

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-47"

Date sworn: 16 December 2015
Filed on behalf of: The Plaintiffs
Prepared by:
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This is the exhibit marked "JH-47" now produced and shown to Joseph David Hayes at the time of swearing his affidavit on 16 December 2015.



Exhibit "JH-47"

Email from Joseph Hayes to Debenture Committee
dated 26 March 2014

From: Linda Szadanovski **On Behalf Of** Joe Hayes

Sent: Wednesday, 26 March 2014 2:43 PM

To: 'c_m_hayes@bigpond.com'; 'lcogger@coggergurry.com.au'; 'bandhlloyd@bigpond.com'; 'goodidea@anson.com.au'; 'ramsdn1@iinet.net.au'; 'donandlzmckenzie@bigpond.com'; 'susanpitman@ymail.com'; 'robjlea@bigpond.com'; 'robjlea789@gmail.com'; 'elliott@eastmelbourne.net'

Cc: Tony McGrath; Barry Kogan; Kathy Sozou; 'ross.mcclymont@ashurst.com'; 'michael.sloan@ashurst.com' (michael.sloan@ashurst.com); Matthew Caddy; esther.ang@perpetual.com.au

Subject: Banksia: Update on Litigation Strategy and other matters

Dear Committee Members

I refer to our update provided on 5 March 2014 and report by way of further update as follows.

Litigation Strategy and Collinson Review

As Committee Members are aware, Guy Edwards of PwC is facilitating the provision to the Committee of independent advice in relation to the litigation strategy being adopted by the Receivers and Managers. Following discussions with Guy, it was agreed to retain Peter Collinson SC to review the strategy. Set out below are our previous updates to Committee Members on this issue dated 7 February 2014 and 15 January 2014 setting out the scope of the review.

Collinson has been briefed on the matter by Ashurst and met earlier last week with the Receivers' Counsel, Philip Crutchfield SC and Jonathon Redwood. He also met with the class action lawyers on Friday last week. Having reviewed the brief, Collinson raised several legal issues in his meeting with our Counsel, which our Counsel are currently considering. The issues are complex and require some research. Following consideration of these issues, we expect that there will be a further meeting between Collinson and our Counsel, in about two weeks' time. Collinson would then require a further short period of time to finalise his views.

On this timetable, it would therefore be possible to convene a Committee Meeting for either 16 or 17 April (being the week before Easter). However, on balance, and having regard to the availability of the various Counsel, Solicitors and The Trustee, we propose the meeting occur as soon as practical after Easter. Edwards and Collinson will be invited to attend to provide their advice in that regard. Philip Crutchfield will also attend.

I note that the next directions hearing in relation to the class action was heard on Tuesday 25 March 2014. At that hearing, her honour set down the application for the plaintiff to amend its Statement of Claim/Strike out application for 11 April 2014.

Impaired Loans/MOU Report

We have prepared drafts of the reports outlined in our 5 March update, covering:

- + An assessment of the options available to the Receivers to recover the remaining loan balances in an accelerated fashion at a lower cost; and
- + A more detailed breakdown of the costs associated with the MOU

These reports are substantially complete, and we expect they can be forwarded to the Committee in the next week or so. Subject to my comments below regarding our next meeting, we are able to present those reports on a teleconference call.

Trustee's fees

We have now received from the Trustee their final fee submission, which the Trustee has requested form the basis of

the Receivers' application to the Court. As expected, the quantum of the submission is based upon the initial (9 December 2013) proposal, incorporating the 'value-add' methodology. We are considering the submission and our recommendation, and will report separately to the Committee on this issue and the next steps in making the application.

Committee members have requested us to determine, following the recent acquisition of Trust Company by Perpetual, whether there was any change in approach or a further reduction in fee quantum that Perpetual were able to offer, in an effort to resolve the matter with the support of the Committee. I confirm that, following our enquiry, Perpetual have indicated there would be no change in approach or any further reduction in fee quantum, and that they should seek the Court approval having regard to the advice prepared by Archibald QC. Perpetual have confirmed however, that their preference would be to have the issue of their outstanding fees resolved by reference to agreement by both the Receivers and the Committee.

Next repayment

Arrangements are being made for the payment of the proposed 2 cent repayment, bringing total repayments to 80 cents in the dollar on debenture holders claims. The repayment is expected to be processed in early April, and we will advise members as soon as the payment date is settled, and will provide a copy of the accompanying circular at that point.

Next meeting

Noting the comments above about the work still required to prepare for the Litigation update, we propose the next meeting of the Committee be scheduled for Thursday, 1 May 2014 at 10:00am at our Melbourne Office, subject to the availability and readiness of Messrs Edwards, Collinson and Crutchfield to report on litigation matters. Would Committee Members please indicate whether they are available for a meeting at that time.

In the meantime, we will provide the separate update reports on Impaired Loans, MOU matters and Trustee's fees as set out above. We anticipate that a teleconference may be appropriate to discuss some of those updates, which we will schedule when we issue that material.

Should any of the above require clarification, please contact one of us.

Kind regards – Joe

Joe Hayes
Partner

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