

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 23/06/2017 3:14:32 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Reply - Form 34 - Rule 16.33
File Number: QUD591/2015
File Title: Graeme Clarke and Marion Clarke in their capacity as trustees of the G&M Clarke Superannuation Fund v Sandhurst Trustees Limited ACN 004 030 737
Registry: QUEENSLAND REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads 'Warwick Soden'.

Dated: 23/06/2017 3:14:36 PM AEST

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



**Reply to
Defence to Further Amended Statement of Claim**

No. QUD 591 of 2015

Federal Court of Australia
District Registry: Queensland
Division: General

GRAEME CLARKE AND MARION CLARKE

Plaintiffs

SANDHURST TRUSTEES LIMITED ACN 004 030 737

Defendant

1. The Plaintiffs join issue with the Defence to the Further Amended Statement of Claim (**FASOC**) filed on 8 June 2017 (**Amended Defence**) by the Defendant, except insofar as it contains admissions.

The interest of the Plaintiffs and Group Members not infringed prior to 14 July 2009

1A. In answer to paragraph 34 of the Amended Defence, the Plaintiffs say:

- (a) The money advanced by each of the Plaintiffs and Group Members to Wickham under the Notes was an unsecured loan to Wickham.

Particulars

Unsecured Note Trust Deed, clause 2.3.

- (b) The interest of each the Plaintiffs and Group Members that has been infringed by the wrongful conduct of the Defendant was, and remains, their right to recoup or be repaid the principal amount of their Notes as and when due under the terms of the Trust Deed.

Filed on behalf of (name & role of party) _____
Prepared by (name of person/lawyer) _____
Law firm (if applicable) _____
Tel _____ Fax _____
Email _____
Address for service
(include state and postcode) _____

Particulars

Unsecured Note Trust Deed, clauses 2.7, 2.8(c), 4.2, 16.1 and 16.2 and Schedule 3, Conditions 3, 4(c)(i), (ii) and (iii).

- (c) Prior to 14 July 2009, the recoupment by each of the Plaintiffs and Group Members of the principal amount advanced by them to Wickham had not been rendered impossible.

Particulars

Wickham had not defaulted at any time prior to 14 July 2009 in respect of its obligations to pay or repay the principal or interest on the Notes as and when due under the terms of the Trust Deed.

- 1B. In the premises, each of the Plaintiffs and the Group Members had sustained no loss or damage at any time prior to 14 July 2009.

Contingent liability to repay not fulfilled prior to 14 July 2009

2. In answer to paragraph 34 of the Defence the Plaintiffs say:

- ~~(a) The Trust Deed provided that Wickham would repay each Note on its Maturity Date in accordance with the Conditions applicable to that Note.~~

Particulars

~~Unsecured Note Trust Deed, clause 2.7.~~

- ~~(b) The Trust Deed provided that if the Noteholder required repayment of the Notes on their Maturity Date, then the Noteholder must give Wickham written notice at least 14 days prior to the Maturity Date of the Notes requiring repayment of the Notes on their Maturity Date.~~

Particulars

~~Unsecured Note Trust Deed, Schedule 3, Condition 4(c)(ii).~~

- ~~(c) By reason of the matters pleaded in (a) and (b) above, the liability of Wickham to repay the Plaintiffs and each Group Member the principal amount outstanding on their Notes was contingent upon the Plaintiffs and each Group Member giving to Wickham written notice of at least 14 days prior to the Maturity Date of the Notes requiring repayment of the Notes on their Maturity Date.~~

~~(d) The contingency for Wickham to be liable to pay or repay the Plaintiffs and each Group Member the principal amount outstanding on their Notes was not fulfilled at any time prior to 14 July 2009 as neither the Plaintiffs nor any Group Member had given Wickham by that date a written 14 day notice requiring repayment of the Notes.~~

Particulars

~~Wickham had paid or repaid the principal amounts outstanding on all Notes that were required to be repaid or paid prior to 14 July 2009.~~

~~(e) In the premises, the Plaintiff and each Group Member had sustained no loss or damage at any time prior to 14 July 2009.~~

Loss not reasonably ascertainable prior to 14 July 2009

3. Alternatively, in further answer to paragraph 34 of the Amended Defence the Plaintiffs say that if they or any Group Member had sustained any loss or damage prior to 14 July 2009 (which is denied), such loss or damage was not reasonably ascertainable at any time prior to that date.

Particulars

(a) Wickham had met all of its obligations in relation to the repayment or payment of the principal or interest on the amounts outstanding of any Notes that were required to be repaid or paid prior to 14 July 2009.

(b) Wickham's audited financial statements record positive net assets for each of the financial years ended 30 June 2009, 30 June 2008, 30 June 2007, 30 June 2006 and 30 June 2005.

Date: 23/6/17.


Signed by Janice Mary Saddler
Lawyer for the Plaintiffs

This pleading was prepared by Greg Drew, counsel, and settled by Tony Martin SC.

Certificate of lawyer

I, Janice Mary Saddler, certify to the Court that, in relation to the reply filed on behalf of the Plaintiffs, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading.

Date: 23/6/17



Signed by Janice Mary Saddler
Lawyer for the Plaintiffs