

**ST KILDA ROAD PTY LTD V 170-174 ST KILDA ROAD PTY LTD [2000] VSC 65**

Supreme Court of Vic – 8 March 2000

**FACTS**

170 – 174 St Kilda Road (“170”) was the owner of the property at 170-174 St Kilda Rd, Melbourne. 170 agreed to sell the property to St Kilda Road Pty Ltd for \$1,400,000.00. St Kilda Road Pty Ltd was to pay the balance owing on 14 September 1999 but elected to extend the settlement date by paying \$25,000.00 to 170 by cheque.

On 17 September 1999, St Kilda Road Pty Ltd stopped payment on the cheque and later on the same day 170 served a Notice of Default on St Kilda Road Pty Ltd. St Kilda Road Pty Ltd failed to comply with the Notice and failed to pay any further moneys to 170.

On 1 December 1999, 170 executed a new contract to sell the property to NDH. St Kilda Road Pty Ltd then lodged a caveat on the title to the property.

On 7 February 2000, the Supreme Court ordered that the caveat be removed. On 8 February 2000, St Kilda Road Pty Ltd lodged another caveat on the title. On 16 February 2000, the Supreme Court ordered that the second caveat be removed.

St Kilda Road Pty Ltd then issued this proceeding seeking an order that the Notice of Default was invalid as there was a contract between 170 and St Kilda Road Pty Ltd.

**ISSUE**

Should the Court stay the proceeding on the basis that it was an abuse of process?

**FINDING**

The issue of this proceeding by St Kilda Road Pty Ltd was clearly an attempt to interfere with 170’s sale of the property to NHD and the claims by St Kilda Road Pty Ltd had no merit. The proceeding was an abuse of process and was stayed.

**QUOTE**

Beach J said:

*“In my opinion this proceeding is totally without merit and has been instituted by St Kilda [Roads Pty Ltd] to exert commercial pressure on 170.*

*Clearly that submission was designed to achieve a situation whereby settlement of 170’s sale of the land to N.H.D. would not take place on 30 March [2000] and in all probability N.H.D. would then walk away from the property.*

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*In my opinion this proceeding has been brought for the improper purpose of frustrating 170's sale of the property to N.H.D."*

## **IMPACT**

A legal proceeding cannot be bought simply to place commercial pressure on the other party.

There must be an arguable legal case to issue the proceeding and any attempt to issue proceedings to commercially pressure the other party is an abuse of process.

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