

OUTCOME DETAILS

**Supreme Court - Civil
at Supreme Court Sydney
on 13 August 2020**

2019/00193556-002 / Notice of Motion Civil - Suncorp Portfolio Services Limited in its capacity as trustee for the Suncorp Master Trust v Kerry Michael Quirk

His Honour makes the following order

I make the Short Minutes of Order which were submitted to my Associate by email on Wednesday 12th August 2020 in relation to discovery.

I order that the plaintiff is to pay the defendants' costs of the Motion for Approval, including any amendment (filed on 4th May 2020) up to and including 6th August 2020).

I stand the proceedings over in due course to 23rd October 2020 for directions

2019/00193556-003 / Notice of Motion Civil - Kerry Michael Quirk v Suncorp Portfolio Services Limited in its capacity as trustee for the Suncorp Master Trust

His Honour makes the following order

I make the Short Minutes of Order which were submitted to my Associate by email on Wednesday 12th August 2020 in relation to discovery.

I order that the plaintiff is to pay the defendants' costs of the Motion for Approval, including any amendment (filed on 4th May 2020) up to and including 6th August 2020).

I stand the proceedings over in due course to 23rd October 2020 for directions

2019/00193556-004 / Notice of Motion Civil - Kerry Michael Quirk v Suncorp Portfolio Services Limited in its capacity as trustee for the Suncorp Master Trust

His Honour makes the following order

I make the Short Minutes of Order which were submitted to my Associate by email on Wednesday 12th August 2020 in relation to discovery.

I order that the plaintiff is to pay the defendants' costs of the Motion for Approval, including any amendment (filed on 4th May 2020) up to and including 6th August 2020).

I stand the proceedings over in due course to 23rd October 2020 for directions

Justice D Hammerschlag

Signed

Date

13/08/20.

Form 44 (version 3)
UCPR 36.1A**SHORT MINUTES OF ORDER****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

TERMS OF ORDER MADE BY THE COURT BY CONSENT**Plaintiff's Motion on Discovery**

1 Pursuant to rule 21.2(1)(a) of the *Uniform Civil Procedure Rules 2005 (NSW) (Rules)*, the First Defendant is to give discovery of the following categories of documents as an initial tranche of discovery:

a. all documents that are relevant within the meaning of rule 21.1(2) of the Rules to one or more facts in issue between the Plaintiff and the Defendants in respect of the Plaintiff's individual claim in the proceedings;

b. all Product Disclosure Statements issued on or after 1 January 2003 in respect of the Suncorp Products (defined in paragraph 8 of the Amended

Commercial List Statement) in relation to which any Group Members were charged Excess Fees (defined in paragraph 26A of the Amended Commercial List Statement) to fund Conflicted Remuneration Payments (referred to in paragraph 26A of the Amended Commercial List Statement) since 1 July 2012;

- c. all documents which constitute, record or evidence terms of trade used by the First Defendant in respect of three or more holders of an Australian financial services licence (as defined in s 761A of the *Corporations Act 2001* (Cth) since 1 July 2012; and
- d. all documents constituting, evidencing or directly concerning the decisions described in paragraphs 34, 37, 39 and 41 of the Amended Commercial List Statement.

2 By 2 October 2020, the First Defendant is to give discovery pursuant to Order 1 above:

- a. by serving a verified list of documents in accordance with rules 21.3 and 21.4 of the Rules, the format of which may be modified so as to accommodate the terms of the discovery protocol (**Discovery Protocol**) agreed by the Plaintiff and the First Defendant which is attached to the email from King & Wood Mallesons to William Roberts and others dated 1 July 2020 at 2.25pm; and
- b. electronically, in accordance with the Discovery Protocol, including by serving a copy of all discovered documents, other than wholly privileged documents set out in the verified list and which are in its possession, custody or power.

3 The Plaintiff's motion filed on 4 May 2020 seeking discovery by the Defendants is otherwise stood over to 23 October 2020 with costs reserved.

