

IN THE SUPREME COURT OF NEW SOUTH WALES
DIVISION: EQUITY
REGISTRY: SYDNEY
CORPORATIONS LIST

No 252832 of 2015

IN THE MATTER OF BANKSIA SECURITIES LIMITED (IN LIQUIDATION) (RECEIVERS AND MANAGERS APPOINTED)
ABN: 45 004 736 458

THE TRUST COMPANY (NOMINEES) LIMITED
ABN 14 000 154 441
Plaintiff

AFFIDAVIT OF JOHN ROSS LINDHOLM

On 22 October 2024, I, John Ross Lindholm, of Collins Square, Tower 2, 727 Collins Street, Docklands, Victoria, 3008, chartered accountant and liquidator, make oath and say as follows:

1. I am a chartered accountant, a registered liquidator and a Special Advisor of the firm KPMG Australia (**KPMG**).
2. I make this affidavit from my own knowledge except where otherwise stated. Where I refer to matters of information, I believe the information to be true.
3. Exhibit "**JRL-26**" is an indexed and paginated bundle containing true copies of the various documents to which I refer in the subsequent paragraphs of this affidavit.
4. The background to my appointment and earlier claims for remuneration are set out in affidavits sworn by me and filed in these proceedings between 3 March 2017 (**First Lindholm Affidavit**) and 21 June 2022 (**Tenth Lindholm Affidavit**). Further background to events referred to in this affidavit are also set out in the affidavits of Samuel Roadley Kingston, the most recent of which was sworn on 12 July 2022 and filed in these proceedings (**July 2022 Kingston Affidavit**). Unless otherwise defined, capitalised terms in this affidavit have the meaning given to them in Mr Kingston's affidavits and the First and Tenth Lindholm Affidavits.

5. I make this affidavit in support of my applications seeking:

- (a) directions that I had the power to, and was justified in, settling all claims against each of the Elliott Entities on the terms of the Elliott Deed of Settlement;
- (b) directions that I had the power to, and was justified in, settling all claims against Mr Zita on the terms of the Zita Deed of Settlement;
- (c) directions that I had the power to, and was justified in, settling all claims against Mr Symons on the terms of the Symons Deed of Settlement;
- (d) directions that I am justified in taking no further steps to obtain any further recoveries from LPLC or Portfolio Law;
- (e) directions that I am justified in making a final distribution to the debenture holders of Banksia pursuant to my statutory duties as liquidator of Banksia in accordance with the terms of the settlement distribution scheme previously approved by the Honourable Justice Dixon on 22 May 2019 (**Final Distribution**);
- (f) a direction that I am justified and acting reasonably in paying any unpaid remuneration, costs, and expenses incurred in respect of the conduct of the special purpose receivership until the conclusion of my appointment from:
 - (i) realisations in the special purpose receivership; or
 - (ii) unrepresented payments of approximately \$4,088,401 from previous distributions to debenture-holders;
- (g) a direction that, at the time of my discharge, I am justified in distributing the remaining proceeds of any unrepresented payments to a charitable purpose of my choosing; and

(h) approval of my remuneration incurred as special purpose receiver of Banksia during the following periods:

- (i) 1 March 2022 – 30 April 2023 (**First Approval Period**);
- (ii) 1 May 2023 – 30 November 2023 (**Second Approval Period**) and;
- (iii) 1 December 2023 – 31 July 2024 (**Third Approval Period**),

together, the '**Approval Periods**'.

6. In making this affidavit, I have based my comments on my experience in litigation matters during my years of practice as a chartered accountant and liquidator. My experience is as follows:

- (a) I am, and have been since 1995, a chartered accountant;
- (b) I have been a registered liquidator since 1997;
- (c) I was appointed a partner of the firm Ferrier Hodgson in 2000;
- (d) I am currently a Special Advisor of the firm KPMG; and
- (e) my relevant experience includes my appointment as voluntary administrator of the Opes Prime Group in 2008. I subsequently oversaw the liquidation of the group and Scheme of Arrangement, which incorporated a settlement of \$253 million for the benefit of unsecured creditors.

7. I do not intend to waive privilege or any confidentiality claims in relation to the documents referred to in this affidavit and nothing in this affidavit should be construed as involving such a waiver. To the extent that anything in this affidavit might be construed as a waiver of privilege or confidentiality, I withdraw and do not rely on that part of this affidavit.

8. In this affidavit, I:

- (a) set out the details of the settlements with the Elliott Entities, Mr Zita, and Mr Symons in **Section A**;
 - (b) provide an update and summary of the recoveries made towards the Remitter Judgment to date in **Section B**;
 - (c) provide an update on the major steps and events in the receivership since my last update to the Court (being the Tenth Lindholm Affidavit and the affidavits filed in the 'Directions Application' defined and described in paragraphs 146 to 151 below) in **Section C**;
 - (d) set out my relevant dealings with debenture-holders, including the Committee and Mr Botsman in **Section D**;
 - (e) summarise the quantum of unrepresented payments held by me from previous distributions and set out a proposal for dealing with those unrepresented payments in **Section E**;
 - (f) address the funding of the receivership in **Section F**;
 - (g) address how I propose to conduct the Final Distribution to debenture holders in **Section G**;
 - (h) address my claim for remuneration in **Section H**.
9. I have also prepared a confidential affidavit in this proceeding. That confidential affidavit sets out my reasoning for agreeing to settle with the Elliott Entities, Mr Zita, and Mr Symons, and the legal advice I have received. As many of the documents which I have reviewed regarding the financial position of the Contraveners were provided to me on a without prejudice basis, I have addressed that issue in the confidential affidavit. I also

set out my reasoning for seeking directions to not take any further steps to pursue potential claims and enforcements steps against Portfolio Law and the LPLC.

A. THE SETTLEMENTS

10. On 22 December 2023, following lengthy negotiations, I entered into a deed of settlement (**Elliott Deed of Settlement**) to resolve all outstanding claims against the Elliott Entities for the sum of \$10,000,000 (**Elliott Settlement Sum**). I outline those negotiations in my confidential affidavit.

Pages 4 to 19 of "**JRL-26**" are a true copy of the Deed of Settlement dated 22 December 2023.

11. On 27 February 2024, I entered into a deed of settlement (**Zita Deed of Settlement**) to resolve all outstanding claims against Mr Zita for the sum of \$95,000 (**Zita Settlement Sum**) to be paid instalments by 30 July 2024. Maddocks received payment of:

- (a) the first instalment of the Zita Settlement Sum, in the amount of \$25,000, on 27 March 2024;
- (b) the second instalment of the Zita Settlement Sum, in the amount of \$35,000, on 27 May 2024;
- (c) a portion of the final instalment of the Zita Settlement Sum, in the amount of \$7,000, on 31 July 2024; and
- (d) the remaining balance of the final instalment of the Zita Settlement Sum, in the amount of \$28,000, on 15 September 2024 (following my agreement to Mr Zita having an extension of time to pay this portion of the Zita Settlement Sum).

Pages 20 to 31 of "**JRL-26**" are a true copy of the Deed of Settlement dated 27 February 2024.

12. At the request of Mr Zita, on 29 July 2024, I agreed to extend the time for him to pay the balance of the Zita Settlement Sum, i.e. \$28,000.00.

13. On 4 March 2024, I entered into a deed of settlement (**Symons Deed of Settlement**) to resolve all outstanding claims against Mr Symons for the sum of \$250,000 (**Symons Settlement Sum**).

Pages 34 to 46 of "**JRL-26**" are a true copy of the Deed of Settlement dated 4 March 2024.

14. In my opinion, the proposed settlements of Banksia's claims against the Elliott Entities, Mr Zita and Mr Symons are reasonable in all the circumstances. It is also my opinion that it is reasonable that I not take any further steps to pursue claims against Portfolio Law and the LPLC. I expand on my reasoning for reaching this opinion in my confidential affidavit.

15. The effect of these settlements is that, if approved, I will have settled with each of the judgment debtors to the Remitter Judgment, including each of the parties against whom I sought an order for non-party costs.

B. RECOVERIES

16. The Remitter Judgment requires, amongst other things, the Contraveners to pay the:

(a) "**Compensation Component**", being the amount of compensation ordered to be paid by the Contraveners in the Remitter Judgment amounting to \$11,700,127, plus interest; and

(b) "**Costs Component**", being the costs ordered to be paid by the Contraveners in the Remitter Judgment on an indemnity basis in relation to the SPR's costs of the Botsman Appeal and the SPR's and contradictor's costs of the Remitter.

17. By reason of the ongoing negotiations with the Elliott Entities, the Costs Component has not yet been assessed. However, the actual costs incurred, excluding any interest, are approximately \$10.6 million, comprised of:
- (a) my costs of the Botsman Appeal, being \$564,144.58 (inclusive of GST);
 - (b) my costs of the Remitter, being \$3,410,323.21 (inclusive of GST); and
 - (c) the Contradictor's costs of the Remitter, being \$6,664,372.56 (inclusive of GST).
18. I consider based on my experience in litigation that upon any taxation of the Costs Component, it is likely that I would be allowed approximately 90% of the costs actually incurred by debenture-holders. I therefore consider the value of the Costs Component to be approximately \$9.54 million.
19. Excluding the settlement with the Elliott Entities, Mr Zita, and Mr Symons for which approval is sought in this application, I have to date made recoveries totalling \$6,518,306.73 towards the Remitter Judgment comprising:
- (a) \$1,558,191.39 from the LPLC on account of the available proceeds of Mr O'Bryan's insurance policy, which I received on 5 November 2021 (**O'Bryan Insurance Proceeds**);
 - (b) \$1,454,547.54 from the LPLC on account of the available proceeds of Mr Symons' insurance policy, which I received on 12 November 2021 (**Symons Insurance Proceeds**);
 - (c) \$375,683.30 from Portfolio Law;
 - (d) \$464,828.83 from the LPLC on account of the available proceeds of Portfolio Law's insurance policy, which I received on 4 May 2023;

- (e) \$1,251,858.54 (**O'Bryan Settlement Sum**) from the settlement with the O'Bryan Entities on 15 September 2023 pursuant to a settlement I reached with those entities and approved by the Supreme Court of Victoria; and
- (f) \$1,413,197.13 (**Trimbos Settlement Sum**) from the settlement with the Trimbos Estate and approved by the Supreme Court of Victoria, comprising the available proceeds of Mr Trimbos' insurance policy with the LPLC.
20. I have allocated each of these recoveries to the Compensation Component, save for the O'Bryan Settlement Sum. In relation to the O'Bryan Settlement Sum, I allocated 50% to the Compensation Component and 50% to the Costs Component. That is because of Mr O'Bryan's bankruptcy and the fact that Noysue and Noysy, who were only liable for the Costs Component, were parties to that settlement. I therefore consider the remaining value of the Costs Component to be approximately \$8.91 million (excluding any entitlement to interest which would be considerable).
21. I set out the calculation of the value of the Compensation Component to account for accrued interest and realisations to date at pages 47 to 48 of "**JRL-26**". In summary, as at 30 September 2024 and excluding the settlements dealt with in this application to the extent amounts are yet to be paid to me, the total amount outstanding in respect of the Compensation Component is \$8,219,710.05 (including accrued interest of \$2,506,959.51).
22. Accordingly, the settlement with the Elliott Entities, Mr Zita, and Mr Symons if approved would result in:
- (a) total recoveries of \$16,863,306.73; and

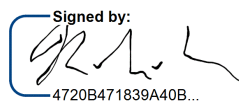
- (b) a shortfall on the total amount potentially recoverable under the Remitter Judgment as at 30 September 2024 of approximately \$6.8m (excluding any interest on the Costs Component).

