

## NOTICE OF FILING

### Details of Filing

Document Lodged: Outline of Submissions  
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File Number: VID420/2025  
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.

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

**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 LTD (ADMINISTRATORS APPOINTED) ACN 004 651 325**

First Plaintiff

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

Second Plaintiff

**WHYALLA PORTS PTY LTD ACN 153 225 364**

Defendant

**GOLDING CONTRACTORS PTY LTD'S SHORT SUBMISSIONS FOR HEARING ON 29 APRIL 2025**

1. Golding Contractors Pty Ltd (**Golding**) is a secured creditor of the defendant, Whyalla Ports Pty Ltd (**Whyalla**). Golding is owed about \$125.9 million by the second plaintiff, OneSteel Manufacturing Pty Ltd (Administrators Appointed) (**OneSteel**), for mining services provided by Golding to OneSteel: affidavit of Nathan John Collins sworn on 25 April 2025 (**Collins' affidavit**) [5], [10], [16]; Mining Services Agreement (Collins' affidavit, Annexure NJC-1, Tab 1, p19); Guarantee and Indemnity (Annexure NJC-1, Tab 4, p403); General Security Agreement (Annexure NJC-1, Tab 6, p465).
2. As a secured creditor owed a significant sum, Golding applies under rule 2.13(3) of the *Federal Court (Corporations) Rules 2000* to be added as a defendant to these proceedings. Golding's rights will be directly affected by the relief sought in these proceedings. This is because the first plaintiffs (**Administrators**) and OneSteel seek relief relating to the lease dated 29 June 2018 between OneSteel and Whyalla (**Lease**) (Annexure NJC-1, Tab 2, p237) including an order that the Lease is void ab initio, unenforceable or of no legal effect.

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Filed on behalf of (name & role of party) Golding Contractors Pty Ltd

Prepared by (name of person/lawyer) Nathan John Collins

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3. The area the subject of the Lease is an area where Whyalla's chattels and Whyalla's Lessee's Improvements are located. Under cl 15.1 of the Lease, Whyalla has a right to remove "all of the Lessee's chattels and the Lessee's Improvements" when the Lease ends.
4. Because Golding has security over Whyalla's property, including Whyalla's rights under the Lease, if the Lease is declared to be void ab initio or otherwise unenforceable, Golding's rights will be directly affected. Golding is a necessary party because, otherwise, Golding will not be bound by any order made about the Lease; and Golding will need to bring separate proceedings to protect its security rights relating to the Lease. This means that Golding should be permitted to defend the Administrators and OneSteel's application that will, in effect, destroy all rights under the Lease: e.g. *Karellas Investments Pty Ltd v FW Projects Pty Limited (in liq)* [2021] FCA 870 [36] (Cheeseman J).
5. Golding also relies on rule 1.32 of the *Federal Court Rules 2011*, which permits joinder in these circumstances: *Kadam v MiiResorts Group 1 Pty Ltd* [2016] FCA 1205 [12]-[19] (Edelman J).
6. Whyalla has consented to Golding being joined. The Administrators and OneSteel have said that they do not object to Golding being joined by an email of Thursday, 24 April 2025 from their solicitors to Golding's solicitors.
7. Further, Whyalla has sought leave to cross-claim against the Administrators and OneSteel to protect Whyalla's rights under the Lease: affidavit of Laura Jane Johns affirmed on 23 April 2025, Annexure LJ-1. Whyalla seeks orders including that the Assets referred to in Schedule 2 of the proposed cross-claim are Whyalla's property (order 4); and an order that the Administrators and OneSteel must permit Whyalla to remove the Assets (order 8).
8. The issue about the ownership of the Assets would appear to raise disputed factual questions in that:
  - (a) it appears from the materials filed by the Administrators and OneSteel, there is a suggestion that Whyalla does not have property rights over the Assets, chattels and the Lessee's Improvements; but
  - (b) from Collins' affidavit ([11], [12], [24]-[58]) and the materials filed by Whyalla, it must be concluded, unless there is a determination about the factual position, that Whyalla has rights to the Lessee's chattels, the Lessee's Improvements and other property, separate and distinct from any rights and property of OneSteel.
9. The Administrators and/or OneSteel cannot obtain an order in these proceedings that would, in effect, permit a sale of *Whyalla's property* as part of the voluntary administration of *OneSteel*.
10. Furthermore, although these issues will need to be considered and developed before there is a final determination of the several questions raised by these proceedings and although the precise basis on which the Administrators and OneSteel seek relief is not clear (absent

points of claim or a concise statement as to those claims), there are some issues raised by the Administrators and OneSteel on which Golding's present position needs to be set out.

