

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMERCIAL COURT
CORPORATIONS LIST

S CI 2015

IN THE MATTER OF BANKSIA SECURITIES LIMITED (IN LIQUIDATION) (RECEIVERS AND MANAGERS APPOINTED) ABN 45 004 736 458

BETWEEN

ANTHONY GREGORY MCGRATH, JOSEPH DAVID HAYES, MATTHEW WAYNE CADDY AND ROBERT MICHAEL KIRMAN AS RECEIVERS AND MANAGERS OF BANKSIA SECURITIES LIMITED (IN LIQUIDATION) (RECEIVERS AND MANAGERS APPOINTED) ABN 45 004 736 458

First Plaintiffs

BANKSIA SECURITIES LIMITED (IN LIQUIDATION) (RECEIVERS AND MANAGERS APPOINTED) ABN 45 004 736 458

Second Plaintiff

AFFIDAVIT OF JOSEPH DAVID HAYES "JH-21"

Date sworn: 16 December 2015
Filed on behalf of: The Plaintiffs
Prepared by:
Ashurst Australia
Level 26
181 William Street
MELBOURNE VIC 3000

Solicitor's Code: 53
DX: 388
Tel: (03) 9679 3000
Fax: (03) 9679 3111
Ref: 03 3000 9288
Attention: Ross McClymont
Email: ross.mcclymont@ashurst.com

This is the exhibit marked "JH-21" now produced and shown to Joseph David Hayes at the time of swearing his affidavit on 16 December 2015.



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Exhibit "JH-21"

Letter from Trust Co to Joseph Hayes dated

6 August 2013



6 August 2013

Mr Joseph Hayes
Partner
McGrathNicol
Level 31 60 Margaret Street
Sydney NSW 2000

Private and confidential

Dear Joseph,

Banksia Securities Limited (Receivers and Managers Appointed) ("BSL")

I refer to your email to David Grbin, Group Executive General Manager Corporate Client Services of 31 July 2013, previous and subsequent discussions.

I note you have proposed that Ashursts (in their capacity as your legal advisers) re-engage with your Senior Counsel. Following this, your Senior Counsel may wish to engage with our Senior Counsel to develop a mutual understanding on the legal issues associated with our potential agreement of the trustee's remuneration under cl 18.02 of the BSL trust deed.

You have asked us a number of questions to help your understanding of matters raised in our fee proposition paper (Draft v2: 29 July 2012). We provide the following response:

Donovan Oates Hannaford Mortgage Corporation Limited

Extent of involvement	<ul style="list-style-type: none"> ▪ Receivership supervised by General Manager, Corporate Clients (2008 – 2011); ▪ Day to day operations administered by Head of Structured Finance (2008 -2011). ▪ From 2012 onwards – receivership oversighted by Head of Corporate and Debt Capital Markets Trustee Services; ▪ Registry function transferred to the trustee's agent October 2012 onwards).
Ultimate return to debenture holders	<ul style="list-style-type: none"> ▪ 0.73c (Receiver's estimate 0.70c) ▪ Expected future return 1.5c – 2.5c
Excess return on estimate	<ul style="list-style-type: none"> ▪ 4.5c – 5.5c
Significant transactions	<ul style="list-style-type: none"> ▪ Substantial loan book secured against real property realised ▪ Tax refund claim against the ATO ▪ Director guarantees pursued
Basis on which quantum was calculated	<ul style="list-style-type: none"> ▪ Cl 18.02 – circa 0.96% of distributions. ▪ Agreement negotiated with Receiver. ▪ Receiver and trustee sought and obtained



	Senior Counsel's advice separately; <ul style="list-style-type: none">▪ Fee agreement was taken to Debenture Holders Committee
Receivers fees to date	▪ \$7.38m
Legal expenses to date	▪ \$1.59m
Trustee's fees to date	▪ \$2.00m
Total fees of receivership / return to debentures holders	▪ 7.2%

South East Secured Investments

Extent of involvement	<ul style="list-style-type: none">▪ Receivership supervised by General Manager, Corporate Clients (2009 – 2011);▪ Day to day operations administered by Head of Structured Finance (2009 -2011).▪ From 2012 onwards – receivership oversights by Head of Corporate and Debt Capital Markets Trustee Services;▪ Registry function transferred to the trustee's agent October 2012 onwards).
Ultimate return to debenture holders	<ul style="list-style-type: none">▪ 0.85c▪ Expected future return 10c (95c against receiver's estimate of 0.90c)
Excess return on estimate	▪ 5c
Significant transactions	<ul style="list-style-type: none">▪ Substantial loan book secured against real property realised▪ CDO Exposure required unwinding
Basis on which quantum was calculated	<ul style="list-style-type: none">▪ CI 18.02 – 1% of Distributions▪ The Receiver did not wish to negotiate with the trustee and remitted cash to trustee in full knowledge of its fee position;▪ The trustee obtained Senior Counsel's advice and decision on fee approved by TRU Board;▪ Fee arrangements fully disclosed to debenture holders
Receivers fees to date	▪ \$3.2
Legal expenses to date	▪ \$1.8m
Trustee's fees to date	▪ \$1.55m
Total fees of receivership / return to debentures holders	▪ 4.2%



Interchase Limited

Extent of involvement	<ul style="list-style-type: none">Receivership supervised by General Manager, Corporate Clients (1992 – 2011);Day to day operations administered by Head of Structured Finance (1992 -2011).From 2012 onwards – receivership oversighted by Head of Corporate and Debt Capital Markets Trustee Services;Registry function done by The Trust Company custody team
Ultimate return to debenture holders	<ul style="list-style-type: none">0.79cFuture return 1 to 2c
Significant transactions	<ul style="list-style-type: none">Litigation against valuers successfully pursuedCreditors of FAI and HIH liquidation
Basis on which quantum was calculated	<ul style="list-style-type: none">CI 18.02Arrangements agreed in 2007 to pay trustee 4.25% of distributions
Receivers fees to date	<ul style="list-style-type: none">\$2.19m
Legal expenses to date	<ul style="list-style-type: none">\$3.922m
Trustee's fees to date	<ul style="list-style-type: none">\$0.230 (From March 07 – June 2013)
Total fees of receivership / return to debentures holders	<ul style="list-style-type: none">15%

Bidgee Finance Limited

Extent of involvement	<ul style="list-style-type: none">Receivership supervised by General Manager, Corporate Clients (2009 – 2011);Day to day operations administered by Head of Structured Finance (2009 -2011).From 2012 onwards – receivership oversighted by Head of Corporate and Debt Capital Markets Trustee Services;
Ultimate return to debenture holders	<ul style="list-style-type: none">100c (\$18m)
Significant transactions	<ul style="list-style-type: none">Enforcing security was left to the trustee as the first ranking secured creditor refused to do so for reputational reasons.
Basis on which quantum was calculated	<ul style="list-style-type: none">CI. 18.02Agreed with shareholders to 50% of the 4.25% suggested in the trust deed.
Receivers fees to date	<ul style="list-style-type: none">Unknown
Legal expenses to date	<ul style="list-style-type: none">Unknown
Trustee's fees to date	<ul style="list-style-type: none">\$0.37m
Total fees of receivership / return to debentures holders	<ul style="list-style-type: none">Unknown

I trust this satisfies your queries, please do not hesitate in contacting me if you require any further information.

Regards



Rupert Smoker
Head of Corporate and Debt Capital Markets Trustee Services