23. I also have the benefit of the following costs orders against the Elliott Entities:

- (a) the costs of the First Elliott Appeal. In accordance with the orders dated 14 October 2020, Alex Elliott is to pay 80% of my costs calculated on the standard basis. I am informed by Sam Kingston and believe that I incurred total costs in relation to the First Elliott Appeal of \$154,156.56 (inclusive of GST), 80% of which is \$123,325.56 (inclusive of GST). The costs have not been taxed and would be further reduced on a taxation on the standard basis.
- (b) the costs of the Second Elliott Appeal. In accordance with the orders dated 4 May 2024, Alex Elliott is to pay my costs calculated on the indemnity basis. I am informed by Sam Kingston and believe that I incurred total costs in relation to the Second Elliott Appeal are \$137,215.77 (inclusive of GST). The costs have not been taxed.
- (c) the costs of the Non-party Costs Summons (**NPCS Costs**). In accordance with the orders dated 27 September 2023, the Elliott Entities are to pay the NPCS Costs on an indemnity basis. I am informed by Sam Kingston and believe that I incurred total costs in relation to the Non-party Costs Summons as against the Elliott Entities are \$310,000 (inclusive of GST). The NPCS Costs have not been taxed and it is reasonable to assume a small reduction on an assessment.

24. At various times, I have also requested that the Elliott Entities pay the following costs orders owed by Australian Funding Partners Pty Ltd (in liq) (**AFP**):

[6207696:45697827_3]

Signed by:

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Signed by:

BD24C706716344A...

- (a) my costs of AFP's application for special leave to the High Court of Australia in relation to the Court of Appeal's judgment in *Botsman v Bolitho* [2018] VSCA 278 (**SLA Costs**). On 17 May 2019, AFP's application was refused with costs. I am informed by Sam Kingston and believe that the SLA Costs are \$157,622.30 (inclusive of GST). The SLA Costs have not been taxed and would be further reduced on a taxation on the standard basis; and
- (b) my and the Contradictor's costs of AFP's applications for a funding commission from the settlement of Banksia's claims against Insurance House Pty Ltd dated 9 August 2019 and 21 January 2020 (**Insurance House Costs**). In accordance with the orders dated 5 May 2020, AFP was to pay the Insurance House Costs on the standard basis. I am informed by Sam Kingston and believe that the Insurance House Costs are \$268,585.75 (inclusive of GST). The Insurance House Costs have not been taxed and would be further reduced on a taxation on the standard basis.
25. I estimate the total value of the costs orders referred to in paragraphs 23 and 24 above to be approximately \$1 million.
26. If the settlements with the Elliott Entities, Mr Symons, and Mr Zita are approved, all claims arising from the Remitter Judgment will be resolved. I am not aware of any other claims available to me as special purpose receiver relating to the Remitter Judgment.
27. Although not related to the Remitter, I understand that Banksia stands to receive substantial dividends in the bankrupt estate of John George Cannon and the liquidation of Lehman Brothers Australia Limited (In Liquidation) (**Lehman Brothers**). By way of elaboration:

(a) *Bankrupt estate of John George Cannon*

- (i) I have lodged a proof of debt in the bankrupt estate for \$7,596,505.26.
- Mr Cannon has commenced a proceeding in the Federal Court (proceeding MLG448/2024) seeking to set aside the bankruptcy trustee's acceptance of the proof of debt lodged by Banksia (**Cannon Application**). Depending on the outcome of the application, Banksia may be entitled to a substantial dividend from the bankrupt estate as I understand that the bankrupt estate may be able to realise funds from the sale of real properties.

(b) *Liquidation of Lehman Brothers*

- (i) I am informed by Mr Jim Downey, the former liquidator of Statewide, that Statewide lodged a proof of debt in the liquidation of Lehman Brothers arising from its acquisition of various collateralized debt obligations (**CDOs**). This proof was subsequently admitted in the liquidation of Lehman Brothers for \$6,491,476.
- (ii) I understand that, in August 2010, Banksia paid \$4.18 million to Statewide for the purchase of those CDOs.
- (iii) Mr Downey has informed me that Statewide subsequently received \$6.1 million in distributions from Lehman Brothers and through a class action brought by investors. I understand that \$5.6 million of the funds Statewide received which related to the CDOs held by Banksia was paid by Statewide to Banksia during the appointment of Banksia's Receivers. The liquidator of Lehman Brothers, Mr Marcus Ayres of

Arcis Advisory, has advised Mr Downey that he is holding a further unclaimed dividend of \$833,355.30 (**LB Dividend**).

- (iv) Based on the matters set out above, and given that Statewide is currently deregistered, Mr Downey has applied to have Statewide reinstated to allow the entitlement to the LB Dividend to be properly transferred to Banksia as it relates to the CDOs held by Banksia. The application for reinstatement is due to be heard on 29 November 2024. Depending on the timing of the resolution of this issue, I intend to include the LB Dividend in the Final Distribution.

C. MAJOR EVENTS IN THE SPECIAL PURPOSE RECEIVERSHIP

28. In this section of my affidavit, I outline the major events that have happened in the special purpose receivership since I last updated the Court in the Tenth Lindholm Affidavit and the affidavits filed in the Directions Application. I have sought to not repeat matters set out in those affidavits.

Second Elliott Appeal

29. On 22 November 2021, Alex Elliott filed an appeal against the finding and orders made against him in the Remitter Judgment (**Second Elliott Appeal**). The Second Elliott Appeal raised wide-ranging legal and factual challenges to the Remitter Judgment.
30. The appeal was listed for hearing in the week commencing 25 July 2023.
31. On 22 December 2021, Maddocks filed and served:
- (a) my written case in response to the Second Elliott Appeal;
 - (b) a list of authorities; and

(c) updates to the draft application book index.

32. On 8 April 2022, the Court of Appeal made directions for the filing of material in the appeal. Those directions required Mr Elliott to file and serve further written submissions. Mr Elliott defaulted on that direction. My solicitors engaged in ongoing correspondence with Mr Elliott and the Court between July 2022 and September 2023. The timetable was extended on a number of occasions to allow further time for Mr Elliott to file submissions but, on each occasion, Mr Elliott defaulted on that obligation.

33. On 6 December 2022, the Court of Appeal Registry sent an email to the parties noting that:

(a) Alex Elliott had still failed to file his submissions or provide an update to the Court; and

(b) on that basis, the Second Elliott Appeal was taken to be abandoned pursuant to r 64.45(1) of the *Supreme Court (General Civil Procedure) Rules 2015*.

Page 49 of "**JRL-26**" is a true copy of the email from the Court of Appeal Registry dated 6 December 2022.

34. On 30 January 2023, the Court of Appeal Registry sent an email to the parties notifying them that the hearing dates for the Second Elliott Appeal were vacated.

Page 50 of "**JRL-26**" is a true copy of the email dated 30 January 2023.

35. On 11 September 2023, the Court of Appeal Registry sent an email to the parties, amongst other things:

(a) noting that the parties had not taken any substantive steps for over 12 months; and

(b) asking if either party to the application for leave to appeal being dismissed by the Court.

Page 51 of "**JRL-26**" is a true copy of the email dated 11 September 2023.

36. At 4:11 pm on 18 September 2023, GHB (the solicitors for Mr Elliott) sent an email to the Court of Appeal Registry indicating that the appeal had not been progressed due to ongoing without prejudice negotiations.

Page 52 of "**JRL-26**" is a true copy of the letter dated 18 September 2023.

37. At 4:40 pm on 18 September 2023, Maddocks sent an email to the Court of Appeal Registry confirming my position that:

- (a) the reasons given by GHB in their correspondence for not progressing the Appeal are unacceptable;
- (b) I do not oppose the Court dismissing the Second Elliott Appeal; and
- (c) if necessary, I will oppose any application for the Second Elliott Appeal to be re-enlivened.

Page 53 of "**JRL-26**" is a true copy of the email dated 18 September 2023.

38. On 2 November 2023, Maddocks sent an email the Court of Appeal Registry asking the Court to confirm if it would make orders dismissing the Second Elliott Appeal of its own motion.

Pages 54 to 56 of "**JRL-26**" are a true copy of the email dated 2 November 2023.

39. On 1 May 2024, the Court of Appeal Registry sent the parties an email indicating that, without further notice, one or more Judges of Appeal would consider dismissing the Second Elliott Appeal of its own motion.

Page 57 of "**JRL-26**" is a true copy of the email dated 1 May 2024.

40. On 2 May 2024, the Court of Appeal Registry sent the parties orders of Walker J dismissing the Second Elliott Appeal and ordering that Alex Elliott pay my costs on the indemnity basis.

Pages 58 to 61 of “**JRL-26**” are a true copy of the orders dated 2 May 2024.

Non-party Costs Summons

41. In section E of the Tenth Lindholm Affidavit, I summarised the steps that had been taken in relation to the Non-party Costs Summons. The following is a summary of the further events since Tenth Lindholm Affidavit.
42. On 4 August 2022, the O’Bryan Entities served the evidence they sought to rely on in the Non-party Costs Summons, and a list of documents that they sought to tender.
43. It was clear from the evidence filed by the O’Bryan Entities that they intended to challenge certain aspects of Dixon J’s findings in the Remitter Judgment. I was concerned about the costs and risks of re-litigating issues that had been dealt with in the trial of the Remitter. Accordingly, on 2 September 2022, Maddocks filed a summons in the Supreme Court of Victoria seeking the determination of a preliminary question about the extent to which the O’Bryan Entities’ were bound by the findings made in the Remitter Judgment (**Preliminary Issue Application**).

Pages 62 to 64 of “**JRL-26**” are a true copy of the summons filed in relation to the Preliminary Issue Application dated 2 September 2022.

44. At a directions hearing on 9 September 2022 (**September Directions Hearing**), Dixon J made orders:
- (a) listing the Non-party Costs Summons as it relates to the Elliott Entities for final hearing on 15 November 2022; and

- (b) timetabling the Preliminary Issues Application for a hearing on 28 November 2022.

Pages 65 to 67 of “**JRL-26**” are a true copy of the orders of Justice Dixon dated 13 September 2022.

45. The Non-party Costs Summons in respect of the Elliott Entities was heard on 15 November 2022, with his Honour reserving his decision.
46. At the hearing on 28 November 2022, my counsel informed the Court that I did not wish to proceed with the Preliminary Issues Application as counsel formed the view that the Preliminary Issues Application could not be determined independently of matters which were the subject of substantive dispute in the Non-party Costs Summons itself (namely, the extent to which Mr O’Bryan had any involvement in the affairs of the O’Bryan Entities). Dixon J then made orders dismissing the Preliminary Issues Application. At the hearing, his Honour also raised the issue of whether he should recuse himself from hearing the Non-party Costs Summons in respect of the O’Bryan Entities in light of the findings in the Remitter Judgment, and invited the parties to file written submissions in respect of the matter. Written submissions in response to that request were filed on behalf of both me and the O’Bryan Entities.
47. On 9 December 2022, his Honour delivered reasons in *Bolitho & Anor v Banksia Securities Limited & Ors (No 19)* [2022] VSC 761 indicating that he would not recuse himself from the proceeding and indicating his intention to finalise the Non-party Costs Summons in early 2023.
48. On 1 March 2023, Dixon J made orders in the Non-Party Costs Summons as against the Elliott Entities (**Elliott Non-party Costs Orders**). Each of the Elliott Entities were

ordered to pay my and the Contradictors' costs of the Remitter on the indemnity basis. The email from the Associate to Dixon J circulating the Elliott Non-party Costs Orders confirmed that the reasons for judgment would be delivered together with Dixon J's judgment on the balance of the issues to be determined in the Non-party Costs Summons.

Pages 68 to 70 of "JRL-26" are a true copy of the orders dated 1 March 2023.

49. Due to some ambiguity regarding the scope of the Elliott Non-party Costs Orders, on 20 September 2023, Maddocks filed submissions on my behalf seeking clarification, pursuant to the slip rule, that:

- (a) the Elliott Non-party Costs Orders extended to the costs of the Botsman Appeal; and
- (b) that I was entitled to my costs of the Non-party Costs Summons against the Elliott Entities on an indemnity basis.

