

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE
NUMBER: BS 10478 OF 2011

IN THE MATTER OF EQUITITRUST LIMITED ACN 061 383 944

First Applicant: **EQUITITRUST LIMITED ACN 061 383 944**

AND

Second Applicant: **BLAIR ALEXANDER PLEASH AND RICHARD ALBARRAN
IN THEIR CAPACITY AS LIQUIDATORS OF
EQUITITRUST LIMITED (IN LIQUIDATION) (RECEIVERS
AND MANAGERS APPOINTED) (RECEIVER APPOINTED)
ACN 061 383 944**

Respondents: **THE MEMBERS OF THE EQUITITRUST INCOME FUND
ARSN 089 079 854 AND THE MEMBERS OF THE
EQUITITRUST PRIORITY CLASS INCOME FUND ARSN
089 079 729**

AFFIDAVIT

PETER JUSTIN HEGARTY of Suite 3.02, Level 3, 99 Elizabeth Street, Sydney,
Lawyer solemnly and sincerely affirms and declares:

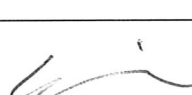
[1] I am the principal of Hegarty Legal, solicitors for the first and second applicants.

Exhibit

[2] Exhibited hereto and marked "PJH-3" is a bundle of documents to which I will refer in this affidavit (**Exhibit**).

[3] My firm maintains a file in relation to this matter (**File**), as it does with all matters it is retained in relation to. Relevantly, it is the practice at my firm that letters, emails and the like that are sent and received by solicitors at my firm are saved to the File as and when they are so sent and received.

Deponent: 

Taken by: 

AFFIDAVIT

Filed on behalf of the first and second
applicant
Form 46, Version 1
Uniform Civil Procedure Rules 1999
Rule 431

HEGARTY LEGAL

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Elizabeth Street, Sydney NSW 2000
Phone No: 02 9056 1746
Fax No: 02 9056 1735
Email: stuartb@hegartylegal.com.au

- [4] Hereunder I depose to certain correspondence being sent and received, as the case may be, by solicitors at my firm other than myself. I have done that on the basis that I am informed by the File of those matters and believe them to be true.
- [5] On 6 December 2021 at 5.51pm I received a letter by email from Ms O'Connor of Gadens, a true copy of which appears at page 1 of the Exhibit.
- [6] On 8 December 2021 at 9.33am I sent a letter by email to, inter alia, Ms O'Connor of Gadens, a true copy of which appears at page 29 of the Exhibit.
- [7] On 8 December 2021 at 7.09pm I sent a letter by email to, inter alia, Ms O'Connor of Gadens, a true copy of which appears at page 33 of the Exhibit.
- [8] On 9 December 2021 at 12.16pm I received a letter by email from Ms O'Connor of Gadens, a true copy of which appears at page 35 of the Exhibit.
- [9] On 16 December 2021 at 6:47pm I sent an email to , inter alia, Ms O'Connor of Gadens, a true copy of which appears at page 41 of the Exhibit
- [10] On 17 December 2021 at 9:01am I sent an email to , inter alia, Ms O'Connor of Gadens, a true copy of which appears at page 48 of the Exhibit.

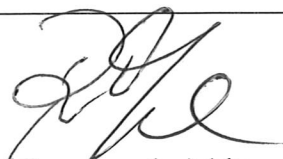
My experience

- [11] I was admitted in 2001. Since that my admission, I have practised predominantly in commercial litigation with a particular focus on insolvency.
- [12] I am familiar with the costs of conducting proceedings in superior courts in Australia.

Liquidation of the Company

- [13] I am informed by Mr Blair Pleash, and believe, the matters under this heading.
- [14] The first applicant (**Company**) was placed into administration on 15 February 2012, and subsequently wound up on 20 April 2012.
- [15] Prior to its winding up, the Company was, until 21 November 2011, the responsible entity of three unregistered managed investment schemes.
- [16] The liquidation is extraordinarily complex. There have been 1677 creditors, including unitholder creditors, claiming a total of \$242,156,105. The managed investment schemes held about \$100,000,000 of investor money at the time of the

Deponent:



Taken by:



Company's entry into voluntary administration. The managed investment schemes have been under the control of receivers and managers.

