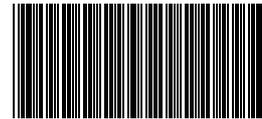




Filed: 18 December 2019 4:10 PM



D00017YZ38

Reply (UCPR 8)

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Equity General
Registry	Supreme Court Sydney
Case number	2019/00184678

TITLE OF PROCEEDINGS

First Plaintiff	Les & Zelda Investments Pty Ltd (ACN 148 907 573) as Trustee for Les & Zelda Family Trust
First Defendant	WHITEHAVEN COAL LIMITED ABN 68124425396

FILING DETAILS

Filed for	Les & Zelda Investments Pty Ltd (ACN 148 907 573) as Trustee for Les & Zelda Family Trust, Plaintiff 1
Legal representative	BENJAMIN COHEN
Legal representative reference	
Telephone	07 3831 9400

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Lodge Document, along with any other documents listed below, were filed by the Court.

Reply (UCPR 8) (Plaintiff Reply 191218.pdf)

[attach.]

Form 8 (version 5)
UCPR 14.4

REPLY

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	Equity General
Registry	Sydney
Case number	2019/184678
Court	Supreme Court of New South Wales

TITLE OF PROCEEDINGS

Plaintiff	Les & Zelda Investments Pty Ltd (ACN 148 907 573) as Trustee for the Les & Zelda Family Trust
-----------	--

Defendant	Whitehaven Coal Limited ABN 68 124 425 396
-----------	--

FILING DETAILS

Filed for	Les & Zelda Investments Pty Ltd (ACN 148 907 573) as Trustee for the Les & Zelda Family Trust, Plaintiff
Filed in relation to	The plaintiff's claim
Legal representative	Mr Ben Cohen, Bartley Cohen
Legal representative reference	0024003
Contact name and telephone	Mr Ben Cohen, (07) 3831 9400
Contact email	benc@bartleylaw.com

PLEADINGS AND PARTICULARS

- 1 The plaintiff admits the documents contained the text as pleaded in sub-paragraphs 12(c), 12F(b), 14(a)(ii), 14(ab)(i)-14(ab)(ii), 18A(b), 20(f)(i)-20(f)(ii), 20(g)(i), 20(h)(i)-20(h)(ii), 20(i)(i)-20(i)(ii), 20(j)(i)-20(j)(xv), 20(k), 26(d)(i), 26(f), 26(p)(i), 26(q), 26(r)(i)-26(r)(ii), 28A(e)(i), and 32(a) of the amended defence filed 25 November 2019 (**Amended Defence**).
- 2 The plaintiff admits that in consideration for selling their shares in Boardwalk, the Boardwalk shareholders would receive consideration including certain shares in the Defendant known as 'Milestone Shares', which were subject to certain 'Trigger Events' and 'Vesting' conditions as pleaded in sub-paragraph 3(d)(i)(AA) of the Amended Defence.
- 3 The plaintiff admits 'Trigger Events' and 'Vesting' conditions are set out in Clauses 3.2 and 3.3 of the Restriction Deed as pleaded in sub-paragraphs 3(d)(i)(B), 3(e)(i)(B), and 14(d)(i)(B) of the Amended Defence.

- 4 The plaintiff admits the Defendant entered into a Share Purchase Agreement dated 11 December 2011 with each of the entities and persons pleaded in sub-paragraphs 3(b)(i)(A)-3(b)(P) of the Amended Defence.
- 5 The plaintiff admits that the 'Trigger Events' in clause 3.2 of the Restriction Deed have not occurred and therefore no 'Vesting' under clause 3.3 of the Restriction Deed has taken place, as pleaded in sub-paragraph 3(k)(i) of the Amended Defence.
- 6 As to paragraph 43 of the Amended Defence, the plaintiff denies the allegations therein and repeats and relies upon the matters pleaded in paragraphs 33I, 33J, 33K, 35A, 40A, 40B, 40C, and 40E of the amended statement of claim filed on 22 July 2019 (**Amended Statement of Claim**).
- 7 As to paragraph 44 of the Amended Defence, the plaintiff denies the allegations therein and repeats and relies upon the matters pleaded in paragraphs 33I, 33J, 33K, 37, 39A, 40A, 40B, 40C, and 40D of the Amended Statement of Claim.
- 8 The plaintiff otherwise joins issue with the matters raised in the Amended Defence.

SIGNATURE OF LEGAL REPRESENTATIVE

I certify under clause 4 of Schedule 2 to the Legal Profession Uniform Law Application Act 2014 that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in this reply has reasonable prospects of success.

Signature

Capacity

Date of signature



Solicitors on record

18 December 2019

AFFIDAVIT VERIFYING

Name Leslie Norman Tinkler
 Address C/- Level 22, Riverside Centre, 123 Eagle Street, Brisbane QLD
 4000
 Occupation
 Date 18 December 2019

I affirm:

- 1 I am the sole director and secretary of the plaintiff and am authorised to swear this affidavit on its behalf.
- 2 I believe that the allegations of fact contained in the reply are true.
- 3 I believe that the allegations of fact that are denied in the reply are untrue.
- 4 After reasonable inquiry, I do not know whether or not the allegations of fact that are not admitted in the reply are true.

AFFIRMED at Laurieton
 Signature of deponent L. N. Tinkler
 Name of witness Susanne Melva Cremer
 Address of witness 73 Bold Street, Laurieton, NSW, 2443
 Capacity of witness [Justice of the Peace/ Solicitor/ Barrister/ Commissioner for Affidavits/Notary Public] 196548

And as a witness, I certify the following matters concerning the person who made this affidavit (the deponent):

- 1 I saw the face of the deponent.
- 2 I have confirmed the deponent's identity using the following identification document:

NSW driver licence
 Identification document relied on (may be original or certified copy) 1

Signature of witness [Signature]

18 December 2019