

29 October 2019

Report to the Creditors
of
Equititrust Limited
(Receiver Appointed) (In Liquidation)
(Receivers and Managers Appointed)
A.C.N. 061 383 944
("the Company")
and

Notice to the unitholders of the Equititrust Premium Fund ("EPF")

I refer to my previous reports and provide an update on the proceedings commenced by the Company in the Supreme Court of Queensland (proceeding number 7399/18) against former directors of the Company and against Tucker & Cowen Solicitors in relation to the acquisition by MS Asia of the EPF Loan Book.

Creditors will recall from the Liquidators' report dated 20 August 2019 that the following applications were listed for hearing before Justice Bowskill on 10 and 11 September 2019:-

1. The plaintiff's application for leave to amend its claim to add a claim for damages for breach of contract against Tucker & Cowen;
2. The Tucker Defendants' application to strike out the further amended statement of claim, or alternatively, for summary judgment, or alternatively for further and better particulars of the further amended statement of claim;
3. The Tucker Defendants' application for security for costs;
4. The Cowen Defendants' application to strike out the further amended statement of claim; and
5. The Cowen Defendants' application for security for costs.

Those applications were heard by Justice Bowskill on 10 and 11 September 2019. Mr Clothier QC and Ms Kabel of counsel appeared for the Cowen Defendants, instructed by DLA Piper. Mr O'Brien QC and Mr Hackett of counsel appeared for the Tucker Defendants, instructed by Mr Tucker (the first defendant). Mr Couper QC and Mr Cooper appeared for the plaintiff, instructed by the Liquidators' solicitors.

The plaintiff's leave application and the defendants' summary judgment/strike-out applications took two full days of argument. Justice Bowskill adjourned the defendants' security for costs applications to a date to be fixed.

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On 4 October 2019, Justice Bowskill delivered reasons for judgment in *Equititrust Ltd v Tucker (No 2)* [2019] QSC 248. Her Honour granted the plaintiff leave to amend its claim, and dismissed the Tucker Defendants' and Cowen Defendants' summary judgment/strike-out applications. Her Honour also listed the matter for further hearing on 9 October 2019 to hear from the parties as to costs and directions to advance the matter. The judgment may be accessed here:

<https://queenslandjudgments.com.au/case/id/341070> and
<https://archive.sclqld.org.au/qjudgment/2019/QSC19-248.pdf>

In respect of costs, her Honour made a preliminary indication at paragraph [162] of the reasons for judgment.

On 9 October 2019, the matter was listed before Justice Bowskill per her orders made on 4 October. Her Honour made the following orders:-

1. The plaintiff has leave to file and serve and Amended Claim in the form annexed to the application filed on 19 June 2019.
2. The amended application filed on 12 August 2019 by the first defendant, the second defendant and the first-named fifth defendant is dismissed.
3. Paragraph 1 of the amended application filed on 15 July 2019 by the second-named fifth defendant and the sixth defendant is dismissed.
4. The parties are to confer with one another, and conduct themselves reasonably and cooperatively, in relation to the matters the subject of Practice Direction 18 of 2018, and the future progress of this proceeding generally, and either provide agreed directions following the close of pleadings, or alternatively cause an application for directions to be made within fourteen (14) days of the close of pleadings, so that such directions can be made by the Court.
5. The plaintiff file and serve a second further amended statement of claim, firstly, in marked up form and, secondly, in clean form, by 11 October 2019.
6. On or before 9 December 2019, the defendants shall file and serve their defences.
7. On or before 6 January 2020, the plaintiff shall file and serve its replies.
8. The plaintiff, the first defendant, the second defendant and the first-named fifth defendant shall bear their own costs of the plaintiff's application filed on 19 June 2019.
9. The first defendant, the second defendant and the first-named fifth defendant shall pay the plaintiff's costs of the amended application filed on 12 August 2019 on the standard basis.
10. The second-named fifth defendant and the sixth defendant are to advise the Court and the other parties in writing on or before 23 October 2019 whether they consent to orders consistent with orders 8 and 9 being made in relation to them, or otherwise setting out their submissions as to costs and requesting a listing for further hearing.
11. Liberty to apply.

A sealed copy of her Honour's order accompanies this report.

The same costs order was made against the Cowen Defendants on 18 October 2019. The order, initialled by Justice Bowskill, accompanies this report.

In accordance with her Honour's reasons delivered on 4 October 2019 and her Honour's Order made on 9 October 2019, the plaintiff filed and served its second further amended statement of claim in "clean" format on 11 October 2019 (having already made the further amendments it wished to on 8 October 2019).

