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Waterfront agreement opponent not genuine: VICT

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Victoria International Container Terminal has accused the CFMMEU delegate at the centre of a 2017 Webb Dock blockade of acting as a "stalking horse" for the maritime division in challenging his employer's non-union deal because he was "indebted" after a \$40,000 bailout.

During a Federal Court hearing earlier this month before Justice Darryl Rangiah, VICT accused Richard Lunt of applying to have its 2016 agreement declared invalid "at the bidding of the MUA" and not because he had a genuine desire to do so.

The company also claimed that he lied to "try to bring some distance between [MUA deputy national secretary Will Tracey] and this litigation" and questioned the fate of more than four mobile phones, including a Samsung bought in October 2017 and damaged shortly after he received a court order to produce evidence of communications with the union.

Initially stating in an affidavit that, after damaging the screen of the Samsung, technicians told him all messages and some contacts were deleted, Lunt admitted during the hearing that he later "got rid of it".

The MUA delegate said he "smashed it and turfed it", not to destroy evidence of communications between him and the MUA but "because there were things on that phone that I didn't want anyone else to see".

He also stood by submissions that every phone that he used from late 2016 until early last year had disappeared, including an iPhone that ended up in a council bin and a Nokia that fell down a drain.

Turfed mobile traversed "crucial period": VICT

VICT's barrister, Stuart Woof QC, said the Samsung was "critical" as its use between October 2017 and April last year crossed over a "crucial period".

The period included the MUA's blockade at Melbourne's Webb Dock in December 2017 in response to VICT's refusal to keep giving Lunt casual stevedoring shifts and the union's announcement that it would dismantle the picket after VICT agreed to reinstate him "on pay" (see Related Articles here and here).

It also included the time in which he filed an adverse action claim against his employer (see Related Article), and led up to Lunt's application last April to have VICT's 2016 agreement declared "void and of no effect" on the basis it was not genuinely agreed and did not pass the Better Off Overall Test.

"You have known since at least March 2018 that VICT has made an allegation that you are a stalking horse for the MUA – that you are doing the bidding for the MUA," Wood said in his cross-examination of Lunt, contending he "knew as at that stage. . . that communications with the union were relevant" to the case.

Wood also suggested during the hearing that Lunt, at the time he filed his Federal Court bid to challenge the 2016 deal, was "indebted to the MUA because they had bailed you out of bankruptcy" and "paid your debt of \$40,000".

"I'm putting to you that your evidence that you're giving to this court now in your affidavit. . . is untrue, and that you have never genuinely wanted to have the VICT enterprise agreement declared invalid until Mr Tracey sent you a letter on 25 January telling him that your solicitors had written to VICT's solicitors asking for it to be declared invalid," Wood said.

Lunt responded: "You're wrong".

He also gave evidence that he raised concerns with Tracey about whether VICT correctly made the agreement after a friend alleged that "it was the managers that voted up the EBA".

Lundt said he asked Tracey at the time: "Can you look into it?"

Lunt's barrister, Herman Borenstein QC, said the "fact that he has been at meetings with other employees from that workplace and he has heard them say that they support him, he says, is part of the picture of him being committed and having a reason to press on with the application".

"It doesn't require the truth of those statements to be proved but, simply, the fact that he's there and the fact of people saying these things is an encouragement to him."

The CFMMEU is understood to be bearing Lunt's legal costs, which he is to repay if he wins the case.

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