

NOTICE OF FILING

Details of Filing

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File Title:	MICHAEL JOE BOTICA & ORS v ADAM WATSON & ORS
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A handwritten signature in blue ink that reads "Sia Lagos". The signature is fluid and cursive, with the first letters of "Sia" and "Lagos" being capitalized and prominent.

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Outline

Federal Court of Australia
District Registry: Queensland
Division: General

No. QUD



IN THE MATTER OF PIONEER LAKES PTY LTD ACN 108 681 563

MICHAEL JOE BOTICA and others

Plaintiffs

ADAM WATSON and others

Defendants

PLAINTIFF OUTLINE

1. This is the plaintiffs' application for urgent injunctive relief to protect the business and assets of the fourth defendant (**Company**), and subsequently for final determination of the plaintiffs' application for orders rectifying the ASIC register to return the registered control and ownership of the Company from the first to third defendants (**Watson Defendants**) to the true owners and directors, being the plaintiffs.
2. While the application is formally made *ex parte*, the first defendant, who controls the second and third defendants,¹ has been notified and will be in attendance.
3. There is no justifiable basis for the Watson defendant's actions. The plaintiffs seek both interim relief to protect the position of the fourth defendant, and urgent final hearing consistent with the lack of foundation for the Watson Defendant's actions.

Overview

4. The first, second and third plaintiffs have been directors of the Company since 2 September 2009 (first plaintiff) and 3 December 2012 respectively, and the third plaintiff has been secretary of the Company since 28 July 2025. The fourth and fifth plaintiffs are or were previously recorded on the ASIC register as the shareholders of the Company.² Those shareholding companies are controlled by the first plaintiff (Grassland) and the second and third plaintiffs (Jomist).
5. Without any legal basis, the first defendant has caused the ASIC register to be changed by removing the plaintiffs as directors, secretary and shareholders of the Company. The first defendant has instead purported to appoint, and recorded in the ASIC register, himself as director and secretary, himself and associated entities (the second and third defendants) as shareholders, and to change the registered office of the Company.³ He has further added himself as signatory to at least one bank account, with the Company's accounts now frozen.⁴
6. This has arisen out of a share sale agreement between the parties for shares in the fourth defendant, but is no means authorised by that agreement, and the Watson Defendants have not paid any of the price due under that agreement.

¹ Botica [23-24], exhibits p 123, 147.

² Botica [6]-[8], and see ASIC search at exhibits p 28.

³ Botica [42]-[47]; cf ASIC search above and Form 484 at exhibits p 299 which records that it was certified by the first defendant.

⁴ Botica [66]-[69].

7. The Company is a property development company in the throes of completing one of the stages in the Pioneer Lakes subdivision near Mackay in Queensland.⁵ The Company has five unconditional contracts on those lots, for which numerous steps must be promptly completed to allow titles to be issued and the benefit of those contracts being realised. The plaintiffs seek urgent relief to protect the Company, their interests therein, and the position of the third-party buyers.

Principles

Interlocutory Relief

8. On an application for an interlocutory injunction, it is necessary to make two main inquiries: first, has the applicant shown that it has a prima facie case, and second, has the applicant shown that the balance of convenience favours granting the relief claimed.
9. The first factor does not require probable success at trial, but merely a sufficient likelihood of success to justify in the circumstances the preservation of the status quo pending the trial. How strong the probability of success needs to be depends upon the nature of the rights asserted and the practical consequences likely to follow from the orders sought. The second inquiry is whether the balance of convenience supports the relief claimed; in other words, whether the inconvenience or injury which the applicant would be likely to suffer if an injunction were refused outweighs, or is outweighed by, the injury which the respondent would suffer if an injunction were granted.⁶
10. The two inquiries are related and not independent of each other, so that the weight of considerations in regard to one may well affect the other.⁷

Transfer of Shares

11. As a general proposition the company's own register of members maintained under Chapter 2C of the *Corporations Act 2001* (CA) is prima facie proof of the matters contained therein.⁸ The fourth defendant's company register records the fourth and fifth plaintiffs as its members: Botica [20] and p 120.
12. Likewise, a shareholder holds its share certificates as prima facie evidence of its ownership of the shares.⁹
13. Further, the constitution of the Company requires that a written instrument of transfer, executed by or on behalf of both transferor and transferee, must be left for registration on the Company's register at the Company's registered office,¹⁰ together with the share certificates to which the transfer relates.¹¹

⁵ Botica [4, 57-65].