[17] In the course of the liquidation:

- (a) the liquidators have incurred over \$2,450,000 on a time recorded basis;
- (b) Over 85 staff of varying levels have worked on the administration;
- (c) More than 32 reports have been issued by the liquidators;
- (d) The liquidator's time recording software contains more than 6500 individual entries.

[18] The liquidators are unfunded, aside from litigation conducted on behalf of the Equititrust Premium Fund for which I have been funded.

[19] A true copy of the last form 5602 lodged with the Australia Securities and Investments Commission is at page 49 of the Exhibit.

Trial of the amended application

[20] The amended application essentially concerns two discrete areas.

[21] The first discrete area is the liquidators' and the Company's **entitlement** to be paid from the assets of the EIF.

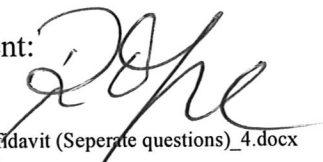
[22] The second is the **quantum** of the liquidator's and the Company's claim for remuneration and expenses. There is no real overlap between the two.

[23] If the liquidators and the Company were unsuccessful on the entitlement issue, there would be no need to determine the quantum issue.

[24] For the entitlement issue, I estimate:

- (a) It would take no more than half a day to hear that part of the application.
- (b) The evidence would be less than 100 pages.
- (c) The submissions would be less than 25 pages.
- (d) The costs (to the liquidators) would be no more than \$40,000.
- (e) Would take approximately one month to prepare for hearing.

Deponent:



Taken by:



[25] For the quantum issue, I estimate (on the assumption that 25% of the time entries will be challenged by Mr Whyte):

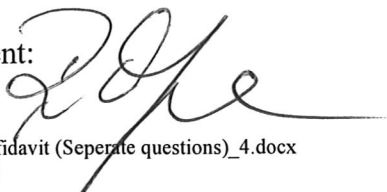
- (a) It would take 10 days to hear that part of the application (assuming each disputed time entry would occupy no more than 10 minutes of court time for evidence in chief and cross-examination and submissions and some and some disputes being common over multiple time entries);
- (b) The evidence would be approximately 3500 pages (assuming no more than 3 pages per disputed time entry and some disputes being common over multiple time entries) ;
- (c) The submissions would be 150 (assuming no more than half a page per disputed time entry and some disputes being common over multiple time entries);
- (d) Would take approximately nine months to prepare for hearing;
- (e) The costs to the liquidators per hearing day would be say, \$15,000 plus GST per hearing day for lawyers, the liquidators and their employees and transcript costs; and
- (f) The costs to the liquidators to prepare the matter for hearing would be say, \$60,000, being say \$6,000 plus GST per hearing day for lawyers, the liquidators and their employees (allowing for the fact that not all such people will undertake work an all days) for 10 days of work.

Order Remuneration

[26] I am informed by Mr Pleash that, relevantly, the facts, matters and circumstances the subject of paragraphs 23 to 26 of the points of claim are true and correct and/or represent his honestly held opinions (based on his experience as a liquidator).

[27] A true copy of a remuneration report setting out the work done by Hall Chadwick in accordance with the Order of Boddice J of 2April 2019 is at page 57 of the Exhibit.

Deponent:




Taken by:



[28] All the facts and circumstances herein deposed to are within my own knowledge, save where stated to be from information only, and my means of knowledge and sources of information appear on this my affidavit.

Affirmed by Peter Justin Hegarty on 17 December 2021 at Sydney in the presence of:


Deponent


Name: Stuart Bailey
Qualification: Solicitor

Deponent:



Taken by:

