

FILED

21 JUN 2019

SUMMONS

(TL)



COURT DETAILS

Court Supreme Court of New South Wales
Division Equity Division
List Commercial List
Registry Sydney
Case number 2019/193556

TITLE OF PROCEEDINGS

Plaintiff **Kerry Michael Quirk**

First Defendant **Suncorp Portfolio Services Limited** in its capacity as trustee for the Suncorp Master Trust
Second Defendant **Geoffrey Edward Summerhayes**
Third Defendant **Sean Carroll**

FILING DETAILS

Filed for Kerry Michael Quirk, Plaintiff
Legal representative Bill Petrovski, William Roberts Lawyers
Legal representative reference 701900167
Contact name and telephone Ding Pan (02) 9552 2111
Contact email SSFclassaction@williamroberts.com.au

This summons is listed at

9:45am 5/7/2019

TYPE OF CLAIM

Mercantile Law

RELIEF CLAIMED

1. An order pursuant to s 55(3) of the *Superannuation Industry (Supervision) Act 1993* (Cth) that the First, Second and Third Defendants pay compensation to the Plaintiff and each of the Group Members for loss and damage suffered by them by reason of the First Defendant's contraventions of the covenants set out in s 52(2)(b), (c) and (d) of the *Superannuation Industry (Supervision) Act 1993* (Cth).
2. Interest.
3. Costs.
4. Such further or other order or orders as the Court sees fit.

Representative action

Unless otherwise stated, definitions in the Commercial List Statement apply.

- 1 The Plaintiff brings this proceeding as representative party for and on behalf of the Group Members pursuant to Part 10 of the *Civil Procedure Act 2005* (NSW).
- 2 The members of the group to whom this proceeding relates (**Group Members**) are those persons:
 - (a) who were members of a superannuation fund under the Master Trust; and
 - (b) whose accounts were affected by the payment of Conflicted Remuneration to Financial Services Licensees in the period 1 July 2013 to 21 June 2019 inclusive (**Relevant Period**); and
 - (c) were not during the Relevant Period, and are not, any of the following:
 - (i) a director, an officer, or a close associate (as defined by s. 9 of the *Corporations Act 2001* (Cth)) of the First Defendant (**Suncorp**); or
 - (ii) a judge, judge of Appeal or the Chief Justice of the Supreme Court of New South Wales or a judge or the Chief Justice of the High Court of Australia.

Questions common to claims of the Plaintiff and the Group Members

The questions of law or fact common to the claims of the Group Members are:

1	Did the Suncorp Master Trust Deed contain the covenants set out in s 52(2)(b), (c) and(d) of the <i>Superannuation Industry (Supervision) Act 1993 (Cth) (SIS Act)</i> ?
2	If the answer to question 1 is 'yes', what is the scope and content of the duties imposed by the covenants in (Statutory Covenants): (a) s 52(2)(b) of the SIS Act? (b) s 52(2)(c) of the SIS Act? (c) s 52(2)(d) of the SIS Act?
3	Were there any contracts or arrangements that effectively grandfathered Conflicted Remuneration following 1 July 2013?
4	Were there any contracts or arrangements that effectively grandfathered Conflicted Remuneration following the Super Simplification Decision?
5	Was there an actual conflict between the interests of the Plaintiff and each of the Group Members, on the one hand, and Suncorp's own interests and the interests of Suncorp's associates on the other?
6	Did Suncorp know, or ought it to have known, of the actual conflict between the interests of the Plaintiff and Group Members and the interests of Suncorp's own interests and the interests of Suncorp's associates?
7	If the answer to questions in 5 and 6 is 'yes', did Suncorp contravene the covenant in s52(2)(b) of the SIS Act to exercise the degree of care, skill and diligence that a prudent superannuation trustee would have exercised if they were the trustee of the Suncorp Funds in making the Grandfathering Decision?
8	If the answer to questions in 5 and 6 is 'yes', did Suncorp contravene the covenant in s52(2)(b) of the SIS Act to exercise the degree of care, skill and diligence that a prudent superannuation trustee would have exercised if they were the trustee of the Suncorp Funds in making the Super Simplification Decision?

9	Did Suncorp contravene the covenant in s52(2)(c) of the SIS Act to perform the trustee's duties and exercise its powers in the best interests of the members of the Suncorp Funds in making the Grandfathering Decision?
10	Did Suncorp contravene the covenant in s52(2)(c) of the SIS Act to perform the trustee's duties and exercise its powers in the best interests of the members of the Suncorp Funds in making the Super Simplification Decision?
11	If the answer to questions in 5 and 6 is 'yes', did Suncorp contravene the covenant in s 52(2)(d) of the SIS Act by failing to give priority to the interests of the Plaintiff and the Group Members in circumstances where there was a conflict between those interests and the interests of Suncorp and its associates in making the Grandfathering Decision?
12	If the answer to questions in 5 and 6 is 'yes', did Suncorp contravene the covenant in s 52(2)(d) of the SIS Act by failing to give priority to the interests of the Plaintiff and the Group Members in circumstances where there was a conflict between those interests and the interests of Suncorp and its associates in making the Super Simplification Decision?
13	<p>If Suncorp had complied with its Statutory Covenants in making the Grandfathering Decision, would it have:</p> <ul style="list-style-type: none"> (a) made the Grandfathering Decision? (b) entered into the Distribution Agreements? (c) made the Conflicted Remuneration Payments to financial services licensees or their authorised representatives in relation to the financial products administered through the Master Trust from 1 July 2013 onwards; or (d) reimbursed the Conflicted Remuneration Payments from members' funds from 1 July 2013 onwards?
14	<p>If Suncorp had complied with its Statutory Covenants in making the Super Simplification Decision, would it have:</p> <ul style="list-style-type: none"> (a) made the Conflicted Remuneration Payments to financial services licensees or their authorised representatives in relation to the financial products administered through the Master Trust from 1 August 2016 onwards?

	(b) reimbursed the Conflicted Remuneration Payments from members' funds from 1 August 2016 onwards?
15	If the answer to any or all of the questions 7 to 14 is "yes", is Suncorp liable to compensate the Plaintiff and the Group Members for their loss or damage?
16	Were the Second and Third Defendants (the Directors) involved in Suncorp's contraventions in relation to the Grandfathering Decision?
17	If the answer to question 16 is "yes", are the Directors liable to compensate the Plaintiff and the Group Members for their loss or damage?
18	If Suncorp and/or the Directors are liable to compensate the Plaintiff and the Group Members, what is the proper methodology for assessing statutory compensation?

SIGNATURE OF LEGAL REPRESENTATIVE

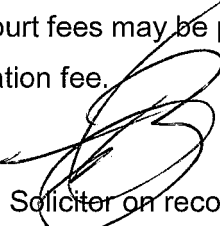
I certify under clause 4 of Schedule 2 to the Legal Profession Uniform Law Application Act 2014 that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in these proceedings has reasonable prospects of success.

I have advised the plaintiff that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature

Capacity

Date of signature


Solicitor on record
21 June 2019

NOTICE TO DEFENDANT

If your solicitor, barrister or you do not attend the hearing, the court may give judgment or make orders against you in your absence. The judgment may be for the relief claimed in the summons and for the plaintiff's costs of bringing these proceedings.

Before you can appear before the court you must file at the court an appearance in the approved form.

HOW TO RESPOND

Please read this summons very carefully. If you have any trouble understanding it or require assistance on how to respond to the summons you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the summons from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

Court forms are available on the UCPR website at www.ucprforms.justice.nsw.gov.au or at any NSW court registry.

REGISTRY ADDRESS

Street address	Level 5, Law Courts Building 184 Phillip Street Sydney NSW 2000
Postal address	Supreme Court of NSW GPO Box 3 Sydney NSW 2001
Telephone	1300 679 272

PARTY DETAILS**PARTIES TO THE PROCEEDINGS****Plaintiff**

Kerry Michael Quirk

Defendants

Suncorp Portfolio Services Limited, First Defendant

Geoffrey Edward Summerhayes, Second Defendant

Sean Carroll, Third Defendant

FURTHER DETAILS ABOUT PLAINTIFF**Plaintiff**

Name	Kerry Michael Quirk
Address	c/- William Roberts Lawyers Level 22 66 Goulburn Street Sydney NSW 2000

Legal representative for Plaintiff

Name	Blagoj (Bill) Petrovski
Practising certificate number	41964
Firm	William Roberts Lawyers
Address	Level 22, 66 Goulburn Street Sydney NSW 2000
DX address	Not applicable
Telephone	02 9552 2111
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Email	bill.petrovski@williamroberts.com.au
Electronic service address	Not applicable

DETAILS ABOUT DEFENDANTS

First Defendant

Name Suncorp Portfolio Services Limited
Address Level 28
266 George Street
Brisbane QLD 4000

Second Defendant

Name Geoffrey Edward Summerhayes
Address 

Third Defendant

Name Sean Carroll
Address 