

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 CLAIM

Lease (Cross-claim paragraph 2)

1. The **Lease** dated 29 June 2018 between the second plaintiff (**OSM**) and the first defendant (**Whyalla Ports**)¹ is valid and binds OSM and Whyalla Ports in accordance with its terms. In particular:

- (a) The Lease is not contrary to cl 31 of the **Consolidated Indenture** that is annexed to the *Whyalla Steel Works Act 1958* (SA)², because cl 31 of the

¹ Annexure TV-1 to the affidavit of Theunis Victor dated 17 April 2025 (the **Victor Affidavit**) at 947 ff.

² Annexure MAK-1 to the affidavit of Michael Anthony Korda affirmed on 2 April 2025 (the **Korda Affidavit**) at 124 ff.

Consolidated Indenture only restricts the assignment of interests and therefore no breach of cl 31 occurs.

- (b) Even if a breach of cl 31 of the Consolidated Indenture did occur, that would not affect the validity of the Lease, in circumstances where:
- (i) there is no express language in the Indenture to the effect that non-compliance with cl 31 renders such a lease invalid, or alternatively not binding as between the parties to it;
 - (ii) cl 31 is only directed towards the conduct of OSM; Whyalla Ports has not failed to comply with any statutory requirement and should not be prejudiced by another party's failure to comply with statutory requirements;
 - (iii) the State was put on notice of the existence of the Lease in July 2021 and did not object to the Lease or to its terms;³
 - (iv) the parties to the Lease have engaged in extensive dealings with each other and third parties on the assumption that the Lease is valid, over at least seven years, and third parties have entered into agreements on the assumption that the Lease is valid;⁴ and
 - (v) Whyalla Ports would suffer substantial loss if the Lease were to be declared invalid.⁵

2. Alternatively, OSM is estopped from denying the validity of the Lease, because:

- (a) OSM and Whyalla Ports have at all relevant times since 2021 and 2018, respectively, assumed that they were bound by the Lease: see paras 1(b)(iii) and (iv) above;

³ Annexure MAK-1 to the Korda Affidavit at 943.

⁴ Victor Affidavit at [34], and annexure TV-1 at 997-1044; Victor Affidavit at [35], and annexure TV-1 at 1045-1145; Victor Affidavit at [36(a)], and annexure TV-1 at 1146-1179; Victor Affidavit at [36(b)], and annexure TV-1 at 1297-1365; Victor Affidavit at [38], and annexure TV-1 at 1503-1557, 1558-1559 and 1560-1615; Victor Affidavit at [43], and annexure TV-1 at 1616-1740; Victor Affidavit at [44], and annexure TV-1 at 1741-1779.

⁵ Affidavit of Laura Johns dated 14 April 2025 at [31]; annexure LJ-1 at 1072; Victor Affidavit at [46].

- (b) by means of the conduct referred to at paras 1(b)(iii) and (iv) above, each of OSM and Whyalla Ports acknowledged the assumption of the validity of the Lease's terms;
- (c) OSM issued no caveat or warning that the assumption ought not be relied upon;
- (d) Whyalla Ports has acted since at latest 2018 on the assumption that the Lease was valid and binding: see paras 1(b)(iii) and (iv) above; and
- (e) Whyalla Ports would suffer severe detriment if OSM were allowed to resile or depart from the assumption that the Lease binds OSM and Whyalla Ports with the result of the Lease being declared non-binding and Whyalla Ports losing the ability to recover the assets identified in Schedule 2 to the Cross-claim (the **Whyalla Ports Assets**) under cl 15.1 of the Lease.

Notice of termination (Cross-claim paragraph 3)

- 3. Whyalla Ports is holding over under the Lease: Lease cl 2.3.
- 4. A party purporting to terminate the Lease during the holding over period must give the other party two years' notice: Lease cl 2.3(c).
- 5. Alternatively, a party purporting to terminate the Lease must give the other party six months' notice: Lease special condition 2(a).
- 6. The First Plaintiffs' letter of 27 March 2025⁶ was of no effect, as it:
 - (a) did not purport to terminate the Lease; and
 - (b) did not provide two years, alternatively six months, notice of termination.

Assets are property of Whyalla Ports (Cross-claim paragraph 4)

- 7. Each of the Whyalla Ports Assets is an asset to which Whyalla Ports has title and a "Lessee's Improvement" under cl 1 of the Lease.

⁶ Annexure MAK-1 to the affidavit of Michael Korda at 559.

8. Cl 15.1 permits and requires Whyalla Ports to remove all Lessee's Improvements within six months of the end of the Lease.

Trespass and conversion (Cross-claim paragraphs 5 and 6)

9. On 28 March 2025, Whyalla Ports:
- (a) revoked any permission, licence or other lawful right of the plaintiffs to enter onto the land the subject of the lease (**Land**); and
 - (b) revoked any permission, licence or other lawful right of the plaintiffs to use the Whyalla Ports Assets.
10. On and after 28 March 2025, the Administrators directed, caused or authorised employees of OSM to:
- (a) enter onto the Land; and
 - (b) use the Whyalla Ports Assets.

Disclaimer (Cross-claim paragraph 8)

11. If the administrators are clothed with a disclaimer power, Whyalla Ports should have the right to collect the Whyalla Ports Assets within a six month period, because:
- (a) the Whyalla Ports Assets are the property of Whyalla Ports: Lease cl 1, definition of "Lessee's Improvements" and cl 15.1;
 - (b) Whyalla Ports has the right to enter the Land and recover the Whyalla Ports Assets under cl 15.1 of the Lease; and
 - (c) if Whyalla Ports is not permitted to enter the Land and recover the Whyalla Ports Assets, Whyalla Ports would be unfairly deprived of its valuable property.

Date: 8 May 2025

Stewart J. Maiden

Christopher Hibbard

Schedule

Federal Court of Australia

District Registry: Victoria Registry

Division: General

Second Plaintiff

ONESTEEL MANUFACTURING PTY
LIMITED (ADMINISTRATOR APPOINTED)
ACN 004 651 325

Second Cross-respondent

ONESTEEL MANUFACTURING PTY
LIMITED (ADMINISTRATOR APPOINTED)
ACN 004 651 325