms.
7. As to paragraph 7 of the PPOC, the Lease granted exclusive possession to WP (Lease, cl 2.1(a), cl 9.1, Reference Schedule [Item 9, Permitted Use], cl 16.5, Annexure A, para 2).
 8. As to paragraph 8 of the PPOC, the term of the Lease is stated to commence on 1 January 2012.
 9. As to paragraph 9 of the PPOC:
 - (a) the issue is not to be determined based on what the Administrators consider but the true legal position;
 - (b) the Administrators were not entitled to serve on WP a Notice of Termination and Repossession;
 - (c) the Notice of Termination and Repossession was ineffective in that:
 - (i) there was no right to terminate the Lease within cl 18.2 of the Lease (as the Administrators considered);
 - (ii) contrary to s 10 of the *Landlord and Tenant Act 1936* (SA), the notice did not specify the particular breach complained of and did not require it to be remedied.
 10. As to paragraph 10 of the PPOC, the Lease was and is operative and this was not merely an assertion that WP made on 28 March 2025.
 11. Golding admits paragraph 11 of the PPOC.
 12. As to paragraph 12 of the PPOC:
 - (a) OneSteel’s rights to the areas at the port at Whyalla the subject of the Lease were not all given to OneSteel under the indenture set out in Schedule 1 and Schedule 2 of the *Whyalla Steel Works Act 1958* (SA), which indenture appears in a consolidated form titled “Consolidated Indenture” at the end of *Whyalla Steel Works Act 1958* (SA) (**1958 Consolidated Indenture**);
 - (b) the areas the subject of Certificates of Title 6141/526 and 6105/304 were the subject of grants of estates in fee simple to The Broken Hill Proprietary Company Limited (OneSteel’s predecessor) that predate the 1958 Consolidated Indenture;

- (c) the areas the subject of Certificates of Title 5603/813, 5582/363 and 5463/457 are purportedly grants of estates in fee simple under the 1958 Consolidated Indenture but there is no proof that these areas were properly the subject of grants under the 1958 Consolidated Indenture;
 - (d) the area the subject of Certificate of Title 6144/964 is a transfer of an estate in fee simple transferred by the Minister for Transport and Infrastructure on 20 August 2014 purportedly pursuant to the 1958 Consolidated Indenture but there is no proof that this transfer was properly the subject of the 1958 Consolidated Indenture;
 - (e) on its proper construction:
 - (i) cl 31 of the 1958 Consolidated Indenture does not preclude a lease being granted by the holder of an estate in fee simple in that:
 - (A) OneSteel as holder of the fee simple in land may lease the land;
 - (B) any “right, power, benefit, or privilege conferred on” OneSteel by the 1958 Consolidated Indenture is a reference to rights and liabilities under the 1958 Consolidated Indenture, not a reference to the rights of a fee simple holder even when the fee simple was granted under the 1958 Consolidated Indenture (which has not been shown);
 - (ii) the grant of the Lease is not within “assign” as used in cl 31 of the 1958 Consolidated Indenture;
 - (iii) if, which is denied, the grant of the Lease falls within “assign” as used in cl 31 of the 1958 Consolidated Indenture, any such assignment is effective and not void *ab initio*, unenforceable or of no legal effect absent the consent of the State.
13. As to paragraph 13 of the PPOC, Golding:
- (a) denies paragraphs 13(a), 13(b) and 13(d);
 - (b) does not admit paragraph 13(c).
14. As to paragraph 14 of the PPOC:
- (a) by cl 1 of the Lease:
 - (i) “**Premises**” “has the meaning in Item 3 of the Reference Schedule and includes the Lessor’s Property”;

- (ii) “**Lessor’s Property**” includes all those buildings, improvements, fittings, fixtures and chattels contained in or on the Premises before the Commencement Date or which are installed on or constructed by OneSteel from time to time;
 - (b) Item 3 of the Reference Schedule of the Lease provides that the Premises are that portion of the land in Certificates of Title 6105/304, 6141/526, 5582/363, 5463/457 and 5603/813 “described in Annexure A” of the Lease.
15. As to paragraph 15 of the PPOC:
- (a) Golding admits the paragraph;
 - (b) the Tip pocket sits on land the subject of Perpetual Licence 319A (being Crown Lease 6213/636);
 - (c) further, the parties to the Lease refer to the area directly underneath the structure identified as “Tip pocket” in Annexure A to the Lease because their objective intention was to give WP a lease over the area underneath the “Tip pocket”;
 - (d) this objective intention is also apparent from the plan attached as Part 1 of Annexure A to the Lease, which depicts the structure.
16. As to paragraph 16 of the PPOC:
- (a) “OSF #2” is the Outer Storage Facility, and consists of two ore storage sheds;
 - (b) if, which is not admitted, the Outer Storage Facility (OSF #2) was not built at the “Commencement Date” of the Lease of 1 January 2012:
 - (i) nothing relevant follows;
 - (ii) further, the Outer Storage Facility (OSF #2) had been built by the time the Lease was executed on 29 June 2018.
17. As to paragraph 17 of the PPOC:
- (a) the Outer Storage Facility (OSF #2) sits on land the subject of Certificates of Title 6144/964, 5463/457 and 5582/363;
 - (b) the parties to the Lease refer to the area directly underneath the structure identified as “OSF #2” in Annexure A to the Lease because their objective intention was to give WP a lease over the area underneath the Outer Storage Facility;
 - (c) this objective intention is also apparent from the plan attached as Part 1 of Annexure A to the Lease, which depicts the structure.

18. As to paragraph 18 of the PPOC, Golding repeats paragraph 15 above.
19. As to paragraph 19 of the PPOC:
 - (a) the shiploader is a crane that sits on the area the subject of Certificate of Title 6144/965, which was constructed for WP in about 2012/2013 and was and remains WP's property;
 - (b) the Minister for Transport, Infrastructure and Local Government is the registered proprietor of Certificate of Title 6144/965;
 - (c) the area the subject of Certificate of Title 6144/965 was vested in the Minister for Transport, Infrastructure and Local Government pursuant to s 15(1) of the *Harbors and Navigation Act 1993* (SA) (**1993 Act**);
 - (d) s 15(1) of the 1993 Act provides that all structures situated in a harbor or situated outside a harbor but on adjacent or subjacent land vest in the Minister but, pursuant to s 15(3)(c) of the 1993 Act, s 15 of the 1993 Act does not apply to real or personal property excluded by regulation from the ambit of s 15 of the 1993 Act;
 - (e) reg 6(g) of the 2023 Regulations provides that, for the purposes of s 15(3)(c) of the 1993 Act, all structures in private ownership that are situated in a harbor or situated outside a harbor but on adjacent or subjacent land constructed after the commencement of the 1993 Act (on 24 October 1994), such that the shiploader crane remains the property of WP;
 - (f) Annexure A of the Lease refers to the area directly underneath "the shiploader *extending from* 'OSF #2'";
 - (g) items of WP's property "*extending from*" the Ore Storage Facility (OSF #2) toward the shiploader crane include WP's system of conveyors and transfer towers linking the Outer Storage Facility (OSF #2) to the shiploader crane (**Transfer Conveyor System**), and WP's system of conveyors within the Outer Storage Facility (OSF #2) (**Ore Storage Sheds Reclaim System**) which is within WP's Ore Storage Facility (OSF #2);
 - (h) WP's Ore Storage Shed Infeed System "*extends from*" the Ore Storage Facility (OSF #2) toward WP's Tip pocket;
 - (i) part of WP's Transfer Conveyor System sits on the land the subject of Certificate of Title 5603/813, 5582/363, 5463/457 and 6144/964 and the remaining part sits on the land the subject of Certificate of Title 6144/965;
 - (j) WP's Ore Storage Sheds Reclaim System sits on land the subject of Certificates of Title 6144/964, 5583/363 and 5463/457;