Pages 71 to 74 of "JRL-26" are a true copy of the submissions dated 20 September 2023.

50. Following a hearing on 22 September 2023, on 27 September 2023, Dixon J handed down his reasons in *Lindholm v Elliott & Ors (No 2)* [2023] VSC 572 clarifying the Elliott Non-party Costs Orders pursuant to the slip rule.

Settlement with the O'Bryan Entities and Trimbos Estate

51. Shortly prior to the commencement of the trial of the Non-party Costs Summons as against the O'Bryan Entities, I entered into a Deed of Settlement with Mr O'Bryan and the O'Bryan Entities seeking to resolve all outstanding claims relating to Mr O'Bryan and

the O'Bryan Entities for \$1.25 million (**O'Bryan Settlement**). The O'Bryan Settlement was conditional upon, amongst other things, court approval.

Pages 75 to 92 of "**JRL-26**" are a true copy of the Deed of Settlement dated 27 March 2023.

52. On 28 April 2023, I caused a summons to be filed in the Supreme Court of Victoria seeking approval of the O'Bryan Settlement.

53. On 9 May 2023, I caused a circular to be sent to debenture holders pursuant to the orders of Dixon J dated 2 May 2023 notifying them of the settlement and providing a general update on the special purpose receivership.

Pages 93 to 96 of "**JRL-26**" are a true copy of the circular to debenture holders dated 9 May 2023.

54. On 24 May 2023, I entered into a deed of settlement to resolve all outstanding claims against the Trimbos Estate for \$1,413,197.13 (**Trimbos Settlement**). The Trimbos Settlement was subject to court approval.

Pages 97 to 108 of "**JRL-26**" are a true copy of the Deed of Settlement dated 24 May 2023.

55. On 2 June 2023, I caused an amended summons to be filed in the Supreme Court of Victoria to also seek orders for the approval of the Trimbos Settlement.

56. On 2 June 2023, I caused an updated circular to be posted to the Banksia Webpage to notify debenture holders of my settlement with the Trimbos Estate and to confirm that the hearing of my application seeking approval of the settlement was set down for 16 June 2023 at the same time as the hearing for the approval of the O'Bryan Settlement pursuant to the orders of Dixon J dated 30 May 2023.

Pages 109 to 114 of “**JRL-26**” are a true copy of the orders of Dixon J dated 30 May 2023.

Pages 115 to 115 of “**JRL-26**” are a true copy of the circular dated 2 June 2023.

57. On 13 June 2023, I caused a further circular to be posted to the Banksia Webpage to give debenture holders details of the hearing on 16 June 2023 along with the link to observe the hearing.

Page 117 of “**JRL-26**” is a true copy of the circular dated 13 June 2023.

58. The hearing of the approval of the O’Bryan and Trimbos Settlements was conducted on 16 June 2023. At the hearing, Dixon J reserved his decision but indicated that he would make orders approving the settlements.

59. On 31 July 2023, Dixon J delivered his reasons approving the settlements and his reasons for making the Elliott Non-party Costs Orders which are documented in *Lindholm v Elliott & Ors* [2023] VSC 442 (**Approval Reasons**).

O’Bryan Appeal

60. On 4 September 2023, Mr O’Bryan filed an appeal against certain findings in the Approval Reasons (**O’Bryan Appeal**). Relevantly, the O’Bryan Appeal did not seek to challenge the orders made by the Court, but only certain findings made in the reasons for judgment.

Pages 118 to 187 of “**JRL-26**” are a true copy of the documents filed by Mr O’Bryan in the O’Bryan Appeal.

61. On 20 September 2023, Maddocks sent correspondence to Mr O’Bryan which, amongst other things:

- (a) indicated that it was my position that the O'Bryan Appeal should be withdrawn immediately as it was an attempt to relitigate matters arising from the Remitter Judgment and contrary to the terms of the O'Bryan Settlement;
- (b) noted that the appeal sought to set aside findings against the Elliott Entities made in the Approval Reasons (which I would have relied on if taking certain further enforcement steps against the Elliott Entities); and
- (c) confirmed that the SPR would seek security for his costs if this proceeding continued.

Pages 188 to 194 of "**JRL-26**" are a copy of the letter sent to the Applicant dated 20 September 2023.

62. On 21 September 2023, Mr O'Bryan, amongst other things, confirmed:

- (a) he could not afford any legal representation;
- (b) he could not offer any security for costs because he had no assets; and
- (c) he would not be able to continue his appeal if security was ordered.

Page 195 of "**JRL-26**" is a copy of notice of the letter to Maddocks dated 21 September 2023.

63. On 21 September 2023, Maddocks filed a notice of objection to competency in respect of the O'Bryan Appeal.

Pages 196 to 216 of "**JRL-26**" are a copy of notice of the Notice of Objection to Competency dated 21 September 2023.

64. On 13 October 2023, the Court of Appeal made orders on the papers making provision for me to file an amended notice of objection to competency as well as any application for security for costs and/or summary judgment and/or stay of the O'Bryan Appeal.

Pages 217 to 220 of “**JRL-26**” are a copy of the orders of the Court dated 13 October 2023.

65. Subsequently, Maddocks filed and served the following material on my behalf in the O’Bryan Appeal:

Date	Document	Pages
18 October 2023	Amended Notice of Objection to Competency	21
1 November 2023	Application other than leave to appeal	2
1 November 2023	Affidavit of Samuel Roadley Kingston	9
1 November 2023	Exhibit SRK-1	84
1 November 2023	Submissions	14

Pages 221 to 240 of “**JRL-26**” are a copy of amended notice of objection to competency dated 18 October 2023.

Pages 241 to 242 of “**JRL-26**” are a copy of the application other than leave to appeal dated 1 November 2023.

66. On 29 November 2023, Mr O’Bryan filed his responsive material to my notice of objection to competency and my application other than leave to appeal.

67. On 10 May 2024, the Court of Appeal heard my notice of objection to competency and my application other than leave to appeal. The Court reserved its judgment.

68. On 13 June 2024, the Court of Appeal delivered its judgment in *O’Bryan v Lindholm* [2024] VSCA 130 in respect of my notice of objection to competency and my application other than leave to appeal. The Court made orders striking out the O’Bryan Appeal, and ordered that Mr O’Bryan pay my costs on a standard basis.

Page 243 of “**JRL-26**” is a copy of the orders of the Court dated 13 June 2024.

69. On 17 June 2024, Maddocks sent a letter to Mr O'Bryan about the cost of the O'Bryan Appeal. To date, Maddocks has not received a response from Mr O'Bryan.

Pages 224 to 245 of "JRL-26" are a copy of the letter to Mr O'Bryan dated 17 June 2024.

70. The O'Bryan Appeal is finalised. Mr O'Bryan has not sought leave to appeal the Court of Appeal's judgment to the High Court, and was required to do so by 11 July 2024.

D. DEALINGS WITH DEBENTURE-HOLDERS

71. In paragraphs 69 to 81 of the First Lindholm Affidavit, I summarise the steps undertaken to appoint the Committee and outline its functions.

72. During the Approval Periods, I have convened meetings of the Committee that took place on the following dates:

- (a) 29 April 2022;
- (b) 7 June 2022;
- (c) 4 August 2022;
- (d) 15 December 2022;
- (e) 14 April 2023;
- (f) 31 May 2023;
- (g) 8 December 2023;
- (h) 21 March 2024; and
- (i) 29 August 2024.

73. I have also caused substantive updates to be sent to the members of the Committee via email on the following dates :

- (a) 14 April 2022;
- (b) 29 April 2022;

- (c) 1 June 2022;
- (d) 7 June 2022;
- (e) 4 August 2022;
- (f) 31 August 2022;
- (g) 8 September 2022;
- (h) 16 September 2022;
- (i) 13 December 2022;
- (j) 30 January 2023;
- (k) 1 February 2023;
- (l) 22 February 2023;
- (m) 3 April 2023;
- (n) 6 April 2023;
- (o) 13 April 2023;
- (p) 17 April 2023;
- (q) 21 April 2023;
- (r) 2 May 2023;
- (s) 9 May 2023;
- (t) 29 May 2023;
- (u) 30 May 2023;
- (v) 15 June 2023;
- (w) 1 August 2023;
- (x) 17 November 2023;
- (y) 4 December 2023;

- (z) 8 March 2024;
- (aa) 9 May 2024;
- (bb) 31 May 2024,
- (cc) 7 June 2024; and
- (dd) 21 June 2024.

74. I have also had a number of informal discussions with members of the Committee from time to time. In particular, I have had discussions with members of the Committee in relation to the enforcement of the Remitter Judgment and the ongoing settlement discussions.
75. Paragraphs 81 to 82 of the Tenth Lindholm Affidavit and paragraphs 11 to 12 of the July Kingston Affidavit address the extensive correspondence that has been exchanged with Mr Christopher Botsman and Mr Keith Pitman. I ensured that all correspondence with Mr Botsman and Mr Pitman were exhibited to my affidavits filed before Dixon J in support of the O'Bryan and Trimbos Settlements.
76. Since that time, Mr Botsman and Mr Pitman have continued to send correspondence. That correspondence continues to make criticisms of me and my conduct of the special purpose receivership. I outline that correspondence below.
77. On 31 August 2022, Maddocks sent a letter to Mr Botsman providing him with a copy of the Directions Judgment, defined in paragraph 151 below.
- Page 246 of "**JRL-26**" is a true copy of the letter dated 31 August 2022 without its attachments.
78. On 7 September 2022, Mr Botsman sent a letter on behalf of Mrs Wendy Botsman and Mr Pitman to the Associate to Justice Dixon. The letter, amongst other things:

- (a) raised allegations about the process adopted by me in seeking the directions recorded in the Directions Judgment;
- (b) was critical of the Directions Application being made;
- (c) again raised allegations about my conduct which had been addressed in prior correspondence; and
- (d) indicated that Mr Botsman and Mr Pitman would bring an application to remove me as SPR of Banksia if I did not procure a settlement of the Banksia Proceedings in a matter of weeks.

Pages 247 to 257 of “**JRL-26**” are a copy of the letter from Mr Botsman dated 7 September 2022 and the subsequent correspondence with the Associate.

79. At the September Directions Hearing, Dixon J made the following further comments in open court:

- (a) neither he nor the Court communicates with anybody except in open court;
- (b) he will not accept or read any correspondence that is not copied to all parties;
- (c) he is not interested in receiving correspondence about settlement processes; and
- (d) debenture-holders should communicate with me, not the Court, in relation to any issue that might arise concerning the ongoing administration.

80. On 16 September 2022, Maddocks sent a response to Mr Botsman, in short, refuting the claims he raised in his correspondence. A copy of that letter is exhibited and explained in more detail in my confidential affidavit as it provides details to Mr Botsman about the redacted parts of the Directions Judgment and discusses the ongoing without prejudice negotiations with the Contraveners.

81. Maddocks has since provided Mr Botsman with copies of all substantive correspondence sent to the Committee in relation to the settlement and the ongoing settlement discussions as exhibited to my confidential affidavit. However, on 19 April 2023, Mr Botsman sent an email to Maddocks indicating that he has not opened any of the attachments provided to him, but would reconsider his position if certain matters raised in his correspondence exhibited to my confidential affidavit were addressed.

Page 259 of “**JRL-26**” is a copy of the email from Mr Botsman dated 19 April 2023.

82. On 21 April 2023, Maddocks sent a response to Mr Botsman which, in short, indicated that:

- (a) I had responded to all of Mr Botsman’s correspondence;
- (b) I did not consider it to be in debenture holders’ interests to continue to debate assertions about historical matters in correspondence; and
- (c) despite Mr Botsman’s position, I would continue to provide him with all non-confidential material filed in the application, and would provide him with all confidential material on receipt of a confidentiality undertaking.

Page 260 of “**JRL-26**” is a copy of the email to Mr Botsman dated 21 April 2023.

83. On 22 March 2023, I received an email from Mr Michael Kearney which was said to be sent on behalf of debenture holders including Mr Bill Radley and Mr Pitman. In his email, Mr Kearney, amongst other things:

- (a) expressed his frustration that the Remitter had not been resolved and that the Contravener’s conduct had resulted in further costs and delay;

- (b) expressed a concern that if a settlement sum of sufficient quantum was not received, debenture holders may not be any better off than they were if the misconduct had not been uncovered;
- (c) indicated that he, and the debenture holders he was writing on behalf of, would not tolerate a settlement sum below the entire outstanding amount of the Remitter Judgment; and
- (d) made a number of requests for information on the costs and recoveries in the special receivership to date.

Pages 261 to 264 of '**JRL-26**' are a true copy of the email from Mr Kearney dated 22 March 2023.

84. On 27 April 2023, I caused a response to be sent to Mr Kearney which, amongst other things:

- (a) confirmed that I shared his concern about the length of time the proceedings had been ongoing for;
- (b) provided an update on recoveries received to date and the costs of the Remitter; and
- (c) explained why I did not consider debenture holders to be in a worse position than what they would have been in had the misconduct identified in the Remitter not been uncovered.

Pages 265 to 268 of '**JRL-26**' are a true copy of the email to Mr Kearney dated 27 April 2023.

85. As Mr Kearney subsequently sent me a number of emails indicating he was not satisfied with my previous response to him, on 30 May 2023, I sent Mr Kearney a letter which, amongst other things:

- (a) noted that a number of his requests had been responded to in my previous response and circular to debenture holders;
- (b) provided him details of the recoveries made to the Remitter Judgment to date and the settlements I had entered into;
- (c) provided details about my funding and costs; and
- (d) provided details about distributions which have been provided to debenture holders to date.

Pages 269 to 271 of "**JRL-26**" are a true copy of the letter to Mr Kearney dated 30 May 2023.

86. On 26 January 2024, an article entitled '*Enough already! Greed, hubris and indifference in the time of Banksia*' written by Mr Botsman was published by Lawyerly. The article, amongst other things:

- (a) summarises Mr Botsman's account of his involvement in the Banksia Proceedings and the Remitter;
- (b) sets out Mr Botsman's views on the settlement with Mr O'Bryan and the O'Bryan Entities, as approved by Dixon J, including by saying that '*Justice for debenture holders was denied*';
- (c) summarises Mr Botsman's view that '*the value is nil*' in Mrs Botsman pursuing any potential claim against the Lawyer Parties for the conduct directed towards her by noting his expectation that the '*courts will do nothing*'; and

(d) indicates Mr Botsman’s position that debenture holders should receive \$22.3 million plus interest.

The Botsman article is available at <https://www.lawyerly.com.au/enough-already-greed-hubris-and-indifference-in-the-time-of-banksia/> and exhibited at pages 272 to 286 of “JRL-26”.

87. I have read all correspondence from Mr Botsman and Mr Pitman and have carefully considered the criticisms made of me and my legal representatives. For the reasons expressed in the responses to those correspondence, I continue to reject those criticisms.

E. UNPRESENTED PAYMENTS

88. The current value of unrepresented cheques across all distributions to debenture holders is as follows:

Total distributions				All unrepresented payments		
Distribution	Date	c / \$	\$ (approx)	No. of accounts	\$	% of dist.
1	Dec-12	20.0	132,600,000	467	117,707	0.1%
2	May-13	45.0	298,350,000	405	362,849	0.1%
3	Oct-13	5.0	33,150,000	627	64,468	0.2%
4	Dec-13	8.0	53,040,000	646	101,146	0.2%
5	Apr-14	2.0	13,260,000	913	39,184	0.3%
6	Mar-17	2.0	13,260,000	1,954	284,118	2.1%
7	Jun-19	6.5	42,000,000	2,612	1,825,850	4.3%
8	Jul-20	1.0	6,633,089	3,402	395,960	6.0%
9	May-21	2.0	13,264,168	3,609	897,271	6.8%
TOTAL		91.5	605,557,256	14,635	4,088,401	0.7%

89. There are 14,635 accounts that have unrepresented payments from all previous distributions. The below table summarises the relevant accounts by size:

Category	Number of accounts	Total value
Outstanding payment greater than \$10,000	31	\$617,586

Outstanding payment between \$4,000 and \$10,000	130	\$753,067
Outstanding payment less than \$4,000	14,474	\$2,717,748
Total	14,635	\$4,088,401

90. Previously, on 22 May 2019, his Honour Justice Dixon made orders which, amongst other things, directed me to distribute \$42 million from the proceeds of the settlement between Banksia, Mr Bolitho and Trust Co to debenture holders (**Interim Distribution**).

The orders required that:

- (a) Interim Distribution was to be undertaken on 13 June 2019 by Link; and
- (b) I cause to be prepared a report concerning the results of the Interim Distribution.

Pages 287 to 289 of "**JRL-26**" are a true copy of the orders dated 22 May 2019.

Pages 290 to 296 of "**JRL-26**" are a true copy of the first report in respect of the Interim Distribution dated 22 August 2019.

Pages 297 to 302 of "**JRL-26**" are a true copy of the second report in respect of the Interim Distribution dated 20 December 2019.

91. In addition, on 8 April 2021, his Honour Justice Dixon made orders which, amongst other things, directed me to distribute an additional amount of \$13 million from the proceeds of the settlement between Banksia, Mr Bolitho and Trust Co to debenture holders (**Further Interim Distribution**). The orders required that:

- (a) the Further Interim Distribution be undertaken on 10 May 2021 by Link Market Services distributing \$13,264,167.79 (which included additional funds contributed by Banksia's Receivers); and

(b) I cause to be prepared a report concerning the results of the Further Interim Distribution.

Pages 303 to 307 of "JRL-26" are a true copy of the orders dated 8 April 2021.

Pages 308 to 315 of "JRL-26" are a copy of the report dated 29 July 2021.

92. I carefully considered what further steps I ought to take in relation to the unrepresented payments consistent with my statutory duties. In my view, it was appropriate to take further steps to seek to identify the location of debenture-holders with accounts that had unrepresented payments, or to identify the estate or personal representative of that debenture-holder if they have died. However, I was concerned to ensure that the costs of undertaking those steps were reasonable and proportionate and did not burden the debenture-holders as a whole. I was also concerned to ensure that any further steps would not further delay the Final Distribution.

93. My proposed course of action in relation to unrepresented payments was as follows.

94. In my view, it was neither proportionate nor cost effective for extensive searches to be undertaken for the holders of small debenture accounts owed less than \$4,000. The average amount owed to accounts with less an \$4,000 in unclaimed funds was \$187.77. I therefore intended to take no steps to ascertain the status of those accounts.

95. I instructed members of my staff to take the following steps in respect of those accounts with an outstanding payment greater than \$10,000:

- (a) obtaining a copy of the debenture holder contact information list from Link. This listing included the contact information for debenture holders including their address and phone number;
- (b) overlaying this list with the unrepresented cheque register that would also be provided by Link;
- (c) conducting searches to find details for the debenture holders with unrepresented cheques. These searches included:
 - (i) “*Reverse look up*” searches to confirm debenture holders’ details from the contact telephone number/s recorded with Link;
 - (ii) “*Person look up*” searches for debenture holders’ names and addresses to confirm the contact number provided by Link;
 - (iii) White pages searches to search for any additional contact number/s for debenture holders that were not recorded with Link;
 - (iv) “*Professional services*” searches to identify and contact debenture holders’ account’s nominated accountant, financial planner or lawyer (if the debenture holder had a nominated accountant, financial planner or lawyer);
 - (v) “*Probate Office Application Index search*” to identify if the debenture holder has passed away;

- (vi) "ASIC Business name search" to confirm the person or organisation business name listed in the debenture holder account provided by Link;
and
 - (vii) Other searches such as Google and Linked In searches.
- (d) preparing a spreadsheet that included the unrepresented payment details and the debenture holder contact information; and
- (e) taking steps to contact debenture holders by telephone where possible.
96. As a result of undertaking the above steps, and instructing Link to undertake a skip tracing in respect of those accounts with amounts owing between \$4,000 and \$10,000, I have been able to locate a further 204 accounts to date, equating to \$2,099,568.62 of unrepresented payments.
97. The current balance of unclaimed funds as at the date of this affidavit is \$4,088,401. However, this balance will reduce to \$1,988,832.38 upon payment to the 204 located accounts.
98. Due to Link's success in undertaking its skip-tracing excises to locate unclaimed accounts as set out above, I requested an estimate from Link to undertake searches for 88 accounts with balances of \$3,000 but less than \$4,000. I received a costs estimate from Link in the sum of \$37,000 to conduct skip-tracing exercises to assist with identifying those debenture holders. Link has been engaged on the basis of that estimate to start undertaking that work in preparation for the Final Distribution.

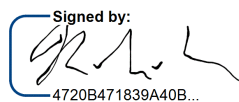
Pages 316 to 317 of “**JRL-26**” are a true copy of the costs estimate provided by Link.

99. If, following those traces, it is possible to identify the location of a debenture-holder or his or her estate, I intend to arrange for the relevant payment to be made in accordance with the direction of the debenture-holder or their representative.
100. In my judgment, it is not in debenture-holders’ interests to take steps to identify those accounts with a remaining balance of \$3,000 or less. That is because:
- (a) there are 495 accounts with a balance of \$3,000 or less, with an average amount owing of \$1,714.16; and
 - (b) I estimate the costs to conduct skip traces of those accounts to be \$158,400.
101. In my view, the costs that would be borne by all debenture-holders are disproportionate to the benefits that would be gained by undertaking this exercise.
102. I anticipate that, following the steps outlined above, there will remain substantial unrepresented payments of at least \$1.5m (**Unclaimed Balance**). This amount is expected to increase once the Final Distribution is made as additional funds become unrepresented.
103. I intend to undertake and complete the above additional steps by no later than 15 November 2024, so that a Final Distribution can be made before the end of the year.
104. I have carefully considered how I ought to deal with the Unclaimed Balance consistently with my statutory duties. I have considered whether I ought to seek an order from this Court permitting me to distribute the Unclaimed Balance to active debenture-holders.

105. I have also considered whether the Unclaimed Balance should be paid into the ASIC Unclaimed Moneys Fund. However, in my view, it is unlikely that much, if any, of the Unclaimed Funds would ever be claimed if I were to pay those funds to ASIC.
106. On balance, but subject to any direction from this Honourable Court, I consider the most appropriate course is to:
- (a) pay the further expenses and remuneration of the receivership out of the Unclaimed Balance. I discuss this further at paragraph 119 below; and
 - (b) pay the remaining balance to a charity or charities for a charitable purpose.
107. Banksia was founded and based in Kyabram with a majority of Banksia's debenture-holders residing in the local region. In my view, it would be appropriate to donate the remaining Unclaimed Balance to charitable purposes that would benefit that local community.
108. I have sought the view of the Committee on appropriate charities that are active in the local area. I have received a submission and email correspondence from members of the Committee about suggested charitable and community based initiatives I could consider providing some funding to, copies of which are located at pages 318 to 328 of "JRL-26". I consider each of these causes worthy of receiving the balance of the unrepresented funds.
109. I also intend to seek the views of debenture-holders in the circular that I will distribute to debenture-holders in connection with the orders and directions sought by these applications.

F. FUNDING

[6207696:45697827_3]

Signed by:

4720B471839A40B...

Signed by:

BD24C706716344A...

110. In accordance with orders made by Black J on 29 February 2016, I established the SPR Litigation Fund to fund the conduct of the Banksia Proceedings. The SPR Litigation Fund was established to meet my costs of the Banksia Proceedings and to address any potential adverse costs exposure. The amounts that have been paid into the SPR Litigation Fund pursuant to orders of this Honourable Court were exhausted in April 2023.
111. I seek directions that I was, and continue to be, justified in drawing on the funds that I have realised in enforcing the Remitter Judgment as funding for the special purpose receivership up until the conclusion of this application.
112. As noted above, KPMG currently holds \$1,359,405.54 in the bank account that comprised the SPR Litigation Fund. The SPR Litigation Fund was established and replenished with the following amounts contributed by the Receivers:
- (a) \$10 million, approved by his Honour Justice Black on 29 February 2016;
 - (b) \$6 million, approved by his Honour Justice Black on 19 February 2018; and
 - (c) \$1.2 million, approved by his Honour Justice Black on 8 February 2021.
113. The last of those funds was exhausted on 11 April 2023.
114. KPMG has held the O'Bryan and Symons Insurance Proceeds in the SPR Litigation Fund bank account, and it is from these funds that I have paid my remuneration, costs, and expenses following the SPR Litigation Fund being exhausted.
115. I incurred significant costs in conducting the Banksia Proceedings and taking steps to enforce the Remitter Judgment. Since its inception, the Remitter evolved in a way which could not have been foreseen and the negotiations in respect of the Remitter Judgment have been complex and protracted. A copy of the transaction records for the SPR Litigation Fund from 11 April 2023 to date is exhibited at pages 326 to 327 of "JRL-26".

116. I have regularly kept the Committee, the Supreme Court of Victoria, and this Honourable Court updated on the costs I have incurred in conducting the Banksia Proceedings. Most recently, the costs that I have incurred were disclosed to debenture-holders in a circular dated 9 May 2023. Each circular that is sent by Link to debenture-holders costs approximately \$20,000 plus GST. To minimise costs, I also post circulars and material on the Banksia Webpage.

Pages 328 to 331 of "**JRL-26**" are a true copy of the circular to debenture holders dated 9 May 2023.

117. I will continue to accrue further remuneration and costs in finalising the special purpose receivership, though I expect those costs to be minimal if I am directed to make the Final Distribution as proposed. It is difficult to accurately estimate the amount of that further remuneration as it is dependent on the steps involved and is, of course, subject to approval by this Honourable Court. However, I presently anticipate that my remuneration is likely to be in the order of \$50,000 to \$75,000 plus GST if the orders sought in this application are made.

118. Mr Kingston has sworn a separate affidavit outlining the likely legal costs that I will incur in finalising the special purpose receivership on the basis that the orders sought in this application are made. In my experience, these amounts are reasonable.

119. Due to the limited steps required to be undertaken between the determination of this application and the Final Distribution, I seek orders to fund my further remuneration, costs, and expenses to the conclusion of my appointment following this application from the amounts held as unrepresented payments from previous distributions referred to above.

120. I consider that it is reasonable to draw my further remuneration, costs, and expenses from the unrepresented amounts held from previous distributions as this will ensure that debenture-holders receive a further and final distribution of the maximum amount payable to them from the Available Funds and settlement proceeds (if approved). It will also ensure that the costs to identify those accounts with unrepresented payments are not borne by all debenture-holders.

G. THE FINAL DISTRIBUTION

121. To date, the SPR and the Receivers have overseen nine distributions to debenture-holders, the details of which are set out in 88 above.
122. Historically, each of these distributions have been undertaken by Link to all debenture-holders on a *pari passu* basis.
123. The balance of the funds held (**Available Funds**) is as follows:
- (a) \$7,715,859.44 by Maddocks as the balance of the funds from the Trust Co Settlement, the payments received from and on behalf of Portfolio Law, the O'Bryan Settlement Sum, Trimbo's Settlement Sum and Zita Settlement Sum; and
 - (b) \$1,359,405.54 in the account which held the 'SPR Litigation Fund', being the fund from which the special purpose receivership of Banksia was funded by the orders of Black J.
124. If the settlements with the Elliott Entities, Mr Zita, and Mr Symons are approved, I intend to make a further and final distribution to debenture-holders, including all moneys from the Available Funds as well as the Elliott, Zita, and Symons Settlement Sums.

125. The amount of the Final Distribution would be for approximately \$19.8 million and provide debenture-holders with a further 3 cents in the dollar on their principal invested in Banksia. This would bring the total recovery to debenture-holders from the external administration of Banksia to approximately 94.5 cents of outstanding principal in the dollar.
126. I propose to conduct the Final Distribution subject to my statutory duties as special purpose receiver and liquidator of Banksia in the same manner that I have administered previous distributions in this receivership.
127. Based on the cost of previous distributions, I estimate the cost for Link to facilitate the Final Distribution will be approximate \$80,000 - \$85,000. Ordinarily, Link is able to facilitate a distribution within 30 days of the provision of funds.
128. Following the Final Distribution, the only steps remaining in the special purpose receivership of Banksia would be to:
- (a) await any distribution from the Cannon Estate and LB Dividend; and
 - (b) make a final application to this Honourable Court seeking approval of my further and final remuneration and for my discharge as special purpose receiver.
129. I do not believe that it is in the interests of debenture-holders for the Cannon Application to delay the Final Distribution or my foreshowed application to be discharged as special purpose receiver if the orders sought in this application are made.

H. REMUNERATION

Remuneration approval process

130. My last application for approval of my remuneration was filed on 27 June 2022, and, on 13 July 2022, the Honourable Justice Black made orders approving my remuneration for the period 1 May 2021 to 28 February 2022 in the amount of \$126,097.90 plus GST. Pages 332 to 333 of “**JRL-26**” are a copy of the Orders of Justice Black dated 13 July 2022.
131. In summary, the following key events have occurred in the conduct of the Banksia Proceedings during the Approval Periods:
- (a) I have continued to take steps to enforce the Remitter Judgment, including prosecuting the Non-party Costs Summons to judgment (as against the Elliott Entities) and to resolution (as against the O’Bryan Entities);
 - (b) defending the Second Elliott Appeal, which has subsequently been abandoned;
 - (c) defending the O’Bryan Appeal;
 - (d) settled claims relating to the Remitter Judgment against the Trimbo’s Estate, Mr O’Bryan, and the O’Bryan Entities, and applied to the Supreme Court of Victoria and received approval in relation to those settlements; and
 - (e) negotiating and participating in discussions relating to the compromise of the Remitter Judgment and the Second Elliott Appeal, including a related application for directions before the Supreme Court of New South Wales (i.e. the Directions Application).
132. This application was not filed before 30 September 2022 (being six months after the last approval period). I delayed filing this application in order to have some certainty about the likely next steps that might be involved following the delivery of the Directions Judgment and the progression of the Non-party Costs Summons.

Remuneration incurred

133. In my capacity as special purpose receiver, I have incurred remuneration during the Approval Periods of \$198,538 plus GST broken down as follows:

- (a) \$102,762 plus GST for the First Approval Period;
- (b) \$39,877 plus GST for the Second Approval Period; and
- (c) \$55,899 plus GST for the Third Approval Period.

134. I have caused to be prepared the following remuneration reports summarising the remuneration incurred in the special purpose receivership during the Approval Periods:

- (a) for the First Approval Period, the report dated 29 May 2023 (**First Remuneration Report**);
- (b) for the Second Approval Period, the report dated 7 December 2023 (**Second Remuneration Report**); and
- (c) for the Third Approval Period, the report dated 27 August 2024 (**Third Remuneration Report**),

together, the '**Remuneration Reports**'.

Pages 334 to 372 of "**JRL-26**" are a true copy of the Remuneration Reports.

135. I have also caused to be prepared invoices showing each entry of time comprising my remuneration during the Approval Periods and a description of the work involved for the further remuneration claimed (**Invoices**).

Pages 373 to 437 of "**JRL-26**" are a true copy of the Invoices.

136. As the sole special purpose receiver, I am familiar with the steps taken to date and the remuneration claimed. The majority of the work performed during the Approval Periods has been undertaken by myself and the following personnel under my direction:

- (a) Alexander Burrows, who is an Associate Director at KPMG;
- (b) Hannah McConalogue, who is a Manager at KPMG; and
- (c) Philip Muscari, who was a Manager at KPMG until his resignation; and
- (d) Claudia Bishop, who was an Executive at KPMG until her resignation.

137. In paragraphs 85 and 86 of the First Lindholm Affidavit, I deposed to the factors I considered in determining that my remuneration in previous approval periods was fair and reasonable and that I have complied with the principles and standards of the Code in my practice. I confirm that I am:

- (a) a former Member of the board of ARITA; and
- (b) a life member of ARITA.

138. I continue to have regard to the Code, the most recent version of which is dated 16 September 2019, and I observe its principles and standards of conduct in my practice.

139. As stated in paragraphs 24 to 26 of the First Lindholm Affidavit, I have calculated remuneration on a time cost basis at rates that, in my opinion and experience:

- (a) are reasonable;
- (b) are in line with market rates for firms of similar size and capability as KPMG;
and
- (c) accurately reflect the experience, seniority, and capability of each staff member.

140. The Court has previously approved my remuneration to be fixed on a time cost basis. I remain of the view that time charging is the most appropriate basis for calculating my remuneration for the reasons set out in paragraph 24 of the First Lindholm Affidavit.

141. The process that I adopted for calculating remuneration for the Approval Periods is as set out at paragraph 27 of the First Lindholm Affidavit.

142. I continue to incur remuneration in my separate capacity as liquidator of Banksia. For the avoidance of doubt, none of the remuneration for which approval is sought in this application is for work performed in relation to my appointment as liquidator.
143. The vast majority of my remuneration during the Approval Periods falls within the Investigations, Creditors, Administration, and Dividend categories.
144. Broadly speaking, remuneration has been incurred in performing the following tasks in respect of the special purpose receivership:
- (a) attendances in relation to the Remitter and enforcement of the Remitter Judgment (including the Second Elliott Appeal and the O'Bryan Appeal);
 - (b) attendances in relation to ongoing settlement discussions to resolve the claims arising from the Remitter Judgment;
 - (c) attendances with the Committee;
 - (d) answering debenture-holders', the Committee's, and Mr Botsman's queries regarding the status of the Banksia Proceedings and Remitter Judgment;
 - (e) corresponding with Link in relation to the updating the Register and taking steps to ensure that unrepresented payments are received; and
 - (f) reviewing correspondence in relation to these issues.
145. In relation to some of the specific events in the Remitter:
- (a) I and various members of my staff have been heavily involved in reviewing material prepared for and in relation to the Non-party Costs Summons. I have reviewed various court documents, sworn affidavits, reviewed correspondence, reviewed key documents, and provided instructions to Maddocks. By its nature, that work was strategic, involving important forensic judgment, and needed to

be carried out by me as appointed special purpose receiver. There are also various other related attendances undertaken by my staff at my direction where I have delegated and supervised aspects of this work.

- (b) I filed the following material in support of the application for approval of the O'Bryan and Trimbos Settlements:

Date	Document	Pages
3 April 2023	Affidavit of Samuel Roadley Kingston	3
3 April 2023	Exhibit SRK-1	19
28 April 2023	Summons	2
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28 April 2023	Exhibit JRL-1	120
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2 June 2023	Amended Summons	3
2 June 2023	Affidavit of John Ross Lindholm	31
2 June 2023	Exhibit JRL-2	464
2 June 2023	Confidential Affidavit of John Ross Lindholm	16
2 June 2023	Confidential Exhibit JRL-2	246
2 June 2023	Submissions	8
15 June 2023	Affidavit of John Ross Lindholm	5
15 June 2023	Exhibit JRL-3	17
15 June 2023	Confidential Exhibit JRL-3	12

Pages 438 to 440 of "**JRL-26**" are a copy of amended summons dated 2 June 2023.

- (c) I and various members of my staff were heavily involved in reviewing material prepared for and in relation to the application seeking approval of the O'Bryan and Trimbos Settlements. I have reviewed various court documents, sworn affidavits, reviewed correspondence, reviewed key documents and provided instructions to Maddocks. By its nature, that work was strategic, involving important forensic judgment, and needed to be carried out by me as the appointed special purpose receiver. There are also various other related

attendances undertaken by my staff at my direction where I have delegated and supervised aspects of this work.

- (d) due to its deemed abandonment, there was no substantive progress made in relation to the Second Elliott Appeal. However, I was still required to review various documents and correspondence to provide instructions to Maddocks on the conduct of the Second Elliott Appeal. By its nature, that work was strategic in light of the ongoing settlement negotiations and needed to be carried out by me as appointed special purpose receiver.
- (e) I and various members of my staff have been involved in reviewing material prepared for and in relation to the O'Bryan Appeal. I have reviewed various court documents, affidavits, correspondence, reviewed key documents, and provided instructions to Maddocks. By its nature, that work was strategic, involving important forensic judgment, and needed to be carried out by me as the appointed special purpose receiver. There are also various other related attendances undertaken by my staff at my direction where I have delegated and supervised aspects of this work.
- (f) I claim some remuneration relating to time spent in dealings with the Committee and debenture-holders, including Mr Botsman, Mr Pitman, and Mr Kearney. I have been personally involved in relation to the attendances set out above. There are also various other related attendances undertaken by my staff at my direction.

146. On 27 July 2022, Maddocks filed an application in this Honourable Court seeking, amongst other things, directions that I would be justified in rejecting a proposal for

settlement of the outstanding issues relating to the Banksia Proceedings on the terms set out in a letter from Garland Hawthorne Brahe Lawyers dated 27 June 2022 (**Directions Application**).

147. The following material was filed in support of the Directions Application:

Date	Document	Pages
27 July 2022	Interlocutory Process	2
27 July 2022	Affidavit of John Ross Lindholm (Directions Application Affidavit)	57
27 July 2022	Exhibit JRL-1	826
27 July 2022	Submissions	2
5 August 2022	Affidavit of John Ross Lindholm	8
5 August 2022	Exhibit JRL-2	33
5 August 2022	Affidavit of Samuel Roadley Kingston	4
5 August 2022	Exhibit SRK-1	32
11 August 2022	Affidavit of John Ross Lindholm	4
11 August 2022	Exhibit JRL-3	89
11 August 2022	Submissions	18

148. During the Approval Periods, and as summarised in the Directions Application Affidavit, I undertook the following in respect of the ongoing negotiations:

- (a) correspondence with the Contraveners, Non-parties, and their representatives about the negotiations;
- (b) extensive correspondence with Mr Botsman and the Committee about the proposed terms of settlement, as described in more detail below;
- (c) investigations and analyses as to the asset and liability position of the Contraveners, Non-parties, and their related entities;
- (d) correspondence with the LPLC about the Contraveners' insurance position;
- (e) a detailed analysis of counsels' and Maddocks' advice about appropriate settlement ranges, the mechanics of any settlement, and various related legal issues; and

- (f) a detailed analysis of the advantages and disadvantages of reaching a negotiated outcome.
149. The Directions Application was listed:
- (a) for first mention on 29 July 2022;
 - (b) directions on 5 August 2022; and
 - (c) hearing on 12 August 2022.
150. Due to the importance of the matters being addressed in the Directions Application, I personally attended these hearings by audio-visual link.
151. On 12 August 2022, the Honourable Justice Black made orders in the form sought in the Directions Application. His Honour's reasons are recorded in *Re Banksia Securities Ltd (Receivers and Managers Appointed) (in liq)* [2022] NSWSC 1106 (**Directions Judgment**).
152. I cannot depose to the without prejudice discussions ongoing between the parties in this affidavit. However, once it became apparent to me that it was unlikely that a global settlement would be reached, I then proceeded to negotiate with the individual contributing parties individually.
153. I claim remuneration for time spent in relation to these attendances. In addition to being personally involved in the without prejudice negotiations, the details of which are set out in my confidential affidavit sworn and relied upon for this application, my involvement was in reviewing material produced by Maddocks and counsel, reviewing various court documents, swearing affidavits, reviewing correspondence, reviewing key documents, and giving detailed consideration to the issues arising in relation to these discussions.
- By its nature, that work was strategic, involving both high-level negotiation and important

forensic judgment, and needed to be carried out by me as the appointed special purpose receiver.

Updates to the Register and Unpresented Payments

154. During the Approval Periods, my staff under my supervision have continued to take steps to update the Register. My staff have also taken steps to ensure that unpresented payments from distributions are received. The status of unpresented payments is summarised in Section E above.

155. I claim remuneration relating to time spent in relation to further updating the Register. There are also various other related attendances undertaken by my staff at my direction, particularly in relation to corresponding with debenture holders and Link.

Committee approval of remuneration

156. On 29 May 2023, I caused to be sent to the members of the Committee an email that, amongst other things:

- (a) called a meeting of the Committee to consider and, if it thought fit, pass a resolution approving my remuneration incurred during the First Approval Period;
and
- (b) attached a copy of the First Remuneration Report for the Committee's consideration.

Page 441 of "**JRL-26**" is a true copy of the email without the Remuneration Report which is found at pages 334 to 346 of "**JRL-26**".

157. A meeting of the Committee was held via telephone conference on 31 May 2023 at 3:00 pm. At the meeting, the Committee passed a resolution approving my remuneration referred to in the First Remuneration Report. A copy of the minutes is exhibited to my

confidential affidavit as it refers to matters which are subject to without prejudice and legal professional privilege.

158. On 7 December 2023, I caused to be sent to the members of the Committee an email that, amongst other things, attached a copy of the Second Remuneration Report for the Committee's consideration.

Page 442 of "JRL-26" is a true copy of the email without the Remuneration Report which is found at pages 347 to 359 of "JRL-26".

159. A meeting of the Committee was held via telephone conference on 8 December 2023 at 9:00 am. At the meeting, the Committee passed a resolution approving my remuneration referred to in the Second Remuneration Report. A copy of the minutes is exhibited to my confidential affidavit as it refers to matters which are subject to without prejudice and legal professional privilege.

160. On 27 August 2024, I caused to be sent to the members of the Committee an email that, amongst other things, attached a copy of the Third Remuneration Report for the Committee's consideration, a copy of which is exhibited to my confidential affidavit.

161. A meeting of the Committee was held via telephone conference on 29 August 2024 at 10:00 am. At the meeting, the Committee passed a resolution approving my remuneration referred to in the Third Remuneration Report. A copy of the minutes is exhibited to my confidential affidavit as it refers to matters which are subject to without prejudice and legal professional privilege.

162. In my opinion and experience, the remuneration I have claimed:

- (a) has been properly and necessarily incurred;
- (b) is reasonable; and


- (c) the work which has been performed giving rise to the remuneration has been performed efficiently and capably by staff of an appropriate level of experience.

The contents of this affidavit are true and correct and I make it knowing that a person making a false affidavit may be prosecuted for the offence of perjury.

SWORN

In Melbourne Victoria

Signature of deponent

Signed by: 

Name of witness

Jane Isabella Carmel

Address of witness

Collins Square, Tower 2, Level 24, 727 Collins Street, Melbourne VIC 3008

Capacity of witness

Solicitor

And as a witness, I certify the following matters concerning the person who made this affidavit (the **deponent**):

- 1 I witnessed the signature of the deponent by audio-visual link and signed in counterpart in accordance with sections 14G and 14H of the *Electronic Transactions Act 2000* (NSW).
- 2 I have known the deponent for at least 12 months.

Signature of witness

Signed by: 
BD24C706716344A...

JANE ISABELLA CARMEL
Level 25, Tower 2, 727 Collins Street,
Docklands VIC 3008
An Australian Legal Practitioner within the
meaning of the Legal Professional Uniform Law
(VIC)

IN THE SUPREME COURT OF NEW SOUTH WALES
DIVISION: EQUITY
REGISTRY: SYDNEY
CORPORATIONS LIST

No 252832 of 2015

IN THE MATTER OF BANKSIA SECURITIES LIMITED (IN LIQUIDATION) (RECEIVERS
AND MANAGERS APPOINTED)
ABN: 45 004 736 458

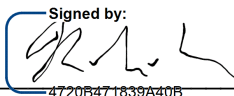

THE TRUST COMPANY (NOMINEES) LIMITED
ABN 14 000 154 441
Plaintiff

CERTIFICATE IDENTIFYING EXHIBIT

Date: 22 October 2024
Filed on behalf of: The Plaintiff
Prepared by:
Maddocks
Lawyers
Collins Square, Tower 2
Level 25, 727 Collins Street
Melbourne VIC 3008

Solicitor's Code: 230
DX 259 Melbourne
Tel: (03) 9258 3555
Fax: (03) 9258 3666
Ref: DCN:STK:6207696
Attention: Sam Kingston
E-mail Address: sam.kingston@maddocks.com.au

This is the exhibit marked "**JRL-26**" now produced and shown to John Ross Lindholm at the time of swearing his affidavit on 22 October 2024.

Signature of deponent	 <small>Signed by:</small> <small>4720B471839A40B...</small>
Signature of witness	 <small>Signed by:</small> <small>BD24C706716344A...</small>
Name of witness	Jane Isabella Carmel
Address of witness	Collins Square, Tower 2, Level 24, 727 Collins Street, Melbourne VIC 3008
Capacity of witness	Solicitor

JANE ISABELLA CARMEL
 Level 25, Tower 2, 727 Collins Street,
 Docklands VIC 3008
 An Australian Legal Practitioner within the
 meaning of the Legal Professional Uniform Law
 (VIC)

Exhibit "JRL-26"
**Bundle of documents referred to in the affidavit of
John Ross Lindholm made on 22 October 2024**

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Maddocks

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Australia

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www.maddocks.com.au

DX 259 Melbourne

Deed of Settlement and Release

**Banksia Securities Limited ACN 004 736 458 (Special Purpose Receiver Appointed)
(In Liquidation)**

And

The Parties Listed in Schedule 1

Deed of Settlement and Release

Dated

Parties

The Parties listed in schedule 1

Background

- A. On 24 December 2012, the Bolitho Proceeding was commenced against, inter alia, BSL. The Bolitho Proceeding is a group proceeding for the purposes of Part 4A of the *Supreme Court Act 1986 (Vic)*.
- B. On 24 June 2014, the SPR and Former SPR were appointed as joint and several liquidators of BSL.
- C. By orders made in the Supreme Court of New South Wales on 30 September 2015 and 29 February 2016, the SPR and the Former SPR were appointed as special purpose receivers of certain assets of BSL.
- D. On 16 December 2019, Mr McCluskey resigned as liquidator and special purpose receiver of BSL.
- E. On 1 November 2018, the Victorian Court of Appeal delivered its judgment in the Boltsman Appeal. The Court of Appeal remitted (i) the approval of the funding commission claimed by AFP and (ii) legal costs and other expenses incurred in the Bolitho Proceeding, to the Trial Division of the Supreme Court of Victoria as the Remitter. The Remitter was heard by the Honourable Justice John Dixon.
- F. The trial of the Remitter commenced on 27 July 2020.
- G. On 10 August 2020, AFP abandoned its claim for a funding commission from the settlement with Trust Co.
- H. On 18 August 2020, SPR filed the Non-Party Costs Summons in the Remitter.
- I. On 20 August 2020, Mr Alex Elliott and Mr Trimbois, a costs consultant, were joined as defendants to the Remitter.
- J. On 11 October 2021, Dixon J delivered the Remitter Judgment and ordered that the Defendants must jointly and severally pay the Compensation Component and the Costs Component to the SPR.
- K. Mr Alex Elliott filed the Elliott Appeal against the Remitter Judgment on 22 November 2021.
- L. AFP entered voluntary administration on 2 December 2021 and liquidation on 20 January 2022.
- M. On 6 December 2022, the Elliott Appeal was taken to be abandoned pursuant to r 64.45(1) of the *Supreme Court (General Civil Procedure) Rules 2015*.

- N. On 1 March 2023, Dixon J made the Non-Party Costs Order and delivered reasons on 31 July 2023.
- O. On 31 July 2023, Dixon J made orders approving the settlement of the SPR's and BSL's claims against the O'Bryan Entities and Trimbos Estate.
- P. The Parties have agreed to settle all Claims without admission on the terms set out in this Deed.

This Deed Witnesses

1. Definitions

In addition to the party short names identified in Schedule 1, in this Deed:

AFP means Australian Funding Partners Pty Ltd (in liquidation).

Bolitho Proceeding means proceeding S CI 2012 7185 in the Supreme Court of Victoria, including for the avoidance of doubt the Remitter.

Botsman Appeal means proceeding S APCI 2018 0037, being an appeal of the approval of the settlement with Trust Co.

Business Day means a day other than a Saturday, Sunday or public holiday in Melbourne, Victoria.

Claim means any claim, notice, allegation, debt, cause of action, liability, litigation, proceeding, judgement, entitlement to payment or compensation or demand of any nature however it arises and whether it is present or future, fixed or unascertained, actual or contingent (whether or not the facts, matters or circumstances giving rise to that claim are known to that person or to any other person at the date of this Deed) and whether at law, in equity, under statute or otherwise.

Committee means BSL's Committee of Debenture Holders.

Compensation Component means the amount of compensation ordered to be paid by the Defendants in the Remitter Judgment amounting to \$11,700,128.

Corporations Act means the *Corporations Act 2001* (Cth).

Costs Component means all costs ordered to be paid by the Defendants and/or the Elliott Entities in the Remitter Judgment in relation to the SPR's costs of the Botsman Appeal and the SPR's and contradictor's costs of the Remitter.

Court means the Supreme Court of Victoria or the Supreme Court of New South Wales.

Deed means this deed of settlement and release executed by the Parties.

Defendants mean AFP, Mr O'Bryan, Mr Symons, Mr Zita and Portfolio Law Pty Ltd, Mr Alexander Elliott and Katerina Peiros (as representative of the Trimbos Estate).

Elliott Appeal means the appeal lodged by Mr Alexander Elliott in respect of the Remitter Judgment with proceeding number S EAPCI 2021 0122.

Elliott Entities means Mr Alexander Elliott, Mr Maximilian Edward Elliott in his capacity as executor of the deceased estate of Mark Edward Elliott, Elliott Legal Pty Ltd, MCM (Mount Buller) Developments Pty Ltd and Decoland Holdings Pty Ltd.

Elliott Beneficiaries means Mrs Pina Elliott, Mr Alexander Elliott, Mr Maximilian Elliott, Mr Edward Elliott and Ms Olivia Elliott in their capacity as the primary beneficiaries of the Elliott Family Trust, Elliott Equity Investment Trust and the MEE Superannuation Fund.

LPLC means the Legal Practitioners Liability Commission.

McKenzie Proceeding means proceeding S CI 2015 01385 commenced in the Supreme Court of Victoria.

Nominated Account means:

Maddocks – Law Practice Trust Account (Melbourne)
BSB: 183-334
Account: 304700040
Swift Code: MACQAU2S
Bank: Macquarie Bank Limited
Branch: 101 Collins Street Melbourne VIC
Reference: STK:MZG:6207696

Non-Party Costs Order means the costs order made on 1 March 2023 by Dixon J in the Bolitho Proceeding against the Elliott Entities.

O'Bryan Entities means Mr O'Bryan, the O'Bryan Trustees, Noysue Pty Ltd and Noysy Pty Ltd.

Officer has the meaning given in the Corporations Act.

Parties means the Parties to this Deed and Party has a corresponding meaning.

Portfolio Law means Portfolio Law Pty Ltd.

Remitter means the remittal from the Court of Appeal of the approval of the commission claimed by AFP and legal costs in the Bolitho Proceeding arising from the settlement with Trust Co back to the trial division of the Supreme Court of Victoria.

Remitter Judgment means the judgment in *Bolitho v Bankasia Securities Limited (No 18) (Remitter)* [2021] VSC 686.

Related Entity of any Party (including an individual) includes any entity identified in the definition of Related Entity in s 9 of the Corporations Act in relation to that Party.

Released Matters means all claims relating or incidental to the:

- a) Bolitho Proceeding (including all claims relating to the Costs Component, the Non-Party Costs Order and the Compensation Component);
- b) McKenzie Proceeding;
- c) Remitter;
- d) Remitter Judgment;
- e) Trust Co Proceeding; and
- f) Elliott Appeal.

Settlement Approval Orders means orders made by the Court directing that the SPR is justified in settling the Claims against the Elliott Entities on the terms of this Deed.

Settlement Sum means \$10,000,000.00.

Trimbos Estate means deceased estate of Mr Peter Trimbos.

Trust Co means the Trust Company (Nominees) Limited.

Trust Co Proceeding means proceeding S CI 2015 01384 commenced in the Supreme Court of Victoria.

2. Conditions precedent

This Deed is subject to and conditional upon each of the following conditions being satisfied:

- 2.1 not later than 9 February 2024 or such later date as the SPR and the Elliott Parties agree, Mr Richard De Bono, as the accountant for the Elliott Entities, meeting with an independent financial accountant selected by the SPR and agreed by the Elliott Entities and providing reasonable access to the Elliott Entities' available books and records on a confidential basis to assist the independent financial accountant to assess their financial position;
- 2.2 within 14 days of the meeting referred to in clause 2.1, the SPR must confirm whether (in his absolute discretion but acting reasonably) the financial position of the Elliott Entities is substantially consistent with the representations made in the letters of Strongman and Crouch dated 1 August 2023 and 12 October 2023. If the SPR confirms his satisfaction that the financial position of the Elliott Entities is substantially consistent, this condition is satisfied;
- 2.3 the SPR receiving the approval of the Committee to settle the Claims against the Elliott Entities on the terms of this Deed;
- 2.4 the making of the Settlement Approval Orders; and
- 2.5 if the Settlement Approval Orders are made:
 - 2.5.1 any appeal period in respect of the Settlement Approval Orders (whether under the rules of the Court, the Court of Appeal, or the High Court) expiring without an appeal being commenced, and/or
 - 2.5.2 in circumstances where an appeal(s) is commenced, or application for special leave is made, in respect of the Settlement Approval Orders, that appeal(s) being finally determined (including any determination in respect of that appeal(s) by the High Court) or the application for special leave refused, the result of which is that the Settlement Approval Orders are made or confirmed.

3. Settlement Sum

- 3.1 Within one business day of the SPR notifying the Elliott Entities in writing of the satisfaction of all of the conditions precedent in clause 2, Alexander Elliott and Elliott Legal Pty Ltd will direct the LPLC to make payment of \$2 million into the Nominated Account within 14 days of the direction (**LPLC Payment**). Alexander Elliott and Elliott Legal Pty Ltd must take all necessary steps within their power to procure the LPLC Payment.
- 3.2 Within 7 days of the SPR notifying the Elliott Entities in writing of the satisfaction of all of the conditions precedent in clause 2, the Elliott Entities will pay \$8 million to the SPR and BSL into the Nominated Account.
- 3.3 The Elliott Entities guarantee the payment of the LPLC Payment to the SPR and BSL and, if the LPLC Payment is not made by the LPLC, will be jointly and severally liable to pay an

amount equivalent to the LPLC Payment to the SPR and BSL into the Nominated Account within 7 days of when the LPLC Payment is required to be paid under clause 3.1.

4. Releases

Release by BSL and the SPR

- 4.1 On and from payment of the Settlement Sum to the SPR in accordance with clause 3, BSL and the SPR, immediately and forever, unconditionally and absolutely:
- 4.1.1 release and discharge the Elliott Entities and their Related Entities (including the Elliott Beneficiaries) from all Claims relating to the subject matter of the Released Matters; and
 - 4.1.2 agree not to commence or maintain any Claim against the Elliott Entities and their Related Entities (including the Elliott Beneficiaries) relating to the subject matter released in clause 4.1.1 (with the exception of a claim or action for breach or enforcement of this Deed).
- 4.2 For the avoidance of doubt, the release in clause 4.1 of this Deed does not extend to or prejudice any Claims made or available to BSL, or the SPR against Mr Zita, Portfolio Law, Mr Symons and the LPLC in relation to the Released Matters.

Release by the Elliott Entities

- 4.3 On and from payment of the Settlement Sum to the SPR in accordance with clause 3, the Elliott Entities and their Related Entities (including the Elliott Beneficiaries), immediately and forever, unconditionally and absolutely, agree to:
- 4.3.1 release and discharge BSL, the SPR, the Former SPR, and their Related Entities from all Claims relating to the subject matter of the Released Matters; and
 - 4.3.2 not commence or maintain any Claim against BSL, the SPR, the Former SPR, and their Related Entities relating to the subject matter released in clause 4.3.1 (with the exception of a claim or action for breach or enforcement of this Deed).

5. Bar to further proceedings

- 5.1 This Deed may be pleaded (and a copy produced to the court) as full and complete defence and absolute bar by a Party to any Claim brought by any other Party relating to the subject matter of the Released Matters, other than in relation to the obligations created under this Deed.
- 5.2 The production of this Deed in any court constitutes a bar against the issue or continuation of legal proceedings against the Parties in respect of the subject matter of the Released Matters, other than in relation to the obligations created under this Deed.

6. Binding effect of this Deed

- 6.1 This Deed binds the Parties and any executor, administrator, transferee, assignee, liquidator or trustee in bankruptcy appointed in respect of it.
- 6.2 This Deed does not become legally binding upon any Party until every Party has executed a counterpart and copies of all counterparts have been exchanged between all Parties.

7. Disposal of Proceeding

With 7 days of payment of the Settlement Sum to the SPR in accordance with clause 3, Mr Alexander Elliott must seek orders dismissing the Elliott Appeal with no order as to costs.

8. Default

If the Settlement Sum is not paid to the Nominated Account in accordance with clause 3 above, the Elliott Entities acknowledge and agree that:

- 8.1 BSL and the SPR will be entitled to immediately commence proceedings against the Elliott Entities for breach of this Deed and to enter judgment for:
- 8.1.1 the total amount of the Settlement Sum (less any payments received towards the Settlement Sum);
 - 8.1.2 interest from the date of the default until the date of judgment calculated at the rate prescribed under the *Penalty Interest Rates Act 1983 (Vic)*; and
 - 8.1.3 the costs of BSL and the SPR in commencing proceedings and applying for and entering that judgment on an indemnity basis;
- 8.2 In the event that BSL and the SPR take steps pursuant to clause 8.1, the Elliott Entities and the Elliott Beneficiaries:
- 8.2.1 consent to BSL and the SPR commencing such proceedings and to the entry of judgment against the Elliott Entities for the amount owing under clause 8.1; and
 - 8.2.2 will not take any steps to resist any enforcement of the judgment obtained by the SPR against the Elliott Entities; and
- 8.3 the filing of an affidavit deposed by the SPR:
- 8.3.1 as to the default in payment of the Settlement Sum;
 - 8.3.2 as to the amount of the Settlement Sum and any payments made towards the Settlement Sum, as at the date of specific in the affidavit; and
 - 8.3.3 exhibiting a copy of this Deed.
- will be irrevocable proof that the amount owing under clause 8.1 is due and payable by them.

9. Warranty

- 9.1 The SPR warrants that the all costs of Mr Peter Jopling AM KC, Jennifer Collins of counsel and the firm Corrs Chambers Westgarth in relation to Mr Jopling's role as contradictor in the Remitter have been paid in full and those parties have no Claim against the Elliott Entities in relation to a Released Matter and agrees that the Elliott Entities are relying on this warranty in entering into this Deed.
- 9.2 Each Party warrants that:
- 9.2.1 they have full power and authority to enter into and perform this Deed;
 - 9.2.2 the matters set out in this Deed are true and accurate,

- 9.2.3 they have entered into this Deed freely and voluntarily;
- 9.2.4 it has taken independent legal advice as to the nature, effect and extent of this Deed;
- 9.2.5 no other Party has made any promise, representation or inducement or been party to any conduct material to the decision to enter into this Deed other than as set out in this Deed;
- 9.2.6 they are aware that the other Parties are relying upon these warranties; and
- 9.2.7 any information they have provided to the SPR and/or his solicitors in relation to their financial position and capacity to pay the Remitter Judgment, including statutory declarations and including the information and representations made in the letters from Strongman and Crouch dated 1 August 2023 and 12 October 2023, is accurate, complete and not misleading in any material respect; and
- 9.3 they accept this Deed as fair and reasonable in the circumstances;

10. Governing law

This Deed is governed by the law applying in Victoria and the Parties submit to the non-exclusive jurisdiction of the courts of Victoria.