⁶ *Australian Broadcasting Corporation v O'Neill* (2006) 227 CLR 57 at [65]-[72] per Gummow and Hayne JJ (Gleeson CJ and Crennan J agreeing at [19]); *Bowen Central Coal Pty Ltd v Aquila Coal Pty Ltd* [2011] QCA 334 at [37]-[38]; See also summary in *AECI Australia Pty Ltd v Convey* [2020] QSC 207 per Bond J at [13]-[18].

⁷ *Samsung Electronics Co Ltd v Apple Inc* (2011) 217 FCR 238 at [67]; *Warner-Lambert Co LLC v Apotex Pty Ltd* (2014) 311 ALR 632 at [70]; *Mineralogy Pty Ltd v Sino Iron Pty Ltd* [2016] WASCA 105 at [87].

⁸ CA s 169, 176; *Avon Downs Pty Ltd v Federal Commissioner of Taxation* (1949) 78 CLR 353; [1949] ALR 792; CLR at 363; adopted in *Norden Holdings Pty Ltd (Trustee) v Martens Investments Pty Ltd (Trustee), in the matter of Amazonia IP Holdings Pty Ltd* [2024] FCA 845 at [91].

⁹ CA s 1070C(2); *Norden* at [91].

¹⁰ Also a requirement of CA s 1071B(2).

¹¹ Constitution, cl 32-33, Botica exhibits p 108.

14. The share sale agreement was consistent with the above, requiring at cl 10.2 and 10.3 actions consistent with the above as part of the completion of that agreement.¹²

Rectification of ASIC Register

15. Pursuant to CA s 1322(4)(b), the Court has discretionary power to order rectification of ASIC registers kept under s 1274 of the Act and reg 9.1.01 of the *Corporations Regulations 2001* (Cth), to correct incorrect information recorded therein.¹³ This is subject to the proviso in CA s 1322(6)(c) that the no substantial injustice has been or is likely to be caused to any person by the proposed orders.
16. Rectification can be ordered where the process by which the event had been included in the register was invalid.¹⁴ In *Re Seabay Kitchens* at [13], Black J found that:

... the process leading to entry of the current information as to the directors, shareholders and registered office of Seabay Kitchen was not properly founded by any corporate process and the register should be rectified on that basis.

17. The rectification granted in *Re Seabay Kitchen* included withdrawal from public view of a Form 484 in respect of changes of directorship and shareholding, and restraint from making changes to the ASIC register: see orders 1 and 2 therein.

Further Facts and Submissions

Preparatory Partial Signature of Completion Documents Grants no Rights

18. While the Watson Defendants contracted to purchase the Company for around \$16.5M:¹⁵
- (a) the Watson defendants have not paid the deposit of \$2 million due under the contract nor the Completion Payment (balance purchase price) or any other money;¹⁶
 - (b) the plaintiffs have terminated that share sale agreement;¹⁷
 - (c) the contractual mechanism (cl 10) required the plaintiff to attend to transfer of control and ownership of the Company to the Watson Defendants and, understandably, only give the buyers ownership of the shares, share certificates, transfer instruments and director / secretarial resignations *at completion*, in return for the contemporaneous and interdependent payment of the Completion payment.
19. On around 24 and 25 June 2026, on the first defendant's assurances, settlement was thought to be imminent: exhibits p 520-525. As a result, their solicitors prepared for the fourth defendant a "Step 1 - Change to Officeholder Pack" and "Step 2 - Share Transfer Pack". These contained documents essential for compliance with the share sale agreement at completion, being:¹⁸

in the change to officeholder pack:

- (a) a proposed resolution of members of the fourth defendant (ie Grassland and Jomist) to accept resignations of the 1st to 3rd plaintiffs as directors and secretary, and appoint the first defendant as director and secretary;

¹² Botica exhibits p 182 at 204.

¹³ *Re Centura Global Holdings Pty Ltd* [2016] NSWSC 62; (2016) 111 ACSR 185 at [56]–[57] per Black J, adopted in *In the matter of Seabay Kitchen Pty Ltd* [2019] NSWSC 790 at [12] per Black J. See also *Cappelleri v Cappelleri* [2024] VSCA 173 at [173]–[175].

¹⁴ Refer *Re Centura* at [56]–[57] and authorities cited therein.

¹⁵ Botica [26], agreement at Botica exhibits p 170.

¹⁶ Botica [30, 34].

¹⁷ Botica [10](c), [52]–[54], exhibits p 360.

¹⁸ Partially executed documents at exhibits p 498.

- (b) resignation forms for the first and third defendants which recorded as the effective date *"the resignation is to take effect on completion of share sales in the Company... Pursuant to the Share Sale Agreement dated 21 May 2026"*;
- (c) a consent to act as company officeholder from the first defendant;
in the share transfer pack;
- (d) a resolution of Mr Watson as sole director (therefore only able to be effective after his valid appointment) approving share transfers from the fourth and fifth plaintiffs to the Watson Defendants;
- (e) share transfer forms for execution by the parties;
- (f) new share certificates for issue to the Watson Defendants.

20. In preparation for settlement those documents were executed by Messrs Coleman and O'Toole for Jomist and personally, and by the first defendant. However, these were not executed by Botica. Further, the documents were not dated, the share certificates were not numbered nor stamped for duty, and none of those documents were provided to the Watson Defendants in any form, but were held at the office of the fourth defendant.¹⁹ No meeting of members was called: Botica [18].

21. It is submitted that:

- (a) The resolution of existing members regarding change of directors appeared on its face, and in the absence of any meeting was necessarily,²⁰ a circulating resolution which requires a signature by all members entitled to vote.²¹ It was therefore ineffective to remove the directors or appoint the first defendant as director;
- (b) The documents in the share transfer pack were consequently ineffective because the first defendant had not been validly appointed. Further, even on the terms of the director resignations, they had not taken effect because completion of the share sale agreement had not been achieved, and therefore Messrs Coleman and O'Toole, as well as Mr Botica, remained directors. For this further reason the first defendant was not at any time sole director, and the share transfer pack resolutions could not be effective without being signed as a circulating resolution of all directors;
- (c) in the context of the share sale agreement, the director resignations not being effective until completion of the share sale agreement, non-payment by the Watson and non-circulation of the incomplete documents, it is clear that the documents were in any case held in escrow or otherwise not to take effect until provided in accordance with the share sale agreement at completion;
- (d) consequently, the Watson Defendants gained no rights under those documents, and no alteration was validly able to be made to the ASIC register.

22. Further, clause 10.6 requires all parties to return all documents and reversal actions taken under clause 10 if Completion does not occur, while preserving other rights a party may have because of such failure.²² That is a clear contractual apportionment of risk if there is a failure to complete, and accords with the relief sought by the plaintiffs.

¹⁹ Affidavit of McKenzie.

²⁰ Meetings are regulated by the Constitution cl 49 – 72 and removal and appointment of directors by Company resolution is provided for at cl 75: Botica exhibits p 111-113.

²¹ Per CA 249A(2).

²² Exhibits p 205.

23. On the facts stated in the affidavit of Mr Botica, the first defendant's unilateral actions to alter the ASIC Register are inconsistent with the terms of contract, the partially executed documents themselves, and with his failure to pay any part of the purchase price.

First Defendant Conduct

24. The first defendant has repeatedly made assertions that payment of the funds due under the share sale agreement (both deposit and full completion payment), were imminent or merely awaiting certain releases for the money to be paid from his bank to the fourth defendant.²³ This has been demonstrated to be false where no payment has been received.

25. When confronted with his wrongful transfers of shares and directorship, the first defendant has further disclaimed knowledge of what has occurred, suggesting he needs to investigate.²⁴ The first defendant has effectively disclaimed knowledge of how this occurred despite the evidence of his authorisation of that step, via the Form 484.²⁵

26. The first defendant has further secured signatory access to at least one of the fourth defendant's bank accounts, all without paying any money due under the share sale agreement.

27. It is submitted that:

- (a) these matters demonstrate that the Company needs interim protection from the Watson Defendants;
- (b) these matters, in the above context, further demonstrate that the first defendant could not have any rational belief that he had any right to take steps that he has taken, and demonstrate a history of obfuscation and delay;
- (c) consequently, these matters go to both the assessment of prospects for the purposes of interlocutory relief, and supportive submissions that the proceeding should be progressed to final resolution on an urgent basis, consistent with the apparent lack of merit of any opposition.