- (k) part of WP's Ore Storage Sheds Infeed System sits on land the subject of Certificates of Title 6144/964 and 5463/457 and the remaining part sits on Perpetual Licence 319A (being Crown Lease 6213/636).
20. As to paragraph 20 of the PPOC, if, which is not admitted, the rail assets were not constructed at the "Commencement Date" of the Lease of 1 January 2012:
- (a) nothing relevant follows;
 - (b) further, the rail assets had been constructed by the time the Lease was executed on 29 June 2018.
21. As to paragraph 21 of the PPOC, Golding repeats paragraphs 14 to 20 above.
22. As to paragraph 22 of the PPOC:
- (a) Golding denies the paragraph;
 - (b) the parties' objective intention under the Lease was to give WP a lease over certain areas at the port at Whyalla where WP's property is located and where WP had been in occupation before the execution of the Lease;
 - (c) the fact that some areas at the port at Whyalla where WP's property is located are not referred to in the Lease does not defeat that objective intention;
 - (d) instead, the Lease is effective as to the areas at the port at Whyalla referred to as the Premises in the Lease in that the boundaries of the leased property can be ascertained or identified;
 - (e) further, the Lease provides that if a part of it is found to be invalid or unenforceable, it will be severed from the Lease and the Lease will otherwise continue in force (cl 22.10).
23. As to paragraph 23 of the PPOC, Golding repeats paragraphs 14 to 20 and 22 above.
24. As to paragraph 24 of the PPOC:
- (a) when one of the Administrators (namely, Mark Francis Xavier Mentha) was previously an administrator of the Arrium Group, the administrators of the Arrium Group lodged with the Australian Securities and Investments Commission a report as to affairs dated 2 September 2016 that identified various assets (including the Outer Storage Facility (OSF #2) and the rail assets) as assets of WP;
 - (b) Golding repeats paragraphs 6, 9, 10, 14 to 20 and 22 above.

25. As to paragraph 25 of the PPOC:
 - (a) Golding admits that the rent under the Reference Schedule and cl 5 of the Lease is \$1,000 per month inclusive of outgoings;
 - (b) Golding denies that the rent is “uncommercial” and, in any event, nothing relevant follows.
26. Golding denies paragraph 26 of the PPOC.
27. Golding does not admit paragraph 27 of the PPOC, and in any event, nothing relevant follows.
28. As to paragraph 28 of the PPOC:
 - (a) Golding repeats paragraphs 6, 9, 10, 14 to 20, 22 and 24 above;
 - (b) Golding denies the paragraph.
29. Golding denies paragraph 29 of the PPOC.
30. As to paragraph 30 of the PPOC:
 - (a) Golding repeats paragraph 9 above;
 - (b) Golding denies the Lease has been terminated.
31. As to paragraph 31 of the PPOC:
 - (a) Golding repeats paragraphs 6, 9, 10, 14 to 20, 22 and 24 above;
 - (b) Golding denies the Administrators are entitled to the relief sought.
32. As to paragraph 32 of the PPOC:
 - (a) neither s 447A(1) of the *Corporations Act 2001* (Cth) nor s 90-15 of the *Insolvency Practice Schedule (Corporations)* (being Schedule 2 to the *Corporations Act*) permit the Court to make an order 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 in the administration of OneSteel;
 - (b) if, which is denied, s 568 of the *Corporations Act* is to operate in the administration of OneSteel, any disclaimer will not affect WP’s rights to its property, including WP’s rights under cl 15.1 of the Lease to remove WP’s chattels and the Lessee’s Improvements if the Lease has terminated;
 - (c) Golding denies that the Administrators are entitled to the relief sought.

SECOND DEFENDANT'S POINTS OF REPLY TO FIRST DEFENDANT'S POINTS OF CLAIM

33. As to the First Defendant's Points of Claim (**WP PoC**):

- (a) Golding repeats paragraphs 1 to 32 above;
- (b) Golding otherwise admits paragraphs 1, 2, 3, 4, alternatively 5, 6, 7, 8, 9, 10 and 11 of the WP PoC.

Dated: 14 May 2025



Brahma Dharmananda SC



Long Pham