Mastering Large-Scale Litigation

David T Forbes



- 1) Re Trade Practices Commission v Santos Limited and Sagasco Holdings Limited
 - a) [1992] FCA 506 (16 October 1992)
 - b) [1992] FCA 523; (1992) 110 ALR 517 (1992) 38 FCR 382 (2 November 1992)
 - c) [1993] FCA 199; (1993) ATPR 41-232 (1993) 42 FCR 203 (1993) 120 ALR 120 (29 April 1993)
- 2) Tigjs & Flynn ats Jennings Group Ltd [1997]
- 3) Powercor Australia Ltd V Pacific Power [1999] VSC 110



- 5) Foodlife Inventory Holdings Pty Ltd (In Liquidation) [2003]
- 6) Findlay v Besley [2003] VSC 247
- 7) Nylex Corporation Pty Ltd (In liq) v Basell Australia Pty Ltd [2009] VSC 97.
- 8) Wimpole Properties Pty Ltd v Beloti Pty Ltd [2012] VSC 219

- 9) Re: Sonray Capital Markets Pty Ltd:
 - a) Re: Sonray Capital Markets Pty Ltd , Georges v Seaborn International (Trustee), in the matter of Sonray Capital Markets Pty Ltd [2012] FCA 75; 87 ACSR 442,
 - b) Georges v Seaborn International Pty Ltd (Trustee), in the matter of Sonray Capital Markets Pty Ltd (in liq) [2012] FCAFC 140,
 - c) Efax Pty Ltd v Georges and Ors [2013] HCAB 04, [2013] HCATrans 100.



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No. 2067 of 1998 Folio 4931

POWERCOR AUSTRALIA LTD Plaintiff

(ACN 064 651 109)

PACIFIC POWER Defendant

JUDGE: Gillard J WHERE HELD: Melbourne

DATE OF HEARING: 10, 15-18, 22-25 and 29-31 March 1999; 7, 8, 12-15, 19-22, 28 and 29 April 1999; 3-6, 17-20, 24-27 and 31 May 1999; 1-3, 7, 8, 10, 15-17, 21-24, 28-30 June 1999; 1, 5-7, 12-15, 19-22, 26-29 July 1999; 10, 11, 12, 16-19, 23-26, 30 and 31 August 1999; 1, 2, 5 and 6 September 1999.

DATE OF JUDGMENT: 18 November 1999

CASE MAY BE CITED AS: Powercor Australia Ltd v Pacific Power

MEDIA NEUTRAL CITATION: [1999] VSC 110

Commodity Derivative Contracts – electricity industry – hedge against risk

 $ISDA\ Master\ Agreement-purpose-future\ transactions-effect\ on\ negotiations-transaction\ part\ of\ Master\ Agreement$

Formation of contract - intention to contract

Estoppel by convention - no change to contractual provisions

Equitable estoppel – to establish contract – no estoppel established

 $Authority\ of\ employee\ to\ conclude\ a\ contract-apparent\ authority-authority\ to\ convey\ offer\ and\ receive\ an\ acceptance$

Ratification of alleged lack of authority in employee to make a contract - ratification after contract repudiated - ratification after contract commenced

Mistake - common and unilateral mistake in contract

Section 52 Trade Practices Act - claims for alleged breach

Specific performance - possible division of relief between damages and performance

APPEARANCES: Counsel Solicitors

For the Plaintiff Mr A. Myers, QC with Phillips Fox

Mr J. Delaney and

Mr M. Carey

For the Defendant Mr G. Downes, QC with Davis O'Neill Sistrom

Mr G. Blake, Hassall & Byrne

Mr P.R. Moloney and (as agents for Davis O'Neill Sistrom)

Mr D.T. Forbes