11. The Lease was executed by Matthew Reed for OneSteel and Whyalla. The evidence is that Mr Reed was appointed the Executive General Manager of Whyalla in 2011 and was the Executive Managing Director of OneSteel when the Lease was executed: affidavit of Theunis Jacobus Victor affirmed on 17 April 2025 [8]-[10], [26]. This means that each of OneSteel and Whyalla's power to make the Lease was able to be and properly "exercised by an individual acting with the company's express or implied authority and on behalf of the company", within s 126(1) of the *Corporations Act 2001* (Cth) (quoting s 126(1) in the terms of s 126(1) when the Lease was executed). (Section 126 was repealed and re-enacted by the *Corporations Amendment (Meetings and Documents) Act 2022* (Cth) (No. 9 of 2022), Schedule 1, item 4, effective 23 February 2022.)
12. Also, each of Whyalla and OneSteel was permitted to assume that Mr Reed, as held out by each of them as an officer or agent of each of them, was duly appointed and had authority to exercise the powers and perform the duties customarily exercised or performed including making contracts: ss 128(1) and 129(3) of the *Corporations Act*.
13. As mentioned, cl 15.1 of the Lease gives Whyalla valuable rights to remove its property. Any argument that Whyalla does not have this right of removal because the Lease is somehow ineffective (by reason of the fact that it was executed on 29 June 2018 and, on the Lease's terms, the Lease commenced on 1 January 2012) is not correct.
14. It may be accepted that the demise under the Lease could not have commenced until the Lease was executed. But, it does not follow that the rights and obligations agreed under the Lease were ineffective before the demise or (importantly) are now ineffective after the demise. The rights and obligations made under such a lease are effective: e.g. *Queensland Television Ltd v FCT* (1969) 119 CLR 167, 175 (Kitto J); *York House Pty Ltd v FCT* (1930) 43 CLR 427, 438 (Knox CJ and Starke J); *Kingsley's Chicken Pty Ltd v Queensland Investment Corporation* [2009] ACTCA 9; (2009) 4 ACTLR 20 [122] (Besanko J, Refshauge and Penfold JJ agreeing).
15. In the face of the evidence in Collins' affidavit and the material filed by Whyalla, there is at least a factual dispute about whether Whyalla conducted a separate business, with its own assets, for logistics and port operations. From Collins' affidavit ([11]-[12], [24]-[58]) and Whyalla's material, it must be concluded, unless there is a contrary determination about the factual position, that Whyalla was incorporated to conduct that separate business with its own assets.
16. It cannot be concluded that the agreements Whyalla made, including to appoint OneSteel as its agent or service provider (Annexure NJC-1, Tab 12, p544 (Limited Agency Agreement); Tab 13, p556 (Summary of Port Intercompany Contracts)) and to itself provide services (e.g. Annexure NJC-1, Tab 29, p2029 (Whyalla Port Export Services Agreement); Tab 33, p2281 (2024 Qube Bulk Contract)), are not legally effective. There

is no evidence that the parties intended that these transactions should not have any legal consequences: e.g. *Equuscorp Pty Ltd v Glengallen Investments Pty Ltd* [2004] HCA 55; (2004) 218 CLR 471 [46] (Gleeson CJ, McHugh, Kirby, Hayne and Callinan JJ).

17. Moreover, if order 3 sought by Whyalla in its cross-claim is made, Whyalla would have the right to continue with the Lease, in which case Whyalla will be able to continue to conduct its separate business at the port: Collins' affidavit [21]; Lease, cl 2.1(a), cl 9.1, Reference Schedule [Item 9, Permitted Use], cl 16.5, Annexure A, para 2.
18. Unless the Administrators and OneSteel are willing to proceed on the footing that the documentary evidence supporting the factual position described in Collins' affidavit reflects the true factual position, these proceedings raise disputed factual issues that may not be able to be dealt with by Monday, 5 May 2025, and in one day. These proceedings may need to be listed as soon as practicable (after points of claim are provided, after appropriate discovery is given and after any further evidence is filed) and may need to be listed for more than one day, likely three days.
19. Any urgency for OneSteel's Administrators to proceed quickly with the voluntary administration of OneSteel cannot be a sufficient reason to avoid the proper determination of the factual and legal questions that are raised by these proceedings. Golding does not intend to cause delay but to ensure its rights over Whyalla's property are protected, in the face of the arguments that appear to be raised by the Administrators and OneSteel that could have the significant effect of outflanking Whyalla's property rights, without the underlying facts being determined.

Dated: 28 April 2025



Brahma Dharmananda SC



Long Pham