

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-57"

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
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Ref: 03 3000 9288
Attention: Ross McClymont
Email: ross.mcclymont@ashurst.com

This is the exhibit marked "**JH-57**" now produced and shown to Joseph David Hayes at the time of swearing his affidavit on 16 December 2015.

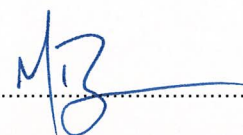


Exhibit "JH-57"

Letter from Clayton Utz to Ashurst dated
25 September 2015

Email

30 September 2015

Mr Michael Sloan and Ms Lucienne Cassidy
Ashurst Australia
Level 26
181 William Street
Melbourne Victoria 3000

michael.sloan@ashurst.com

lucienne.cassidy@ashurst.com

Dear Sirs

**Banksia Securities Limited (Receivers and Managers appointed) (In Liquidation):
Trust Co.'s Outstanding Remuneration**

We refer to your 25 September 2015 letter in response to our 18 September 2015 letter and the formal demand for payment served on your clients. We adopt the definitions used in our 18 September 2015 letter and our earlier correspondence.

We note that the Receivers agree with our client that the Banksia Trust Deed in particular, clause 18.02, governs payment by Banksia of our client's outstanding post enforcement additional remuneration and that our client has an entitlement to its remuneration under the Trust Deed, as demanded in our 18 September 2015 letter.

Our client's view remains that as the trustee, our client has a proprietary right in the Banksia trust fund to be indemnified in respect of its outstanding post enforcement additional remuneration and that mere fact alone, does not create for our client a conflict of interest and duty because that right is incidental to Trust Co. holding office as trustee.

Further, the circumstances are such that our client is not currently seeking to resort to any part of the Banksia trust estate to pay for its costs in defending either the Bolitho Class Action Proceeding or the Liquidators' Proceeding commenced against it but rather, is seeking payment of its outstanding additional remuneration in relation to enforcement of its rights under the Banksia Trust Deed.

In relation to your comments concerning the Debenture Holder Committee (being a body established by the Receivers which has no statutory function or authority), we appreciate that whilst it has been convenient for the Receivers to seek the view of those persons (who number less than ten) as representatives of 16,000 debenture holders with investments in Banksia, our client does not accept that those same persons are able to fully represent the views of all 16,000 debenture holders, some of whom have already agreed to give up a commission of 30% of any recovery otherwise payable to them to progress the Bolitho Class Action Proceedings which proceedings include the same or similar claims now sought to be brought by the Liquidators against Trust Co. in the Liquidators' Proceedings.

We agree with you that it is not relevant that the Liquidators have disputed the Receivers' right to determine and pay the outstanding additional remuneration owed to our client in accordance with the Banksia Trust Deed.

We note that the Receivers have formed the view in response to the formal demand for payment, that they are not able to pay the amount demanded without a direction of the Court for approval of Trust Co.'s remuneration.

Ashurst Australia

30 September 2015

We also note that the Receivers forwarded to us a draft affidavit of Joseph Hayes to be filed in support of such application back in 2014.

We are therefore instructed to urge the Receivers to forthwith progress their application and we ask that you forward to us the Receivers' proposed Originating Process intended to be filed with the Supreme Court of Victoria, for our comments.

Please also advise what changes if any, are intended to be made to the draft affidavit of Mr Hayes provided to us in 2014, which we assume you intend to be file in support of the application.

We look forward to hearing from you.

Yours sincerely,



Jennifer Ball, Partner
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jball@claytonutz.com

Our ref 12818/201/80154803.003