

MR PURTON: No, there's not, your Honour. The prejudice is simply that it will add a further half-day to the hearing - - -

HIS HONOUR: I understand. I understand that.

5

MR PURTON: It's as simple as that, your Honour.

HIS HONOUR: I understand.

10 MR PURTON: But I don't press it any further.

HIS HONOUR: No, no. All right. Well, I understand that. Now, Mr Garrett, what I want to know – and I don't want to know it today, but I want to know it in an orderly fashion – is effectively what takes this litigation out of the decisions made by  
15 Davies J and I think maybe – I thought there was another one. Maybe Mortimer J  
- - -

MR GARRETT: Mortimer and Beach, thank you, your Honour.

20 HIS HONOUR: All right. So I need to know – I haven't read those decisions yet, Mr Garrett, but I have obviously – by the material given to me by the applicant in this case I'm familiar of what they dealt with, if what I've been told is true, and how they may impact upon this case. And what's put against you quite frankly, Mr  
25 Garrett, is you're just rehearsing everything that's been dealt with by those three judges of this court beforehand. So what I need to know and what you have to help me with, and I will make some directions about this, is you've got to show me what is different – why it's a new case.

MR GARRETT: Yes.

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HIS HONOUR: Because the reality is if it's the same case that's been dealt with before, Mr Garrett, I will have no choice, whatever I want to do – as a matter of law I will have to at least see to one aspect of the claim, that's the statutory demand, be set aside. Now, whether an injunction's been made seeking other matters may be a  
35 different issue and we will have to tease that out.

MR GARRETT: That's a matter arising out of the proceeding, yes.

HIS HONOUR: Yes. All right. So that's where I'm at. So what I was thinking of  
40 doing is giving you a chance to file material, but I'm going to limit the material, Mr Garrett. I know you've tried to file some material, I gather, but I don't want to receive lots of material that isn't directed to that question, effectively, that I've asked you. So - - -

45 MR GARRETT: Certainly.

HIS HONOUR: Do you understand – I think you do understand what I’m saying, but if you’ve got any questions about that - - -

MR GARRETT: I totally understand what you mean, your Honour. Yes, I do.  
5 There is an issue in this proceeding, and that is whether the judgments that have been made in the past have been vitiated by fraud. Now, on the basis of the affidavit material that was both before Davies – her Honour Davies, her Honour Mortimer, his Honour Beach and his Honour North, the plaintiff in this proceeding has sworn and filed on 24 separate occasions materials that he knows to be false. Now, that has  
10 been admitted. There is a notice to admit that was filed on 5 January that sets out the matter extremely clearly. There is no response to that notice to admit, your Honour. As a consequence, of course, the matters set out in that notice to admit, which is filed and served - - -

15 HIS HONOUR: That’s – a notice to admit in this proceeding before me?

MR GARRETT: In this proceeding before you, your Honour.

HIS HONOUR: All right.  
20

MR GARRETT: All of the admissions that were made in VID158 to VID166 that were before Davies J have been readmitted for the purposes of this proceeding. I pointed out to her Honour on 27 July that the affidavit of the deponent Jason Ryan was false. Her Honour chose to do a Nelson and turned a blind eye to the conduct of  
25 a legal practitioner as in-house legal counsel for Treasury Wine Estates Vintners Limited in filing and serving a false affidavit. That matter has not been appealed as yet because, on 30 July, I obtained a grant of assistance in the Public Interest Test Case Funding Scheme from the Office of the Commonwealth Attorney-General.

30 HIS HONOUR: What date did you get that, sorry?

MR GARRETT: 30 July.

35 HIS HONOUR: 2015 - - -

MR GARRETT: 15. Thank you, your Honour.

HIS HONOUR: All right.  
40

MR GARRETT: The appearance was 27<sup>th</sup> - - -

HIS HONOUR: Yes.

45 MR GARRETT: - - - and judgement delivered on 3 August. I did not appeal because the path that I’m going down now is that of constitutional writs so I’m seeking to have this reviewed – this matter and all of the preceding matters, including

a matter in the Supreme Court of South Australia, which is where this proceeding arises from, which is Supreme Court matter 1996 2244, Andrew Garrett v Mildara Blass Limited. Mildara Blass Limited has had different guises at various points in time. It changed its name to Beringer Blass on the acquisition of Mildara Blass by Foster's Wine Estates – Foster's Brewing Group. My apologies, your Honour.  
5 Subsequently it changed its name to Fosters Wine Estates. After that it changed its name to – excuse me while I compose myself; this has been a long journey, your Honour – to Treasury Wine Estates Vintners Limited.

10 During the period up until 1996, when it was acquired by Foster's Brewing Group, it traded as Mildara Blass Limited. After that time it was delisted, of course, as 100 per cent of the shares had been owned by Foster's Brewing Group. In 2004 a sequestration order was made against me in respect of debts that could not and did not legally exist.

15

HIS HONOUR: But those issues have been decided against you, haven't they?

MR GARRETT: They have, your Honour - - -

20 HIS HONOUR: Yes.

MR GARRETT: - - - but again, those matters are vitiated by a fraud.

HIS HONOUR: Well, is that your point before me? That you accept that those  
25 decisions have been made - - -

MR GARRETT: I accept that the decisions have been made.

HIS HONOUR: - - - but they're void because they've been fraudulently obtained.  
30 Is that what you want to agitate?

MR GARRETT: Indeed, your Honour. And there is – an aspect of this proceeding relates to orders sought for the registrar to bring contempt of court proceedings against the lawyers involved. So there are very serious issues involved in this, but  
35 they also include, unfortunately for the Federal Court, separation of powers issues. The separation of powers issues relate to the conduct of Registrar Caporale, Registrar Allaway and the communications between those registrars, as members of the executive government, and the judiciary. It is clear to me from the absence of materials provided under Freedom of Information requests made of the Federal Court  
40 of Australia, and of judicial complaints made to Allsop CJ on 6 June 2015, and finally forwarded to him on 16 June 2015, which were then revisited on the basis of a failure to comply with section 15 of the Federal Court of Australia Act.

45 As a consequence of the failures of the Chief Justice to investigate proper judicial complaints I then complained to the Commonwealth Attorney-General and the Minister of Justice. As a consequence of that matter I heard from Dr Alvin Smirdle of the Court's Tribunals and Justice Policy Branch of the Commonwealth Attorney-

General. The matters arising in this proceeding are, indeed, extremely serious. They are constitutional in nature and I understand your Honour has expertise in that space. But this is a - - -

5 HIS HONOUR: I don't know about that, Mr Garrett, but I'm here to decide the case.

MR GARRETT: I understand that, your Honour. However, I'm saying to your Honour that, in fact, I apply for summary judgment on the basis that the plaintiff  
10 stands absolutely no prospects of success on the basis of the admissions made in the notice to admit, and I urge your Honour to review that notice to admit. I'm entitled to judgment debt under Federal Court Rule 2207.

HIS HONOUR: But it's your notice to admit, I take it.  
15

MR GARRETT: Yes.

HIS HONOUR: You've issued a notice to admit.

20 MR GARRETT: Yes.

HIS HONOUR: And no answer's been given for that notice to admit.

MR GARRETT: Thank you, your Honour.  
25

HIS HONOUR: All right. Well, that means they're not admitted so I – it's as if it's a nothing before me legally. It's not evidence; it's what you're saying - - -

MR GARRETT: Well, under 2204 - - -  
30

HIS HONOUR: It's what you're saying that you want them to admit and - - -

MR GARRETT: Yes.

35 HIS HONOUR: - - - if they admitted it all and you could provide that to me that may be a different kettle of fish but - - -

MR GARRETT: Indeed. So - - -

40 HIS HONOUR: But we haven't got to that stage yet, Mr Garrett.

MR GARRETT: Well, that's the next point, your Honour - - -

HIS HONOUR: All right.  
45

MR GARRETT: - - - is the applications to be made for orders that the plaintiff has been deemed to have admitted the facts contained in the notice of admit - - -

HIS HONOUR: But why should I do that if they've decided not to admit it?

MR GARRETT: Your Honour, they haven't sent a notice disputing facts; therefore  
- - -

5

HIS HONOUR: They don't have to. I think the rules say if they don't – I can't remember, Mr Purton, but I thought if you didn't admit them within a certain time it's said to be not admitted.

10 MR PURTON: Your Honour, I need to check that, but if I could just say a couple of things on the notice to admit.

HIS HONOUR: Yes. Yes.

15 MR PURTON: We say the notice to admit is an abuse of process. We say it's irrelevant to the application, being our own application - - -

HIS HONOUR: All right.

20 MR PURTON: - - - and in time should be set aside, but that should not be done today.

HIS HONOUR: All right.

25 MR PURTON: And we've written to Mr Garrett on that issue - - -

HIS HONOUR: About that. Right.

MR PURTON: - - - in time.

30

HIS HONOUR: All right. Anyhow. Well - - -

MR GARRETT: Your Honour - - -

35 HIS HONOUR: I hear what you're saying, Mr Garrett. We will look at that - - -

MR GARRETT: Would you? Thank you.

HIS HONOUR: - - - but not today. But we will look at that.

40

MR GARRETT: That's okay. Indeed, your Honour, on the basis of the advice that I received from registry that the affidavits that I filed on 5 January weren't accepted for filing and that we would discuss that matter today - - -

45 HIS HONOUR: Yes, we will.

MR GARRETT: - - - then I wrote to your Honour's chambers on 4 February – yesterday.

HIS HONOUR: Yes.

5

MR GARRETT: I don't know if your Honour's had an opportunity to see that email.

HIS HONOUR: I didn't see that email.

10

MR GARRETT: Could I ask your Honour to review that because it does set out the Federal Court rules and it also sets out a number of others matters related to section 15.

15

HIS HONOUR: Have you got in court the material you wanted to file?

MR GARRETT: Your Honour, the materials that I wanted to file are the materials that I filed, but there are additional materials because unfortunately there are special federal matters that arise in the South Australian proceedings, both in the District Court and the Supreme Court. That will mean cross-vesting of those proceedings under the Cross-vesting Act.

20

HIS HONOUR: Well, have you got in court, though, the material you sought to file in the Federal Court the other day?

25

MR GARRETT: I do have the materials, your Honour, but they are annexed - - -

HIS HONOUR: Are they on the bar table over there on the left-hand side?

30

MR GARRETT: Yes, they are.

HIS HONOUR: Could I have a – would you mind if I have a very quick look at those for a moment?

35

MR GARRETT: Not at all, your Honour.

HIS HONOUR: Is any of this material not material – is there any new material that wasn't before Davies J or Beach J or Mortimer J or North J?

40

MR GARRETT: There is, your Honour, in terms of the evidence in respect of the false affidavits filed. I didn't put any of those materials in respect to false affidavits to anyone bar Davies J. North J never heard it at a hearing of the proceedings of VID158 to VID165. VID166 – the appeal of VID166 remains unheard. For reasons not known to me that matter was never listed. It seems to have fallen through the cracks, your Honour.

45

HIS HONOUR: Which number is that, sorry?

MR GARRETT: VID166 of 2015. My email talks about - - -

HIS HONOUR: Well, in the judgment of Davies J – just the front page says file number VID166 of 2015.

5

MR GARRETT: Your Honour, the – could I have a look at that particular one?

HIS HONOUR: Yes. As I said, I haven't read that decision, apart – I've just got a copy of it. But you will see the front page, which indicates the file numbers that her Honour purports to deal with.

10

MR GARRETT: Yes, this is Davies J's decision.

HIS HONOUR: Yes. So - - -

15

MR GARRETT: I'm talking about the appeal of Davies J's decision - - -

HIS HONOUR: I see.

20

MR GARRETT: - - - has not been heard.

HIS HONOUR: The appeal – sorry, I didn't realise there was an appeal from Davies J's decision. I thought you hadn't appealed.

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MR GARRETT: There was an appeal of all of Davies J's decisions in VID158 to 166.

HIS HONOUR: Yes.

30

MR GARRETT: They were given proceeding numbers VID361 to 368.

HIS HONOUR: Yes. That's because when it goes on appeal they get new numbers.

MR GARRETT: Yes, of course.

35

HIS HONOUR: Yes.

MR GARRETT: And, indeed, that went to North J and was determined on 21 July.

40

HIS HONOUR: I see. Yes. I now remember. Yes.

MR GARRETT: But the problem with the hearings of VID361 to 368 – there appears to have not been a VID369 applying to VID166.

45

HIS HONOUR: Right. Well, I - - -

MR GARRETT: Does your Honour follow what I'm saying?

HIS HONOUR: Well, I hear what you're saying.

MR GARRETT: It's complex, but there is a meal that's been missed.

5 HIS HONOUR: All right. Well, getting back to what I want to progress this matter,  
what I think you need to do is to set out for me the arguments you want, which  
you've outlined now to me – the arguments you want to put forward and what  
10 material you want to rely upon. Now, I don't want the material, but I want you to  
say this affidavit or this notice to admit or whatever, or a new affidavit if you were  
going to – if you want to put a new affidavit. It's not helpful for the court, Mr  
Garrett, to have this much material which has been dealt with before. As I said to  
you, my main issue – and you've identified it. You say, well, I should ignore all the  
earlier cases because they've been obtained by fraud.

15 MR GARRETT: Indeed.

HIS HONOUR: That's basically what your main point - - -

MR GARRETT: And that affidavit reflects that material. That was not before any  
20 justice before your Honour - - -

HIS HONOUR: All right.

MR GARRETT: - - - so that is new material that has not been before any justice.  
25

HIS HONOUR: All of this is new material; it has not been - - -

MR GARRETT: Yes, your Honour.

30 HIS HONOUR: All of it?

MR GARRETT: Yes, your Honour.

HIS HONOUR: All right. Well, then – and this will show that - - -  
35

MR GARRETT: The vitiation by fraud.

HIS HONOUR: - - - the judgments were obtained by fraud.

40 MR GARRETT: Yes.

HIS HONOUR: Is the only judgment you need to have obtained by fraud Davies J's  
or do you need to get rid of them all?

45 MR GARRETT: All of them, your Honour.

HIS HONOUR: All of them were obtained by fraud?

MR GARRETT: Yes.

HIS HONOUR: All right.

5 MR GARRETT: And also obtained by separation of powers issues related to the  
- - -

HIS HONOUR: Well, I understand that – that’s a separate matter so you will need  
to identify that.

10

MR GARRETT: Indeed.

HIS HONOUR: So what you need to do is you need to identify your arguments and  
what evidence you want to rely upon in relation to that matter.

15

MR GARRETT: Well, I think it’s a bit more complex than that, your Honour.

HIS HONOUR: All right.

20

MR GARRETT: The issue is whether this court can hear the matter at all, and that  
is a function of the notice of apprehended bias that I’ve sent through to the court on  
more than one occasion, and that flows from the failure of the Chief Justice to  
comply with the statutory duties to investigate the conduct of the judiciary and the  
registrars complained of.

25

HIS HONOUR: Well, that may be the Chief Justice’s problems, but are you saying  
I’m biased?

MR GARRETT: Indeed - - -

30

HIS HONOUR: Are you saying I’m biased; I can’t hear it either?

MR GARRETT: I’m not saying that, your Honour, because I don’t know that I’ve  
appeared before your Honour, but I’m saying that no officer of the Federal Court can  
hear this proceeding and, indeed, given that some of the matters are, in fact, also  
steps of an administrative nature, there is the issues of whether, in the same  
proceeding, decisions of the registrars need to be reviewed at the same time, and,  
indeed, I’ve referred to in my email yesterday a decision of Registrar Allaway made  
on 16 November 2015 which needs to be reviewed, which was the failure to list a  
crossclaim against Mortimer J, and also the lawyers complained of. That relates  
purely, wholly and solely to the issues of vitiation by fraud and false affidavit  
materials filed on no less than 24 occasions and the contempt of court issues that  
must arise from that.

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45

HIS HONOUR: Well, I can’t – I can only deal with the matters that are before me,  
Mr Garrett. At the moment I’ve got a proceeding that’s been brought by your  
opponent’s client to you, but what I’m trying to do is focus in on - - -

MR GARRETT: Yes.

HIS HONOUR: And I think the best way to do it - - -

5 MR GARRETT: On the statutory letter of demand issue.

HIS HONOUR: Yes. ....

10 MR GARRETT: I understand what your Honour's saying. It's about whether there's a genuine dispute.

HIS HONOUR: Yes.

15 MR GARRETT: The concept of genuine dispute, of course, relies on the affidavit material.

HIS HONOUR: Well, that's been decided against you, though, hasn't it?

20 MR GARRETT: Well - - -

HIS HONOUR: As long as those decisions are valid.

MR GARRETT: I don't think it has been decided, your Honour; that's my point.

25 HIS HONOUR: Well, your point is it hasn't been decided because those decisions are void.

30 MR GARRETT: Indeed, your Honour, but it's not just that. There are other aspects that haven't been decided – have been avoided by the judiciary of this court.

HIS HONOUR: Well, you need to identify them for me too.

MR GARRETT: Yes, indeed I do, your Honour.

35 HIS HONOUR: Not now. All right.

MR GARRETT: I concede that point. I'm happy to do that.

40 HIS HONOUR: All right.

45 MR GARRETT: The final point that I make is that the affidavit is not compliant with the Federal Court rules, and when I say the affidavit I mean the affidavit of the plaintiff. It is sworn by a lawyer; it's not sworn by an officer of the company. Consequently, under section 5, I think it is – 5A or is it 25? It's in my email. If I can ask your Honour just to bear with me for one second. Sorry. 2.5A – the affidavit is noncompliant. It's not sworn by an officer of the company. Therefore the

application should be set aside because it's doomed to failure. It's outside of the 21-day period and is incapable of being cured.

5 HIS HONOUR: Well, it's capable of being cured. We can just get an officer – if that's a good point then the plaintiff could get someone else to swear the affidavit.

MR GARRETT: Well, no, your Honour, because the affidavit must be sworn within the 21-day period; otherwise an event of insolvency has been committed.

10 HIS HONOUR: All right. All right.

MR GARRETT: In that simple – sorry, your Honour. I should say it's my interpretation of the simple operation of the Corporations Act.

15 HIS HONOUR: All right. All right. Well, then - - -

MR GARRETT: And the authorities that I've read.

20 HIS HONOUR: All right. Well, then, that's another point you need to put in your - - -

MR GARRETT: Indeed.

25 HIS HONOUR: - - - document.

MR GARRETT: The other point that I make is that the grant of the test case funding by the Commonwealth Attorney-General was made on the basis of can vexatious litigant orders be made in a proceeding without the relevant discovery orders of all of the material facts being made by the court in the lead-up to making that order?  
30

HIS HONOUR: Yes.

35 MR GARRETT: And, indeed, can that order be made in a void of making a finding - - -

HIS HONOUR: But why is that relevant to me today? I'm not dealing with you as a vexatious litigant. You're a defendant.

40 MR GARRETT: Well, your Honour's already – I understand. I completely understand that.

HIS HONOUR: So it's neither here - - -

45 MR GARRETT: And the documents that I've filed are in my defence so therefore - - -

HIS HONOUR: It's neither here nor there whether you're a vexatious litigant.

MR GARRETT: Yes. It's not really, your Honour. My friend has already referred  
5 your Honour to that decision; therefore it creates an impression in your Honour's  
mind as to the conduct of the proceedings to date, and indeed I can understand that.  
However - - -

HIS HONOUR: Well, as I said, I haven't read the decisions that have been against  
10 you, Mr Garrett, so - - -

MR GARRETT: Yes. But the point about what I'm making, your Honour - - -

HIS HONOUR: - - - I don't have much impression at all.

15 MR GARRETT: The point is that vexatious litigant orders should not be made  
without first a finding of all the material facts - - -

HIS HONOUR: Yes.

20 MR GARRETT: - - - and second, without making a finding on the merits of the  
proceeding on which they're made.

HIS HONOUR: Well, that may be a fight for another day. I don't think I will be  
25 entertaining that discussion, but - - -

MR GARRETT: Well, your Honour, I think you will be, with the greatest of  
respect.

HIS HONOUR: Right. Well, you need to put that in your list of things you want to  
30 raise.

MR GARRETT: Yes. And that will be coming – flowing from the decision in Re  
Waken.

35 HIS HONOUR: All right. All right. Well, then, can I suggest this because I've got  
now to hear another matter - - -

MR GARRETT: Yes, I know that, your Honour.

40 HIS HONOUR: - - - which is going to sit for 11.30.

MR GARRETT: Yes.

45 HIS HONOUR: My suggestion is that I make an order that the parties file and serve  
written outlines of submissions in relation to the plaintiff's application for injunctive  
relief, not exceeding 20 pages in length. I was going to set this matter down on 10  
March. Does that suit you, Mr Garrett, Mr Purton?

MR GARRETT: The earlier the better, your Honour.

HIS HONOUR: All right.

5 MR GARRETT: However, I think the estimate of time is shy. I think it's going to take longer than half a day and probably longer than a day.

HIS HONOUR: All right.

10 MR PURTON: Your Honour, if I may, if your Honour is not minded to make the order that's sought in my submission - - -

HIS HONOUR: Not 1, no.

15 MR PURTON: Yes, yes. 1 needs to come out, but also the reference in orders 2 and in orders 3 of my minute to injunctive relief ought also come out because it will be all aspects of the - - -

HIS HONOUR: All right. Sorry, you're quite right.

20

MR PURTON: And 10 March, your Honour, is fine for - - -

HIS HONOUR: What about the - maybe if we need a day maybe 11 March. Would that - - -

25

MR PURTON: Yes, your Honour - - -

HIS HONOUR: That's a Friday.

30 MR GARRETT: Whatever is convenient for your Honour.

MR PURTON: One thing Mr Garrett and I can agree on is if all those issues are to be ventilated it will take longer than the half-day estimate that I had in my minute of order.

35

HIS HONOUR: All right. Well, how about we set it down for 11 March, which is a Friday.

40 MR PURTON: Yes. Your Honour, I'm minded that you have a full list, but if I may seek your indulgence just one moment.

HIS HONOUR: Yes.

45 MR PURTON: The reason that the plaintiff brings this application is that it's faced - as it has been on 19 occasions - - -

HIS HONOUR: I understand.