Other matters Requiring Urgency

28. The plaintiffs only became aware of the purported change of control on 28 July 2026 when advised by a supplier. Since that time they have engaged in correspondence and put the first defendant repeatedly on notice that the changes to the ASIC register needed to be reversed.²⁶ Despite requests for time to investigate, which time has elapsed, he has provided no substantive answer.

29. The broader circumstances requiring urgency affect the interests of both the fourth defendant and consequently the plaintiffs, and also third parties being contract holders on the lots and contractors involved in the project. The immediate action being undertaken by the fourth defendant is titling of lots in the latest stage of the ongoing Pioneer Lakes subdivision. This requires active steps in managing completion of the survey of the proposed lots, meeting with Council and the project engineers, securing council endorsement of the Survey Plan and applying for the issue of new titles. From the plaintiffs' perspective that requires both instructions to and payment for the services of the relevant contractors from the fourth defendant.

²³ Botica [32-35].

²⁴ Botica [45-51].

²⁵ Botica exhibits P298

²⁶ Botica [36-40, 44-54].

30. Interim or interlocutory relief or undertakings will not adequately address that for anything other than a short period at best. The first to third plaintiffs have been directors of the Company for more than a decade, plainly have not resigned on any basis, and wish to continue to maintain the subdivision on track both for revenue and reputational purposes. The current situation also leaves the interests of third parties, namely buyers with contracts on the lots, at risk.

Resolution

31. In the above premises it is submitted that the plaintiff has a strong prima facie case for final relief. The Watson Defendants have not complied with their fundamental obligations under the share sale agreement to pay either the deposit or completion payment. They appear to have purported to act on partially completed documents which are legally ineffective and which, objectively, were completed only in preparation for completion of the share sale agreement, which plainly never occurred and has been terminated.
32. That absence of grounds for the ASIC changes is a conventional basis for the final relief sought, being correction of the ASIC register, in accordance with the authorities cited above including *Re Seabay Kitchens*.
33. It is further submitted that the balance of convenience plainly favours the relief sought. The first defendant is a stranger to the Company and cannot be allowed to affect the progress of the subdivision. Further, he has interfered with the Company's banking arrangements, which puts its finances at risk, which has led to freezing of the bank accounts from which it is inevitable payments would be required to be made for the progress of the project.
34. The plaintiffs' control of the fourth defendant, and consequently the subdivision project, for more than a decade, demonstrates that their control is paramount unless or until they choose to transfer their interests in the company. There is no longer any prospect of a transfer to the Watson Defendants as a result of the termination of the share sale agreement.
35. The proposed affidavit to be filed by the first defendant is analogous to the ancillary order for an affidavit as to assets typically found in a freezing order. Here, it addresses matters which are solely within the first defendant's knowledge, and which the plaintiffs will not otherwise be able to discover without detailed investigation or possibly at all.
36. The interim relief merely protects the fourth defendant's position. It is consistent with the final relief, which will remove the purported control and ownership which has been assumed by the Watson Defendants.
37. As to any possible case to be run by the Watson Defendants in opposition, it is submitted that there is little to be said for such a case. It may be argued that the plaintiffs' termination of the share sale agreement was wrongful, although it is unclear why this might be. Any complaint about, for example, the costs of roading within the development which appears to have been made, would generally entitle the Watson Defendants to terminate and seek damages. Any claim that specific performance should be ordered would run up against the demonstrated inability of the Watson defendants to be ready, willing and able to complete.
38. More fundamentally, the share sale agreement clause 10.6 provides for the remedies which are to occur in the case of failure to complete, being divestiture of any rights acquired in prospect of completion, without prejudice to any other remedies. This is consistent with the interlocutory and final relief sought.
39. Clause 12 further provides for the sellers to carry on the business as a going concern until completion, following ordinary and usual practice, with due care and material compliance

with applicable laws.²⁷ That provides further protection for any interests that the Watson Defendants may have, should there be a claim that the contract remains on foot and the time for completion has somehow not been reached.

40. For the above reasons it is submitted that interim and interlocutory relief should be granted in the terms sought, with the proceeding expedited to final hearing.

5 August 2026

M A Taylor

Counsel for the plaintiff

²⁷ Exhibits p 206.