

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged: Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 7/07/2023 9:11:42 AM AEST
Date Accepted for Filing: 7/07/2023 1:05:03 PM AEST
File Number: NSD683/2023
File Title: UNION STANDARD INTERNATIONAL GROUP PTY LTD (IN LIQUIDATION) (ACN 117 658 349) & ANOR v LS CAPITAL HOLDINGS PTY LTD (ACN 164 494 811)
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing: First Case Management Hearing
Time and date for hearing: 20/07/2023, 9:30 AM
Place: Court Room Not Assigned, Level 17, Law Courts Building 184 Phillip Street
Queens Square, Sydney



Sia Lagos

Registrar

Important Information

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 of the filing of the document is determined pursuant to the Court's Rules.



- 4 In the alternative to order 2, an order pursuant to section 588FF of the Act that LS Capital pay to the Company the sum of \$534,012.60, being an amount equal to the amount paid by the Company under the Unfair Preference Transactions.
- 5 Interest pursuant to sections 51A and 52 of the *Federal Court of Australia Act 1976* (Cth).
- 6 Costs.
- 7 Such further or other orders as the Court deems fit.

Date: 6 July 2023

A handwritten signature in black ink, appearing to be 'A. Quinn'.

Lawyer for the Plaintiffs

This application will be heard by _____ at Law Courts Building, Queens Square, 184 Phillip Street, Sydney NSW 2000 at _____ am/pm on _____.

B Notice to defendant

TO: LS Capital Holdings Pty Ltd (ACN 164 494 811) of 27A Dover Road, Rose Bay NSW 2029

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff.

Note: Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

C Application for winding up on ground of insolvency

Not applicable.

Note 1 In an application for winding up in insolvency on the ground that the company has failed to comply with a statutory demand, the applicant should consider completing Part C of Form 2 as shown in Schedule 3 (Notes to these Rules).

Note 2 An example of the affidavit in support of an application for winding up in insolvency for failure to comply with a statutory demand is shown in Schedule 3 (Notes to these Rules).



D Filing

Date of filing:

Registrar

This originating process is filed by Hall & Wilcox for the Plaintiffs.

E Service

The Plaintiffs' address for service is C/- Hall & Wilcox, Level 18, 347 Kent Street, Sydney NSW 2000.

It is intended to serve a copy of this originating process on the Defendant.



Schedule

Federal Court of Australia

No. of 2023

District Registry: New South Wales

Division: General

IN THE MATTER OF UNION STANDARD INTERNATIONAL GROUP PTY LTD (IN LIQUIDATION)
(ACN 117 658 349)

Plaintiffs

First Plaintiff Union Standard International Group Pty Ltd (in liquidation) (ACN 117 658 349)

Second Plaintiffs Peter Paul Krejci and Andrew John Cummins as joint and several liquidators of Union Standard International Group Pty Ltd (in liquidation) (ACN 117 658 349)

Defendant

Defendant LS Capital Holdings Pty Ltd (ACN 164 494 811)

NOTICE OF FILING

Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 7/07/2023 9:11:42 AM AEST
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Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

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The date of the filing of the document is determined pursuant to the Court's Rules.



Form 59
Rule 29.02(1)

Affidavit

No. of 2023

Federal Court of Australia
District Registry: New South Wales
Division: General

IN THE MATTER OF UNION STANDARD INTERNATIONAL GROUP PTY LTD (IN LIQUIDATION)
(ACN 117 658 349)

Union Standard International Group Pty Ltd (in liquidation) (ACN 117 658 349)

First Plaintiff and others named in the schedule

LS Capital Holdings Pty Ltd (ACN 164 494 811)

Defendant


Affidavit of: **Mark Robert Petrucco**
Address: Level 18, 347 Kent Street, Sydney NSW 2000
Occupation: Solicitor
Date: 6 July 2023

I, Mark Robert Petrucco, say on oath:

- 1 I am a partner at Hall & Wilcox, the solicitors for the Plaintiffs. I am authorised to make this affidavit on the Plaintiffs' behalf.
- 2 Annexed and marked '**MRP-1**' is a copy of a Statement of Claim proposed to be filed by the Plaintiffs in these proceedings to support the relief sought in the Originating Process. I believe on the information available to me that the statements of fact contained in the Statement of Claim are true and correct.

Sworn by the deponent
at Sydney
in New South Wales
on 6 July 2023

)
)
)
)


Signature of deponent

Before me:



Signature of witness
Jeremy Roby, Solicitor

| | |
|---|--------------------------|
| Filed on behalf of (name & role of party) | The Plaintiffs |
| Prepared by (name of person/lawyer) | Mark Petrucco |
| Law firm (if applicable) | Hall & Wilcox |
| Tel +61 2 8267 3800 | Fax +61 2 8267 3888 |
| Email mark.petrucco@hallandwilcox.com.au | |

Address for service Level 18 347 Kent Street Sydney 2000 Australia

(include state and postcode)
42256744_1

Form 59
Rule 29.02(1)

Certificate for annexure

No. _____ of 2023

Federal Court of Australia
District Registry: New South Wales
Division: General

IN THE MATTER OF UNION STANDARD INTERNATIONAL GROUP PTY LTD (IN LIQUIDATION)
(ACN 117 658 349)

Union Standard International Group Pty Ltd (in liquidation) (ACN 117 658 349)

First Plaintiff and others named in the schedule

LS Capital Holdings Pty Ltd (ACN 164 494 811)

Defendant

This is the annexure marked '**MRP-1**'.