The Liquidators await the defendants' defences, which are due to be filed by 9 December 2019. The Liquidators will provide a further update following the making of directions contemplated by paragraph 4 of Justice Bowskill's Order, which will deal with the steps to advance the proceeding after the close of pleadings.

If you have any queries or require further information, please contact Kristine Hu of this office.

Yours faithfully,



BLAIR PLEASH
LIQUIDATOR

Duplicate

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE

NUMBER: BS7399/18

Plaintiff: **EQUITTRUST LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION) ACN 061 383 944 ON ITS OWN ACCOUNT AND AS TRUSTEE OF THE EQUITTRUST PREMIUM FUND**

AND

First Defendant: **DAVID ROBERT WALTER TUCKER**

AND OTHERS

ORDER

Before: Justice Bowskill

Date: 9 October 2019

Initiating documents: Application filed by the plaintiff on 19 June 2019 [86]

Amended Application filed by the second-named fifth defendant and the sixth defendant on 15 July 2019 [91]

Amended Application filed by the first defendant, the second defendant and the first-named fifth defendant on 12 August 2019 [99]

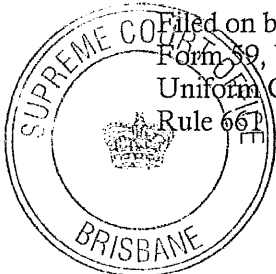
THE ORDER OF THE COURT IS:

1. The plaintiff has leave to file and serve an Amended Claim in the form annexed to the application filed on 19 June 2019.
2. The amended application filed on 12 August 2019 by the first defendant, the second defendant and the first-named fifth defendant is dismissed.
3. Paragraph 1 of the amended application filed on 15 July 2019 by the second-named fifth defendant and the sixth defendant is dismissed.
4. The parties are to confer with one another, and conduct themselves reasonably and

ORDER

Filed on behalf of the Plaintiff
Form 59, Version 1
Uniform Civil Procedure Rules 1999
Rule 661

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Ref: TPR:20141610

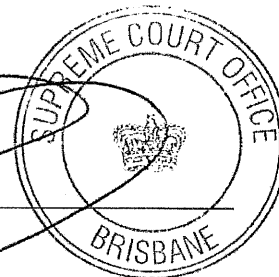


cooperatively, in relation to the matters the subject of Practice Direction 18 of 2018, and the future progress of this proceeding generally, and either provide agreed directions following the close of pleadings, or alternatively cause an application for directions to be made within fourteen (14) days of the close of pleadings, so that such directions can be made by the Court.

5. The plaintiff file and serve a second further amended statement of claim, firstly, in marked up form and, secondly, in clean form, by 11 October 2019.
6. On or before 9 December 2019, the defendants shall file and serve their defences.
7. On or before 6 January 2020, the plaintiff shall file and serve its replies.
8. The plaintiff, the first defendant, the second defendant and the first-named fifth defendant shall bear their own costs of the plaintiff's application filed on 19 June 2019.
9. The first defendant, the second defendant and the first-named fifth defendant shall pay the plaintiff's costs of the amended application filed on 12 August 2019 on the standard basis.
10. The second-named fifth defendant and the sixth defendant are to advise the Court and the other parties in writing on or before 23 October 2019 whether they consent to orders consistent with orders 8 and 9 being made in relation to them, or otherwise setting out their submissions as to costs and requesting a listing for further hearing.
11. Liberty to apply.

Signed: _____

Deputy Registrar



SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE

NUMBER: BS7399/18

Plaintiff: **EQUITRUST LIMITED (RECEIVERS AND MANAGERS
APPOINTED) (IN LIQUIDATION) ACN 061 383 944 ON ITS
OWN ACCOUNT AND AS TRUSTEE OF THE
EQUITRUST PREMIUM FUND**

AND

First Defendant: **DAVID ROBERT WALTER TUCKER**
AND OTHERS

ORDER

Before: Justice Bowskill

Date: 18 October 2019

Initiating documents: Application filed by the plaintiff on 19 June 2019 [86]

Amended Application filed by the second-named fifth defendant and the sixth defendant on 15 July 2019 [91]

Amended Application filed by the first defendant, the second defendant and the first-named fifth defendant on 12 August 2019 [99]

THE ORDER OF THE COURT IS:

1. The second-named fifth defendant and the sixth defendant shall bear their own costs of the plaintiff's application filed on 19 June 2019.
2. The second-named fifth defendant and the sixth defendant shall pay the plaintiff's costs of the amended application filed on 15 July 2019 on the standard basis.
3. Liberty to apply.

ORDER
Filed on behalf of the Plaintiff
Form 59, Version 1
Uniform Civil Procedure Rules 1999
Rule 661

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QAS