IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
PROPERTY LIST

Not Restricted

S ECI 2025 02613

| | |
|---|---|
| LAKE EILDON COUNTRY CLUB (ACN 005 642 937) | Plaintiff |
| v | |
| MARCHELLEEN PTY LTD (ACN 005 104 478) and Ors | Defendant |

---

| | |
|---|---|
| JUDGE: | Garde J |
| WHERE HELD: | Melbourne |
| DATE OF HEARING: | 17 June 2026 |
| DATE OF JUDGMENT: | 7 July 2026 |
| CASE MAY BE CITED AS: | Lake Eildon Country Club v Marchelleen Pty Ltd |
| MEDIUM NEUTRAL CITATION: | [2026] VSC 436 |

---

LAND LAW – Co-ownership – Where timeshare resort is owned by 730 registered members with 1,386 titles – Application by club for appointment of trustees to consolidate titles and sell the land – Whether it is appropriate to appoint trustees for sale – Relevant factors – Method of sale or valuation – Surrender of a lease – Distribution of proceeds of sale – *Property Law Act 1958* (Vic) Part IV, ss 222, 225, 228, 231 and 232; *Trustee Act 1958*, s 63.

---

| APPEARANCES: | Counsel | Solicitors |
|---|---|---|
| For the Plaintiff | Mr P Annabell | McCullough Robertson Lawyers |
| For the Defendants | No appearance | |

HIS HONOUR:

**Introduction**

1 Following their success overseas, timeshare resort schemes became common in Australia in the 1980s. The Lake Eildon Country Club (ACN 005 642 937) ('club') was incorporated on 11 April 1980 to provide a country club resort ('resort') on the shores of Lake Eildon with cabins, cottages, leisure and sporting facilities. Over four decades later, the club directors consider that the club is not economically viable. The members wish to consolidate their timeshare titles, sell the resort and distribute the proceeds of sale after payment of costs and expenses. This is the first occasion in Victoria where court orders have been sought for the appointment of trustees for the consolidation of timeshare titles, sale and winding up of a timeshare resort.

**The proceeding**

2 On 15 November 2024, the club made an application ('proceeding') to the Victorian Civil and Administrative Tribunal ('VCAT') for orders under Part IV of the *Property Law Act 1958* (Vic) ('*PLA*') for the appointment of trustees, consolidation of titles and for the resort to be wound up and sold. The members of the club were named as respondents. By an order made on 2 April 2025 under s 77(1) and (3) of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic), and ss 234C(4)(b) and 234E of the *PLA*, VCAT referred the proceeding to this Court. As a result of the referral, this Court has jurisdiction to hear and determine the proceeding. Under s 234D of the *PLA*, this Court may make any order that VCAT could make under Part IV.

3 The proceeding is supported by affidavits and exhibits filed by a club director and by two of the club's solicitors. Each of the proposed trustees has filed an affidavit setting out his qualifications, expertise, experience and willingness to act.

**The resort**

4 The club is limited by guarantee and is an unlisted public company. It has a registered lease J48949 ('lease'), and operates the resort under the name of Mansfield Country Resort. The resort is located at 50 Banumum Road, Mansfield, Victoria 3722 and includes five cabins and 36 cottages, a BBQ area, children's playground, swimming

pool, spa, sauna, squash and tennis courts, and a mini golf course ('land'). The club has a resort management and services agreement with a corporate manager.

5 The land is currently comprised of 1,386 titles and approximately 5,200 fractional interests. Ownership of the titles is split between the club, members, former members, and the manager. The club has 730 registered members. As memberships may be held by two or more persons, the number of persons with an interest in the club far exceeds 730. The members enjoy rights and entitlements and have obligations under the club's constitution.

6 Each entitlement is subject to an annual levy and a special levy so that the club can meet its liabilities. The annual levy is payable at the start of each financial year. The amount of the special levy is determined by the directors of the club under its constitution.

7 The voting rights of a member depend on the number of fractional interests held by the member. Under the club's constitution, each member participates in a distribution of proceeds in accordance with the number of fractional interests held by the member.

8 Each membership carries an entitlement for the member to occupy a unit of holiday accommodation in the resort for a period of time. The period of time is determined by the member's fractional interest in the land, and is expressed in terms of the number of memberships, or 'weeks' owned by the member. Under the constitution, each member is a tenant in common co-owner of the land.

**<u>Decision to wind up the resort</u>**

9 In 2022, the directors of the club formed the view that it was uneconomic to continue to operate the club under the current arrangements. They determined that it was in the best interests of the club, and its members for the land to be sold and the club wound up. The directors remain of this view in substance for the following reasons:

(a) the resort facilities require substantial investment in order for the resort to be attractive as a holiday destination and economically sustainable;

(b) some club members are retired or approaching retirement and are increasingly unable to afford the financial burden of club levies;

(c) it was likely in the future that more members would default on payment of levies;

(d) new club members by inheritance may be disinclined to use the facilities, or pay the levies;

(e) there was a high prevalence of unpaid levies, and difficulty and expense in recovery, including the need for legal proceedings; and

(f) there were limited options for members to leave the timeshare, or realise their investment with little or no secondary market for memberships.

10 In June 2022, the directors conducted a members survey which found that 78% of respondents favoured winding up the timeshare scheme within five years.

11 On 15 July 2023, seven resolutions were passed by the members at an extraordinary general meeting. They were in substance to:

(a) amend the constitution to address the sale of the land and the winding up of the club (95.25% in favour);

(b) approve the club as the applicant to VCAT (94.46% in favour);

(c) approve an application for the appointment of trustees to sell the land, and distribute the proceeds and for ancillary orders (94.46% in favour);

(d) sell the land (94.26% in favour);

(e) terminate or surrender the lease (93.66% in favour);

(f) appoint the club as agent of the members for the sale of land and the winding up of the club (94.46% in favour); and

(g) authorise the directors to apply cash reserves to meet the fees and expenses of the proposal to sell the land and wind up the club (95.25% in favour).

**Conduct of the proceeding**

12 In view of the large number of parties, some of whom are located overseas, I gave directions on 23 September 2025 for:

(a) the uploading of court documents and documents related to the proceeding on a website maintained by the Supreme Court; and

(b) substituted service of the proceeding on the defendants, by

(i) sending a letter to each defendant for whom the club held an email address;

(ii) posting a letter by ordinary prepaid post to each defendant for whom the club did not hold an email address, or who had notified the club that it cannot or does not wish to receive notices by email;

(iii) posting a letter by ordinary prepaid post to ASIC for each corporate defendant that was deregistered; and

(iv) publishing notices on the website of the resort and on its noticeboard.

13 I also directed that ASIC and the Registrar of Titles be given notice of the proceeding and be joined as defendants.

14 The club effected service on the defendants in accordance with the orders, as verified in affidavits deposed by its solicitors. Seventeen of the owners of fractional interests were found to be Australian deregistered companies. Two owners of fractional interests were found to be foreign deregistered corporations. The defendants' responses to service have been extremely limited. None stated any opposition to the directors' proposals or the proceeding.

15 In accordance with s 225(3) of the *PLA*, the club gave notice of the proceeding to the holders of security interests over titles relating to the land. Four mortgagees and five caveators were identified. There was one response to the notices to mortgagees from

a solicitor for a mortgagee who stated that the mortgagee would abide by the order of the court. There was no response from the two caveators.

**ASIC's position**

16 Ownership of the property of a deregistered company is vested in ASIC which has the powers of an owner of the property.[1] On 12 December 2025, ASIC stated in substance:

(a) ASIC does not intend to take any steps on behalf of the deregistered companies;

(b) on the strict understanding that no orders are sought against, or directly affecting ASIC, it does not oppose the application and does not intend to appear; and

(c) any funds payable to a deregistered company should be forwarded to ASIC's Unclaimed Monies Unit.

**The Registrar of Titles' position**

17 On 13 January 2026, the Registrar of Titles:

(a) stated that she would not appear in the proceeding;

(b) provided comments on the proposed orders;

(c) stated that a particular folio of the Register had been cancelled; and

(d) requested confirmation that costs would not be sought against the Registrar.

18 Very extensive notice has been given of the proceeding to members, security holders, statutory bodies, on the club website, on the land and by notice on the Supreme Court website. No person has appeared to oppose the proceeding or the orders sought by the club.

**Issues**

19 The main issues that I need to consider are:

(a) whether the Court should appoint and vest the titles to the land in trustees, and

---

1 *Corporations Act 2001* ss 601AD(2), (4).

in the trustees proposed by the club, in order for the titles to be consolidated and the land sold;

(b) whether the Court should order a particular method of sale or require a valuation;

(c) whether the trustees should have power to surrender the lease; and

(d) the manner in which the proceeds of sale are to be distributed.

**Relevant statutory provisions**

20 Part IV of the *PLA* concerns co-owned land and goods, and provides the machinery for the Court to make orders for the appointment of trustees and the vesting of land.

21 Section 222 defines 'co-owner' to mean:

> a person who has an interest in land … with one or more other persons as—
>
> (a) joint tenants; or
>
> (b) tenants in common.

22 Section 225 relevantly provides:

> (1) A co-owner of land … may apply to VCAT for an order or orders under this Division to be made in respect of that land ….
>
> (2) An application under this section may request—
>
> (a) the sale of the land … and the division of the proceeds among the co-owners; or
>
> (b) the physical division of the land … among the co-owners; or
>
> (c) a combination of the matters specified in paragraphs (a) and (b).
>
> (3) A person who makes an application under subsection (1) must give notice of the application to the holder of a security interest over the land … to which the application relates.

23 Section 228 of the *PLA* relevantly authorises the making of the following orders:

> (1) In any proceeding under this Division, VCAT may make any order it thinks fit to ensure that a just and fair sale or division of land … occurs.
>
> (2) Without limiting VCAT's powers, it may order—

(a) the sale of the land … and the division of the proceeds of sale among the co-owners; or

(b) the physical division of the land … among the co-owners; or

(c) that a combination of the matters specified in paragraphs (a) and (b) occurs.

24 Section 231 of the *PLA* authorises the appointment of trustees:

(1) In any proceeding under this Division, if VCAT thinks that the appointment or removal of trustees is necessary or desirable, it may order—

(i) the appointment of trustees; or

(ii) the removal of trustees.

(2) In an order appointing trustees for the purposes of the sale of land …, VCAT may—

(a) direct the trustees as to the terms and conditions on which any sale is to be carried out;

(b) direct the distribution of any proceeds of the sale in any manner specified by VCAT.

(3) In an order appointing trustees for the purposes of a physical division of land …, VCAT may direct the trustees as to the manner in which the division is to be carried out.

(4) An order under this section may provide for the remuneration of the trustees appointed under the order and—

(a) if trustees are appointed for the purposes referred to in subsection (2), the order may provide that the remuneration of the trustees be paid from the proceeds of sale; and

(b) if the trustees are appointed for the purposes referred to in subsection (3), the order may provide that the remuneration of the trustees be paid by such parties to the proceeding as VCAT considers just and fair in the circumstances.

25 Section 232 grants VCAT broad powers in relation to the sale of land:

In any proceeding under this Division, VCAT may order—

(a) that the land … be sold by private sale or at auction;

(b) that the co-owners may purchase the land … at that sale or auction;

(c) in the case of a private sale, that the sale be at fair market price as determined by independent valuer;

(d) in the case of an auction, that the reserve price is the reserve price set by VCAT;

(e) that an independent valuation of the land … take place;

(f) that a sale is to be completed within a specified time;

(g) that the costs of the sale be met—

(i) by one or more of the co-owners; or

(ii) from the proceeds of the sale;

(h) that the sale and division of the proceeds of sale or the physical division of the land … is subject to any terms and conditions which VCAT considers necessary or desirable in any particular case;

(i) in the case of land, that any necessary deed or instrument be executed and documents of title be produced or other things be done that are necessary to enable an order to be carried out effectively;

(j) in the case of land to which the **Transfer of Land Act 1958** applies, directing the Registrar of Titles to make amendments to the Register within the meaning of that Act or do any act or make any recordings necessary to give effect to an order under this Division.

26 Section 63 of the *Trustee Act 1958* (Vic) confers additional powers concerning trustees:

(1) Where in the management or administration of any property vested in trustees, any sale, lease, mortgage, surrender, release or other disposition, or any purchase, investment, acquisition, expenditure or other transaction, is in the opinion of the Court expedient, but the same cannot be effected by reason of the absence of any power for that purpose vested in the trustees by the trust instrument (if any) or by law, the Court may by order confer upon the trustees, either generally or in any particular instance, the necessary power for the purpose on such terms and subject to such provisions and conditions (if any) as the Court thinks fit and may direct in what manner any money authorized to be expended, and the costs of any transaction are to be paid or borne as between capital and income.

(2) The Court may from time to time rescind or vary any order made under this section, or may make any new or further order.

(3) An application to the Court under this section may be made by the trustees, or by any of them, or by any person beneficially interested under the trust.

## Appointment of trustees and the vesting of the resort

27 The club seeks an order from the Court under s 231 of the *PLA* for the appointment of Simon Thorn and Bradley Tonks of the firm PKF Newcastle, 755 Hunter Street, Newcastle West, New South Wales as statutory trustees of the land constituting the resort, and for the trustees to be given the necessary powers to consolidate and sell the

land, surrender the lease, and distribute the proceeds after payment of costs and expenses, and receipt of income less outgoings.