Signature of witness

Jeremy Roby, solicitor

- 6 The Defendant, LS Capital Holdings Pty Ltd (ACN 164 494 811) (**LS Capital**), is and was at all times material to these proceedings a company incorporated under the Act.
- 7 Mr Zakhaim was appointed as a director of LS Capital on 26 June 2013 and remained a director at all times material to these proceedings thereafter.
- 8 The Liquidators commence these proceedings in their capacity as liquidators of the Company.

RELATION BACK DATE

- 9 By reason of the matters pleaded in paragraphs 2 and 3 and pursuant to sections 9, 91 and 513C of the Act, the relation-back day in relation to the liquidation of the Company is 8 July 2020 (**Relation-Back Date**).

PAYMENTS TO LS CAPITAL

Uncommercial transaction

- 10 During the two years ending on the Relation-Back Date, LS Capital received from the Company payments totalling \$1,302,855.80 in respect of invoices rendered by LS Capital to the Company as follows:

| Payment date | Amount |
|---------------------|---------------|
| 13 July 2018 | \$9,915.40 |
| 15 August 2018 | \$1,919.50 |
| 16 October 2018 | \$8,996.90 |
| 16 November 2018 | \$24,206.60 |
| 27 December 2018 | \$21,588.00 |
| 16 January 2019 | \$34,675.30 |
| 15 February 2019 | \$50,776.00 |
| 15 March 2019 | \$40,306.20 |
| 12 April 2019 | \$52,475.50 |
| 14 May 2019 | \$33,640.20 |
| 1 July 2019 | \$130,545.80 |
| 23 July 2019 | \$39,153.40 |
| 15 August 2019 | \$42,574.40 |
| 15 September 2019 | \$112,150.50 |
| 15 October 2019 | \$55,888.80 |
| 14 November 2019 | \$39,931.00 |

| | |
|------------------|-----------------------|
| 2 January 2020 | \$70,099.70 |
| 15 January 2020 | \$167,547.60 |
| 15 February 2020 | \$212,756.50 |
| 18 March 2020 | \$61,011.50 |
| 15 April 2020 | \$55,502.70 |
| 15 May 2020 | \$37,194.30 |
| TOTAL | \$1,302,855.80 |

(together **Uncommercial Payments**).

- 11 Each of the invoices issued by LS Capital to the Company described the services allegedly provided by LS Capital to the Company as 'risk - management consulting' (**Alleged Services**).
- 12 Each of the Uncommercial Payments constituted a transaction for the purposes of sections 9 and 588FB of the Act (each an **Uncommercial Payment Transaction**).
- 13 A reasonable person in the Company's circumstances would not have entered into the Uncommercial Payment Transactions having regard to:
 - (a) there being no benefit to the Company in entering into the Uncommercial Payment Transactions because services, including the Alleged Services were not provided by LS Capital to the Company or at all;
 - (b) the detriment suffered by the Company in making the Uncommercial Payments and receiving no services from LS Capital;
 - (c) the benefit that LS Capital received by reason of the Uncommercial Payments without having provided the Alleged Services or any services at all to the Company; and
 - (d) the Alleged Services being matters within the responsibility of Mr Zakhaim as pleaded in paragraph 5 above for which he received a salary from the Company.
- 14 By reason of the matters pleaded in paragraphs 10 to 13, each of the Uncommercial Payment Transactions was an uncommercial transaction, pursuant to section 588FB of the Act.

Unfair preference

- 15 During the six months ending on the Relation-Back Date, LS Capital received from the Company payments totalling \$534,012.60 (**Unfair Preference Payments**) in respect of invoices rendered by LS Capital to the Company, as follows:

| Payment date | Amount |
|------------------|---------------------|
| 15 January 2020 | \$167,547.60 |
| 15 February 2020 | \$212,756.50 |
| 18 March 2020 | \$61,011.50 |
| 15 April 2020 | \$55,502.70 |
| 15 May 2020 | \$37,194.30 |
| TOTAL | \$534,012.60 |

- 16 Each of the Unfair Preference Payments constituted a transaction for the purposes of sections 9 and 588FA of the Act (each an **Unfair Preference Transaction**).
- 17 The Company and LS Capital were parties to the Unfair Preference Transactions.
- 18 The Unfair Preference Payments were made to LS Capital by the Company in respect of unsecured debts owed by the Company to LS Capital.
- 19 The Unfair Preference Payments resulted in LS Capital receiving more from the Company in respect of unsecured debts than LS Capital would otherwise have received from the Company if the Unfair Preference Transactions were set aside and LS Capital were to prove for the debts in the winding up of the Company.
- 20 By reason of the matters pleaded in paragraphs 15 to 19, the Unfair Preference Transactions were unfair preference payments given by the Company to LS Capital within the meaning of section 588FA of the Act.

