

OUTCOME DETAILS

**Supreme Court - Civil
at Supreme Court Sydney
on 30 July 2018**

2017/00193375-001 / Summons: TW McConnell Pty Ltd ACN 000 217 890 as trustee for the McConnell Superannuation Fund v SURFSTITCH GROUP LIMITED

Orders made in chambers in accordance with the Short Minutes of Order, initialled by Stevenson J, dated today and placed with the papers.

SHORT MINUTES OF ORDER

1. The Court grants leave to those of the legal representatives of the parties named in Schedule A hereto who give to the Court an undertaking in writing duly signed in the form set out in Schedule B, to inspect the:

- (a) transcript of the compulsory examination of Justin Cameron dated 6 October 2016 (filename "SRF.0005.0001.0002.PDF"); and
- (b) transcript of the compulsory examination of Justin Cameron dated 2 June 2017 (filename "Justin Cameron s19 Transcript 02.06.17 (amended).pdf"),

(together Transcripts) produced by the Australian Securities and Investments Commission pursuant to the subpoena addressed to it and dated 9 March 2018.

2. Upon executing the undertaking in the form set out in Schedule B, the legal representatives of the first defendant (SurfStitch) listed in Schedule A have first and exclusive access to the Transcripts for 7 days from the date referred to in paragraph 6 for the purpose of making any claim restricting the access of the plaintiff's legal advisers listed in Schedule A to the Transcripts on the grounds of a claim of client legal privilege.

3. If SurfStitch maintains a claim of client legal privilege over any part of the Transcripts, it must by 7 days from the date referred to in paragraph 6, serve on the solicitors for the plaintiff, subject to the relevant legal advisers of the plaintiff having provided the relevant undertaking, and second defendant:

- (a) copies of the Transcripts in which those parts of the Transcripts over which any such claims are maintained are masked; and
- (b) an affidavit setting out the basis of any such claims.

4. If SurfStitch does not maintain a claim of client legal privilege over any part of the Transcripts it must by 4:00 pm 7 days from the date referred to in paragraph 6, subject to the relevant legal advisers of the plaintiff having provided the relevant undertaking, serve copies of the Transcripts on the solicitors for the plaintiff.

5. Should either the plaintiff or SurfStitch intend to tender the Transcripts, or any part of them or to use them or any part of the Transcripts in the examination or cross-examination of any witness at the trial of this proceeding, the party intending to use that material in that fashion give the second defendant as much notice as is reasonably practicable of that intention and, in any event, 7 days notice by notifying the solicitors for the second defendant.

6. Orders 1 to 5 above are stayed for the later of 7 days from the making of these orders and the determination of any application for leave to appeal and appeal from these orders.
7. The parties have liberty to apply on 48 hours' notice.

Justice J Stevenson

Signed

Date

SCHEDULE A

Persons for the plaintiff who will need to see the Transcripts

1. Lachlan Armstrong QC
2. Christopher Withers
3. Tim Chalke
4. Glenn McGowan QC
5. Patrick Walsh
6. Phillip O'Brien
7. Matthew Lunney
8. Rebecca Di Rago
9. Stephanie Rawlinson

Persons for the first defendant who will need to see the Transcripts

1. Michael Izzo
2. Moira Saville
3. Tim Klineberg
4. Alison Hammond
5. Carone Huang

SCHEDULE B
CONFIDENTIALITY UNDERTAKING

In this undertaking:

Court means the Supreme Court of New South Wales.

Plaintiff means TW McConnell Pty Limited ACN 000 217 890 as trustee for the McConnell Superannuation Fund.

Proceedings means New South Wales Supreme Court proceedings with plaintiff TW McConnell and defendants SurfStitch Group Limited and Justin Cameron with proceeding number 2017/193375.

Transcript means one of the transcripts of the examinations of Justin Peter Cameron (**Cameron**) conducted on 6 October 2016 and 2 June 2017 by ASIC pursuant to section 19 of the *Australian Securities and Investments Commission Act*, and produced by ASIC pursuant to a subpoena dated 9 March 2018, and **Transcripts** means both of those Transcripts.

SurfStitch means the first defendant, SurfStitch Group Limited (Subject to Deed of Company Arrangement) (ACN 602 288 004)

1. I, [name], of [address], undertake to Justin Peter Cameron (**Cameron**) and the Court that, subject to Court order or unless required by law, I will not without the prior written consent of Cameron:
 - (a) make any use of the Transcripts for any purpose other than for the purposes of these proceedings;
 - (b) disclose, directly or indirectly the Transcripts or their contents or substance (**Transcript Information**) to any person or body other than:
 - (i) those solicitors and counsel acting for the Plaintiff or SurfStitch as are set out in Schedule A to the orders made in this proceeding on [date to be inserted] 2018 who have signed an undertaking in the form of this Schedule B; or
 - (ii) solicitors and counsel for the second defendant; or
 - (iii) an officer of this Court or as otherwise directed by an order of this Court.
2. I further undertake that, within 28 days of the conclusion of the Proceedings (including any appeal), I will destroy all copies of the Transcripts and upon request from Arnold Bloch Leibler provide written confirmation to Arnold Bloch Leibler of the endeavours undertaken by me to destroy the Transcripts.

3. I acknowledge that my obligations under this confidentiality undertaking are in addition to any other obligation, express or implied, that I may have to the Court.
4. The above undertakings and agreement are subject to any Court order and any disclosure required by law.
5. Nothing in this confidentiality undertaking prevents the use of a Transcript or of Transcript Information for the purpose of the Proceedings, provided that it is used in accordance with this Confidentiality Undertaking.

Dated:

Signed: