

FILED

- J NOV 2015



REPLY



COURT DETAILS

Court
Division
List
Registry
Case number
TITLE OF PROCEEDINGS

**SUPREME COURT OF NEW SOUTH WALES
EQUITY
CORPORATIONS LIST
SYDNEY**

2015/171592

Plaintiffs

JOHN SMITH AND ROSEMARY SMITH

Defendant

**AUSTRALIAN EXECUTOR TRUSTEES LIMITED
ACN 007 869 573**

FILING DETAILS

Filed for
Legal representative
Legal representative reference
Contact name and telephone
Contact email

John Smith and Rosemary Smith, Plaintiffs
Douglas Raftesath, Meridian Lawyers
Douglas Raftesath (02) 9018 9978
draftesath@meridianlawyers.com.au

PLEADINGS AND PARTICULARS

The Plaintiffs

1. The Plaintiffs join issue with the Defence to Amended Statement of Claim filed on 17 September 2015 (**Defence**) by the Defendant (**AET**) except insofar as it contains admissions.

Contingent Liability to repay not fulfilled prior to 10 June 2009

2. In answer to paragraph 42 of the Defence, the Plaintiffs say that:
 - (a) the Trust Deed provided that unless otherwise specified in the conditions of issue or any debenture, if requested by the debenture holder, the face value of a debenture would be repaid to the debenture holder within 30 days after the maturity date.

Particulars

Trust Deed, clause 2,3.2.

- (b) The conditions of the issue or the debentures to the Plaintiffs and each Group Member did not otherwise specify from what was provided for in (a) above.
- (c) By reason of the matters pleaded in (a) and (b) above, the liability of Provident Capital Limited (receivers and managers appointed) (in liquidation) ACN 082 735 573 (Provident) to repay the Plaintiffs and each Group Member the face value of their debentures within 30 days after their maturity date was contingent upon the Plaintiffs and each Group Member requesting Provident to do so;
- (d) The contingency for Provident to be liable to repay the Plaintiffs and each Group Member the face value of their debentures within 30 days after the maturity date was not fulfilled any time prior to 10 June 2009, as neither the Plaintiffs nor any Group Member had requested Provident to do so.

Particulars

Provident had paid or repaid the face value on all debentures that were requested to be repaid prior to 10 June 2009.

- (e) In the premises, the Plaintiffs and each Group Member has sustained no loss or damage at any time prior to 10 June 2009.

Loss not **reasonably** ascertainable prior to 10 June 2009

3. Alternatively, in further answer to paragraph 42 of the Defence, the Plaintiffs say that if they or any Group Member had sustained any loss or damage prior to 10 June 2009 (which is denied), such loss or damage was not reasonably ascertainable at any time prior to that date-

Particulars

- (a) Provident had met all of its obligations in relation to the repayment of the face value of any debenture that was requested to be repaid prior to 10 June 2009;
- (b) Provident's audited financial statements recorded positive net assets for each of the financial years ended 30 June 2009, 30 June 2008, 30 June 2007, 30 June 2006 and 30 June 2005.

SIGNATURE OF LEGAL REPRESENTATIVE

I certify under clause 4 of Schedule 2 to the Legal Profession Uniform Law Application Act 2014 that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the Reply to the Defence in these proceedings has reasonable prospects of success.

Signature



Capacity

Solicitor for the Plaintiffs

Date of signature

27 - 10 - 2015

REGISTRY ADDRESS

Street address

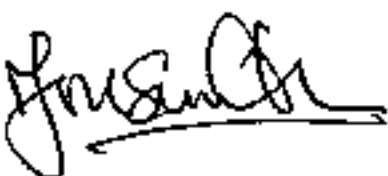
Supreme Court of New South Wales, Law Courts Building, 184 Phillip Street, Sydney NSW 2000

Postal address

GPO Box 3 SYDNEY NSW 2000

Telephone

(02) 9230 8111





AFFIDAVIT VERIFYING

Name JOHN SMITH
 Address 233/2 Saliena Avenue, Lake Munmorah NSW 2259
 Occupation Retired
 Date 27th OCTOBER, 2015

I say on oath:

- 1 I am the first named Plaintiff.
- 2 I believe that the allegations of fact contained in the Reply are true.
- 3 I believe that the allegations of fact that are denied in the Reply are untrue.
- 4 After reasonable enquiry, I do not know whether or not the allegations of fact that are not admitted in the Reply are true.

SWORN at

Signature of deponent

LAKEMUNMORAH NSW



Name of witness

Address of witness

Capacity of witness

And as a witness, I certify the following matters concerning the person who made this affidavit (the deponent);

- 1 I saw the face of the deponent.
- 2 I have confirmed the deponent's identity using the following identification document

 Identification document relied on (may be original or certified copy) †

Signature of witness



Note: The deponent and witness must sign each page of the affidavit.

See UCPR 35.7B
 Justice of the Peace
 In and for the State of New South Wales Australia
 Craig M. Pearce
 21/103 Majors Bldg, CONCORD NSW 2137
 Australia
 Registration No: 143240

AFFIDAVIT VERIFYING

Name ROSEMARY SMITH
 Address 233/2 Saliena Avenue, Lake Munmorah NSW 2259
 Occupation Retired
 Date June 2015 & 27th OCTOBER, 2015



I say on oath:

- 5 I am the first named Plaintiff
- 6 I believe that the allegations of fact contained in the Reply are true.
- 7 I believe that the allegations of fact that are denied in the Reply are untrue.
- 8 After reasonable enquiry, I do not know whether or not the allegations of fact that are not admitted in the Reply are true.

SWORN at

LAKE MUNMORAN NSW

Signature of deponent

R. d. Smith

Name of witness

Address of witness

Capacity of witness

And as a witness, i certify the following matters concerning the person who made this affidavit (the deponent):

- 1 I saw the face of the deponent.
- 2 I have affirmed the deponent's identity using the following identification document:

identification document relied on (may be original or certified copy) †

Signature of witness

C. M. Pearce

Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.

..... Justice of the Peace
 In and for the State of New South Wales, Australia
 Craig M. Pearce
 11100 Majors Bay Rd CONCORD NSW 2137
 Australia
 Registrar No: 143240

Justin

[on separate page]

PARTY DETAILS

PARTIES TO THE PROCEEDINGS

Plaintiffs

JOHN SMITH and ROSEMARY SMITH

Defendant

**AUSTRALIAN EXECUTOR TRUSTEES
LIMITED, ACN 007 869 573**

FURTHER DETAILS ABOUT PLAINTIFFS

Name **JOHN SMITH and ROSEMARY SMITH**
Address 233/2 Saliene Avenue,
Lake Munmorah NSW 2259

Frequent user identifier

Legal representative for plaintiff

Name Douglas Raftesath
Practising certificate number
Firm Meridian Lawyers
Contact solicitor Douglas Raftesath
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Sydney NSW 2000

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Telephone (02) 9018 9978
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Electronic service address draftesath@meridianlawyers.com.au

DETAILS ABOUT DEFENDANT

Name AUSTRALIAN EXECUTOR TRUSTEES LIMITED,
ACN 007 869 573
Address