

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	John Smith and Rosemary Smith, Plaintiffs
Legal representative	Douglas Raftesath, Meridian Lawyers
Legal representative reference	
Contact name and telephone	Douglas Raftesath (02) 9018 9978
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ORDERS

THE COURT ORDERS that:

Notice of commencement

1. Pursuant to s.176(1) of the Civil Procedure Act 2005 ("Act") the form and content of the notice set out in Annexure A to these orders be approved as a notice to advise group members of the commencement of the proceeding (Notice of Commencement).
2. The Plaintiffs shall cause the Notice of Commencement to be sent by pre-paid ordinary post and/or email to the last known mailing or email addresses held by the Plaintiffs' solicitors in respect of each group member by no later than 31 July 2015.

Pleadings

3. The Defendant is to file and serve its Defence on the Plaintiffs by no later than 18 September 2015.
4. The Plaintiffs are to serve any Reply on the Defendant by no later than 25 September 2015.

Opt-out

5. By 9 October 2015, the parties shall endeavour to agree:
 - (a) form and content of a draft opt out notice for the purposes of s.162 of the Act;
 - (b) draft orders with respect to the proposed manner and timing of the giving the opt out notice for the purposes of s.162 of the Act;
 - (c) information as to the anticipated costs of giving the opt out notice in the manner proposed;
 - (d) a draft order as to the payment of costs of giving the opt out notice if not to be borne by the Plaintiffs.
6. By 16 October 2015, the Plaintiffs:
 - (a) if the matters referred to in order 5 above have been agreed, deliver to the Associate to Ball J the parties' consent orders; or
 - (b) if the matters referred to in order 5 above have not been agreed, file and serve any notice of motion and supporting affidavit in respect of any of the matters in order 5(a) to 5(d) above, returnable before Ball J on 23 October 2015.

Evidence

7. The Plaintiffs are to serve on the Defendant any lay affidavit evidence on which they intend to rely by 23 October 2015.
8. The Defendant is to serve on the Plaintiffs any lay affidavit evidence on which they intend to rely by 11 December 2015.

9. The Plaintiffs are to serve on the Defendant any expert affidavit evidence on which they intend to rely by 4 March 2016.
10. The Defendant is to serve on the Plaintiffs any expert affidavit evidence on which they intend to rely by 29 April 2016.
11. The Plaintiffs are to serve on the Defendant any evidence in reply by 27 May 2016.

Tender Bundles

12. By 1 July 2016, the Plaintiffs are to serve on the Defendant a disk or storage device containing an electronic copy of documents that the Plaintiffs propose to tender at trial together with an electronic index of those documents (Plaintiffs' Bundle). Electronic documents in the Plaintiffs' Bundle shall be in multiple page PDF, print enabled, text searchable format.
13. The electronic index to the Plaintiffs' Bundle must:
 - (a) adequately describe the documents that the Plaintiffs propose to rely on at trial;
 - (b) be hyperlinked to multiple page PDF, print enabled, text searchable format copies of the documents; and
 - (i) contain the following fields:
 - (ii) document date or estimated date;
 - (iii) unique document identification number;
 - (iv) document type;
 - (v) document title;
 - (vi) author/from;
 - (vii) recipient/to.
14. By 5 August 2016, the Defendant is to serve on the Plaintiffs a disk or storage device containing an electronic copy of documents that the Defendants propose to tender at trial together with an electronic index of those documents

(Defendant's Bundle). Electronic documents in the Plaintiffs' Bundle shall be in multiple page PDF, print enabled, text searchable format.

15. The electronic index to the Defendant's Bundle must:

- (a) adequately describe the documents that the Defendant proposes to rely on at trial;
- (b) be hyperlinked to multiple page PDF, print enabled, text searchable format copies of the documents; and
- (c) contain the following fields:
 - (i) document date or estimated date;
 - (ii) unique document identification number;
 - (iii) document type;
 - (iv) document title;
 - (v) author/from;
 - (vi) recipient/to.

16. By 4:00pm on 26 August 2016, the Plaintiffs are to serve, on a disk or storage device, an electronic index and electronic copy of all documents proposed to be tendered by the parties at the trial, including Plaintiffs' Bundle, the Defendant's Bundle and any additional documents the Plaintiff requires (the Tender Bundle), such index to be organised in chronological order as far as is practicable and to be duly paginated and hyperlinked to the multiple page PDF, print enabled, text searchable format copies of the documents (the Consolidated Index).

17. By 4:00pm on 16 September 2016, the Plaintiffs are to provide to the Associate to Ball J, on a disk or storage device, an electronic copy of the Consolidated Index and the Tender Bundle, together with two printed and bound copies of the Consolidated Index and Tender Bundle.

Final Hearing

18. Pursuant to s.183 of the Act there be a trial of all issues raised by the pleadings including the claim for damages by the Plaintiffs, except for the individual damages claims by other group members.
19. The proceeding is provisionally listed for hearing before Ball J on Monday 26 September 2016 for a period of 6 weeks.

Other

20. The proceeding be listed before Ball J for directions on 23 October 2015 at 9:30am.
21. The parties have liberty to apply on 3 days' notice.

