

IN THE SUPREME COURT  
OF VICTORIA  
AT MELBOURNE  
COMMON LAW DIVISION  
JUDICIAL REVIEW AND APPEALS LIST

S ECI 2018 01223

**BETWEEN:**

JOHN BARR INVESTMENTS PTY LTD (ACN 005 225 274) Appellant

- and -

MORDIALLOC SPORTING CLUB INCORPORATED (ARN  
A0027737R) Respondent

**GENERAL FORM OF ORDER**

JUDGE: The Honourable Associate Justice Derham

DATE MADE: 26 September 2019

ORIGINATING PROCESS: Notice of Appeal pursuant to s 148 of the *Victorian  
Civil and Administrative Tribunal Act 1998* filed on  
7 September 2018

HOW OBTAINED: Pursuant to the orders of the Court made on 30 July  
2019

ATTENDANCE: Mr DRJ O'Brien of counsel for the Appellant  
Dr A Hanak QC and Dr E Kelly of counsel for  
the Respondent  
Mr N Frenkel of counsel for 528 Main Street  
Mordialloc Pty Ltd (as trustee of the 528 Main Street  
Mordialloc Unit Trust) (**528 Main**) and Aus Finance  
Group Pty Ltd (**AFG**)



OTHER MATTERS:

- A. On 6 September 2019, the Court was notified that the Respondent has appointed Fitzpatrick Legal Pty Ltd (ACN 124 925 524) (Fitzpatrick Legal) as solicitors on record in this proceeding.
- B. The Court was provided with a minute of consent orders signed by the solicitors for the Appellant and Fitzpatrick Legal as solicitors for the Respondent, confirming that the Appellant consents to the appointment of Fitzpatrick Legal as solicitors for the Respondent.
- C. On 26 April 2019, 528 Main filed an appearance in this proceeding as an "Other Party".
- D. 528 Main does not concede that the Court has jurisdiction to make any order about the representation of the Respondent and opposes the appointment of Fitzpatrick Legal on the grounds that the appointment is prohibited by the terms of a Reimbursement Deed entered into between 528 Main and the Respondent, which deed is exhibited at page 1 of Exhibit BW-1 to the affidavit of Mr Braden Williams sworn on 6 September 2019.

- E. The Court has been informed that the Respondent proposes to issue a summons for orders confirming that Fitzpatrick Legal is not prohibited from acting on its behalf in this proceeding.
- F. This order is signed by the Associate Judge pursuant to Rule 60.02(1)(b) of the *Supreme Court (General Civil Procedure) Rules 2015* ('Rules').

**THE COURT ORDERS THAT:**

1. By 4pm on 3 October 2019, the Appellant have leave to file and serve a Second Further Amended Notice of Appeal in the form exhibited to the Affidavit of Michael Victor Scherini affirmed 19 September 2019 as set out in Exhibit "MVS-1".
2. By 4pm on 11 October 2019, the Respondent file and serve upon the Appellant and 528 Main any application it intends to make in respect of the appointment of Fitzpatrick Legal to act on its behalf in this proceeding, together with any further affidavit material it intends to file in support of that application, in addition to the Affidavit of Mr Braden Williams filed on 6 September 2019.
3. Any application by the Respondent pursuant to order 2 shall be made returnable before Randall AsJ on 10 December 2019 at 10:30am.
4. By 4pm on 25 October 2019, the Appellant and 528 Main file and serve any affidavit materials in response to the Respondent's application.
5. The Respondent file and serve any submissions in support of its application by 4pm on 15 November 2019.
6. The Appellant and 528 Main file and serve any submissions in opposition to the application by 4pm on 20 November 2019.
7. By 4pm on 17 October 2019, 528 Main and AFG have leave to file and serve a summons and affidavit in support seeking the costs of and incidental to their compliance with the subpoenas issued at the request of the Appellant to 528 Main on 6 December 2018 and to AFG on 4 February 2019.
8. Any application by 528 Main and AFG pursuant to order 7 shall be made returnable before Randall AsJ on 10 December 2019 at 10.30am.
9. By 4pm on 20 November 2019, the Appellant is to file and serve any affidavit and outline of submissions in response to any application by 528 Main and AFG referred to in the preceding paragraph.
10. Costs reserved.
11. Liberty to apply is reserved.

DATE AUTHENTICATED: 26 September 2019

  


THE HONOURABLE ASSOCIATE JUSTICE DERHAM