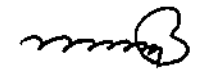


Ball J


16. 8. 16

**SHORT MINUTES OF ORDER FOR 16 AUGUST 2016
IN RELATION TO PLAINTIFFS' CLAIMS**

COURT DETAILS

Court Supreme Court of New South Wales
Division Equity
Registry Sydney
Case number 2015/306222

TITLE OF PROCEEDINGS

Plaintiffs **Innes Creighton**

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

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**

Defendants **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:

Expert evidence

- 1 The time for the Plaintiff in the Creighton Proceeding and the Plaintiffs in the Smith Proceeding (collectively, **the Plaintiffs**) to comply with order 18 made on 4 April 2016 (regarding the service of expert reports on which they intend to rely) be extended to on or before 30 September 2016.
- 2 The time for the Defendant to comply with order 19 made on 4 April 2016 (regarding the service of expert reports on which it intends to rely in relation to the Plaintiffs' claims) be extended to on or before 10 February 2017.
- 3 The time for the Plaintiffs to comply with order 20 made on 4 April 2016 (regarding the service of expert reports in reply) be extended to on or before 10 March 2017.
- 4 The time for the Plaintiffs' and Defendant's experts to comply with order 20A made on 4 April 2016 (regarding conferral and preparation of a joint report) be extended to on or before 24 March 2017.

Tender Bundle

- 5 The time for the Plaintiffs to comply with order 21 made on 4 April 2016 (regarding the service of the Plaintiff's Bundle of documents they propose to tender at the trial) be extended to 14 October 2016.
- 6 The time for the Defendant to comply with order 22 made on 4 April 2016 (regarding the service of the Defendant's Bundle of documents it proposes to tender at trial) be extended to ²⁴ February 2017.
- 7 The time for the Plaintiffs to comply with order 23 made on 4 April 2016 (regarding the service of the Tender Bundle and the Consolidated Index) be extended to 17 March 2017.

Opt out notice

- 8 The Plaintiffs file and serve any notice of motion in relation to the opt out notice and supporting affidavits on or before 24 August 2016.
- 9 The Plaintiff in the Smith Proceeding (**Smith**) and the defendant to file and serve any affidavits in opposition to the Creighton notice of motion on or before 7 September 2016
- 10 Creighton and the defendant to file and serve any affidavits in opposition to the Smith notice of motion on or before 7 September 2016

- 11 The Plaintiffs to file and serve any affidavits in reply and submissions in support of their respective notices of motion on or before 21 September 2016
- 12 The respective Plaintiffs to file and serve submissions in opposition to the notices of motion on or before ~~6 October~~ ^{23 September} 2016.
- 13 The notices of motion be listed for hearing on ~~[insert date]~~. ^{30 September 2016}

Hearing and other matters

- 14 Vacate the provisional listing of the hearing commencing 30 January 2017.
- 15 Provisionally list the matter for hearing commencing on 8 May 2017 with an estimated hearing length of ~~six~~ ^{eight} weeks.
- 16 The Smith Proceeding and the Creighton Proceeding be stood over for further directions before Ball J on ~~[insert]~~ ^{Friday 2 December 2016}.
- 17 Liberty to apply on three days' notice.

Undertakings

- 18 Slater and Gordon Limited (and any agents or employees thereof) have leave to withdraw undertakings given to the defendant and the Court by way of security for costs (**the undertakings**) including without limitation the undertaking filed with the Court on 17 December 2015.
- 19 Slater and Gordon Limited is excused from compliance with the undertakings.

Mediation

- 20 The Smith Proceeding and the Creighton Proceeding be referred to mediation by a private mediator, to be agreed by the parties.
- 21 The private mediation shall occur by 31 March 2017

The Court notes that:

- 22 It is intended that the parties' expert evidence will address the following matters raised in the pleadings which are common to group members (or to some group members), even where those matters do not fall to be determined on the Plaintiffs' claims.
- (a) the amount group members in the Creighton Proceeding who acquired debentures before 23 December 2008 would have recovered if the Defendant had taken the steps alleged in paragraphs 80, 82 and 84 of the Further Amended Statement of Claim in the Creighton Proceeding (**Creighton FASOC**) by mid to late January 2009 / early February 2009 (see particular (f) to paragraph 89 of the Creighton FASOC).

- (b) the amount group members in the Creighton Proceeding who acquired debentures between 23 December 2008 and late January / early February 2009 would have recovered if the Defendant had taken the steps alleged in paragraphs 80, 82 and 84 of the Creighton FASOC by mid to late January 2009 / early February 2009 (see particulars (f) and (g) to paragraph 89 of the Creighton FASOC);
- (c) the amount group members in the Creighton Proceeding who acquired debentures after late January / early February 2009 would have recovered if the Defendant had taken the steps alleged in paragraphs 80, 82 and 84 of the Creighton FASOC by mid to late January 2009 / early February 2009 (see particular (g) to paragraph 89 of the Creighton FASOC);
- (d) the amount group members in the Creighton Proceeding who acquired debentures before 22 December 2010 would have recovered if the Defendant had taken the steps alleged in paragraphs 80, 82 and 84 of the Creighton FASOC by mid to late January 2009 / early February 2009 (see particular (g) to paragraph 89 of the Creighton FASOC);
- (e) the amount group members in the Creighton Proceeding who acquired debentures before 22 December 2010 would have recovered if the Defendant had taken the steps alleged in paragraphs 137, 139 and 141 of the Creighton FASOC by November or December 2010 (see the first particular (f) of paragraph 146 of the Creighton FASOC);
- (f) the amount group members in the Creighton Proceeding who acquired debentures after 22 December 2010 would have recovered if the Defendant had taken the steps alleged in paragraphs 137, 139 and 141 of the Creighton FASOC by November or December 2010 (see the second particular (d) to paragraph 146 of the Creighton FASOC);
- (g) the amount group members in the Smith Proceeding would have recovered if a receiver had been appointed to Provident on or about:
- a. 4 February 2005;
 - b. 17 February 2006;
 - c. 17 February 2007, and
 - d. 17 February 2008

(see paragraph 32 of the Further Amended Statement of Claim in the Smith Proceeding.

