

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.

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 and First Cross-Respondents

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

Second Plaintiff and Second Cross-Respondent

and

WHYALLA PORTS PTY LTD (ADMINISTRATORS APPOINTED) (RECEIVERS AND MANAGERS APPOINTED) ACN 153 225 364

First Defendant and Cross-Claimant

GOLDING CONTRACTORS PTY LTD ACN 009 732 794

Second Defendant

**PLAINTIFFS' POINTS OF REPLY TO THE FIRST DEFENDANT'S AND CROSS-CLAIMANT'S POINTS OF CLAIM DATED 12 JUNE 2025
(filed in accordance with the orders of O'Callaghan J made on 17 June 2025)**

Background (Points of Claim paragraphs 1-3)

- 1 The Plaintiffs and Cross-Respondents (**Cross-Respondents**) deny the allegation in paragraph 1 of the Points of Claim dated 12 June 2025 (**Points of Claim**) filed by the First Defendant and Cross-Claimant (**Whyalla Ports**) and say further that:
 - (a) the second defendant, **Golding** Contractors Pty Ltd, has issued a proof of debt to the Second Plaintiff and Second Cross-Respondent, **OneSteel** Manufacturing Pty Limited (Administrators Appointed), for \$113,347,555.44 (inclusive of GST);
 - (b) the debt claimed by Golding has not been adjudicated.

2 As to the allegation at paragraph 2 of the Points of Claim, the Cross-Respondents deny that Whyalla Ports granted a security interest to Golding in respect of any of the Assets referred to in Schedule 2 to Whyalla Ports' Amended Cross-Claim dated 12 June 2025 (**Cross-Claim**).

3 The Cross-Respondents do not know and cannot admit paragraph 3 of the Points of Claim.

Ownership of Assets at common law (Points of Claim paragraphs 4 - 6)

4 The Cross-Respondents deny each of the allegations at paragraphs 4 to 6 of the Points of Claim.

5 Further:

(a) other than items 15 (Rolls Royce Mooring Winches) and 145 (Bis Equipment Transition), the Assets referred to in Schedule 2 to the Cross-Claim are not personal property;

(b) Whyalla Ports does not own or have an entitlement to take possession of those Assets because they are fixtures which are part of the land to which they are affixed, in which land Whyalla Ports has never had a proprietary interest; and

(c) insofar as the Assets were erected or constructed pursuant to agreements entered into by Whyalla Ports and either Kerman Contracting Limited or Leighton Contractors Pty Ltd, those Assets were erected or constructed on behalf of OneSteel, and not Whyalla Ports, because:

(i) other than item 15 (Rolls Royce Mooring Winches), those Assets are fixtures built on land in respect of which Whyalla Ports has never had any proprietary interest; and

(ii) by reason of:

(A) Perpetual Licence 319 (Crown Lease 512-105);

(B) the *Broken Hill Proprietary Company's Indenture Act 1937* (SA) and the Consolidated Indenture thereto;

(C) Perpetual Licence 319A (Crown Lease 1013/20);

- (D) the *Whyalla Steel Works Act 1958* (SA) and Consolidated Indenture thereto;
- (E) the environmental authorisation granted to OneSteel under Part 6 of the *Environment Protection Act 1993* (SA) set out in Schedule 3 of the *Whyalla Steel Works Act*; and
- (F) the *Harbours and Navigation Regulations 2009* (SA),

OneSteel was exclusively entitled to operate the port at Whyalla, where each of the Assets was erected or constructed.

- 6 Even if Whyalla Ports held title to the Assets prior to 19 February 2025 and even if the Assets are not fixtures, any Assets constituting personal property in the possession of OneSteel were subject to a PPS Lease in respect of which Whyalla Ports was the relevant secured party, in each case for the purposes of the *Personal Property Securities Act 2009* (Cth). Whyalla Ports' failure to validly register the PPS Leases on the Personal Property Securities Register has the effect that all property the subject of those PPS Leases vested in OneSteel on 19 February 2025.

Application of *Whyalla Steel Works Act* to Assets situated outside of Certificates of Title 6105/304, 6141/526, 5582/363, 5463/457 and 5603/813 (Points of Claim paragraphs 7-12)

- 7 The Cross-Respondents admit the allegation at paragraph 11 of the Points of Claim.
- 8 As to the allegation at paragraph 12 of the Points of Claim, the Cross-Respondents admit that certain of the Assets, or parts of the Assets, referred to in that paragraph (**Paragraph 12 Assets**) are not located on Certificates of Title 6105/304, 6141/526, 5582/363, 5463/457 or 5603/813 (**Identified Certificates of Title**).
- 9 The Cross-Respondents otherwise deny the allegations at paragraphs 7 to 12 of the Points of Claim, including the allegation that, to the extent the Paragraph 12 Assets were not built on the Identified Certificates of Title, those Assets are not on "prescribed land" within the meaning of cl 1 of Schedule 4 of the *Whyalla Steel Works Act*.
- 10 Clause 1 of Schedule 4 of the *Whyalla Steel Works Act* defines the "prescribed land". That definition comprises two limbs:

- (a) The first limb comprises the whole of the land comprised in the Identified Certificates of Title.
 - (b) The second limb comprises “any other land that is the subject of the lease to which ... Schedule 4 applies”.
- 11 The proper construction of the second limb of the definition of the “prescribed land” is informed by the text and context of the lease to which it refers, namely:
- (a) The Lease purported to grant a lease in respect of the “Premises” (cl 2.1). The land comprising the “Premises” was uncertain, being inconsistently described in the Lease:
 - (i) In Reference Schedule, item 3, the “Premises” were defined as “the portion of the land in [the Identified Certificates of Title] described in Annexure A”.
 - (ii) Annexure A was titled “Description of Premises” and relevantly referred to “the area directly underneath the structures (a) identified as ‘OSF #2’; (b) identified as ‘Tip pocket’; and (c) the shiploader extending from ‘OSF#2’” as depicted in a plan titled “Part 1 of Annexure A”. The plan in Part 1 of Annexure A depicted and identified an area titled “OSF#2”, an area titled “tip pocket” and a shiploader extending from OSF#2. The plan did not refer to or identify the boundaries of the Identified Certificates of Title.
 - (b) Further, the Lease purported to confer substantive rights and impose substantive obligations in respect of “Lessee’s Improvements”: see cl 8.1(b), 11.1(b)(i), 13.2(a), 13.3(a)(iv), 15.1, 15.2, 15.3. The Lease defined Lessee’s Improvements as “all buildings, structures, roads, fences and other improvements in the nature of fixtures, fittings, plant, equipment, furnishings, partitions, cabling, floor coverings or other articles and chattels now or in the future situated in or on, or installed or constructed *in, on or about the Premises* by or on behalf of or at the expense of the Lessee”.
- 12 In these circumstances, the Paragraph 12 Assets (to the extent they are not situated on the Identified Certificates of Title) are situated on land “that is the subject of the [L]ease” and

therefore within “prescribed land” within the meaning of cl 1 of Schedule 4 of the *Whyalla Steel Works Act* because:

- (a) they are situated on land which was clearly depicted and identified within Annexure A to the Lease, which purported to provide a “Description of the Premises”; alternatively
- (b) they were “Lessee’s Improvements” to which the Lease purported to apply and, consequently, the land on which they are situated is the subject of the Lease, irrespective of whether that land is within the Identified Certificates of Title.

Application of *Whyalla Steel Works Act* to Assets erected pursuant to construction contracts (Points of Claim paragraphs 13–14)

13 As to the allegations in paragraph 13 of the Points of Claim:

- (a) the Cross-Respondents admit that items 2, at least part of 9, at least part of 10 and at least part of 11 in Schedule 2 of the Cross-Claim are situated on the “prescribed land” within the meaning of cl 1 of Schedule 4 of the *Whyalla Steel Works Act*; and
- (b) the Cross-Respondents deny that those Assets are Whyalla Ports’ personal property.

14 The Cross-Respondents deny paragraph 14 of the Points of Claim.

15 Each of the Assets referred to in items 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 15, 18, 34 and 145 in Schedule 2 of the Cross-Claim were erected or constructed “on behalf of” OneSteel within the meaning of cl 4(1)(b) of Schedule 4 of the *Whyalla Steelworks Act* for the reasons set out at paragraph 5(c) above.

Conversion (Points of Claim paragraph 15)

16 The Cross-Respondents deny paragraph 15 of the Points of Claim.

Dated: 21 June 2025



Signed by Leon Zwier

Lawyer for the Plaintiffs and Cross-Respondents