28 Where the appointment of trustees for sale is sought in relation to co-owned land, the court will normally make an order for the appointment as the right to an order is 'an incident of co-ownership'. A co-owner is entitled to an order 'almost as of right' unless on settled principles it would be inequitable to allow the application.[2] While a contractual covenant by a co-owner not to seek the appointment of trustees for a limited period might be sufficient to persuade a court to abstain from making such an appointment,[3] the court has no general discretion to refuse an application on the grounds of hardship or unfairness.[4] In the present case, it is not suggested that there is any reason why the making of the order sought by the club would be inequitable.

29 Four factors are usually considered in relation to the identity of trustees where there is no consent to the appointment of trustees. They are:[5]

(a) the preference of the person with the greater interest in the land;

(b) the trustee should be as independent and free from conflicts of interest as possible;

(c) where they have active duties, the trustees should have appropriate skill, expertise and experience; and

(d) the court should endeavour to get the best value for the parties' money, and see that as between two equally alternative proposals that the cheaper is preferred.

30 In the present case, there is consent to the appointment of trustees, but the factors

---

2 *Hogan v Baseden* (1997) 8 BPR 15,723; *Ex parte Eimbart Pty Ltd* [1982] Qd R 398, 402; *Ranger v Ranger* [2009] QCA 226, [14]; *Callaghan v O'Neil* [2002] NSWSC 877, [8]; *Chalboub v Chalboub* [2005] NSWC 572, [17]; *Tory v Tory* [2007] NSWSC 1078, [42]; *Spathis v Nanos* [2008] NSWSC 418, [19]; *Bremner v French (No 4)* [2024] NSWSC 793, [65]–[131]; Peter Butt, *Land Law* (Thomson Reuters, 7th ed, 2017) 288 [6.730].

3 *Re Permanent Trustee Nominees (Canberra) Limited* (1989) 1 Qd R 314, 317, 320, 322–323 (Kelly SPJ, Connolly and Moynihan JJ).

4 *McNamara, Re & Conveyancing Act* (1961) 78 WN(NSW) 1068 (Myers J); *Hogan v Baseden* (1997) 8 BPR 15,723, 15,726–15,727; *Yeo v Brassil* [2010] VSC 344, [21]–[23] (Judd J).

5 *Arrow Custodians Pty Ltd v Pine Forests of Australia Pty Ltd* [2006] NSWSC 341, [21] (Young CJ in Eq); *Application by Buckett: Kent v Buckett* [2012] NSWSC 735, [52] ( Hallen AsJ).

should still be considered. Both Mr Thorn and Mr Tonks are registered liquidators and chartered accountants. Each has been an insolvency practitioner for over 25 years. Both have extensive insolvency experience across many industries including hospitality, registered clubs, retail and professional services. Mr Thorn's experience includes previous appointments as a trustee for sale and winding up of timeshare resorts including Pacific Palms Resort, Korora Bay Village Resort, and Cedar Lake Country Resort. Mr Tonks has completed major assignments in preparing and executing asset realisation programs including going concern sales. Both Mr Thorn and Mr Tonks are eminently qualified to act as the trustees for the sale of the resort in accordance with the orders of the court. They have provided a schedule of the fees and charges ordinarily imposed by their firm which is similar to the fees and charges imposed by other insolvency firms. No objection has been taken by the club or by any member to the proposed scale of fees.

31 The proceeding is unopposed. No person has appeared to express any opposition or suggested any alternative to the orders sought by the club. No objection has been forthcoming to the appointment of Mr Thorn and Mr Tonks.

32 In considering the exercise of the court's discretion under s 231 of the *PLA*, I give great weight to the evidence that the members have twice emphatically stated their request that the timeshare resort be wound up. Responding to the member survey in June 2022, 78% of respondents considered that the timeshare scheme should be wound up within five years. In June 2023, club members were provided with a comprehensive explanatory notice paper and met at an Extraordinary General Meeting on 15 July 2023 to consider seven proposed resolutions to achieve the sale and winding up of the resort. 170 members representing 505 memberships were present in person or by proxy. Over 93% of memberships voted in support of each resolution.

33 In relation to Resolution 3, the club directors recommended in the explanatory notice paper that Mr Thorn and Mr Tonks (if required) should be appointed to act as the trustees. The directors made their recommendation based on legal advice, discussions with Mr Thorn, the benefit to the club and efficiencies should the person appointed be

a registered liquidator who could later be appointed as the club liquidator. The directors noted that Mr Thorn and Mr Tonks were independent, professionally qualified and competent to undertake the administrative responsibilities of trustees. The resolution was overwhelmingly supported by the members.

34 The circumstances are broadly similar to those in *Vacation Club Ltd v A.G.G. Properties Pty*,[6] which was also concerned with the appointment of trustees for the purpose of the sale of a timeshare property. Darke J said:

> The resolutions passed at the extraordinary general meeting of members on 10 November 2018 appointed Mr Dawes and the third plaintiff (and later, by resolution of the Club's board, the second plaintiff in place of Mr Dawes) to apply for the appointment of trustees for the sale of the Property. In these circumstances, the application is not made by a co-owner seeking to take advantage of an individual right as co-owner to seek the appointment of trustees to sell the Property. Rather, the application is made by the second and third plaintiffs in their capacity as duly authorised representatives of the Club seeking to carry out the wishes of the Club members as a whole. In my opinion, cl 5 (or a clause to like effect) provides no basis to withhold relief under s 66G.
>
> I can discern no other possible arguments against the appointment of trustees for sale in this case. In circumstances where the vast majority of co-owners are members of the Club, and the members have voted overwhelmingly in favour of a sale of the Property, I do not think that any co-owner who is not a Club member (presumably having chosen not to seek membership) would be in a position to resist the application. As noted earlier, a small number of co-owners who are not Club members have not been served. Nevertheless, in the circumstances I have described, I am satisfied that it is appropriate for the application to be determined in the absence of these co-owners.[7]

35 The relevant considerations all point to the acceptance of the club's submissions. I will do so, and make orders appointing Mr Thorn and Mr Tonks as trustees of the land with the necessary duties and powers to take steps to consolidate and sell the land.

**Method of Sale and Valuation**

36 The resort is a large property on the shores of Lake Eildon. It is subject to an array of complex controls. Any valuation of the resort would need to take into account the existing zoning, planning overlay controls, development potential, subdivisional controls, environmental controls and any policies or restrictions imposed by the Mansfield Shire Council; Goulburn Valley Water as the manager of Lake Eildon, or

6 (2019) 19 BPR 39,799; [2019] NSWSC 1357.
7 Ibid 39,806–39,807 [35]–[36].

Parks Victoria as the manager of the Lake Eildon National Park. Any valuer undertaking a proper valuation would need engineering advice, and instructions or expert advice as to all of these matters and possibly others. The club has not sought a valuation because of the expense involved. It would be considerable.

37 Under the proposed orders, it will be for the trustees to determine how the resort is best sold. It may be possible to sell the resort as a whole or as a going concern or when subdivided in marketable parcels. Some parts of the resort may have more development potential than others. Circumstances and controls may change. The court does not have the expert evidence or advice to permit it to determine what method of sale should be adopted or what should be done. It is right that the trustees have the carriage of these decisions and the sale process.

38 I will not make any orders as to the method of sale or require that a formal valuation be obtained.

**Surrender of the Lease**

39 The lease is an impediment to the sale of the land as it exists only for the purpose of a timeshare scheme. The proposed orders grant power to the trustees to surrender the lease and can be made under s 232(i) of the *PLA*.[8]

**Proceeds of Sale**

40 After the sale, the trustees will hold the net proceeds of sale after payment of all costs and expenses and net income after payment of all outgoings. Subject to their right to pay money into court, they will hold the proceeds for payment to each co-owner in the same share as each fractional interest held by the co-owner less any amount which the trustees are notified by the club that the club is owed by the co-owner at the date of distribution of proceeds. The club is to receive the same share as other co-owners for each fractional interest that the club holds in the land less 28 '1/5,200' fractional interests. The fund payable to each deregistered owner less any amount which the trustees are notified by the club that the club is owed by the deregistered owner as at

8 A similar order was made in *Ultiqa Village Resort Ltd v Deale* [2025] NSWSC 233 [39(2)(d)] (Pike J).

the date of distribution is to be paid to ASIC.

41 Following the sale of the land, the club will need to apply to the Court for winding up.

42 Liberty to apply will be granted to address any new or unforeseen issues.

**Costs**

43 It is appropriate that the costs of the club of the proceeding and the costs of the applications authorised by these orders be paid out of the proceeds of sale of the land.

---

**CERTIFICATE**

I certify that this and the 12 preceding pages are a true copy of the reasons for ruling of Garde J of the Supreme Court of Victoria delivered on 7 July 2026.

DATED this 7 day of July 2026.

..............................

Associate