



HIGH COURT OF AUSTRALIA

NOTICE OF FILING

This document was filed electronically in the High Court of Australia on 30 Oct 2020 and has been accepted for filing under the *High Court Rules 2004*. Details of filing and important additional information are provided below.

Details of Filing

File Number: M96/2020
File Title: Victoria International Container Terminal Limited v. Lunt & C
Registry: Melbourne
Document filed: Form 27B - Appellant's chronology
Filing party: Appellant
Date filed: 30 Oct 2020

Important Information

This Notice has been inserted as the cover page of the document which has been accepted for filing electronically. 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 and whenever the document is reproduced for use by the Court.

IN THE HIGH COURT OF AUSTRALIA
MELBOURNE REGISTRY

BETWEEN: **VICTORIA INTERNATIONAL CONTAINER TERMINAL LIMITED**
Appellant

and

RICHARD SIMON LUNT
First Respondent

FAIR WORK COMMISSION
Second Respondent

AUSTRALIAN MARITIME OFFICERS UNION
Third Respondent

CONSTRUCTION, FORESTRY, MARITIME, MINING AND ENERGY UNION
Fourth Respondent

APPELLANT'S CHRONOLOGY

Part I: Certification

1. This chronology is in a form suitable for publication on the internet.

Part II: List of principal events leading to the appeal

2. Follows.

Dated: 30 October 2020



.....
Stuart Wood AM QC
Aickin Chambers
Telephone: (03) 9225 6719
Fax: (03) 9225 7967
swood@vicbar.com.au



.....
Nico Burmeister
Aickin Chambers
Telephone: (03) 9225 6902
Fax: (03) 9225 7967
nico.burmeister@vicbar.com.au

Chris Gardner
Seyfarth Shaw Australia
Solicitor for the Appellant

Date	Event	Reference
6 October 2016	<p>The appellant ('VICT') makes an application to the second respondent ('FWC') for approval of the <i>Victoria International Container Terminal Operations Agreement 2016</i> ('EA').</p> <p>The application was supported by a Form 17 statutory declaration of Michael O'Leary, an employee of VICT. The statutory declaration attached the EA.</p> <p>Mr O'Leary declared that the EA covered all employees (other than senior management) directly engaged in VICT's activities at Webb Dock East, Melbourne, who would otherwise be covered by the <i>Stevedoring Industry Award 2010</i>. He declared that eight employees would be covered by the EA and that all eight had voted to approve the EA. Mr O'Leary also declared that he thought the EA passed the "better off overall test".</p>	<p><i>Lunt v Victoria International Container Terminal Limited (No 2)</i> (2019) 165 ALD 542 ('PJ') [11]-[12] [<u>Core Appeal Book ('CAB')</u> 7]</p>

Date	Event	Reference
10 October 2016	<p>The fourth respondent (‘union’, then the Maritime Union of Australia) files in the FWC a Form F18 statutory declaration in support of approval of the EA.</p> <p>That declaration was completed by Adam Jacka, national legal officer for the union.</p> <p>The form asked the question, <i>“Does the Union support the approval of the Agreement by the Fair Work Commission?”</i>. The answer, <i>“Yes”</i> was marked.</p> <p>In response to the notation on the form beginning, <i>“With respect to the matters contained in the employer’s Form 17 statutory declaration that are within my knowledge”</i>, the answer, <i>“I agree with the statutory declaration”</i> was marked.</p> <p>The union also gives notice pursuant to s 183 of the <i>Fair Work Act 2009</i> (Cth) that it wants to be covered by the EA.</p>	PJ [13] [CAB 7]

Date	Event	Reference
12 October 2016	<p>The FWC provides a notice of the listing of the application for hearing on 17 October 2016. Mr Jacka was listed as one of the persons to whom the notice was provided by the FWC.</p> <p>The notice indicated that, <i>“in the absence of any person indicating that they wished to be heard, the application for approval of the agreement will be determined in accordance with requirements of the Fair Work Act 2009 on the basis of the materials lodged with the Fair Work Commission to date”</i>.</p>	PJ [14] [CAB 7-8]
17 October 2016	<p>In response to a query from the FWC as to why the union should be covered by the EA, the union writes to the FWC saying:</p> <p><i>“The MUA represented members whose employment would be covered by the proposed agreement during bargaining for the proposed agreement.”</i></p>	PJ [15] [CAB 8]
19 October 2016	The FWC approves the EA and notes that it covers the union.	PJ [16] [CAB 8]
From 19 October 2016	The union, having supported the approval of the EA, <i>“naturally”</i> makes no application for permission to appeal against its approval.	PJ [17] [CAB 8]

Date	Event	Reference
June to November 2017	The union makes three applications for the FWC to deal with disputes in accordance with the EA.	PJ [18] [CAB 8]
From about November 2017	The union begins publicly criticising the process by which the EA was made and the wage rates it provides for.	PJ [19]-[28] [CAB 8-9]
24 January 2018	The first respondent (' Mr Lunt '), through his solicitors, first informs VICT that he intends to seek orders quashing the approval of the EA.	PJ [113] [CAB 23], 127 [CAB 26]
4 May 2018	Mr Lunt commences the primary proceeding below.	PJ [10] [CAB 7]
1-2 April 2019	The primary judge (Rangiah J) hears VICT's application to dismiss the proceeding as an abuse of process.	
2 July 2019	The primary judge orders the dismissal of the proceeding as an abuse of process.	PJ [CAB tab 1] Order of Rangiah J in <i>Lunt v Victoria International Container Terminal Limited</i> (Federal Court of Australia, VID511/2018, 2 July 2019) [CAB tab 2]

Date	Event	Reference
30 September 2019	Justice Kerr grants Mr Lunt leave to appeal the primary judge’s order dismissing the proceeding (on a limited basis).	<i>Lunt v Victoria International Container Terminal Limited</i> [2019] FCA 1599 (Kerr J)
17 February 2020	The Full Court (Bromberg, Kerr and Wheelahan JJ) hears Mr Lunt’s appeal against the primary judge’s order dismissing the proceeding.	
18 March 2020	The Full Court upholds the appeal; orders that the primary judge’s order dismissing the proceeding be set aside; and orders that VICT’s application to dismiss the proceeding as an abuse of process be dismissed.	Order of Bromberg, Kerr and Wheelahan JJ in <i>Lunt v Victoria International Container Terminal Limited</i> (Federal Court of Australia, VID777/2019, 18 March 2020) [CAB tab 5]
11 September 2020	<p>The High Court (Kiefel CJ and Nettle J) grants VICT special leave to appeal the whole of the judgment and order of the Full Court, limited to the following ground:</p> <p style="text-align: center;"><i>“That the Full Court of the Federal Court erred in failing to find that the proceeding brought the administration of justice into disrepute.”</i></p>	Order of Kiefel CJ and Nettle J in <i>Victoria International Container Terminal Limited v Lunt</i> (High Court of Australia, M35/2020, 11 September 2020) [CAB tab 8]