ANNEXURE A

SUPREME COURT OF NEW SOUTH WALES

NOTICE OF A REPRESENTATIVE PROCEEDING

Debentureholders in PROVIDENT CAPITAL LIMITED

1. Why is this Notice important?

Mr John Smith and Mrs Rosemary Smith (**the Plaintiffs**) have commenced a representative proceeding in the Supreme Court of New South Wales against Australian Executor Trustees Ltd (ACN 007 869 794) (**AET**) on behalf of persons who were issued debentures by Provident Capital Ltd (receivers and managers appointed) (in liquidation) (ACN 082 735 573) (**Provident**).

The proceeding arises out of a claim that AET contravened its obligations under the *Corporations Act 2001* (C'th) (**the Act**) by failing to exercise reasonable diligence to ascertain whether Provident had breached the terms of the Trust Deed and the Act.

The Plaintiffs are represented by Meridian, Lawyers, and the proceeding is funded by Litman Holdings Pty Ltd (**Litman**).

The Supreme Court of New South Wales has ordered that this Notice be published for the information of the persons who are members of the group on whose behalf the proceeding is brought.

You are a group member if you:

- (i) held debentures issued by Provident as at 29 June 2012;
- (ii) have suffered loss and damage by reason of the conduct of AET as set out in the Amended Statement of Claim; and

- (iii) signed a litigation funding agreement with Litman by 5pm on 16 July 2015 (**Funding Agreement**).

If you are a group member, you should read this notice very carefully. Any questions you have concerning the matters contained in this notice should not be directed the Court. If there is anything in it that you do not understand, you should seek legal advice.

2. What is the representative proceeding?

This representative proceeding is a claim for damages that has been brought by the Plaintiffs against AET, on behalf of the group members (including themselves). This is possible and appropriate where the claims of all of the group members involve similar questions of fact and law.

Group members are bound by any judgment or settlement entered into in the representative proceeding and approved by the Court unless they have opted out of the proceeding. This means that:

- (a) if the representative proceeding is successful, group members will be eligible for a share of any settlement moneys or court-awarded damages; and
- (b) if the representative proceeding is unsuccessful, the group members are bound by that result.

3. What is the claim about?

The Plaintiffs for and on behalf of the group members allege that:

- AET contravened its obligations under the Act by failing to exercise reasonable diligence to ascertain whether Provident had breached the terms of the Trust Deed and the Act;
- if AET had exercised reasonable diligence as required by the Act, it would have ascertained that Provident had committed such breaches and would have appointed receivers to Provident at a time prior to 31 December 2007;
- by reason of the contraventions by AET of its obligations under the Act, the Plaintiffs and each of the group members have suffered loss and damage, in that the assets of Provident have been sold for an amount

significantly less than the amount they would have been sold if AET had properly performed its statutory obligations; and

- the Plaintiffs claim damages for financial loss suffered by each of the group members, as well as interest on that amount and legal costs.

The detailed allegations are contained in the Plaintiffs' Amended Statement of Claim. A copy of the Amended Statement of Claim is available to be viewed on the websites referred to below.

AET says that it intends to defend the claim. A copy of AET's Defence, once filed with the Court, will be available to be viewed on these websites, subject to the directions of the presiding judge.

4. Will you be liable for legal costs?

Litman has agreed to pay all the legal and other costs associated with the proceeding, including any adverse costs order, under the Funding Agreement.

That means group members **are not** individually responsible for the ongoing legal costs associated with the representative proceeding.

If the representative proceeding is successful, and group members obtain judgment for an award of damages, then the costs and fees set out in the Funding Agreement will be deducted from the amount of damages to be distributed to group members.

If the representative proceeding is unsuccessful, group members will have no liability for legal costs.

Please be aware that Litman is not responsible for any costs you decide to incur on your own behalf, including legal advice you choose to obtain from lawyers other than Meridian Lawyers.

5. What if I do not want to remain as a group member?

If you do not wish to remain a group member, you have a right to opt out of the representative proceeding.

Later this year, the Court will make orders that will enable group members to opt out of the representative proceeding, if they choose to. This will be explained to you in a Court approved “opt-out notice” which will be sent to you in due course.

If you opt out you will cease to be a group member, and therefore will not be entitled to share in the benefit of any order, judgment or settlement in the representative proceeding.

However, you will be at liberty to bring your own claim against AET, provided that you issue a court proceeding within the time limit applicable to your claim. If you wish to bring your own claim against AET, you should seek your own legal advice about your claim and the applicable time limit prior to opting out.

6. Do I have to take any steps to remain a group member?

If you have already agreed to become a group member by signing the Funding Agreement, you do not need to do anything more.

The Plaintiffs will continue to bring the representative proceeding on your behalf up to the point where the Court determines those questions that are common to claims of the Plaintiffs and the group members.

7. Where can you obtain copies of relevant documents?

Subject to the directions of the presiding judge, copies of relevant documents, including the Amended Statement of Claim and the orders of the Court regarding this Notice, may be obtained by:

- (a) downloading them from:
www.investorsactiongroup.com.au/actiongroups/providentdebenturesc
[heme](#);
- (b) requesting them by email to draftesath@meridianlawyers.com.au; or
- (c) inspecting them on the Supreme Court of New South Wales website:
www.supremecourt.justice.nsw.gov.au.

Please consider the above matters carefully.

If there is anything of which you are unsure, you should contact Meridian, Lawyers, by email to draftesath@meridianlawyers.com.au or by telephone on (02) 9018 9999, or seek your own legal advice.