



No: QUD591/2015

Federal Court of Australia
District Registry: Queensland
Division: General

**GRAEME CLARKE AND MARION CLARKE IN THEIR CAPACITY AS
TRUSTEES OF THE G&M CLARKE SUPERANNUATION FUND**
Plaintiff

SANDHURST TRUSTEES LIMITED ACN 004 030 737
Defendant

ORDER

JUDGE: JUSTICE GREENWOOD

DATE OF ORDER: 06 October 2015

WHERE MADE: Brisbane

THE COURT ORDERS THAT:

1. Pursuant to s 33Y(2) of the *Federal Court of Australia Act 1976* (Cth) (**the Act**) the form and content of the notice set out in Annexure A to these orders are approved as a notice to advise group members of the commencement of the proceeding (**Notice of Commencement**).
2. Pursuant to s 33Y(3) of the Act, the plaintiff 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 plaintiff's solicitor in respect of each group member by no later than 14 October 2015.
3. Pursuant to r 20.14 of the *Federal Court Rules 2011* (Cth), the plaintiff give standard discovery no later than 4.00pm on 27 October 2015.
4. Pursuant to r 20.14 of the *Federal Court Rules 2011* (Cth), the defendant give standard discovery in tranches:
 - a. the first tranche to be disclosed on or before 4.00pm 27 October 2015;
 - b. the second tranche to be disclosed on or before 4.00pm 27 November 2015.such discovery to exclude the documents already discovered by the defendant pursuant to Order 1 of the Orders of the Court of 5 June 2014 in proceeding QUD 804 of 2013.



5. The defendant have liberty to apply in respect to discovery and the time by which that discovery is to be provided of documents that may be recoverable from backup tapes.
6. By 9 October 2015, the parties endeavour to agree to a protocol for providing standard discovery in electronic format in the proceeding.
7. By 9 October 2015, the parties:
 - a. if the matters referred to in Order 6 above have been agreed, deliver to the chambers of the Honourable Justice Greenwood the parties' consent orders; or
 - b. if the matters referred to in Order 6 above have not been agreed, file and serve any interlocutory application and supporting affidavits in respect of any of the matters in Order 6 above;and the matter be listed for directions or hearing of any interlocutory application pursuant to Order 7(b) (as the case may be) not before 16 October 2015 at 9.30am.
8. By 27 October 2015, the parties shall endeavour to agree:
 - a. the time and date before which a group member may opt-out of this proceeding pursuant to s 33J(1) of the Act;
 - b. the form and content of a draft opt out notice for the purposes of s 33Y(2) of the Act;
 - c. draft orders with respect to the proposed manner and timing of the giving of the opt out notice for the purposes of s 33Y(3) of the Act.
9. By 3 November 2015, the plaintiff:
 - a. if the matters referred to in Order 8 above have been agreed, deliver to the chambers of the Honourable Justice Greenwood the parties' consent orders; or
 - b. if the matters referred to in Order 8 above have not been agreed, file and serve any interlocutory application and supporting affidavit in respect of any of the matters in Order 8 above;and the matter be listed for directions, or hearing of any interlocutory application pursuant to Order 9(b) (as the case may be), not before 10 November 2015 at 9.30 am.
10. The plaintiff serve on the defendant any lay affidavit evidence on which they intend to rely by 3 November 2015, such evidence as to damages to be limited to evidence of the plaintiff.
11. The defendant serve on the plaintiff any lay affidavit evidence on which they intend to rely by 22 December 2015.
12. The proceeding be listed for directions not before 10 November 2015 at 9.30 am.
13. Liberty to apply on three days' notice.



Date that entry is stamped:

Warwick Soden
Registrar



Annexure A

NOTICE OF A REPRESENTATIVE PROCEEDING

Noteholders in WICKHAM SECURITIES LIMITED

1. Why is this Notice important?

This notice is a very important legal document which may affect your legal rights. You should read it carefully. If you do not understand any part of it, you may wish to seek legal advice in relation to its contents.

Mr Graeme Clarke and Mrs Marion Clarke (**the Plaintiffs**) have commenced a representative proceeding in the Federal Court of Australia against Sandhurst Trustees Limited (ACN 004 030 737) (**Sandhurst**) on behalf of persons who were issued notes by Wickham Securities Limited (in liquidation) (ACN 111 421 811) (**Wickham**).

The Plaintiffs claim that Sandhurst contravened its obligations under the *Corporations Act 2001* (Cth) (**the Act**) by failing to exercise reasonable diligence to ascertain whether Wickham had breached the terms of the Trust Deed and the Act. Sandhurst denies that it is liable to the Plaintiffs and is defending the proceeding.

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

The Federal Court of Australia 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 and may be affected by the action.

You are a group member if you:

- (i) held notes issued by Wickham as at 21 December 2012;
- (ii) have suffered loss and damage by reason of the conduct of Sandhurst as set out in the Statement of Claim; and
- (iii) signed a litigation funding agreement with Litman (**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 to the Court. If there is anything in it that you do not understand, you should seek legal advice.

If you are unsure whether or not you are a group member, you should contact Shine Lawyers by email to professionalnegligence@shine.com.au or by telephone on (07) 3006 6000 or seek your only legal advice without delay.

2. What is the representative proceeding?

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

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;
- (b) if the representative proceeding is unsuccessful, the group members are bound by that result; and
- (c) regardless of the outcome of the representative proceedings, group members will be barred from pursuing their claims against Sandhurst in separate legal proceedings unless they have opted out.

3. What is Opt Out?

The Plaintiff in a representative proceeding does not need to seek the consent of group members to commence a representative proceeding on their behalf or to identify a specific group member. However, a group member can cease to be a group member by opting out of the representative proceeding. An explanation of how a group member can opt out is found below in the section headed, "What if I do not want to remain as a group member?"

4. What is the claim about?

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

- Sandhurst contravened its obligations under the Act by failing to exercise reasonable diligence to ascertain whether Wickham had breached the terms of the Trust Deed and the Act;
- if Sandhurst had exercised reasonable diligence as required by the Act, it would have ascertained that Wickham had committed such breaches and would have required Wickham to remedy such breaches and, if Wickham failed to do so, applied to the Court for an order appointing a receiver to the property of Wickham;
- prior to 31 December 2007, or alternatively about 21 December 2012, Sandhurst did not do any of those things;
- by reason of the contraventions by Sandhurst of its obligations under the Act, the Plaintiffs and each of the group members have suffered loss and damage, in that the assets of Wickham have been sold for an amount significantly less than the amount they would have been sold if Sandhurst 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' Statement of Claim. A copy of the Statement of Claim is available to be viewed on the websites referred to below.

Sandhurst is defending the claim. A copy of Sandhurst's Defence, once filed with the Court, will be available to be viewed on the websites noted under the heading, "Where can you obtain copies of relevant documents", subject to the directions of the presiding judge.

5. Will you be liable for legal costs?

Litman has agreed to fund part of 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 Shine Lawyers' legal and other costs associated with the representative proceeding during the course of the proceeding.

Shine Lawyers have agreed to act for the Plaintiffs and the group members on a "no win no fee" basis meaning that they will only be entitled to recover their legal and other costs upon the successful outcome of the claim.

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 and the fees payable to Shine Lawyers will become payable and 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 to Shine Lawyers or Litman.

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 Shine Lawyers.

6. 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.

In due course 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 will not be bound by the outcome of the representative proceeding and any settlement, judgment or determination made in it. In such circumstances, you will not be entitled to share in the benefit of any order, judgment or settlement in the representative proceeding. If you opt out, you will be at liberty to bring your own claim against Sandhurst, provided that you issue a court proceeding within the time limit applicable to your claim. If you wish to bring your own claim against Sandhurst, you should seek your own legal advice about your claim and the applicable time limit prior to opting out.

7. What will happen if you choose to remain as a group member?

Unless you opt out, you will be bound by the outcome of the representative proceeding. If the representative proceeding is successful, you will be entitled to share in the benefit of any order, judgment or settlement in favour of the Plaintiffs and group members. (In some cases you may have to satisfy certain conditions before your entitlement arises.) If the representative proceeding is unsuccessful or is not as successful as you might have wished, you will not be able to sue on the same claim in any other proceedings.

8. 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.

9. Where can you obtain copies of relevant documents?

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



- (a) downloading them from: www.shine.com.au/wickham; or
- (b) requesting them by email to professionalnegligence@shine.com.au;
- (c) inspecting them between 9am and 5pm at one of Shine Lawyers' offices in Brisbane, contact details for which are available from www.shine.com.au or by calling (07 3006 6000); or
- (d) inspecting them on the Federal Court of Australia website: www.fedcourt.gov.au or by visiting a District Registry of the Federal Court in Sydney, Canberra, Melbourne, Brisbane, Adelaide, Perth, Hobart or Darwin: the addresses for these registries are available at www.fedcourt.gov.au.

Please consider the above matters carefully.

If there is anything of which you are unsure, you should contact Shine Lawyers, by email to professionalnegligence@shine.com.au or by telephone on (07) 3006 6000. Alternatively, you may prefer to retain your own lawyer to provide you with independent legal advice in relation to your rights as a group member in the representative proceedings. However, please remember that you will be responsible for any legal costs incurred in retaining your own lawyer.