

**IN THE HIGH COURT OF AUSTRALIA
PERTH OFFICE OF THE REGISTRY**

No. P43 of 2010

Between:

**AUSTRALIAN SECURITIES AND
INVESTMENTS COMMISSION**

Appellant

and

**LANEPOINT ENTERPRISES PTY
LTD (ACN 110 693 251)**

**(RECEIVERS AND MANAGERS
APPOINTED)**

Respondent

**RESPONDENT'S NOTE OF FURTHER SUBMISSIONS PURSUANT TO
LEAVE OF THE COURT GRANTED ON 8 MARCH 2011**

1. The judgment of North and Siopis JJ in the Full Court dealt only with Ground of Appeal 4, which is at 4 AB 1444. This can be seen in their Honour's reasons at [34] (4 AB 1458).
2. At the hearing before this Court the Respondent sought, in the event that the appeal was upheld, an order remitting the matter to the Full Court to deal with grounds not addressed by the Full Court. This gave rise to the question of whether, in fact, the grounds of appeal other than Ground 4 were put to the Full Court.
3. Ground 1 of Lanepoint's Notice of Appeal (found at 4 AB 1444) was advanced

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15 March 2011
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Reference: Mark de Kerloy / Peter Crawford

in the Full Court. This ground (in particular ground 1(a)) was to the effect that Gilmour J did not consider various affidavit evidence which deposed to the attempted compromise of Lanepoint's liability to the WIF, including execution of a settlement deed and the approval of the (conditional) compromise by creditors.

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4. The written submissions before the Full Court addressed ground 1(a). Lanepoint's Outline of Submissions at [1(b) and (c)] relate to this ground. Relevant also is [18(e)] and [43]. ASIC addressed this ground (ASIC's Outline of Submissions at [1](b), [2](b) and [32]-[44]). This matter was also touched upon in oral submissions before the Full Court by Lanepoint's counsel (Transcript p.22 (line 45)). Even though the compromise did not become unconditional and thereby effectual, the evidence the subject of ground 1(a) was put for two purposes. *First* to demonstrate the existence of a genuine dispute as to the WIF liability on the basis that the liquidator of Westpoint Management had agreed to compromise it completely. *Second*, on the basis that the Westpoint Management liquidator was willing to compromise the debt so substantially was evidence material to a finding that the debt was not owing, on the basis that the liquidator of Westpoint Management after substantial inquiry had agreed to in effect forgo it. The first purpose for which this evidence was led was relevant only to a stay. The second aspect, however, gave rise to a submission that the application for winding up be dismissed on the basis that it was open to find that the debt was not owing.
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5. Ground 2 of the grounds of appeal merged with Ground 4 and was not dealt with separately.
6. Ground 3 was seemingly dealt with along with ground 1.
7. Ground 5 of the grounds of appeal also appeared to be dealt with along with Ground 4.

Draft notice of contention unnecessary

8. The Respondent does not seek “a discharge or variation of a part of the [Full Court’s] judgment actually pronounced” (Cf: *High Court Rules 2004* (Cth), r.42.08.5). The Respondent also does not “contend that the [Full Court’s] judgment ought to be upheld on the ground that the Full Court has erroneously decided, or has failed to decide, some matter of fact or law” (Cf: r.42.08.5). The Full Court’s judgment is directed only towards ordering a stay of WAD 152 of 2006 until further order.
9. A notice of contention is unnecessary.

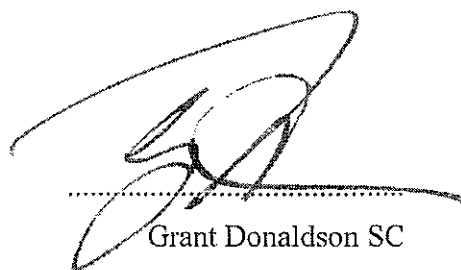
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Orders sought

10. In the event that the Appellant is successful in this appeal, the Respondent proposes the following orders be made:
1. The appeal be allowed.
 2. The proceeding be remitted to the Full Court of the Federal Court of Australia for determination of grounds 1(a) and 3 of the Respondent’s Minute of Amended Notice of Appeal.

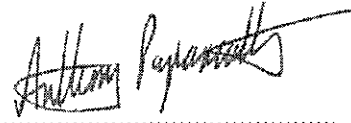
DATED: the 15th day of March 2011

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