

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: 30/06/2023 4:25:00 PM AEST
Date Accepted for Filing: 4/07/2023 11:00:53 AM AEST
File Number: NSD658/2023
File Title: UNION STANDARD INTERNATIONAL GROUP PTY LTD (IN LIQUIDATION) (ACN 117 658 349) v SHAY ZAKHAIM & ANOR
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing: To Be Advised
Time and date for hearing: To Be Advised
Place: To Be Advised



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.



6 Costs.

Date: 30 June 2023

A handwritten signature in blue ink, appearing to be 'Hali & Wilcox'.

Lawyer for the Plaintiff

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 defendants

TO:

Shay Zakhaim of 27A Dover Road, Rose Bay NSW 2029

AND

Gauid Tulloch Bove (ABN 23 350 595 506) of Level 3, 71-73 Archer Street, Chatswood NSW 2067

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.

D Filing

Date of filing:

Registrar

This originating process is filed by Hali & Wilcox for the Plaintiff.



E Service

The Plaintiff's 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 each 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)

Plaintiff

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

Defendants

First Defendant **Shay Zakhaim**

Second Defendant **Gauld Tulloch Bove (ABN 23 350 595 506)**

NOTICE OF FILING

Details of Filing

Document Lodged:	Concise Statement
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	30/06/2023 4:25:00 PM AEST
Date Accepted for Filing:	4/07/2023 11:01:16 AM AEST
File Number:	NSD658/2023
File Title:	UNION STANDARD INTERNATIONAL GROUP PTY LTD (IN LIQUIDATION) (ACN 117 658 349) v SHAY ZAKHAIM & ANOR
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

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Form NCF1

Concise statement

No. of 2023

Federal Court of Australia
District Registry: New South Wales
Division: Commercial and Corporations

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)

Plaintiff

Shay Zakhaim

First Defendant and another named in the schedule

A Important facts giving rise to the claim

- 1 The Plaintiff, Union Standard International Group Pty Ltd (in liquidation) (ACN 117 658 349) (**Company**), brings these proceedings against its former Chief Executive Officer (**CEO**), the Second Defendant, Shay Zakhaim (**Zakhaim**) and its former auditors, Gaudl Tulloch Bove (ABN 23 350 595 506) (**Gaudl Tulloch Bove**).
- 2 The Company traded as 'USGFX' and carried on business under an Australian financial services licence (**AFSL**) which from around 2012 in broad terms authorised it, in relation to derivatives and foreign exchange contracts, to provide financial product advice, to deal in a financial product and make a market for financial products to retail and wholesale clients.
- 3 The Company carried out significant aspects of its business through a "back office" from an unknown address in Taiwan (**Taiwan Back Office**). The Taiwan Back Office comprised, among other things, various purported Taiwan based service entities to the Company, including Mikado Group S.A. (**Mikado**), Olympus Technology Limited (**Olympus**), Phoenix Tree Technology Limited (**Phoenix Tree**), Fuyu International Technology Limited (**Fuyu**) and Crux Matter Holding Incorporated (**Crux**). Each of these entities were associated with or related to the key persons involved in the Taiwan Back Office, including Ms Queena Lee.
- 4 The deposit and trading activities of the Company's clients were conducted using a software platform known as MT4/MT5, developed by MetaQuotes Software (**Trading Platform**). The Taiwan Back Office provided the Company and its accountants, Shuriken Consulting Sydney Pty Ltd, with regular reports containing information from the Trading Platform, including deposits, withdrawals and the net equity of clients (**Trading Platform Reports**).

Filed on behalf of (name & role of party)	The Plaintiff		
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 (include state and postcode)	Level 18 347 Kent Street Sydney 2000 Australia		