Company's insolvency

- 21 The Company was continuously insolvent from at least 31 March 2016 within the meaning of section 95A of the Act.

Particulars

- (i) The Company's current ratio was below 1 at all material times after 31 March 2016 after adjusting for a failure to record investor client liabilities in its audited financial statements.
 - (ii) Further particulars may be provided prior to trial.
- 22 Pursuant to section 286 of the Act, the Company was required to keep written financial records for a period of 7 years that:
- (a) correctly record and explain its transactions and financial position and performance; and
 - (b) would enable true and fair financial statements to be prepared and audited.
- 23 The Company failed to keep written financial records in accordance with section 286 of the Act from at least 30 June 2017.

Particulars

The Company failed to record the following investor client liabilities in its audited financial statements from at least 30 June 2017:

- (i) financial year 2017 - \$12,141,661;
 - (ii) financial year 2018 - \$81,747,414; and
 - (iii) financial year 2019 - \$138,716,552.
- 24 Pursuant to section 588E(4) of the Act, the Company is presumed to have been insolvent from at least 30 June 2017.

Insolvent transactions

- 25 By reason of the matters pleaded in paragraphs 10 to 14 and 21 to 24, the Uncommercial Payment Transactions were insolvent transactions within the meaning of section 588FC of the Act.
- 26 By reason of the matters pleaded in paragraphs 15 to 20 and 21 to 24, the Unfair Preference Transactions were insolvent transactions within the meaning of section 588FC of the Act.

Voidable transactions

- 27 In the premises, the Uncommercial Payment Transactions are voidable transactions within the meaning of section 588FE(3) of the Act.
- 28 In the premises, the Unfair Preference Transactions are voidable transactions within the meaning of section 588FE(2) of the Act.

Demand for payment

- 29 On 19 May 2023, Hall & Wilcox, the solicitors for the Liquidators, made a demand to LS Capital requiring it to pay to the Liquidators the sum of \$1,834,987.30 for payments made by the Company to LS Capital between 15 July 2016 and 15 May 2020.

Particulars

The demand was sent by Hall & Wilcox in writing, and consists of a letter addressed to LS Capital and dated 19 May 2023.

- 30 LS Capital has failed, refused and/or neglected to pay to the Plaintiffs an amount equal to the value of the Uncommercial Payments and the Unfair Preference Payments.

RELIEF CLAIMED

- 31 The Plaintiffs seek the relief set out in the Originating Process including:
- (a) a declaration that each of the Uncommercial Payment Transactions were:
 - (i) uncommercial transactions within the meaning of section 588FB of the Act;
 - (ii) insolvent transactions within the meaning of section 588FC of the Act; and
 - (iii) voidable transactions within the meaning of section 588FE of the Act;
 - (b) an order pursuant to section 588FF of the Act that LS Capital pay to the Company \$1,302,855.80 being, an amount equal to the amount paid by the Company under the Uncommercial Payment Transactions;
 - (c) in the alternative to paragraph 31(a), a declaration that each of the Unfair Preference Transactions were:
 - (i) unfair preferences within the meaning of section 588FA of the Act;

- (ii) insolvent transactions within the meaning of section 588FC of the Act; and
- (iii) voidable transactions within the meaning of section 588FE of the Act;
- (d) in the alternative to paragraph 31(b), an order pursuant to section 588FF of the Act that LS Capital pay to the Company \$534,012.60 being, being an amount equal to the amount paid by the Company under the Unfair Preference Transactions;
- (e) interest pursuant to sections 51A and 52 of the *Federal Court of Australia Act 1976* (Cth);
- (f) costs; and
- (g) such further or other orders the Court sees fit.

Date:

Signed by Mark Petrucco
Lawyer for the Plaintiffs

This pleading was prepared by Mark Petrucco, lawyer

Certificate of lawyer

I, Mark Petrucco, certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date:

Signed by Mark Petrucco
Lawyer for the Applicant

Schedule

No. of 2023

Federal Court of Australia
District Registry: New South Wales
Division: General

IN THE MATTER OF UNION STANDARD INTERNATIONAL GROUP PTY LTD (IN
LIQUIDATION) (ACN 117 658 349)

Plaintiffs

| | |
|-------------------|---|
| First Plaintiff | Union Standard International Group Pty Ltd (in liquidation) (ACN 117 658 349) |
| Second Plaintiffs | Peter Paul Krejci and Andrew John Cummins in their capacity as joint and several liquidators of Union Standard International Group Pty Ltd (in liquidation) (ACN 117 658 349) |

Defendant

| | |
|-----------|---|
| Defendant | LS Capital Holdings Pty Ltd (ACN 164 494 811) |
|-----------|---|