MR PURTON: - - - with an application to – a presumption of insolvency. Mr Garrett has pointed out to the plaintiff on a number of occasions that that may have issues for the plaintiff’s financial covenants. The statutory demand in the judgment of Davies is stayed as against Mr Garrett. He cannot rely on it - - -

5

HIS HONOUR: Yes.

MR PURTON: - - - because he has not obtained leave.

10 HIS HONOUR: All right.

MR PURTON: The issues that Mr Garrett has raised, your Honour, ought really be brought in a new proceeding and leave ought be granted, if the court were minded to do it, pursuant to the vexatious litigant orders.

15

HIS HONOUR: I understand.

MR PURTON: But instead Mr Garrett is seeking to bring these matters through the back door. There ought only be two issues of relevance to our application, your Honour. One is whether a genuine dispute exists, and we say that it does, and two is whether the application – the statutory demand, rather, was served for an improper purpose.

20

HIS HONOUR: I understand.

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MR PURTON: And we say certainly – evidently it was. Any other material, your Honour, is relevant – is irrelevant and will - - -

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HIS HONOUR: I understand. All right. Well, I have to give Mr Garrett the opportunity to put before me, in the best way he can, in a logical way - - -

MR PURTON: Yes.

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HIS HONOUR: But the purpose of today has just been to focus the mind of everybody on what we’re talking about.

MR PURTON: Yes, your Honour.

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HIS HONOUR: Now, Mr Garrett will go away and think about what he wants to put and - - -

MR PURTON: Yes.

45

HIS HONOUR: But if we’re going to hear it on 11 March is there any material you – any further evidence or any further material you want to rely upon?

MR PURTON: We disagree with Mr Garrett in terms of whether the affidavit may be relied on or not, so that - - -

HIS HONOUR: All right. Well, that's your choice. That's fine.

5

MR PURTON: So there's no further material to be filed from the perspective of the - - -

HIS HONOUR: From your point of view.

10

MR PURTON: - - - the plaintiff. No, your Honour.

HIS HONOUR: All right. Now, Mr Garrett – so - - -

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MR GARRETT: If I could make just one quick point, your Honour.

HIS HONOUR: Yes.

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MR GARRETT: And that is my friend has commented on the orders of Davies J in respect of statutory letters of demand issued in the past. This statutory letter of demand is in respect of different moneys. These are in respect of receivables that were due on 30 June and payable on 25 July, which, of course, was two days before the hearing of her Honour, 2015. And secondly, there was a payment of another – sorry, \$150,000 due on 30 September and payable on 25 October, so these are quite different moneys. One shouldn't allow counsel to lead your Honour in a direction to consider these moneys that are subject to the statutory letter of demand are the same as the moneys that have been considered in the past.

25

30

Previously I've attended a mediation conference in VID248 and VID381 of 2014, in which I consented to withdraw all the statutory letters of demand on the basis that I would get a fair hearing in VID248 of 2014. That did not occur. Consequently the statutory letters of demand – the orders that were made at the time of consenting to set aside the statutory letter of demand were the subject of orders that I could reserve my right to reissue those statutory letters of demand. I did that. Consequently VID158 to VID166 commenced and the issues about false affidavit material flow from there.

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HIS HONOUR: All right. Well, if I make the order, Mr Garrett, Mr Purton, that parties – I wonder if, Mr Purton, you will engross this for me and send it through to my chambers as a formal order - - -

MR PURTON: Yes, your Honour.

45

HIS HONOUR: - - - and provide, of course, the order to Mr Garrett. The parties file and serve written outlines of submissions in relation to the plaintiff's application not exceeding 20 pages in length by 4 March 2016; 2, the plaintiff's application be

listed for hearing on 11 March 2016 at 10.15 am. And I will reserve the costs. All right.

5 MR PURTON: May it please the court.

HIS HONOUR: Now, Mr Garrett, I'm going to return this material to you. What I have said to you in the motion of submissions is for you to put what you want – propositions and to set out in that affidavit – in that submission, sorry, what material you want to rely upon.

10 MR GARRETT: Yes. Thank you, your Honour.

HIS HONOUR: All right? Now, that material – I'm going to be receiving this on 4 March – will be documentary material presumably.

15 MR GARRETT: Yes, it will be, your Honour.

HIS HONOUR: And it may be that when I've had a look at that, what you want to rely upon – I will need to get copies and arrange to give Mr Purton copies.

20 MR GARRETT: No problems at all.

HIS HONOUR: Which I'm trying to - - -

25 MR GARRETT: Thank you.

HIS HONOUR: And remember what I said to you and you have to take your own course about this, but you need to be – and I think you understand the point – you need to persuade me that what has gone before is different from what I'm going to deal with now.

30 MR GARRETT: Yes.

HIS HONOUR: But I've explained that to you. All right.

35 MR GARRETT: No, I completely understand your point, your Honour. There is only one further point to make, and that is I've taken steps to brief counsel.

HIS HONOUR: Yes.

40 MR GARRETT: So I'm not yet able to say that they've accepted the brief.

HIS HONOUR: Yes.

45 MR GARRETT: However, I wanted your Honour to be aware of that – Mr Georgiadis of Georgiadis Lawyers in Adelaide.

HIS HONOUR: Yes.

MR GARRETT: It is my intention to withdraw from self-representation - - -

5 HIS HONOUR: All right.

MR GARRETT: - - - and allow counsel to take the appropriate steps.

10 HIS HONOUR: All right. Well, that's probably a useful thing to happen, but I will  
leave that in your hands, Mr Garrett.

MR GARRETT: Thank you, your Honour.

15 HIS HONOUR: All right. Thank you, Mr Purton. We will now call the next  
matter, please.

**MATTER ADJOURNED at 11.39 am UNTIL FRIDAY, 11 MARCH 2016**



**ANNEXURE 6; Transcripts of VID 949 of 2015; *Treasury Wine Estates Vintners Limited v Andrew Garrett v Regina & Ors***



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**TRANSCRIPT OF PROCEEDINGS**

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O/N H-653328

**FEDERAL COURT OF AUSTRALIA**

**VICTORIA REGISTRY**

**MIDDLETON J**

**No. VID 949 of 2015**

**TREASURY WINE ESTATES VINTNERS LIMITED**

**and**

**ANDREW MORTON GARRETT**

**MELBOURNE**

**10.19 AM, FRIDAY, 11 MARCH 2016**

**MR C. MOLLER** appears for the applicant

**MR A. GARRETT** appears in person

**MR R. McCLURE** appears for the 1<sup>st</sup> to 16<sup>th</sup>, 26<sup>th</sup> and 35<sup>th</sup> to 37<sup>th</sup> defendants to the cross-claim

**MR D. McCREDDEN** appears for the 33<sup>rd</sup>, 34<sup>th</sup>, 40<sup>th</sup>, 42 to 46<sup>th</sup> and 49<sup>th</sup> to 55<sup>th</sup> proposed cross-respondents

**MR N. ABRAMS** appears for the 29<sup>th</sup> and 30<sup>th</sup> named entities and the CEO of Austrade

**MR V. TAVOLARO** appears for the Commissioner of Taxation

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MR C. MOLLER: Please the court, I appear for the applicant.

HIS HONOUR: Yes, Mr Moller. Yes, Mr Garrett. Are you appearing for yourself?

5 MR A. GARRETT: Your Honour, I appear personally today. Thank you, your Honour.

HIS HONOUR: Thank you, Mr Garrett, and who else do we have appearing?

10 MR R. McCLURE: Your Honour, if the court pleases, I appear for the first to the 16<sup>th</sup>, the 26<sup>th</sup> and the 35<sup>th</sup> to the 37<sup>th</sup> ..... defendants to the cross-claim.

HIS HONOUR: Cross-claim. Thank you, Mr McClure. Yes.

15 MR D. McCREDDEN: Please the court, I appear for various Victorian and South Australian State entities, they being, in relation to Victoria, the 33<sup>rd</sup> proposed cross-defendant – cross-respondent, the 49<sup>th</sup>, 50<sup>th</sup>, 51<sup>st</sup>, 52<sup>nd</sup>, 53<sup>rd</sup> and 55<sup>th</sup>, and, your Honour, in relation to the South Australian State entities, I appear for the 34<sup>th</sup>, the 40<sup>th</sup>, 42<sup>nd</sup>, 43<sup>rd</sup>, 44<sup>th</sup>, 45<sup>th</sup>, 46<sup>th</sup> and 54<sup>th</sup> .....

20

HIS HONOUR: Thank you, Mr McCredden. Yes.

MR N. ABRAMS: If your Honour pleases, I appear on behalf of the entity number 29, proposed defendant by cross-claim the CEO of Austrade and also, your Honour, 25 the 30<sup>th</sup> named entity, Austrade itself, your Honour.

HIS HONOUR: Thank you. Yes.

MR V. TAVOLARO: May it please the court, I appear for the 38<sup>th</sup> named proposed 30 defendant, the Commissioner of Taxation.

HIS HONOUR: Yes, Mr Tavolaro. Thank you very much. I may have this matter called outside just to see if there's any other parties that are interested.

35 MR MOLLER: Of course, your Honour.

HIS HONOUR: Thank you, Mr Moller. Would you call the matter outside the courtroom, please?

40 ASSOCIATE: No further appearances, your Honour.

HIS HONOUR: Thank you. Yes, Mr Moller.

MR MOLLER: Your Honour, there is before the court an application under section 45 459G of the Corporations Act to set aside a statutory demand served on the applicant by Mr Garrett. You will also have seen from our originating process that we seek an

injunction restraining him from serving further statutory demands on the applicant. The other parties are obviously in court because of Mr Garrett's process, if I can use a neutral term. We say as to that, and we're in your Honour's hands as to when you want to deal with it, but it is improper. It should not have been brought in this  
5 application. It's improper for two – at least two reasons.

The first, as we understand the matters raised in that process, they go beyond the issues raised in the 459G application and there's authority that it is not proper to use proceedings in the corporations or bankruptcy jurisdiction to ventilate other claims  
10 which should be brought in courts of competent jurisdiction or in the other jurisdictions of this court.

HIS HONOUR: What authority is that, Mr Moller?

15 MR MOLLER: That's a decision, your Honour – I have copies handed up. It's a decision of VH Aviation Proprietary Limited v BP Australia, a decision of Beaumont J. I've got copies for Mr Garrett and for your Honour.

HIS HONOUR: Thank you. Yes.  
20

MR MOLLER: I've got copies for my friends. To be honest ..... quite so many of them, I must say.

HIS HONOUR: No .....  
25

MR MOLLER: Your Honour can look at – the head note summarises it:

*It is not permissible without leave of the court to add claims in the general jurisdiction of the court to proceedings commenced in the court's bankruptcy or corporate insolvency jurisdiction –*  
30

and we say that that is this jurisdiction because the issuing of a statutory demand is a necessary step – it's an issue we will ventilate later during the day – in the winding up jurisdiction.  
35

HIS HONOUR: Yes.

MR MOLLER: Your Honour can see where Beaumont J cites the authorities, page 75, line E, and his Honour says there that:  
40

*The statement of claim was purported to be filed because, as a matter of form as well as substance, it is not permissible at least without the leave of the court to seek to add claims in the general jurisdiction –*

45 etcetera, and then he rehearses some comments that Gibbs J, as he then was, made on the bottom of page 76, your Honour, when sitting in the then Federal Court of

Bankruptcy about having the claims, the subject of the purported application, brought in a proper court.

HIS HONOUR: All right.

5

MR MOLLER: That's the authority; that's the principle. The second reason of course is that by the application Mr Garrett – by the process Mr Garrett seeks to bring an application, the commencement of which is barred by the vexatious litigant orders, so he would need leave anyway. As I say, we're in your Honour's hands as to how it should be dealt with.

10

HIS HONOUR: Well, I thought what we would do is, subject to what Mr Garrett thinks about this – but you brought everybody – not everybody – you brought Mr Garrett to court, so you should go first on your application, then I will hear Mr Garrett and then from what he says we will see how we progress. Everyone happy to proceed in that way? It seems a logical way to proceed. I'm hearing no-one say to the contrary, so let's do that.

15

MR MOLLER: If your Honour pleases.

20

HIS HONOUR: Now, I have had the advantage, I should tell you, of reading the submissions obviously and the pleadings and I'm familiar with most of the cases that have been referred to, including now I have had the opportunity of looking at the previous decisions that are referred to dealing with Mr Garrett dealt with by the various justices of this court, which I hadn't been familiar with before. So I have a couple of questions, Mr Moller, first, so let's deal with those. You rely more than just on the Corporations Act, don't you? I think you were indicating in a submission that you rely upon the general powers of the Federal Court in relation to the interlocutory – sorry, to the injunction you seek.

25

30

MR MOLLER: Yes, your Honour.

HIS HONOUR: So you need to formally amend, don't you ..... do you?

35

MR MOLLER: We do and we foreshadowed that, I think - - -

HIS HONOUR: In paragraph 43.

MR MOLLER: In paragraph forty – and I think by a footnote, if necessary.

40

HIS HONOUR: Yes, footnote 9.

MR MOLLER: Yes.

45

HIS HONOUR: All right. So you're going to rely upon either section 23 of the Federal Court Act or its inherent and implied powers. Is that as I understand?

MR MOLLER: Precisely, your Honour.

HIS HONOUR: All right.

5 MR MOLLER: Along the same lines as French J did in the Seacrest case.

HIS HONOUR: Yes. Mr Garrett, what Mr Moller wants to do is to not change any of the arguments, other than to say the jurisdiction of the court is enlivened by section 23 of the Federal Court Act, or its inherent power.

10

MR GARRETT: I'm happy to concede that point, your Honour. In terms of my submissions as to the all-encompassing powers of the court around rule 1.32 and additionally also in respect of the findings of the High Court in Re Wakim; ex parte McNally where of course this court has the power to consider any matter, howsoever arising, related to this proceeding, whether State or Federal. Thank you, your Honour.

15

HIS HONOUR: Yes. All right. Well, then I will give you leave, Mr Moller, to amend your application to include applying under section 23 of the Federal Court of Australia Act, or under its inherent or implied jurisdiction.

20

MR MOLLER: If the court pleases.

HIS HONOUR: And the other issue, Mr Moller, is there was a notice to admit - - -

25

MR MOLLER: Yes.

HIS HONOUR: - - - which was relied upon by Mr Garrett and I can't see any disputation of it. I think what was said by your predecessor is there may be an application to set that aside as an abuse of process.

30

MR MOLLER: Yes, your Honour.

HIS HONOUR: Or there's another way, is to seek to have dispensation with its compliance.

35

MR MOLLER: I think your Honour has that power under rule 1.34, as I recall.

HIS HONOUR: I do. I do.

40

MR MOLLER: We make the application. We put it either way, your Honour.

HIS HONOUR: All right.

45 MR MOLLER: In support of the application you will have seen the notice to admit.

HIS HONOUR: I hear what you say about it.

MR MOLLER: Yes.

HIS HONOUR: I will hear Mr Garrett about that - - -

5 MR MOLLER: Of course.

HIS HONOUR: - - - but I just wanted – not now, Mr Garrett, but I will give you a chance to discuss it later, but I just want to put all this on the agenda.

10 MR MOLLER: Yes.

HIS HONOUR: So that’s on the table and that’s the application you make, otherwise I take it you have not responded to that notice.

15 MR MOLLER: Not in any formal sense. We’ve written to Mr Garrett and said that the document is out of order, so he knows what we say about it.

20 HIS HONOUR: All right. Now the other issue which I just wanted to have your ..... view about, Mr Garrett told me, when the matter was last before me, at page 18 of the transcript – did you get a copy of the transcript, Mr Garrett? I can’t remember now.

MR GARRETT: I did. Thank you very much, your Honour.

25 HIS HONOUR: Thank you. All right. So at page 18, look at line 20, and the point he makes there is that these are new matters. They’re new sums of money.

MR MOLLER: Yes.

30 HIS HONOUR: They’re different moneys.

MR MOLLER: Yes.

35 HIS HONOUR: Is that right or wrong?

MR MOLLER: We accept that they are moneys pertaining to a different period, so these are not the statutory demands upon which Davies J adjudicated.

40 HIS HONOUR: I see.

MR MOLLER: But they are statutory demands under the same clause - - -

HIS HONOUR: Of the deed.

45 MR MOLLER: - - - of the same instrument, being the deed, for a later period, and we touch on this in the submissions. We point to some correspondence from the past where Mr Garrett says that he was going to raise statutory demands every quarter.

So presumably these are the demands for the next quarter, irrespective of the moneys that he says are owing under the deed.

HIS HONOUR: Owing under the deed.

5

MR MOLLER: Yes.

HIS HONOUR: Clause 9, is it? Is it clause 9?

10 MR MOLLER: Clause 9.2, your Honour.

HIS HONOUR: Yes. I'm familiar with that clause now.

MR MOLLER: You are?

15

HIS HONOUR: Yes. All right. So it's not the moneys that Davies J dealt with, or statutory demands - - -

MR MOLLER: No.

20

HIS HONOUR: - - - but it arises out of the same instrument, you would say, the deed, clause 9, and that's an ongoing ..... go on for a number of different amounts of money over a different period of time, presumably, if - - -

25 MR MOLLER: Potentially in perpetuity.

HIS HONOUR: In perpetuity, yes.

MR MOLLER: Yes.

30

HIS HONOUR: Exactly. Yes.

MR GARRETT: Sorry, your Honour. I must intervene on that one. It's not for different amounts of money. Clause 9.2 is quite different from clause 9.1. 9.1 is moneys payable to the trustees of the Andrew Garrett – sorry, the Garrett Family Trust, while clause 9.2 is moneys due and payable to me personally. There are two quite separate intellectual property assets. The Garrett family licence, which was terminated and are the 40 pages that are missing from exhibit MC4, all refer to the Garrett family licence.

40

HIS HONOUR: So the moneys you're – now before me are under 9.2, are they?

MR GARRETT: Correct, your Honour, 9.2(b), but what I'm saying is that the plaintiff has read clause 9.2(a) together with clause 9.1(b) and in so doing has removed clause 9.2(a) from clause 9.2, so that only remaining moneys to be paid under clause 9.2 is those moneys due under 9.2(b), which in fact is \$600,000 per annum.

45

HIS HONOUR: All right.

MR GARRETT: Which is a fixed amount of money; it's not variable.

5 HIS HONOUR: All right. Thank you.

MR GARRETT: Thank you.

10 HIS HONOUR: Well, Mr Moller, all I need to understand, I suppose, having regard to what – the way it's put in part is which – by you is that this is an agitation of what has already gone before. So it's just the same dispute, either Anshuned or estopped or whatever.

15 MR MOLLER: We don't put it as high as that, your Honour.

HIS HONOUR: You don't. All right.

20 MR MOLLER: We say that – and it will come to the construction of the clauses, 9.1 and 9.2, and we say her Honour construed the clauses and her construction – it doesn't matter, with respect, whether her construction was right or wrong, but she said that there is a genuine dispute as to the proper construction of the clause. That being the case, there exists a genuine dispute.

25 HIS HONOUR: I see.

MR MOLLER: There existed a dispute that said, occasioning the setting aside of those statutory demands, there is the same construction argument, therefore the same dispute in respect of these.

30 HIS HONOUR: I see. All right.

MR MOLLER: I've got the references to the relevant demands that were before her Honour and, if it becomes necessary, I can take you to the pages in the material.

35 HIS HONOUR: Well, can you give me the references before her Honour?

40 MR MOLLER: Yes. In terms of her Honour's judgment, paragraphs 18 and 19, her Honour deals with a statutory demand under \$8.55 million that was said to be a claim under clauses 9.2(b) and 9.3 – paragraphs 18 and 19. That was the subject of proceeding VID159. The relevant statutory demand is at pages 307 and 308 of Mr Critchley's affidavit. The second relevant demand was the one referred to at paragraphs 33 and 34 of her Honour's reasons. It was the subject of a statutory demand for \$150,000, the claim being under the same clauses. The application to set it aside was the subject of VID164.

45 HIS HONOUR: Yes.

MR MOLLER: And that statutory demand is at pages 319 to 320 of the exhibits to Mr Critchley's affidavit. There were another seven statutory demands, all of which were in respect of claims under clause 17.3 of the deed. I won't bother your Honour with them at present; hopefully not at all because we're not in the realm of that part  
5 of the deed. So we say, to take an Anshun point, we say it's the same argument.

HIS HONOUR: Yes.

MR MOLLER: Her Honour wasn't appealed. It would be of course for your  
10 Honour to express – to interpret the clause yourself, but there's no reason, we say, to go past her Honour's construction.

HIS HONOUR: All right. Thank you.

15 MR MOLLER: Does your Honour have any other questions for me?

HIS HONOUR: Let me just check what I needed to do. I don't think so, other than – let me just understand then where you're coming from. Firstly, in relation to what Mr Garrett has done in bringing the statutory demands, you firstly say, "Well,  
20 they've been prevented by an order of the court already," so that's the first step. If that's right, then that should be the end of it.

MR MOLLER: Of the - - -

25 HIS HONOUR: On that – on setting aside the statutory demands.

MR MOLLER: Yes.

HIS HONOUR: Then you say, "Well, if we're not right about that, there's a  
30 genuine dispute anyhow for what we've just gone through."

MR MOLLER: Yes.

HIS HONOUR: They're the two main arguments on the statutory demands, are they  
35 not?

MR MOLLER: There are two other ones, your Honour. One, we say that the demand on its face is impermissibly vague and ambiguous.

40 HIS HONOUR: Yes.

MR MOLLER: Which is the same argument rehearsed in front of her Honour; she agreed with that.

45 HIS HONOUR: Yes.

MR MOLLER: We deal with that in the written submissions and cite a decision called LSI about what the requirements are of the description, that is the description of the relevant debt. We say that irrespective of the vexatious litigant orders, the issue of the demand itself is an abuse and an impermissible use of the mechanism provided by the statute.

HIS HONOUR: All right.

MR MOLLER: So those are the four bases, your Honour.

HIS HONOUR: Thank you. Four bases. All right. And then when we come to the injunction, you rely upon section 23, an inherent power effectively now, I think, not the corporations power because her Honour Davies J - - -

MR MOLLER: Was against us.

HIS HONOUR: - - - was against you on that, so that's fine, and you say effectively - and this is a final hearing today because you're wanting a final injunction.

MR MOLLER: Yes.

HIS HONOUR: And Mr Garrett, you know, comes to the court wanting the whole matter disposed of severally.

MR MOLLER: Yes.

HIS HONOUR: Yes. So effectively what we're doing today, just to make it quite clear to everybody, this is a final hearing about everything. So, if Mr Garrett is right, you get dismissed, but it doesn't matter if it's summarily or not and I will be dealing with it anyhow one way or the other. So you're wanting final relief on the basis effectively that even though already the effect of the court order could arguably be that Mr Garrett is already in contempt, you don't want to have to keep coming back fighting about this all the time.

MR MOLLER: Precisely, your Honour. The material discloses that before this application my client had spent in excess of \$80,000, not including management time. Every time we've come before the court there are directions hearings along the way. We take a judge out of the list to deal with it. Mortimer J canvassed the consequences for parties and for the court, and we've extracted what her Honour said in the written submissions what the consequences are for the court and parties in relation to Mr Garrett's repeated conduct. We want it to stop. We say that in respect of a statutory demand - Mr Pertin put this on the last occasion using the example or analogy of the back door.

Your Honour made the point we bring him to court, but as soon as he gets here he slips in an interlocutory process to re-agitate everything that he has tried to agitate in this court and in South Australia previously, and of course our concern is

notwithstanding the stay on the statutory demand, vis a vis Mr Garrett, it still has statutory consequences.

5 HIS HONOUR: I understand that. I understand what you're saying about that.

MR MOLLER: So other creditors might step in. If that happens, we've got covenant consequences, all sorts of things.

10 HIS HONOUR: Yes. I understand.

MR MOLLER: So we want it to stop. If there's an injunction and that statutory demand is issued, it is plain that a contempt will have occurred and consequences will follow.

15 HIS HONOUR: All right. And the other issue then – thank you. And your – what you rely upon in this proceeding is the affidavit of Mr Critchley; is that right?

MR MOLLER: Yes, your Honour.

20 HIS HONOUR: And there's an attack upon that saying you can't do that.

MR MOLLER: Yes.

25 HIS HONOUR: Mr Garrett says that's impermissible. What's your answer to that?

MR MOLLER: He refers to clause 2.5 of the Corporations Rules and they are concerned, your Honour, with the circumstances when a creditor puts on an affidavit.

30 HIS HONOUR: I see.

MR MOLLER: Of course in this case we are not the creditor.

HIS HONOUR: .....

35 MR MOLLER: Mr Garrett has issued the creditor's statutory demand - - -

HIS HONOUR: So that clause doesn't apply.

40 MR MOLLER: So the rule isn't engaged.

HIS HONOUR: All right.

45 MR MOLLER: Insofar as the objection is one of hearsay, we rely on the decision of Hayne J in Mibor Investments – I can hand copies forward to your Honour – where this issue was squarely raised by his Honour.

HIS HONOUR: That was probably my concern, the hearsay .....

MR MOLLER: Yes, and what his Honour says, if your Honour turns to page 296 of the Victorian Reports, that the point was raised squarely by the respondent bank in that case represented by Mr Goldberg, as he then was, that the evidence was inadmissible because it was stated on information and belief. Hayne J, you can see  
5 from the bottom of page 296, says, “Well, this is an interlocutory proceeding.”

HIS HONOUR: But we’re not an interlocutory proceeding; we’re a final proceeding, aren’t we? So that’s why I was trying to clarify where we’re at.

10 MR MOLLER: Yes.

HIS HONOUR: This is a final hearing to determine whether you should get an injunction. I mean you don’t want to treat it interlocutory application. Mr Garrett wants to get the thing finalised by knocking it out, so I don’t regard this an  
15 interlocutory application; that’s all.

MR MOLLER: I follow, your Honour. If the point is taken against us, can I ask that the affidavit be taken de bene esse insofar as the proceeding is concerned with final relief and we will, if the point is persisted with, regularise and have someone  
20 swear an affidavit confirming what Mr Critchley has said. It can be done by that simple route which one - - -

HIS HONOUR: Well, a lot of the material – well, it can be done that way. What the affidavit does is to really recite by reference to documents the sequence of events,  
25 doesn’t it, Mr Garrett?

MR GARRETT: Yes.

HIS HONOUR: In that sense, putting aside the point that Mr Garrett has made, has  
30 it – and I’m speaking to you now, Mr Garrett, to see what you say about this – it’s really just a chronology of the events which, I must say, you don’t seem to dispute the chronology of events as far as they go. You go and say other things like there’s a fraud on the decision, and all those issues; is that right?

35 MR GARRETT: Yes.

HIS HONOUR: All right. Well, then do you object to this affidavit going in on that basis? That’s it’s a chronology of the events and to the extent to which it relies upon  
40 documents, those documents can go in?

MR GARRETT: Yes, your Honour. I object to any documents placed onto the court file by the plaintiff or its representatives because it’s - - -

45 HIS HONOUR: Why is that?

MR GARRETT: Because it’s a fraud of the court.

HIS HONOUR: So the fraud is upon me?

MR GARRETT: Yes.

5 HIS HONOUR: Is that your only objection?

MR GARRETT: I beg your pardon?

10 HIS HONOUR: Is that your only objection?

MR GARRETT: Yes, your Honour.

HIS HONOUR: All right. Well, what I will do - - -

15 MR GARRETT: Sorry, in terms of the - - -

HIS HONOUR: The ..... just talking about the affidavit.

20 MR GARRETT: - - - issues then related to creditors and officers of companies swearing affidavits, the same principle is applied. The affidavit of an officer of the company must be sworn to attest to the financial affairs of the company. I disagree with my friend's interpretation of the rule referred to.

25 HIS HONOUR: All right. Well, what I will do, Mr Moller, I will rule upon – I've heard the objection. It seems to be an objection based upon generally my role in this contest anyhow, which is something I'm going to have to decide when I hear Mr Garrett talk about fraud upon the court and whether the whole thing is a fraud. The logic, I think, of what Mr Garrett has said is no-one should hear this case at all. I think that's the logic of what he has said, but we will hear about that later. I will  
30 receive this affidavit and I will rule upon its admissibility, but I indicate that if the only objection is clause 2.15 and that it's a fraud upon the court to receive it, then I will only look at those objections. I will otherwise let it in, but I will give you leave to formalise the affidavit on the basis of proving the documents that are referred to therein.

35 MR MOLLER: Yes.

HIS HONOUR: So an officer of the company could do that.

40 MR MOLLER: On that, your Honour - - -

HIS HONOUR: Didn't an officer of the company swear up - - -

45 MR MOLLER: Before Davies J.

HIS HONOUR: - - - two affidavits in the earlier proceedings?

MR MOLLER: Yes. On that, Mr Critchley deposes that he has had carriage of these matters for 18 months.

HIS HONOUR: Yes. So he may know about them anyhow.

5

MR MOLLER: He knows about them from personal knowledge.

HIS HONOUR: Yes. All right. Well, I will take that into account when I'm considering it, but you – I will give you leave to do it. Whether you take up the leave is up to you. I will give you leave to file that affidavit by 4 pm Wednesday 16 March.

10

MR MOLLER: If the court pleases.

HIS HONOUR: So all that does, Mr Garrett – I'm just making it clear to you so it's fair to you – you should work on the basis that the affidavit of Mr Critchley, whether it's his affidavit or someone else's, will contain the information in that affidavit. Do you understand what I'm saying?

15

MR GARRETT: I do, your Honour, but there is a fundamental issue with this whole affidavit.

20

HIS HONOUR: Yes.

MR GARRETT: Of course, as your Honour quite rightly pointed out, the previous proceedings, 158 to 166, were sworn by an officer of the company compliant with the court rules, and now the question arises of course why didn't he swear the same affidavit again and why did he feel it necessary to hide behind a solicitor? So there is some fundamental issues that need some examination.

25

30

HIS HONOUR: Did you cross-examine any of the previous deponents?

MR GARRETT: No, your Honour. Unfortunately – I requested that cross-examination, and you will see that within my submissions in VID158 dated 27 July that I sought to cross-examine Mr Ryan on his affidavit material because I said that in fact that – those affidavits were also false because the exhibits JR4 of all of those affidavits were also false because they were absent the 40 pages referring to the Garrett family licence. At the start of the submissions of the other side they refer to disputes in 2000, but that's inherently incorrect, your Honour. The disputes arose from 1995 and they arose from the assignment of the Garrett family licence on 25 August of that year.

35

40

Now the assignment is attached to the pages that are absent, the exhibit NC4 and JR4 in VID158 to 166. Additionally they are also absent – the affidavit of the deponent in this proceeding in VID381. In total the plaintiff has relied on false affidavit material at total of 23 times. That has been pointed out to the court on 5 August 2014 before her Honour Mortimer J, and I recall the words of Suresh Senathiraja

45

representing the plaintiff who said, “We were just trying to save paper.” Now it was the responsibility of those officers of the court to prepare the court books and not mislead the court. Her Honour Mortimer J was misled.

5 Unfortunately I say that her Honour was misled deliberately because I say that there is a number of communications that haven’t come to my attention as yet. I’ve made a number of FOI applications consistent with the findings of the High Court in *Kline v The Official Secretary of the Commonwealth Attorney-General* – sorry, Governor-General, seeking documents of an administrative nature in respect of any proceeding related to me. None of those documents have been discovered by the court and indeed not only is there vexatious litigant orders against me in – starting in 2244 of 1996 in the Supreme Court of South Australia, also in 7323 of 2007 brought by the Attorney-General for an improper purpose, also in SCI127 of 2004, *Andrew Garrett Wine Resorts v National Australia Bank*.

15 So, so far there are three vexatious litigant orders under section 39 of the South Australian Supreme Court. There are also three vexatious litigant orders in this court being that made by her Mortimer J on 21 November in VID248. Further, there was two vexatious litigant orders made in favour of the Australian Commissioner of Taxation in VID739 and VID600 of 2014. None of those vexatious litigant orders made any finding on the merits of the application in which they were brought. There’s a fundamental issue with the way in which the court has applied the principles of vexatious litigant orders as a barrier to justice and a fundamental breach of Constitutional rights.

25 HIS HONOUR: Well, then shouldn’t that be a matter of appeal in relation to the vexatious orders themselves and the ..... appeal?

30 MR GARRETT: I think that’s right, your Honour, but unfortunately the appeals of VID158 to 166 which relied on the vexatious litigant orders were heard by North J on 21 July 2015 in circumstances where there was no hearing. It was heard in chambers on the papers and dismissed out of hand. There is one further proceeding - - -

35 HIS HONOUR: Well, then you go to the High Court if you’re unsatisfied with that, or dissatisfied with that, sorry.

40 MR GARRETT: Indeed, your Honour, and that is exactly the intention on 30 July. I accepted a grant of financial assistance from the Commonwealth Attorney-General to argue just that point, but a few other points as well, and they go to the heart of the interpretation of the Constitution Act of Victoria, the Constitution Act of South Australia, and dare I say every - - -

45 HIS HONOUR: Well, they will all be dealt with by the High Court, won’t it?

MR GARRETT: Well, it may be, your Honour.

HIS HONOUR: If they give you leave.

MR GARRETT: I think that it's not a function of leave, your Honour. It's a  
function of an application under the original jurisdiction under section 38(a) of the  
5 Judiciary Act and 75(i) of the Constitution, so it's an original jurisdiction issue as a  
matter arising under a treaty, the treaty being Australian Treaty Series number 23.

