



Issued: 7 March 2016 2:07 PM

JUDGMENT/ORDER

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Corporations List
Registry	Supreme Court Sydney
Case number	2015/00252832

TITLE OF PROCEEDINGS

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

DATE OF JUDGMENT/ORDER

Date made or given	29 February 2016
Date entered	29 February 2016

TERMS OF JUDGMENT/ORDER

Filed in Court for Special Purpose Liquidators: Affidavit of David Charles Newman dated 17 February 2016; Affidavit of Marelda Hibberd dated 26 February 2016; Affidavit of John Ross Lindholm dated 15 December 2015.

Filed in Court for Original Receivers: Affidavit of Joseph David Hayes dated 11 February 2016.

VERDICT, ORDER OR DIRECTION:

- Black J grants leave to Original Receivers (Messrs A.G. McGrath, J.D. Hayes, M.W. Caddy and R.M. Kirman) to appear today.

- Black J grants leave to Australian Securities and Investments Commission to appear amicus curiae.

- Black J grants leave to file in Court affidavit of David Charles Newman dated 17 February 2016.

- Black J grants leave to file in Court affidavit of Marelda Hibberd dated 26 February 2016.

- Black J grants leave to file in Court affidavit of Joseph David Hayes dated 11 February 2016.

- Black J grants leave to file in Court affidavit of John Ross Lindholm dated 15 December 2015.

Dispense with formal requirements for heading of affidavit to extent necessary to do so.

Black J makes the following orders and directions:

1. Judgment reserved.

2. Make orders 1–4 and 6–8 in the document titled Annexure A and marked MF13 and note the undertaking offered by the Special Purpose Receivers in the form of paragraph 5 of MF13 deleting the words prior to “if the Court” in paragraph 5.

3. Reserve the question of the direction sought by the Special Purpose Receiver to be determined in the judgment.

4. Costs reserved.

5. Liberty to the parties and Australian Securities and Investments Commission to apply on 3 business days’ notice.

ORDERS:

1. Schedule A of the 30 September Orders be varied to include the rights and entitlements of BSL the subject of Supreme Court of Victoria Proceedings No SCI 2015/1384, known as Banksia Securities Limited (Receivers and Managers appointed) (in Liquidation) (“BSL”) v The Trust Company (Nominees) Limited (“Trust Co”).

2. The Receivers immediately release \$10 million to the Special Purpose Receivers (“SPR Litigation Fund”) for the payment of:

- (a) all past and unpaid remuneration and costs and expenses incurred by the Special Purpose Receivers, including in their capacity as Liquidators prior to the 30 September Orders, in respect of the Banksia Proceedings;
- (b) all future remuneration and costs and expenses, as they are incurred by the Special Purpose Receivers, in continuing to prosecute the Banksia Proceedings; and
- (c) all future remuneration and costs and expenses, as they are incurred by Special Purpose Receivers in respect of any other matters reasonably incidental or related to the conduct of the Banksia Proceedings, including the Fee Application.

3. For the avoidance of doubt, the Special Purpose Receivers be entitled to immediately draw on the SPR Litigation Fund for the payment of their remuneration and all costs and expenses as and when they are incurred by them in respect of the Banksia Proceedings.

4. Every six months, commencing on 1 April 2016, the remuneration of the Special Purpose Receivers drawn from the SPR Litigation Fund in the previous six months be approved by the Supreme Court of New South Wales. Before making each application the Special Purpose Receivers shall first submit their remuneration for approval by the Committee of Inspection.

NOTE THE UNDERTAKING OFFERED BY THE SPECIAL PURPOSE RECEIVERS THAT:

5. If the Court determines that any of the remuneration paid from the SPR Litigation Fund is unreasonable and not properly incurred the Special Purpose Receivers shall reconstitute the SPR Litigation Fund within 7 days of that determination in the amount so determined.

ORDERS THAT:

6. The Special Purpose Receivers may apply to the Supreme Court of New South Wales, upon 14 days’ notice to the Receivers, for further moneys from the Fund to be made available for:

- (a) meeting adverse costs orders in the Banksia Proceedings (or security for costs in respect thereof); or
- (b) further funding to conduct the Banksia Proceedings if the SPR Litigation Fund has been exhausted or is likely to be exhausted within the following 6 months.

7. The Receivers shall only be entitled to make Permitted Payments from the Fund and shall not be permitted to cause the balance of the Fund to fall below \$10 million without the approval of the Supreme Court of New South Wales, upon 14 days’ notice to the Special Purpose Receivers and ASIC of any application.

8. If the Receivers retire before the conclusion of the Banksia Proceedings, any balance of the Fund at that time shall be transferred by the Receivers to the SPR Litigation Fund.

“Permitted Payments” means:

- (a) all payments to the Receivers from the Fund for their remuneration and costs and expenses properly incurred in discharging all remaining matters arising in the Receivership in accordance with the 30 September Orders; and
- (b) any payment the Receivers are ordered by the Supreme Court of Victoria to make in respect of the Fee Application.

“Banksia Proceedings” has the meaning in paragraph 5 of the Hibberd Affidavit.

“Fund” has the meaning in paragraph 44 of the Hibberd Affidavit.

“Fee Application” means the application filed by the Receivers in the Supreme Court of Victoria for a direction from the Court that they are justified in paying out of the assets of BSL the sum up to an amount of \$3,960,163 to Trust Co.

“Receivers” has the meaning in the 30 September Orders.

“Special Purpose Receivers” has the meaning in the 30 September Orders.

“Committee of Inspection” has the meaning given in paragraph 12 of the affidavit of John Lindholm dated 14 December 2015.

SEAL AND SIGNATURE



Signature Chris D'Aeth
Capacity Principal Registrar
Date 7 March 2016

If this document was issued by means of the Electronic Case Management System (ECM), pursuant to Part 3 of the Uniform Civil Procedure Rules (UCPR), this document is taken to have been signed if the person's name is printed where his or her signature would otherwise appear.

FURTHER DETAILS ABOUT Applicant(s)

First Applicant
Name Banksia Securities Limited (In Liquidation) (Receivers and Managers Appointed)

Address
Telephone
Fax
E-mail
Client reference

Legal representative for plaintiffs

Name David Newman
Practicing certificate number P0006374
Address Maddocks Level 9
 140 William Street
 MELBOURNE VIC 3000

DX address
Telephone 0392583853
Fax
Email
Electronic service address

FURTHER DETAILS ABOUT (s)