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## Delegate a "front man" for union's belated challenge to deal: Court

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The Federal Court has thrown out a CFMMEU delegate's attempt to quash a contentious waterfront deal, finding that he was acting as a "front man" for the union's effort to sink an agreement it failed to challenge at the time.

Ruling that the CFMMEU was the "true moving party" in proceedings, Justice Darryl Rangiah concluded that Richard Lunt's bid to terminate Victoria International Container Terminal's 2016 [agreement](#) was an abuse of process motivated by the union's desire to avoid scrutiny over its acquiescence to the deal.

Highlighting Lunt's admission that he "smashed. . . and turfed" a mobile phone considered crucial to VICT's claim that he was being directed by MUA deputy national secretary Will Tracey, the judge said the union's payment of costs in the case "may be seen as merely consistent with the MUA supporting Mr Lunt as one of its members", but was most likely otherwise motivated.

"As I have concluded that Mr Lunt was not sufficiently concerned about the enterprise agreement to commence proceedings for the approval be quashed, the payment of the costs. . . is more consistent with the MUA, and now the CFMMEU, paying for Mr Lunt to seek the relief that they were not prepared to seek in their own names."

It was unnecessary, he continued, to determine whether any application brought by the union would or would not have failed.

"It is enough to determine that there is a substantial risk that such an application would have failed," Justice Rangiah said.

"It seems unlikely that a court would quash and declare invalid the approval of the enterprise agreement upon the application of the MUA or the CFMMEU where that approval was supported by the MUA and then left unchallenged for over a year in circumstances where VICT, its employees and the MUA relied upon it, including in proceedings before the [Fair Work] Commission."

### MUA's "heavy involvement"

Justice Rangiah also pointed to the MUA's "heavy involvement" in an earlier failed application by Lunt to amend an associated [matter](#) (see [Related Article](#)) to challenge the deal.

"On 14 December 2017, Mr Tracey sent an email to Mr Lunt referring to a time and wages inspection and saying, 'This provides the basis to challenge the agreement and knock it over. Now the real games begin'.

"On 24 January 2018, Mr Lunt's solicitors wrote to VICT's solicitors advising of their instructions to 'seek amendment of the originating application'.

"On the following day, Mr Tracey forwarded the solicitor's letter to Mr Lunt by email.

"I have inferred that Mr Tracey was heavily involved in obtaining and communicating Mr Lunt's instructions to apply for leave to amend."

Concluding that Lunt brought the proceeding "for the predominant purpose of enabling the CFMMEU to obtain relief which it was unlikely to obtain if the proceeding were brought in its own name", the judge said that, in his opinion, "that is an illegitimate and collateral purpose".

"I also find that the CFMMEU is the true moving party. . . because it has used Mr Lunt to seek the relief that it fears it would not obtain if it brought the proceeding in its own name.

"Through the device of the CFMMEU using Mr Lunt as a 'front man', VICT has been deprived of the opportunity to defend the proceeding on the basis that the MUA acquiesced in the approval that is now sought to be quashed, failed to exercise its right to apply for permission to appeal and delayed in bringing the proceeding in circumstances where VICT, its employees and the MUA were acting under the terms of the enterprise agreement."

The CFMMEU's use of the court's procedures to bring the proceeding in Lunt's name was "unjustifiably oppressive" to VICT, Justice Rangiah said.

"Further, it would bring the administration of justice into disrepute if the CFMMEU were permitted, by using the device of having a 'front man', to bring the proceeding to challenge the approval of the enterprise agreement while avoiding scrutiny of its acquiescence to that approval.

"The current proceeding must [therefore] be dismissed on the basis that it is an abuse of process."

[Richard Lunt v Victoria International Container Terminal Limited \(No 2\) \[2019\] FCA 1016 \(2 July 2019\)](#)

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