

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-58"

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

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Attention: Ross McClymont
Email: ross.mcclymont@ashurst.com

This is the exhibit marked "JH-58" now produced and shown to Joseph David Hayes at the time of swearing his affidavit on 16 December 2015 .



Exhibit "JH-58"

Correspondence between Ashurst and Clayton Utz
dated 6, 9 and 25 October 2015

Our ref: MCS\DE\03 3000 9288
Partner: Michael Sloan
Direct line: +61 3 9679 3027
Email: michael.sloan@ashurst.com
Contact: Maia Emslie , Senior Associate
Direct line: +61 3 9679 3082
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06 October 2015

BY EMAIL

Jennifer Ball
Clayton Utz
Level 15, 1 Bligh Street
SYDNEY NSW 2000
jbball@claytonutz.com

ashurst

Dear Jennifer

Banksia Securities Limited (Receivers and Managers Appointed) (In Liquidation)

We refer to our letter of 1 October 2015.

Please now find **enclosed** the Receivers' proposed Originating Process for your comments.

We are in the process of updating the affidavit of Joseph Hayes. We are meeting with Mr Hayes tomorrow to review the proposed amendments. We expect to be in a position to provide you with the latest draft of the affidavit later tomorrow, following that meeting.

In the meantime, we refer to paragraph 2.6 of your letter of 18 September 2015. In that letter you state that in the event that payment of the additional remuneration of \$3,050,812 was not received by close of business Wednesday, 23 September 2015 and Trust Co was required to make application to the court, Trust Co would seek payment by Banksia of the additional remuneration under the Banksia Trust Deed for the period up to February 2014 in the total sum of \$3,960,163, plus costs. We would be grateful if you would please confirm the position.

We look forward to hearing from you.

Yours faithfully


Michael Sloan
Partner


Maia Emslie
Senior Associate

AUSTRALIA BELGIUM CHINA FRANCE GERMANY HONG KONG SAR INDONESIA (ASSOCIATED OFFICE) ITALY JAPAN PAPUA NEW GUINEA
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237046440.01

Chan, Jacqueline 3216

From: Cassidy, Lucienne 3588
Sent: Friday, 9 October 2015 3:30 PM
To: Ball, Jennifer (jball@claytonutz.com)
Cc: Sloan Michael 3027 (Michael.Sloan@ashurst.com); Emslie, Maia 3082; Mavrakis, Nicholas (nmavrakis@claytonutz.com); Lindsey Cregan (lcregan@claytonutz.com)
Subject: Banksia Securities Limited (Receivers and Managers appointed) (In Liquidation): Trust Co.'s Outstanding Remuneration - affidavit
Attachments: 237039518_1_Trustee Remuneration - Hayes Affidavit - October 2015.DOCX

Dear Jennifer

We **attach** the draft affidavit of Joe Hayes in mark-up. It is substantially the same as the previous versions that you have seen. For ease of reference, we have provided it in mark-up.

Let us have your comments for our consideration and instruction. If it would be easier to meet in person let us know.

We have couriered the exhibits to you separately. There may be some small discrepancies as we have made some minor changes since we sent the exhibits up to our Sydney office. If you have any difficulty then let us know.

Once we have your comments, then we will finalise the affidavit and file the application.

Kind regards
Lucienne

Lucienne Cassidy

Lawyer

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Email

27 October 2015

Mr Michael Sloan and Ms Maia Emslie
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Melbourne Victoria 3000

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maia.emslie@ashurst.com

Dear Sirs

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

We refer to your 6 October and 9 October 2015 letters, the Receivers' proposed Originating Process which is to be filed in the Supreme Court of Victoria and the proposed affidavit to be sworn by Joseph Hayes to be filed in support of the Receivers' application.

With respect to the Receivers' proposed Originating Process, we are instructed to request the Receivers insert a new paragraph 2 as follows:

"A direction that the First Plaintiffs are justifying and agreeing, on behalf of BSL to pay Trust Co. additional remuneration pursuant to clause 18.02 of the Trust Deed for the period 25 October 2012 to February 2014 in sum of \$3,960,163 (or such other sum as the court thinks appropriate)."

With respect to the proposed affidavit to be sworn by Joseph Hayes, we have amended and marked up some factual errors only in the **enclosed** version of the affidavit.

We have sought to amend only those incorrect factual matters and our client otherwise makes no comments with respect to the proposed application to be made by the Receivers. This is because our client's position is that it is not necessary for the Receivers to make any application to the Court in circumstances where the contractual terms of the Banksia Trust Deed clearly provide a clear mechanism for payment by Banksia of Trust Co.'s post appointment additional remuneration for services it has performed and undertaken and consequence of having it to enforce the Trust Deed.

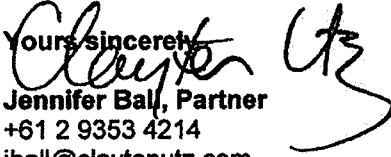
Our client's position remains that the Banksia Trust Deed does not oblige Trust Co. to consult with any of the Banksia debenture holders let alone a committee formed by the receivers which has not statutory powers or contractual rights in respect of payment owed to it by way of additional remuneration under the Banksia Trust Deed.

If the Receivers however, deem it necessary to make such application to the court and to incur such costs of any such application, then that is a matter for the Receivers.

Our client continues to reserve all its rights under the Banksia trust Deed and reserves all of its rights to serve any other demands for payment in accordance with the terms of the Banksia Trust Deed.

Ashurst Australia

27 October 2015

Yours sincerely

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Our ref 12818/201/80154803.003