First Defendant's Motion on Discovery

4 Subject to Order 5, pursuant to rule 21.2 of the Rules, the Plaintiff is to give discovery of the following categories of documents:

- a. account statements dated on or from 1 January 2013 to the date of commencement of these proceedings in respect of all investments in the Suncorp Master Trust held by the Plaintiff;
- b. all documents, including (without limitation) all correspondence between:
 - i. the First Defendant and the Plaintiff; or
 - ii. any Suncorp entity and the Plaintiff; or

iii. the Plaintiff's financial adviser(s) and the Plaintiff, dated on or from 1 January 2013 to the date of commencement of these proceedings, referring or relating to the Suncorp Master Trust or the Plaintiff's investments in the Suncorp Master Trust, recording, referring or relating to:

- iv. the levying of fees on, or the payment of rebates to, the Plaintiff in respect of the Plaintiff's investments in the Suncorp Master Trust; or
- v. the payment of Advisor Remuneration (as defined in the First Defendant's Commercial List Response) by the First Defendant or any related bodies corporate of the First Defendant to any person in respect of the Plaintiff's investments in the Suncorp Master Trust; or
- vi. financial advice given to the Plaintiff concerning the Plaintiff's investments in the Suncorp Master Trust; or
- vii. the Plaintiff's right to request that the First Defendant transfer his investments to a product in respect of which:

- A. he would not be charged Excess Fees (as defined in the Amended Commercial List Statement); or
- B. the First Defendant would not pay Financial Services Licensees (as defined in the Amended Commercial List Statement) any Advisor Remuneration (as defined in the First Defendant's Commercial List Response); and

- c. all Product Disclosure Statements or other disclosure documents issued from 1 January 2013 until the commencement of these proceedings, in respect of all investments of the Plaintiff in the Suncorp Master Trust during that period.

5 The Plaintiff is not required to give discovery of documents which satisfy each and all of the following criteria:

- a. documents that are not in the Plaintiff's possession; and
- b. documents that are in the Plaintiff's power or control; and
- c. documents that the Plaintiff believes on a reasonable basis to be in the First Defendant's possession.

For the avoidance of doubt, the Plaintiff must give discovery of documents falling within Order 4 that are in neither the Plaintiff's nor (in the reasonable belief of the Plaintiff) the First Defendant's possession but which are within the Plaintiff's power or control.

6 By 2 October 2020, the Plaintiff is to give discovery pursuant to Orders 4 and 5 above:

- a. by serving a verified list of documents in accordance with rules 21.3 and 21.4 of the Rules, the format of which may be modified so as to accommodate the terms of the Discovery Protocol; and
- b. electronically, in accordance with the Discovery Protocol, including by serving a copy of all discovered documents, other than wholly privileged documents, set out in the verified list and which are in his possession, custody or power.

7 Costs of the First Defendant's motion filed on 1 May 2020 seeking discovery by the Plaintiff be reserved.

Plaintiff's Motion on Opt out and Registration Notice

8 By 4 August 2020, the Plaintiff is to file and serve any further evidence in respect of his motion dated 4 May 2020 concerning Opt Out and Registration notices to group members (**Notice Motion**).

9 The Notice Motion is listed for directions on 7 August 2020 in accordance with the current protocol for Friday's Commercial, Technology and Construction and Commercial Arbitration List.

10 The Notice Motion is stood over for hearing on 13 August 2020.

11 Costs of and incidental to the hearing on 21 July 2020 of the Notice Motion are reserved.

General

12 The proceedings be stood over to 23 October 2020 for directions.

13 Liberty to apply with three days' written notice.

SIGNATURES

SEAL AND SIGNATURE

Court seal

Signature

Capacity

Date made or given

Date entered

NOTICE

Subject to limited exceptions, no variation of a judgment or order can occur except on application made within 14 days after entry of the judgment or order.

PARTY DETAILS

PLAINTIFF'S CLAIM

Plaintiff

Kerry Michael Quirk, Plaintiff

Defendants

Suncorp Portfolio Services Limited, First Defendant

Geoffrey Edward Summerhayes, Second Defendant

Sean Carroll, Third Defendant