

SHORT MINUTES OF ORDER

COURT DETAILS

Court Supreme Court of New South Wales
Division Equity
Registry Sydney
Case number 2015/171592

TITLE OF PROCEEDINGS

Plaintiffs **John Smith and Rosemary Smith**

Defendant **Australian Executor Trustees Limited**
ACN 007 869 794

FILING DETAILS

Filed for **Australia Executor Trustees Limited, Defendant**
Legal representative Brad Woodhouse, Corrs Chambers Westgarth
Legal representative reference 9116109
Contact name and telephone Brad Woodhouse, (02) 9210 6859
Contact email brad.woodhouse@corrs.com.au

The Court orders that:

- 1 As security for the Defendant's costs of this proceeding, the Plaintiffs to procure and provide to the Defendant's solicitors on or before 5 April 2016 a Deed of Indemnity executed by AmTrust Europe Limited in the form annexed, varied so as to:
 - (a) remove the "draft" watermark; and
 - (b) insert the figure "\$1,000,000" following the words "shall not exceed the sum of AUD".
- 2 As security for the Defendant's costs of enforcing the Deed of Indemnity in order 1, the Plaintiffs to arrange payment of the sum of \$25,000 into Court on or before 5 April 2016.
- 3 In the event that the security in orders 1 and 2 is not provided on or before 5 April 2016, the proceedings be stayed.
- 4 The Deed of Indemnity is provided without prejudice to the Defendant's right to seek further security for its costs if necessary.
- 5 The costs of paragraphs 1 and 2 of the Defendant's notice of motion in this proceeding dated 11 November 2015 be costs in the cause.

REFERENCE NUMBER DI

THIS DEED OF INDEMNITY is made on the day of 2016

BETWEEN

- (1) **AMTRUST EUROPE LIMITED** whose office is at No 2 Minster Court, Mincing Lane, London EC3R 7BB ("**AmTrust**");
- (2) **AUSTRALIAN EXECUTOR TRUSTEES LIMITED** of Level 22, 207 Kent Street, Sydney, Australia ("**the Defendant**");

individually a "**Party**" and together the "**Parties**".

WHEREAS:

1. John and Rosemary Smith ("**the Claimants**") have a legal claim ("**the Claim**") against the Defendant for breaches of various duties. The Claimants have issued legal proceedings in relation to the Claim in the Supreme Court of New South Wales under Action Number 2015/171592.
2. AmTrust has issued an insurance policy (policy number 126620201509) on 27 October 2015 in respect of the Claimant's liability for adverse costs.
3. In order to secure the policy the Claimants have been ordered/agreed to indemnify the Defendant in the sum of up to AUD . In order to meet this liability AmTrust has agreed to indemnify the Defendant in accordance with the terms of this Deed.

NOW THIS DEED WITNESSES as follows:

Definitions

1. In this Deed the following definitions shall have the following meanings:

"**Business Day**" means a day on which banks generally are open in the City of London for the transaction of normal banking business (other than a Saturday).

"**Notice**" means a notice given pursuant to this Deed.

Indemnity

2. AmTrust hereby unconditionally and irrevocably undertakes to pay to the Defendant any sum or sums which the Claimants are liable to pay in respect of the Defendant's costs, to be assessed if not agreed pursuant to order, statute, agreement or otherwise. The payment or payments will be made by AmTrust within 7 Business Days of receipt by AmTrust of the Defendant's written demand for such sums or within 10 Business Days of the issue of the relevant Court Order, whichever is the later. AmTrust's total liability hereunder shall not exceed the sum of AUD plus any sum which may be due solely in respect of simple interest applicable to the original demand for sums in respect of the Defendant's costs at the judgment rate from the date of the presentation of the demand by the Defendant under the indemnity until payment by AmTrust.

3. A certified copy of the relevant Court Order or signed agreement shall be conclusive evidence of the liability of and binding upon AmTrust without further enquiry by AmTrust.
4. AmTrust shall be deemed to be a Principal Debtor and not merely a surety and, accordingly, AmTrust shall not be discharged nor shall its liability be affected by any act or thing or means whatsoever (including, without limitation, any defences to payment asserted by, insolvency of, or unenforceability as against the Claimants).
5. For the avoidance of doubt and without prejudice to the foregoing, AmTrust's liability under this Deed shall not be subject to avoidance on the grounds of fraud or misrepresentation by the Claimants, nor shall it be affected by any lack of substance in the claim which has been brought by the Claimants.

Notices

6. Notices under this Deed shall be in writing and served at the addresses set out in this Deed (or to such address as is notified in writing by one Party to the others from time to time) by hand or by pre-paid recorded delivery post.
7. Notices shall be deemed served:
 - 7.1 if delivered by hand, at the time of delivery to the Party; or
 - 7.2 if sent by pre-paid recorded delivery post, at the expiration of 5 days from dispatch.

Reciprocal enforcement and registration

8. If AmTrust fail to pay any amount in accordance with clause 2 of this Deed, AmTrust hereby unconditionally and irrevocably undertakes to:
 - a. consent to judgment being entered against it in favour of the Respondent in the Supreme Court of New South Wales to pay such amount subject to the total liability not exceeding the sum under clause 2 ("the NSW judgment")
 - b. consent to the NSW judgment being registered in the High Court under *Foreign Judgments (Reciprocal Enforcement) Act 1933 (UK)*, s.2;
 - c. not to seek to set aside the registration of the NSW judgment in the High Court;
 - d. not seek security for costs against the Respondent for proceedings for the registration or enforcement of the NSW Judgment in the United Kingdom.

General

9. This Deed shall be in addition to and not in substitution for (and shall not be prejudiced by) any rights which the Defendant may have against the Claimants or any other person in respect of the sums indemnified under this Deed.
10. AmTrust may not assign or transfer any of its rights or obligations under this Deed.
11. This Deed shall be governed by and construed in accordance with Law of New South Wales and shall be subject to the exclusive jurisdiction of the Supreme Court of New South Wales.

IN WITNESS WHEREOF this Deed has been executed as a Deed on the Date set out above.

Signed by **AMTRUST EUROPE LIMITED**

acting by

an authorized signatory

in the presence of:.....

Address:

Occupation: