

IN THE HIGH COURT OF AUSTRALIA  
PERTH REGISTRY

No P 43 of 2010

ON APPEAL FROM THE FULL COURT OF  
THE FEDERAL COURT OF AUSTRALIA

BETWEEN

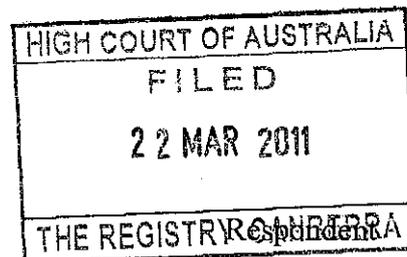
AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

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Appellant

and

LANEPOINT ENTERPRISES PTY LTD  
(ACN 110 693 251)  
(RECEIVERS AND MANAGERS APPOINTED)



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**APPELLANT'S REPLY SUPPLEMENTARY SUBMISSIONS  
PURSUANT TO LEAVE GRANTED ON 8 MARCH 2011**

1. Lanepoint contends in its supplementary submission that, if ASIC succeeds, the proceeding should be remitted to the Full Court of the Federal Court for determination of grounds 1(a) and 3 of Lanepoint's Amended Notice of Appeal (AB 1444).
2. The Court should not entertain that contention. The essence of the contention is that the Full Court "failed to decide" grounds 1(a) and 3, and that the Full Court's judgment ought to be upheld on those grounds: that is precisely what it intends to argue if the matter were remitted. The contention therefore falls squarely within r 42.08.5 of the *High Court Rules*: a Notice of Contention is required: cf *Commissioner of Taxation v Payne* (2000) 202 CLR 93 at [18]-[22], [56]. Lanepoint does not seek to file a Notice of Contention. Even if it did, Lanepoint would need to seek an enlargement of time which, given the passage of time, should be refused.

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<b>Filed on behalf of:</b>	The Appellant
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3. In any event, grounds 1(a) and 3 have no merit with the consequence that remitter would be futile.
4. Ground 1(a) is to the effect that the trial judge failed to consider or have regard to: (i) the affidavit of Karen Sandra Carey dated 10 June 2008 (AB 1256); (ii) the affidavit of Karen Sandra Carey dated 28 July 2008 (AB 1271); and (iii) the affidavit of Blair Daniel Campbell dated 6 November 2008 (AB 1329). Those affidavits go to the existence of negotiations with the liquidator of Westpoint Management concerning the possible compromise of the WIF debt. None of those affidavits is probative of any fact contrary to the continued existence of the WIF debt.
5. Ground 3 is to the effect that Gilmour J failed to consider whether or not the WIF debt was due and payable at the time of his order and whether or not it had been compromised. Gilmour J clearly found the WIF debt due and payable: AB 1407 at [21], [53], [70], [86], [90]–[93]) which necessarily included a finding that the debt had not been compromised. The ground has an air of unreality in light of the statement in the affidavit of Norman Phillip Carey dated 19 March 2009 at [18] (AB 1398) that the negotiations with the liquidator of Westpoint Management had by then “broke[n] down”. See also Buchanan J at [101] (AB 1475).
6. As Buchanan J correctly noted at [105] (AB 1476), the highest Lanepoint’s case could be put is to complain that Gilmour J erred in the exercise of his discretion to dismiss the application even though Lanepoint had not proven that it was solvent. No error has been demonstrated

Dated: 22 March 2011

  
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