

Prospero Markets

From: David de Mestre
Sent: Tuesday, 3 September 2024 11:24 AM
To: Associate CheesemanJ
Cc: nsd10202024@fedcourt.gov.au; Adam Cutri; austin.yeung@ausjurislegal.com.au
Subject: RE: NSD1020/2024 - AN APPLICATION BY JONATHON SHERWOOD KEENAN & ORS
| Allocation to Cheeseman J [SEC=OFFICIAL] [BP-BPWSD.B.FID1755657]
Attachments: 17624579_1 240903 Affidavit of Adam Cutri and Exhibit APC-1 (sealed).PDF;
17617502_1 240903 Plaintiffs Note for Docket Judge - contradictors.PDF; 17617574
_1 240903 AMENDED Originating Process (Corporations) - draft.PDF

Dear Associate

We act for the plaintiffs and respond as follows to your email dated 27 August 2024. We also respectfully request that the following attachments be brought to Her Honour's attention in advance of the case management hearing on 19 September 2024:

- affidavit of Adam Cutri (solicitor for the plaintiffs) filed today with an accompanying exhibit;
- counsel's note to Her Honour regarding contradictors.

The plaintiffs are in the process of notifying interested parties of your correspondence and the case management hearing listed on 9.30 am on 19 September 2024.

Representative defendants

1. Items 1 and 2 of attached note: From the enquiries made to date (attached affidavit at [11]-[14]), it is not clear whether the liquidators would be able to identify willing representative defendants in relation to clients and unsecured creditors. There has been no engagement by such persons contacted by the liquidators (or at all) to date. As a result, and given only judicial advice and not binding declarations are sought, the liquidators do not propose to make an application to join representative defendants to the proceeding. The question of a contradictor is addressed below;
2. Item 3 of the attached note: In relation to the persons in the MT4 Offshore Database issues (attached affidavit at [15]-[19]), the liquidators do not presently propose to make an application to appoint a representative defendant and consider that any issues, if any, following rejection of the proofs of debt foreshadowed at proposed order 10(1)(i)(B) would be better resolved in the dispute resolution process provided for in order 10(c) and (d) of the originating process. We expect that the solicitors referred to at [15]-[19] of the attached affidavit will appear at the case management hearing and indicate their clients' position. They have been copied into this correspondence;
3. Items 4 to 8 of the attached note: The remaining issues set out in the note do not, in the circumstances, require an appointment of a representative defendant.

Contradictor

4. In light of the above, a contradictor on limited issues may be of assistance to the Court in relation to items 1 and 2 in the note provided (although the legal issues are quite confined). This would be effectively, to present any arguments:
 - a. for the costs of distribution being paid from the general company funds (and not the trust funds);
 - b. against the proposed pooling of the AUD and USD bank accounts holding trust funds;

5. The liquidators' only concern with any such appointment is the cost and time required (given the limited issues, the estimated outcomes and the objective of returning the trust funds as quickly as possible);
6. The liquidators have not yet identified a legal practitioner who could be appointed as a contradictor but could do so promptly following the case management hearing, if required or directed.

Proposed Amended Originating Process

The liquidators identified errors in the cross-referencing included in proposed orders 10(b)(i), 15 and 20 of the filed originating process and will seek leave to file the attached draft amended originating process addressing those errors.

Yours faithfully

David

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Bartier Perry Pty Limited is a corporation and not a partnership.



From: Associate CheesemanJ <Associate.CheesemanJ@fedcourt.gov.au>

Sent: Tuesday, August 27, 2024 9:31 AM

To: Litigation Notification <Litigation@bartier.com.au>

Cc: nsd10202024@fedcourt.gov.au; Associate CheesemanJ <Associate.CheesemanJ@fedcourt.gov.au>

Subject: NSD1020/2024 - AN APPLICATION BY JONATHON SHERWOOD KEENAN & ORS | Allocation to Cheeseman J [SEC=OFFICIAL]

OFFICIAL

Dear practitioners

The above matter has been allocated to Justice Cheeseman and her Honour has listed the matter for case management hearing on **Thursday, 19 September 2024 at 9:30 am**.

The case management hearing will be in person, unless otherwise advised.

Provision of information

Her Honour has requested that **within 7 days** the plaintiffs indicate:

- whether an application will be made to join representative defendants to the proceeding; and
- whether it is appropriate to appoint a contradictor.

Notification to any interested parties

Her Honour directs the plaintiffs to bring this correspondence and the listing of this matter to the attention of any interested parties.

Please confirm receipt of this email.

Kind regards

Alana Callus | Associate to the Honourable Justice Cheeseman

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