

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE
NUMBER: BS 10478/11

IN THE MATTER OF EQUITITRUST LIMITED ACN 061 383 944

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

AND

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

A. DETAILS OF INTERLOCUTORY APPLICATION

This interlocutory application is made under sections 449E and 473 of the *Corporations Act 2001* (Cth), paragraph 8 of the order of The Honourable Justice Boddice dated 2 April 2019, sections 72 and 101(1) of the *Trusts Act 1973* (Qld) and the court's inherent jurisdiction.

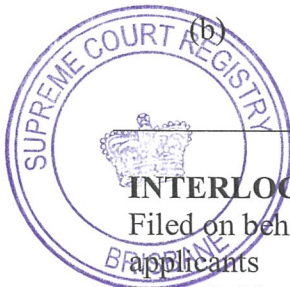
On the facts stated in the supporting affidavits, the proposed second applicants, Blair Alexander Pleash and Richard Albarran in their capacity as Liquidators of the applicant, apply for the following interlocutory relief:

Extension of time

1. That the time for compliance with paragraph 7 of the order Justice Boddice dated 31 August 2021 be extended to the date of filing of this application, pursuant to rule 7 of the UCPR;

Joinder

2. that 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 be joined as a party to this proceeding and that hereinafter:
 - (a) they be referred to as the second applicants; and
 - (b) the applicant be referred to as the first applicant;



INTERLOCUTORY APPLICATION

Filed on behalf of the proposed second
applicants

Form 3, Ver 3, Rule 2.2 Rules 31

HEGARTY LEGAL

Suite 3.02, Level 3

99 Elizabeth Street

SYDNEY NSW 2000

Phone: 02 9056 1735

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pursuant to rule 69 of the UCPR;

Fixing Remuneration

3. that the remuneration of the second applicants be approved in the sum of \$944,498.55 plus GST, or such other sum as the court considers appropriate, for work completed in their capacity as liquidators in the period 1 May 2013 to 30 July 2020, including for remuneration in accordance with paragraph 8 of the order of Justice Boddice dated 2 April 2019 (**2 April 2019 Order**) (**Liquidation Remuneration**), pursuant to section 473 of the *Corporations Act 2001* (Cth) and/or the court's inherent jurisdiction;
4. in the alternative to paragraph 3, that the remuneration of the second applicants be approved in the sum of \$87,319 plus GST, or such other sum as the court considers appropriate, for the work they and their employees of Hall Chadwick performed in carrying out the work they were required to do under paragraph 1 of the 2 April 2019 Order, in the period 2 April 2019 to 20 April 2020 (**Order Remuneration**), pursuant to paragraph 8 of the 2 April 2019 Order and/or the court's inherent jurisdiction;

Payment from EIF

5. that the:
 - (a) expenses in the sum of \$203,388.99, or such other amount as the court considers appropriate, incurred by the second applicants in their capacity as administrators in the period 15 February 2012 to 20 April 2012 (**Administration Expenses**);
 - (b) Liquidation Remuneration and the remuneration of the second applicants approved by order of the Supreme Court of New South Wales on 1 November 2013 in Supreme Court of New South Wales Proceedings No. 2013/136475;
 - (c) expenses in the sum of \$614,738.38, or such other amount as the court considers appropriate, incurred by the second applicants in their capacity as liquidators in the period 1 May 2013 to 30 July 2020 (**Liquidation Expenses**); and
 - (d) Order Remuneration;

and each of them, or such part of them as the court considers appropriate in respect of subparagraphs (a) to (c), be paid from the property of the first named respondent (**EIF**) pursuant to:

- (e) the first applicant's:
 - i. entitlement to such remuneration as the court authorises pursuant section 101(1) of the *Trusts Act 1973* (Qld) (**TA**), in respect of remuneration;
 - ii. entitlement pursuant to section 72 of the **TA**, in respect of expenses;
 - iii. entitlement to remuneration pursuant to clause 21.1 of the EIF constitution up to a maximum sum of 1.5% per annum of the Gross Asset Value of the Scheme, in respect of remuneration;

- iv. entitlement to be indemnified pursuant to clause 6.1 of the EIF constitution, in respect of expenses; and
 - v. right of indemnity at common law, in respect of remuneration and expenses; and
- (f) the second applicants’:
- i. entitlement pursuant to order 8 of the 2 April 2019 Order, in respect of the Order Remuneration; and
 - ii. entitlement to seek and if so ordered be paid same, pursuant to the court’s inherent jurisdiction, in respect of remuneration and expenses;

Directions

- 6. that the relief claimed at paragraphs 1, 2 and 5 (save for the quantum of the relevant expenses and the part of all amounts to be paid from the property of the EIF) herein be determined separately and prior to the relief claimed at paragraphs 3 and 4 herein, pursuant to rule 367 of the UCPR and/or the court’s inherent jurisdiction;
- 7. such further directions for the orderly hearing of this application as the court considers appropriate, pursuant to rule 367 of the UCPR and/or the court’s inherent jurisdiction;

Payment on account

- 8. in the event that the relief claimed at paragraph 5 herein is determined in accordance with paragraph 6 herein and in favour of the applicants, or either of them, that, subject to further order, the applicants be indemnified from the property of EIF for all proper costs and expenses (including legal costs on a full indemnity basis) incurred by them in relation to this application, with such amounts to be paid by the Receiver to the applicants from the property the EIF within 14 days of demand for payment (accompanied by copies of the tax invoices or other documents evidencing the costs and expenses) being made on the said Receiver, from time to time;

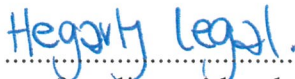
Costs

- 9. that the second applicants’ costs of this application form part of the costs and expenses of the winding up of the first applicant;
- 10. in the alternative to paragraph 9, such order as to costs as the court considers appropriate; and

Other

- 11. such further or other relief as the court considers appropriate.

Date: 28 September 2021


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Signature of applicants’ legal practitioner

B. NOTICE TO RESPONDENT(S)

TO: The respondent
c/- David Whyte, Receiver of the EIF
C/- Gadens Lawyers
Level 11, 111 Eagle Street
Brisbane QLD 4000

This application will be heard by the Court at QEII Courts of Law Complex, 415 George Street, Brisbane Qld 4000 on 1 October 2021.

If you wish to oppose this application or to argue that any different order should be made, you must appear before the Court in person or by your lawyer and you shall be heard. If you do not appear at the hearing the orders sought may be made without further notice to you. In addition you must before the day for hearing file a notice of appearance in this Registry. The notice should be in Form 4. You must serve a copy of it at the applicant's address for service shown in this application as soon as possible.

Note: Unless the Court otherwise orders, a respondent that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

C. FILING

This interlocutory application is filed by Peter Hegarty of Hegarty Legal for the applicants.

D. SERVICE

The applicants' address for service is Suite 3.02, Level 3, 99 Elizabeth Street, Sydney, NSW 2000, phone: 02 9056 1735 and email: peterh@hegartylegal.com.au.

It is intended to serve a copy of this interlocutory application on each respondent and on any person listed below:

Note: An address for service must include telephone number, fax number, email address and document exchange address when appropriate.