HIS HONOUR: So that would be dealt with by the High Court though.

10 MR GARRETT: I'm not sure that this court hasn't got the power to review some of  
those judgments on the basis that they were obtained by fraud. So the point is that I  
believe that at this point in time I want to have your Honour hear those issues  
because of course I want to make sure they are heard and properly ventilated without  
proceeding to the High Court at this juncture. So, your Honour, it's very much  
15 dependent on whether your Honour is prepared to agree with my contention that your  
Honour has jurisdiction to be able to hear all of the matters arising, whether State or  
Federal, under the principles of the High Court in Re Wakim.

HIS HONOUR: I don't know if I – I don't have much problem that I have a  
20 jurisdiction to deal with decisions of this court that are obtained by fraud, but  
whether or not that's what I should do in this case is another matter .....

MR GARRETT: Of course, and I've put it plenty of - - -

25 HIS HONOUR: Now ..... you've stood up to talk about the affidavit, that's what I  
was talking about with Mr Moller, so let's continue on, but I've heard what you said,  
so I will hear – go back to Mr Moller .....

MR GARRETT: Yes. So that the fundamental issue is that the disputes arose in  
30 1985 on the day of the assignment of the Garrett family licence. It has been  
deliberately left out of a number of affidavits of the plaintiff with the sole purpose  
- - -

HIS HONOUR: Have you put it in though? You would know about this, so you've  
35 - - -

MR GARRETT: I've certainly put it in, your Honour.

HIS HONOUR: So the court knows about it.  
40

MR GARRETT: This court knows about it. One would have thought that the other  
courts knew about it, but - - -

HIS HONOUR: Did you tell the other courts about it?  
45

MR GARRETT: Yes, I did, your Honour.

HIS HONOUR: Well, then they knew about it.

MR GARRETT: I did indeed.

5 HIS HONOUR: So what – I don't understand what your complaint is, other than one of, "Well, you should have been told, your Honour, by the other side. The other side didn't tell you. They were naughty, but here you are. I tell you anyhow, so you can have the full picture." That's what has happened, isn't it?

10 MR GARRETT: Yes, indeed, your Honour, because I'm - - -

HIS HONOUR: Well ..... the judges have made, in your view, a mistake.

15 MR GARRETT: Well, I'm saying that not only have they made a mistake, but unfortunately I say that the judges' conduct is corrupt within the meaning of the Crimes Act.

HIS HONOUR: Well, why is it corrupt?

20 MR GARRETT: Because, your Honour, they've taken instructions from other parties and there has been a blurring of the separation of powers between executive government related to the Federal Court and the judiciary. The judiciary of course, it's fundamental that - - -

25 HIS HONOUR: Just tell me, who are the other parties?

MR GARRETT: Sorry?

30 HIS HONOUR: Who have they taken instruction from? Who are the other parties that are giving instructions?

MR GARRETT: Registrar Caporale.

35 HIS HONOUR: I see. So - - -

MR GARRETT: Registrar Allaway and - - -

HIS HONOUR: Without any names, it's the registrars. You've identified - - -

40 MR GARRETT: The registrars.

HIS HONOUR: Yes.

45 MR GARRETT: It's about the separation of powers issue, your Honour.

HIS HONOUR: All right. I understand.

MR GARRETT: The - - -

HIS HONOUR: I've gone too far. Let me get back to ..... Mr Moller.

5 MR GARRETT: Certainly, your Honour. We will get to the - - -

HIS HONOUR: We will get to it later.

10 MR GARRETT: - - - point of cross-examination of Mr Critchley on that affidavit material shortly, I trust.

HIS HONOUR: Yes. Well, now you've just encouraged me to keep going with you for a second. What do you want to cross-examine Mr Critchley about?

15 MR GARRETT: I want to cross-examine Mr Critchley on his affidavits. My submissions in VID158 set out – those are the ones dated 27 July as distinct from the ones dated 13 May before her Honour Davies J and, your Honour, in my submissions I've relied on all of those submissions. So I've set out a fairly extensive list of materials on which I rely upon and the issue is this, your Honour: Mr Critchley, Mr  
20 Ryan, Ms Newhouse, who was acting on the instructions of Ben Davidson, Ben Davidson being the same solicitor who has instructed Mr Cowling in 2005 to swear an affidavit into Victorian Supreme Court matter 7323 of 2005 which was an interpleader as to who had entitlement as to the moneys, and that was a function of a sequestration order made against me on 24 September 2004.

25 There's a fundamental issue with that sequestration order, your Honour, is that the debt in respect of that order was an alleged debt appearing on the running balance account of the Andrew Garrett Family Trust, Andrew Garrett Family Trust being a different trust distinguished by a different ABN number to the Garrett Family Trust  
30 which is a party to the deed. The fundamental issue with that, your Honour, is the debt could not, and did not, legally exist. I put that – put to the court on no less than 13 separate occasions.

35 HIS HONOUR: And you haven't succeeded ..... obviously.

MR GARRETT: No, your Honour. In fact what I did get was her Honour Mortimer J saying, "I'm not making a finding on the merits," and therefore – you know, very clear terms, "I'm not making a finding on the merits," and determining it to be an abuse of process. The reason why her Honour determined it to be abuse of process  
40 was her Honour's reliance on the findings of Gilmour J in Western Australia. At that time a significant event occurred and, your Honour, attached to my submissions at annexure number 1 is a copy of the running balance account of the Andrew Garrett Family Trust.

45 Annexure number 2 is a copy of the creditor's petition brought by the Australian Tax Office. You can see from the two annexures that the amount of money claimed by the Commissioner of Taxation and the corrections to the running balance account of

the Andrew Garrett Family Trust meant that the debt did not exist, and the reason why it did not exist is because the Commissioner advised me that the way to correct a running balance of account – and all of this evidence was before her Honour Mortimer J – was to advise the Commissioner of amending activity statements. Of course I’m not an accountant, your Honour. I didn’t know these things.

So I took instruction from the Commissioner, did those corrections, the Commissioner found out ..... the finding on which I was bankrupted doesn’t exist. He was concerned about embarrassment. I put that to her Honour and, your Honour, one of the affidavits that I referred to is the same affidavit that I swore in VID248. That affidavit in VID248 is labelled as my affidavit of 4 November 2015 that was filed in the Supreme Court of South Australia. When I returned to the Supreme Court of South Australia last year – pardon me, your Honour. I will just grab my breath for a minute.

HIS HONOUR: No, no.

MR GARRETT: If you wouldn’t mind. On 2 July 2015 I returned to the State of South Australia and made sure that I communicated to all levels of government: executive, judicial, legislature, to make them aware of the issues that I had and the new materials that became available to me between June and August of 2004 that were made available from the Australian Tax Office under a Freedom of Information application.

HIS HONOUR: But presumably this material has been put before Mortimer J or Davies J or Pagone J now, because you’ve had that for a fair while.

MR GARRETT: Well, therein lies the fundamental problem, your Honour. The inherent issues arising from separations of powers in this court are the fundamental problems. I’m saying that there was communications between the registrars and persons unknown to me in South Australia to try and extinguish my rights and - - -

HIS HONOUR: In South Australia?

MR GARRETT: In South Australia - - -

HIS HONOUR: All right. Well, then that - - -

MR GARRETT: - - - to this court and vice versa, and then from the registrars it went up to the judiciary and the judiciary – there was a noticeable change on or about 18 July when Tracey J made orders Mr Peter Max, my ex-trustee in bankruptcy, had – provide copies of all communications between us. I made submissions to his Honour on 5 September, 10 October, from recollection, in VID304 of 2014, and VID425 of 2014, that the entirety of the communications relating to my bankrupt estate weren’t provided, and I provided evidence of further communications in my possession and control that Mr Max had not filed before his Honour.

And there is a fundamental issue that, your Honour, in Supreme Court proceeding 165 of 2006, in Viscariello v Max – Mr Max was found to have misled the court, and breached his model litigant obligations. I put to the court, both in the proceeding before Mortimer J, 248, the proceeding before Tracey J, regarding Mr Max in 304,  
5 and the proceeding before Tracey J in respect of Mr Duncan, 425, who was the trustee of my ex-wife’s bankrupt estate. Your Honour, of course, I’m sure, is very familiar with the obligations of trustee in bankruptcy to go behind the debts that are subject of their appointment and make an adjudication on those debts.

10 The authority that I relied upon on more than one occasion was Rendus Mahoney, and yet all that material was absent the judgments of the various members of the judiciary. It was quite extraordinary to watch such an avert display of oppression of human rights and rights to a fair trial as has been exhibited by members of the judiciary in this court. Jessup J, who I consider to be a gentleman and very  
15 knowledgeable, unfortunately did not fall out of the same trap. There was – in the matters versus Austrade, Austrade did not file a defence. I was entitled to summary judgment on the basis of my defence being filed. Therefore, you know, the statement of claim remains.

20 But his Honour did not make that summary judgment. It’s across all proceedings. Their observation has been extraordinary, where the application of the provisions of the Bankruptcy Act, and the provisions of the Corporations Act, the provisions of vexatious litigant orders in State Courts and in Federal Courts to be used as a barrier to justice is unforgiveable.

25 HIS HONOUR: Mr Garrett, this conversation started because I wanted to really know what you were going to – what you would be cross-examining Mr Critchley about.

30 MR GARRETT: Thank you, your Honour.

HIS HONOUR: Now, there wouldn’t be – I mean, Mr Critchley can’t assist you with any of that, because he doesn’t know about what has happened about your allegations between what has gone on and your separation of powers argument, for  
35 instance.

MR GARRETT: Well, that’s true, your Honour.

40 HIS HONOUR: Nor would any officer of the applicant.

MR GARRETT: Well, I would like to think that’s true, I should say. I correct what I just said. In my submissions I’ve made a very bold statement that moneys may have changed hands between the plaintiff and its legal representatives.

45 HIS HONOUR: There’s no evidence of that.

MR GARRETT: There is no evidence of that, correct, your Honour, but I'm seeking to find that evidence, and if no evidence exists I absolutely withdraw that statement. So I'm perfectly happy on full and proper - - -

5 HIS HONOUR: You usually get the evidence first before you make the statement, Mr - - -

MR GARRETT: Well, your Honour, therein lies the fundamental issue. No discovery has been made in any proceeding related to me. No orders for discovery –  
10 everyone has come along and said, “He’s vexatious. Strike his matter out as an abuse of process; improper purpose.” Why is it that no orders for discovery have been made? And in fact as early as 2007 I made those same orders for the possession of – sought those same orders in the Supreme Court proceeding in South Australia in SER (1996) 2244, before Leighton J. And I also sought possession of the  
15 Finlayson’s file. The Finlayson’s file is a file of my solicitors who were then acting in that proceeding.

Lander J made finding on 31 July 2008 which said, “Mr Short-Smith, for  
20 Finlayson’s, appears to have breached privilege, and has released documents of privilege to Mr Max’s solicitors,” and that he made that within his judgment. So I refer you to that judgment, your Honour, within SAD5. It’s a fundamental issue as to who has the Finlayson file. I suspect that because of the production of that bit of evidence by Mr Max, Mr Max has the Finlayson file.

25 HIS HONOUR: Well, am I to go into that? Am I to work out where the Finlayson file is; you want me to do that?

MR GARRETT: I would like orders for someone to produce the Finlayson’s file from the parties who are named in this interlocutory application. I don’t - - -

30 HIS HONOUR: Is that one of the purposes of this proceeding?

MR GARRETT: Yes, your Honour. That’s part of the purpose of this proceeding, because if there is a genuine dispute – I’m seeking to evidence that there was never  
35 any genuine dispute – then the issues relating to clause 9.2 were considered within the execution of the deed of settlement that was prepared by the plaintiff’s solicitors.

HIS HONOUR: And what’s put against you at the moment is that you’ve got a decision against you raising these issues. What you’re really – and I think you raised  
40 this with me before. What you’re really saying to me is, “All right, your Honour, you’ve got these decisions, but I want to go behind them.” That’s really where you’re coming from, in everything you’ve told me.

MR GARRETT: I’m saying that it’s possible for this court to set aside perfected  
45 orders, and I’ve put that in my submissions, and - - -

HIS HONOUR: Assume I’ve got to power to do it - - -

MR GARRETT: Yes, I put those authorities in the - - -

HIS HONOUR: - - - then the question – yes. Well, assuming I do – let’s say I’m not going to argue that I’ve got power to do it – the question is why should I do it on the basis of what you’ve put before me? That’s the substantive matter of your arguments. I will come to that later. I want to go back to Mr Moller now.

MR GARRETT: Yes. Why you should do it is because I seek to inquire from Mr Critchley as to the reasons why, firstly, he swore that affidavit; secondly, when he knew only officers of the company could swear that affidavit, and indeed had acted in the same proceedings in VID158 – 166 of 2015, where an officer of the company did swear the affidavit.

HIS HONOUR: That’s the first question you want to ask him.

MR GARRETT: Thank you.

HIS HONOUR: Yes. What’s the next one?

MR GARRETT: The second question is not whether he believes the affidavit is true, but why he believes the affidavit is true, because, of course, Mr Critchley has sworn under oath that he believes exhibit MC4 to be a true and correct copy of the deed of settlement, which is absent the 40 pages. And, your Honour, I sent through to the parties a number of authorities yesterday, and amongst which was some authorities on section 459G that I obtained from the Supreme Court of South Australia. It’s true to say that - - -

HIS HONOUR: No, I don’t want to go there yet, Mr Garrett. I want to know what questions you’re going to ask Mr Critchley. So you want to ask him MRC4; is that a true – “Why do you say that’s a true copy?” when you say it’s not a true copy?

MR GARRETT: That’s correct, your Honour.

HIS HONOUR: And you’ve given me the true copy?

MR GARRETT: Yes, your Honour.

HIS HONOUR: All right. Next question.

MR GARRETT: I want to ascertain from Mr Critchley’s affidavit what he believes the interpretation is of clause 17.3. Clause 17.3 is the indemnity clause, your Honour.

HIS HONOUR: Why does that matter?

MR GARRETT: Because, your Honour, he’s saying that the interpretation of clause 17.3, the indemnity, is something that should be determined by the court. But, of

course, every time I've tried to have it determined by the court it has been dismissed because the event of the setting aside of the – sorry, the correction of the running balance account of the Andrew Garrett Family Trust, which occurred in October of 2008, which is exhibit 1, fundamentally attacks every decision of every court that I've been in. At every step - - -

HIS HONOUR: Yes, that's fine. What's the next question?

MR GARRETT: Clause 17.3, of course, can only be interpreted in the presence of the four corners of the document.

HIS HONOUR: No, no, I understand that, that you want to ask him about the interpretation of clause 17.3.

MR GARRETT: Yes, and how he expects to obtain a proper interpretation of the clause 17.3 when 40 pages of the deed of settlement are missing.

HIS HONOUR: All right. And the next question?

MR GARRETT: The four corners aren't present.

HIS HONOUR: Yes. I understand all that.

MR GARRETT: Thank you.

HIS HONOUR: What's the next question?

MR GARRETT: I want to ask him what he understands about perjury and contempt of court issues.

HIS HONOUR: Right. Next question?

MR GARRETT: One of the – some of the exhibits that are annexed to my affidavit sworn in VID158 of 2015, which I was not fortunate enough to cross-examine Mr Ryan on – include recipient generated invoices issued by the plaintiff in circumstances where there was no taxable supply relating to the payments made under the deed of settlement. Because there was no taxable supply, and the deed of settlement had been terminated by consent, by virtue of the deed of settlement and the two separate payments that were to be made, there was – sorry, your Honour, I've just lost myself for a minute. Could your Honour just brighten me up a bit on that last point that I was making?

HIS HONOUR: Well, I thought you were trying to work out what was at 158 of 2015.

45

MR GARRETT: Yes. Thank you, your Honour. There's a significant number of alleged recipient created tax invoices that are missing from the affidavit of Ms Newhouse, that was filed before Mortimer J.

5 HIS HONOUR: Is that put to the deponent, or you didn't cross-examine that deponent?

MR GARRETT: I couldn't, your Honour, so - - -

10 HIS HONOUR: Did you raise that issue with the judge, there were tax invoices missing?

MR GARRETT: Indeed I did, but therein lies the fundamental issue about the improper purpose and abuse of process by the court in using the provisions of section 37AO of the Federal Court of Australia Act, and the breaches of the Federal Court judiciary and registrars executive government of the Federal Court in terms of section 20 of the Federal Court of Australia Act in an open system of - - -

20 HIS HONOUR: Yes, let's not get diverted with that yet. The next question you want to ask Mr Critchley?

MR GARRETT: Yes, your Honour. There is a judgment of Lander J, which is the one I referred to, that said that the Garrett Family Trust and the Andrew Garrett Family Trust are one and the same. But, of course, that was made in circumstances where Mr Max made submissions with Mr Duncan to Lander J in VID - - -

HIS HONOUR: So how is Mr Critchley going to – how would any question you could ask him help with that?

30 MR GARRETT: Because, your Honour, he must be aware that Mr Max's appointment as a trustee in bankruptcy occurred in circumstances where my staff were misled to put in a GST liability on the running balance account where no GST liability existed. And it was that debt that I was - - -

35 HIS HONOUR: But could you have given evidence about that?

MR GARRETT: I did, your Honour.

HIS HONOUR: All right.

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MR GARRETT: Therein lies my point, because - - -

HIS HONOUR: Well, were you not believed?

45 MR GARRETT: Every judgment made by this court has not referred to that evidence - - -

HIS HONOUR: Right.

MR GARRETT: - - - and therein lies the fundamental issue of the fraud on this court, and the fraud on each of the other courts by a court.

5

HIS HONOUR: When a judge normally makes a mistake like that, if it's true, you appeal him or her.

MR GARRETT: Indeed, and indeed I did that, but his Honour Justice - - -

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HIS HONOUR: And you weren't successful, though.

MR GARRETT: Beech J wrote to me on 28 January, which, of course, is a document of an administrative nature, in accordance with the finding in Kline, and said that Allsop CJ had instructed him to manage the appeals in a number of proceedings, being VID731, 730 and 732. 730 was an appeal of the decision in VID304. VID731 was an appeal of the decision in VR248, and VID732 was an appeal of the decision in 425. Beech J gave short shrift to my appeal. In fact one of the points on appeal in VID49 was that – which was also managed by Beech J – was that Judge Burchardt fell into error in MLG16 - - -

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20

HIS HONOUR: All I'm trying to work out, Mr Garrett, is that you had a right of appeal; you exercised the right of appeal, and you say the decision was wrong in the appeal court.

25

MR GARRETT: Yes.

HIS HONOUR: All I wanted to know is, getting back to the purpose of this inquiry from you, how is Mr Critchley going to assist you with that endeavour?

30

MR GARRETT: Because, your Honour, if Mr Critchley knew, and his client knew, that the two trustees in bankruptcy, Mr Duncan and Mr Max, were appointed in respect of debts that his client knew could not possibly, and did not legally exist, then what was the purpose in issuing those invoices and also as to his client's instructions? And what I'm seeking, your Honour, is to get orders for discovery against the plaintiff that breach legal privilege. So I'm seeking, your Honour, to go behind legal privilege and find some of the issues relating to this.

35

And I say that the affidavit of Matthew Critchley must be struck out because of that one simple point: there are 40 pages missing; secondly because it's not sworn by an officer of the company. He doesn't know the financial affairs of his client. And thirdly, I wanted to ask Mr Critchley about VID – sorry, NSD660 of 2014, Brian Jones v Treasury Wine Estates Limited. Treasury Wine Estates Limited is the controlling mind, same board of directors, as the plaintiff in this proceeding. Therefore what does he know of VID660? It's an action that was brought by Mr Jones as a nominal defendant. It's a class action funded by IMF, brought by the shareholders of Treasury Wine Estates Limited.

40

45

Until 11 December 2011, Treasury Wine Estates Limited had a different name. I don't know what that name was, but on the same date the plaintiff in this proceeding was a – both of those companies were wholly-owned subsidiaries of Foster's Brewing Group Limited. I wanted to ask Mr Critchley as to the period of time  
5 between 2004, when Ben Davidson instructed Matthew Critchley to swear a true and correct copy of the deed of settlement, which evidences the whole 65 pages, and that was sworn in the Victorian proceeding.

Every time payments were made into the litigant's fund of that proceeding, which  
10 subsequently became SAD5 of 2006 on cross-testing to the South Australia registry, payments were made under covering letter from Mr Davidson saying, "I am instructed that the moneys due under clause 9 are this amount." At no point in time was I ever a party to this Victorian proceedings – call them that, your Honour – and couldn't contest those payments because I had no standing at that time. Of course  
15 also at that time Mr Max was busy trespassing on my estate and had gone behind the judgment debt, which was a judgment debt obtained by default.

The default judgment was obtained in default of filing a defence, your Honour. And my lawyers on the file in that particular proceeding in the District Court of South  
20 Australia was Lancioni Partners. And it's not known to me why they didn't file a defence, because the defence was a good defence, which I subsequently brought to the attention by way of solicitors and was heard by Master Norman. The separation of powers issues in South Australia are breathtaking, absolutely breathtaking.

25 HIS HONOUR: Let's – so I've got eight questions you want to ask Mr Critchley so far.

MR GARRETT: Thank you. And so I want to ask him why a fellow member of his firm, acting under the instructions of Mr Ben Davidson, who instructed Ms  
30 Newhouse to swear an affidavit in VID248, and the same person who instructed Mr Cowling in the Victorian proceeding, instructed two quite separate documents to be sworn as true and correct copies of the deed of settlement.

HIS HONOUR: All right. What else - - -  
35

MR GARRETT: Mr Davidson, of course, is a partner of Mr Critchley and the vicarious liability issues that arise in respect of all of the partners of Corrs Chambers Westgarth are significant, both in the criminal and civil jurisdictions.

40 HIS HONOUR: What's the next question?

MR GARRETT: Mr Critchley appeared in my application in South Australia to reopen the Supreme Court proceedings in South Australia, 1996, dash 2244, and that application to reopen was accepted for filing on 13 October 2015. The matter was  
45 heard by Peake J in a very unusual circumstances where his Honour essentially threatened me with continuing to make submissions in that proceeding. I'm seeking

to find out if Mr Critchley has a copy of those transcripts of those proceedings. How did a matter get - - -

HIS HONOUR: Why is that relevant to this proceeding?