- 5 The Company operated several bank accounts with the Commonwealth Bank of Australia, including client money trust accounts (**Trust Accounts**). The Company used overseas money processing entities (**Money Processors**) to receive and transmit money from overseas clients to the Trust Accounts, including from countries like China, Taiwan and Hong Kong where the majority of the Company's clients were located.
- 6 Zakhaim was the CEO of the Company from at least 2014 until the appointment of the liquidators as voluntary administrators on 8 July 2020. In his capacity as CEO, Zakhaim had overall responsibility for sales, legal, compliance and finance of the Company.
- 7 On or about 13 October 2015, Gaudl Tulloch Bove was retained by the Company to audit the financial statements and AFSL for the Company for the financial year ended 30 June 2015 (**Retainer**), which was expressed to continue for subsequent years until such time as Gaudl Tulloch Bove's engagement was varied by change of circumstance or terminated.
- 8 In accordance with the Retainer, Gaudl Tulloch Bove audited the Company's financial statements including for the financial years ended 30 June 2017 to 30 June 2019 and issued accompanying audit reports for each of those financial statements (**Audited Financial Statements**). Gaudl Tulloch Bove also conducted audits of the Company's AFSL in each of the relevant years.
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- 9 ~~The Company entered into voluntary administration on 8 July 2020 and was wound up by order of the Federal Court of Australia on 3 September 2020 on the application of its joint and several administrators, Peter Paul Krejci and Andrew John Cummins, who were then appointed as its joint and several liquidators (**Liquidators**).~~
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- 10 As at the date of the Liquidators' appointment as voluntary administrators, approximately \$15.6 million was held by the Money Processors. The Liquidators have recovered approximately \$948,000 of that amount, leaving approximately \$14.65 million outstanding, the majority of which (being approximately \$14 million) was purportedly held by a particular Money Processor known as U-Pay.
- 11 The Company incurred purported liabilities in respect of invoices issued by Mikado for approximately AUD 3.29 million and by Olympus for approximately AUD 3.727 million, although a credit note was subsequently issued by Olympus for approximately AUD \$1.588 million. Those transactions were recorded in the Company's management accounts as 'loan from owner' and additional share capital was issued to the sole shareholder, Union Standard Group International Holdings Limited, a company incorporated in Samoa, in repayment for those 'loans'.
- 12 The Company purportedly incurred and paid liabilities in respect of invoices issued by Phoenix Tree for approximately USD 8.437 million, Fuyu for approximately USD 9.726 million and Crux for approximately USD 12.092 million both before and after entering into purported service agreements with each of them. Additionally, the Company paid approximately USD 4.808 million to an individual named Li Po Hsi (**Mr Li**), who the Liquidators understand is Ms Lee's husband.

- 13 Since the Liquidators' appointment, clients of the Company have submitted proofs of debt totalling approximately \$352 million, comprising \$32 million owing to trading clients of the Company and \$320 million owing to 'investing clients' of the Company. Investing clients were apparently promised a fixed interest return on investment, ranging from 6% to 12% per annum. The significant amount owing to investing clients was not recorded in the Audited Financial Statements or in the Trading Platform Reports.

B Relief sought

- 14 The Company seeks an order for damages or compensation against Zakhaim under section 1317H of the *Corporations Act 2001* (Cth) (**Corporations Act**) and for damages against Gaud Tulloch Bove.

- 15 The Company also seeks costs, and interest pursuant to sections 51A and 52 of the *Federal Court of Australia Act 1976* (Cth) against both Zakhaim and Gaud Tulloch Bove.

C Primary legal grounds

- 16 Zakhaim breached his duties under section 180 of the Corporations Act and the general law to exercise his powers and discharge his duties as an officer of the Company with the degree of care and diligence that a reasonable person would exercise if they were an officer of a corporation in the Company's circumstances and occupied the office held by, and had the same responsibilities with the Company, as Zakhaim.
- 17 The particular breaches against Zakhaim include failing to make any, or any sufficient, inquiry into the transactions that occurred between the Company and Mikado, Olympus, Phoenix Tree, Fuyu, Crux and Mr Li (together, **Related Party Transactions**)) to determine whether those transactions were at arm's length or to ensure that the Company received services commensurate with the liabilities incurred or payments made to those parties.
- 18 In addition, he failed to make any, or any sufficient, inquiry into the controls (or lack thereof) between the Company and the Money Processors (in particular U-Pay) which lack of control resulted in approximately \$14.65 million becoming irrevocable upon the Liquidators' appointment and remaining so as at the date of these proceedings.
- 19 In providing the audit reports for the Audited Financial Statements and/or in auditing the Company's AFSL, Gaud Tulloch Bove breached their duties under the Retainer and in tort to carry out the audit with reasonable care and skill and in accordance with audit standards prescribed by the Australian Accounting Standards Board.
- 20 Gaud Tulloch Bove also breached their duties under sections 307 and 308 of the Corporations Act to ensure that the Company's accounts represented a true and fair view of the Company's financial position and to report any defect or irregularity in the financial reports.
- 21 Gaud Tulloch Bove breached their duties, including as follows:

- (a) first, they failed to make any, or any sufficient, inquiry into the Related Party Transactions;
- (b) second, they failed to make any, or any sufficient, inquiry into the controls (or lack thereof) between the Company and the Money Processors (in particular U-Pay) which lack of control resulted in approximately \$14.65 million becoming irrevocable upon the Liquidators' appointment and remaining so as at the date of these proceedings; and
- (c) third, they failed to make sufficient inquiry of the transactions recorded on the Trading Platform Reports or otherwise unreasonably relied on those Trading Platform Reports and thereby failed to detect the amounts owing to investor clients, which money was obtained on deposit outside the authorisation of the Company's AFSL.


D Alleged harm suffered

- 22 Had Zakhaim and/or Gaudl Tulloch Bove fulfilled their respective duties from at least 2017, the Audited Financial Statements would not have been signed by Gaudl Tulloch Bove or lodged with the Australian Securities and Investments Commission. This would have resulted in the Company ceasing trade well prior to when it entered into voluntary administration on 8 July 2020. By reason thereof the Company has suffered loss and damage.
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Certificate of lawyer

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

Date: *30 June 2023*



Signed by Mark Petrucco

Lawyer for the Plaintiff

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Federal Court of Australia

No. of 2023

District Registry: New South Wales

Division: General

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