5

MR GARRETT: Well, it's relevant to this proceeding in this way, your Honour, because it goes to the fundamentals of rule 1.32 and rule 242 of the Supreme Court of South Australia and rule 242 of the District Court of South Australia, where justices of the various courts can make any order in the interests of justice that may be necessary. And fundamental to that is the document that I saw on the Federal Court website relating to the attainment of justice. At every step the judiciary has turned a blind eye in South Australia to the issues of professional misconduct. The Legal Practitioners Conduct Commissioner, the proposed cross-defendant, 40<sup>th</sup> proposed cross-defendant, was in fact the same person who was briefed by me when he was chairman and chief executive of Minter Ellison Lawyers in South Australia to prepare National Australia Bank security documents, and stuffed it up.

10

15

HIS HONOUR: So you want to have Mr Critchley assist you in bringing an action against them for negligence?

20

MR GARRETT: Your Honour, I've made complaint to the Legal Services Commissioner about Mr Critchley's conduct here in Victoria, and I've also made complaint to - - -

25

HIS HONOUR: Is that what you want it for, for getting information to assist with that endeavour?

30

MR GARRETT: I want to find out whether either the Legal Practitioners Conduct Commissioner in South Australia, or the Legal Services Commissioner here in Victoria and the Legal Services Board, made inquiry which caused James Westgarth, in respect to my complaints made against them - - -

HIS HONOUR: So you want some sort of order of mine to get that material?

35

MR GARRETT: Yes, your Honour.

HIS HONOUR: So that's Mr Critchley. Is that basically the ambit of what you want to ask Mr Critchley?

40

MR GARRETT: I haven't quite finished on 224, I'm afraid, your Honour.

HIS HONOUR: Yes.

45

MR GARRETT: 224 was dismissed out of hand by Peake J. I then tried to appeal that decision. For some reason the appeal wasn't listed. It's common practice in the court of South Australia to - - -

HIS HONOUR: I don't want to hear the common practice in South Australia, Mr Garrett.

MR GARRETT: Unfortunately, your Honour, this is - - -

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HIS HONOUR: Please, that's - - -

MR GARRETT: - - - a matter arising.

10 HIS HONOUR: Yes. You may be able to come to that later. I'm not sure.

MR GARRETT: We can come to it later. No problems. I'm happy with that.

HIS HONOUR: All I want to know is the questions for Mr Critchley.

15

MR GARRETT: Thank you, your Honour.

HIS HONOUR: Right. So I understand that area. I've just - - -

20 MR GARRETT: One application was made to the Supreme Court of South Australia. It was somewhat of a surprise to me to see Mr Critchley on the other end of a video link on the day of the hearing, because I hadn't received any notice from any person that Mr Critchley was appearing.

25 HIS HONOUR: So you want to know why he was there?

MR GARRETT: Yes, your Honour.

HIS HONOUR: All right. So that's the question.

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MR GARRETT: And indeed how did he appear; why did he appear; what communications with the court did he make that weren't shared with me as to his appearance.

35 HIS HONOUR: All right.

MR GARRETT: Which, of course, it's a normal practice, your Honour – and your Honour's associate has kindly pointed out to me my own error in failing to copy parties on communications which I then corrected. I wanted to find out from Mr  
40 Critchley whether having understood the issues of perjury and contempt of court – the issue is about contempt of court – and the multiple contempts of court that I say have occurred, both in the Victorian Supreme Court, the South Australian Supreme Court, the Federal Court of Australia, in the proceedings involving him, and/or Mr Davidson, and/or Ms Newhouse – I don't have any complaint against Mr Cowling.  
45 Mr Cowling was acting as instructor and properly - - -

HIS HONOUR: Right. So I don't want to go to the details, but you want to cross-examine him about various aspects of contempt of court that he knows about?

MR GARRETT: The Victorian Supreme Court, South - - -

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HIS HONOUR: Yes, no, you've gone through them already, Mr - - -

MR GARRETT: Thank you.

10 HIS HONOUR: All right. Next question.

MR GARRETT: I wanted to find out if Mr Critchley had ever been confronted before in another court of – in respect of similar issues - - -

15 HIS HONOUR: All right. Yes.

MR GARRETT: - - - and therefore establish a pattern of conduct. I wanted to also ask Mr Critchley about the relationship between lawyers and insolvency practitioners that he might be aware of as partner of the firm Corrs Chambers Westgarth in terms of speculative arrangements, joint venture arrangements, referred to and described by Caracas CJ in the findings of the Supreme Court of South Australia on 9 December in *Viscariello v Max*. That judgment was - - -

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25 HIS HONOUR: No, I don't need to go to the details. That's another question you want to ask.

MR GARRETT: Thank you.

30 HIS HONOUR: Yes. I'm nearly up to 12, I think; roundabout there.

MR GARRETT: I wanted to ask him – this may sound a bit odd, your Honour. There was a reading of the Legal Practitioners Act in State Parliament of South Australia in 1981 where the various members of the House of Representatives in that hearing described the South Australia Law Society as a “secret society of mafia-like proportions”. That detail has been sworn into an affidavit that I put into the Lowro family matters. Your Honour, because I'm saying the matter is arising out of the state and federal proceedings – state and federal matters are so serious in respect of this proceeding and the conduct of the firm Corrs Chambers Westgarth, which replicates the conduct of Johnson Winter & Slattery and Littmann Carus and Cadmore Kosoff Knox. These joint venture relationships have fundamental issues of champerty and maintenance. Now, my understanding is that champerty and maintenance - - -

45 HIS HONOUR: Well, I don't need to go to the details. I understand what champerty and maintenance is. You want to ask him about events – something happened in 1981 in the Legislative Assembly, and see whether there's a continuation of that conduct; is that what you want to say?

MR GARRETT: Correct, your Honour, between the South Australia Law Society  
- - -

HIS HONOUR: Yes.

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MR GARRETT: The legal profession generally in respect of these joint venture profit share arrangements, and is he aware of what happens to the taxation of those revenues that are obtained, what I say fundamentally illegally, and how those funding – how that taxation revenue is applied to the funding of officers of the Commonwealth. I also wanted to understand whether Mr Critchley, as an officer of the court, understood that his first duty is a first duty to the court, and not to his client.

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HIS HONOUR: All right. So that’s the other question: officer of the court; whether he understood his responsibilities.

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MR GARRETT: Yes. And whether in his opinion, as an officer of the court, the board of Treasury Wine Estates Limited, the board of Foster’s Brewing Group, who Corrs Chambers Westgarth acted for between 2005 and 2011, and subsequently the board of Treasury Wine Estates Limited, stroke the plaintiff, Treasury Wine Estates Vintners Limited, a wholly-owned subsidiary, understood or properly advised of their director’s duties and obligations - - -

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HIS HONOUR: Yes. Yes.

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MR GARRETT: - - - by the firm. I think that’s a reasonable start, your Honour.

HIS HONOUR: All right. So they’re the main things. Obviously you will put them in a – they’re the ones that are at the top of your mind what you want to ask?

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MR GARRETT: Yes, at the moment, top of my mind; correct.

HIS HONOUR: All right.

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MR GARRETT: I think that’s a very fair way to present it, your Honour.

HIS HONOUR: All right.

MR GARRETT: The fundamental starting point is not 2000, as my friends say; it’s 1995.

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HIS HONOUR: Yes.

MR GARRETT: All of the judgments made in all courts were made on a sequestration order that shouldn’t have been made.

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HIS HONOUR: Yes.

MR GARRETT: What awareness did his firm have of that sequestration order, and the subsequent sequestration order made on 15 May, two days after VID – the notices to admit made in VID158 to 166 were struck out by Davies J. One further question includes whether Mr Critchley believes that the striking out of the notices to admit in fact changed the admissions. Normally the proper process is that – and this is just my reading of the law, your Honour, and, of course, I’m just a layman – is that admissions once made, and the admission was made under the Federal Court Rules, 14 days passes for a notice disputing facts under rule 22 - - -

10 HIS HONOUR: You need leave to withdraw the admission, if that’s what you’re trying to get to.

MR GARRETT: Thank you. That was the point exactly. So it’s all about applying for leave to withdraw the admissions, which leave will only - - -

15 HIS HONOUR: Well, that - - -

MR GARRETT: - - - be granted in special circumstances.

20 HIS HONOUR: They say that the notice is an abuse of process to start off with, and that’s for me to determine.

MR GARRETT: That’s - - -

25 HIS HONOUR: And that’s part and parcel of what it’s all about.

MR GARRETT: That’s their position to your Honour.

30 HIS HONOUR: Yes, and you say that’s not right, for the reason - - -

MR GARRETT: And I’m saying no, the notices to admit are filed in accordance with the court rules.

35 HIS HONOUR: Yes.

MR GARRETT: The proper process is to file a notice disputing facts. My friend made a submission about some correspondence to me saying that they disputed everything and everything. However, there’s no evidence of that before this court. It’s impermissible for counsel to make such submissions from the bar table. If there was evidence then your Honour might be able to consider it, but there is no evidence.

45 HIS HONOUR: All right. Thank you. Mr Moller, what that exercise to me indicates – and I won’t be ruling on it. I will deal with these matters in the course of my judgment. But it does indicate that if you want to rely upon Mr Critchley’s affidavit in its entirety, as distinct from just the documents, tendering the documents – because there are some parts of Mr Critchley’s affidavit that opine matters which probably would be, if we looked at in a strict way, on a final hearing, would be

inadmissible. But apart from what Mr Garrett wants to do to have the advantage of cross-examining a deponent, which he would be normally entitled to do, subject to the court's overriding discretion as to what questions could be asked, all you – as I understood it – were really relying upon were the documents that were exhibited to that affidavit, but I'm not – but it's your case, not mine.

MR MOLLER: Yes.

HIS HONOUR: You have to make that decision.

MR MOLLER: I understand, your Honour, and I'm going to take some time to work through it - - -

HIS HONOUR: All right.

MR MOLLER: - - - if I can at the bar table. Can I indicate this, that insofar as the genuine dispute is concerned, I understand Mr Garrett has a concern about the 40 missing pages.

HIS HONOUR: Yes. What's the answer to that, by the way?

MR MOLLER: I don't know what the factual – why there are 40 missing pages. But I notice that in Mr Garrett's material, starting – and it's very conveniently numbered with sequential page numbers. There's a copy of the deed of settlement starting at page 30 of 248.

HIS HONOUR: Yes.

MR MOLLER: So we would be content to run the genuine dispute argument involving the construction of that deed on Mr Garrett's version of that document - - -

HIS HONOUR: Yes.

MR MOLLER: - - - which is presumably complete and contains the extra 40 pages.

HIS HONOUR: He told me it did.

MR MOLLER: Yes. So that would deal with that. Insofar as many of the other matters are concerned, obviously they seek opinion from Mr Critchley as to affairs in South Australia as to the state of the South Australian Law Society in 1981. I'm instructed he was two, so he might not know very much about that.

HIS HONOUR: Well, what do you need – I mean, you will have to maybe have a think about this, but you're the one applying to set aside the statutory demands. So presumably you would normally bring the statutory demands. You would set out the basis for why they should be set aside. Primarily in this case it seems that your case is put on legal approach and previous decisions of this court.