11. Interpretation

11.1 Words and headings

In this Deed, unless expressed to the contrary:

- 11.1.1 words denoting the singular include the plural and vice versa;
- 11.1.2 the word 'includes' in any form is not a word of limitation;
- 11.1.3 where a word or phrase is defined, another part of speech or grammatical form of that word or phrase has a corresponding meaning;
- 11.1.4 headings and sub-headings are for ease of reference only and do not affect the interpretation of this Deed; and
- 11.1.5 no rule of construction applies to the disadvantage of the Party preparing this Deed on the basis that it prepared or put forward this Deed or any part of it.

11.2 Specific references

In this Deed, unless expressed to the contrary, a reference to

- 11.2.1 a gender includes all other genders;
- 11.2.2 any legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced and includes any subordinate legislation issued under it;
- 11.2.3 any document (such as a deed, agreement or other document) is to that document (or, if required by the context, to a part of it) as amended, novated, substituted or supplemented at any time;
- 11.2.4 a reference to time is to Melbourne, Australia time.

- 11.2.5 writing includes writing in digital form;
- 11.2.6 'this Deed' is to this Deed as amended from time to time;
- 11.2.7 'A\$', '\$', 'AUD' or 'dollars' is a reference to Australian dollars;
- 11.2.8 a clause, schedule or attachment is a reference to a clause, schedule or attachment in or to this Deed;
- 11.2.9 any property or assets of a person includes the legal and beneficial interest of that person of those assets or property, whether as owner, lessee or lessor, licensee or licensor, trustee or beneficiary or otherwise;
- 11.2.10 a person includes a firm, partnership, joint venture, association, corporation or other body corporate;
- 11.2.11 a person includes the legal personal representatives, successors and permitted assigns of that person, and in the case of a trustee, includes any substituted or additional trustee; and
- 11.2.12 any body (**Original Body**) which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the Original Body.

12. General

12.1 Variation

This Deed may only be varied by a document executed by the Parties.

12.2 Entire agreement and no reliance

12.2.1 This Deed

- (a) constitutes the entire agreement between the Parties; and
- (b) supersedes and cancels any contract, deed, arrangement, related condition, collateral arrangement, condition, warranty, indemnity or representation imposed, given or made by a Party (or an agent of a Party) prior to entering into this Deed.

12.2.2 The Parties acknowledge that in entering into this Deed, each Party has not relied on any representations made by the other Party (or its agents or employees) other than matters expressly set out in this Deed.

12.3 Liability

If a Party consists of 2 or more people or entities, an obligation of that Party binds each of them jointly and severally.

12.4 Severability

12.4.1 Any provision of this Deed that is held to be illegal, invalid, void, voidable or unenforceable must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.

12.4.2 If it is not possible to read down a provision as required by this clause, part or all of the clause of this Deed that is unlawful or unenforceable will be severed from this Deed and the remaining provisions continue in force.

12.5 Waiver

The failure of a Party at any time to insist on performance of any provision of this Deed is not a waiver of the Party's right at any later time to insist on performance of that or any other provision of this Deed.

12.6 Further assurance

Each Party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Deed.

12.7 No merger

The warranties, undertakings, agreements and continuing obligations in this Deed do not merge on completion of the transactions contemplated by this Deed.

12.8 Business Day

If a payment or other act is required by this Deed to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.

12.9 Legal costs and expenses

Each Party must pay its own legal costs and other expenses for the negotiation, preparation and execution of this Deed and related documents, unless expressly stated otherwise. For the avoidance of doubt, the SPR's costs are costs in the special purpose receivership of BSL.

12.10 No assignment without consent

A Party must not, without the prior written consent of the other Party

12.10.1 assign or novate this Deed;

12.10.2 transfer any right or obligation arising from this Deed;

12.10.3 mortgage, charge, create a security interest (as defined in s 51A of the Corporations Act) over, allow a security interest to exist over, or otherwise encumber any benefit arising from this Deed; or

12.10.4 subcontract the performance of any of its obligations under this Deed.

12.11 Time of the essence

Time is of the essence for all time-based obligations under this Deed.

Schedule 1 Parties

Name	Banksia Securities Limited ACN 004 736 458 (Special Purpose Receiver Appointed) (In Liquidation)
Address	C/- Maddocks Lawyers, Collins Square, Tower 2, Level 25, 727 Collins Street, Melbourne VIC 3008
Email	sam.kingston@maddocks.com.au
Short name	BSL
Name	John Ross Lindholm
Address	C/- Maddocks Lawyers, Collins Square, Tower 2, Level 25, 727 Collins Street, Melbourne VIC 3008
Email	sam.kingston@maddocks.com.au
Short name	SPR
Name	Peter Damien McCluskey
Address	C/- Maddocks Lawyers, Collins Square, Tower 2, Level 25, 727 Collins Street, Melbourne VIC 3008
Email	sam.kingston@maddocks.com.au
Short name	Former SPR
Name	Elliott Legal Pty Ltd
Address	C/- Strongman & Crouch, Level 15, 114 William Street, Melbourne VIC 3000
Email	mpetroni@strongmancrouch.com.au
Short name	Elliott Legal
Name	MCM (Mt Buller) Developments Pty Ltd
Address	C/- Strongman & Crouch, Level 15, 114 William Street, Melbourne VIC 3000
Email	mpetroni@strongmancrouch.com.au
Short name	MCM
Name	Decoland Holdings Pty Ltd
Address	C/- Strongman & Crouch, Level 15, 114 William Street, Melbourne VIC 3000
Email	mpetroni@strongmancrouch.com.au
Short name	Decoland
Name	Pina Gabrielle Elliott
Address	C/- Strongman & Crouch, Level 15, 114 William Street, Melbourne VIC 3000
Email	mpetroni@strongmancrouch.com.au
Short name	Pina Elliott
Name	Alexander Christopher Elliott
Address	C/- Strongman & Crouch, Level 15, 114 William Street, Melbourne VIC 3000
Email	mpetroni@strongmancrouch.com.au
Short name	Alexander Elliott

Name **Maximilian Edward Elliott personally and in his capacity as executor of the deceased estate of Mr Mark Edward Elliott**
Address C/- Strongman & Crouch, Level 15, 114 William Street, Melbourne VIC 3000
Email mpetroni@strongmancrouch.com.au
Short name **Maximilian Elliott**

Name **Edward Elliott**
Address C/- Strongman & Crouch, Level 15, 114 William Street, Melbourne VIC 3000
Email mpetroni@strongmancrouch.com.au
Short name **Edward Elliott**

Name **Olivia Elliott**
Address C/- Strongman & Crouch, Level 15, 114 William Street, Melbourne VIC 3000
Email mpetroni@strongmancrouch.com.au
Short name **Olivia Elliott**

Executed by the Parties as a deed

Executed by Banksia Securities Limited ACN 004)
736 458 (Special Purpose Receiver Appointed) (In)
Liquidation) by being signed, sealed and delivered by)
John Ross Lindholm, in the presence of:)

Signature

.....
Witness

Annalouise Lindholm
Print name of Witness

Signed sealed and delivered by John Ross
Lindholm in the presence of:

Signature

.....
Witness

Annalouise Lindholm
Print name of Witness

Signed sealed and delivered by Peter Damien
McCluskey in the presence of:

Signature

.....
Witness

.....
Print name of Witness

Executed by ELLIOTT LEGAL PTY LTD ACN 169)
412 391 in accordance with s 127(1) of the)
Corporations Act 2001:)

.....
Signature of Director

.....
Print full name

.....
Signature of Director/Company Secretary

ALEXANDER ELLIOTT
Print full name

Executed by the Parties as a deed

Executed by Banksia Securities Limited ACN 004)
736 458 (Special Purpose Receiver Appointed) (In)
Liquidation) by being signed, sealed and delivered by)
John Ross Lindholm, in the presence of:)

Signature

Witness

Print name of Witness

Signed sealed and delivered by John Ross
Lindholm in the presence of:

Signature

Witness

Print name of Witness

Signed sealed and delivered by Peter Damien
McCluskey in the presence of:

Signature

Witness

Print name of Witness

Executed by ELLIOTT LEGAL PTY LTD ACN 169
412 391 in accordance with s 127(1) of the
Corporations Act 2001

Signature of Director

Print full name

Signature of Director/Company Secretary

Print full name

Executed by MCM (MT BULLER) DEVELOPMENTS)
PTY LTD ACN 087 073 872 in accordance with)
s 127(1) of the Corporations Act 2001:)

Signature of Director

Print full name

Signature of Director/Company Secretary

Print full name

ALEXANDER ELLIOTT

Executed by DECOLAND HOLDINGS PTY LTD ACN)
007 431 405 in accordance with s 127(1) of the)
Corporations Act 2001:)

Signature of Director

Print full name

Signature of Director/Company Secretary

Print full name

ALEXANDER ELLIOTT

Signed sealed and delivered by Pina Gabrielle Elliott in the presence of:

Witness

Print name of witness

Signature

Signed sealed and delivered by Alexander Christopher Elliott in the presence of:

Witness

Print name of Witness

Signature

Signed sealed and delivered by Maximilian Edward Elliott personally and in his capacity as the executor of the estate of Mark Edward Elliott in the presence of:

)
)
)
) Signature


.....
Witness

MILL PETAONIDEUK
.....
Print name of Witness

Signed sealed and delivered by Edward Elliott in the presence of:


)
)
)
) Signature


.....
Witness

MILL PETAONIDEUK
.....
Print name of Witness

Signed sealed and delivered by Olivia Elliott in the presence of:

)
)
)
) Signature


.....
Witness

MILL PETAONIDEUK
.....
Print name of Witness

Deed of Settlement and Release

Dated 27 February 2024

Parties

The Parties listed in schedule 1.

Background

- A. On 24 December 2012, the Bolitho Proceeding was commenced against, inter alia, BSL. The Bolitho Proceeding is a group proceeding for the purposes of Part 4A of the *Supreme Court Act 1988* (Vic).
- B. On 24 June 2014, the SPR and Former SPR were appointed as joint and several liquidators of BSL.
- C. By orders made in the Supreme Court of New South Wales on 30 September 2015 and 29 February 2016, the SPR and the Former SPR were appointed as special purpose receivers of certain assets of BSL.
- D. On 16 December 2018, Mr McCluskey resigned as liquidator and special purpose receiver of BSL.
- E. On 1 November 2018, the Victorian Court of Appeal delivered its judgment in the *Coteman Appeal*. The Court of Appeal remitted (i) the approval of the funding commission claimed by AFP and (ii) legal costs and other expenses incurred in the Bolitho Proceeding to the Trial Division of the Supreme Court of Victoria as the Remitter. The Remitter was heard by the Honourable Justice John Dixon.
- F. On 13 November 2019, AFP, two of the Counsel who appeared in the Bolitho Proceeding, Mr Norman O'Bryan and Mr Michael Symons, and the solicitor who was representing Mr Bolitho and his firm, Mr Zila and Particola Law, were joined as parties to the Remitter.
- G. The trial of the Remitter commenced on 27 July 2020.
- H. On 11 October 2021, Dixon J delivered the Remitter Judgment and ordered that the Defendants must jointly and severally pay the Compensation Component and the Costs Component to the SPR.
- I. The SPR and Mr Zila have agreed to resolve all Claims arising out of or in relation to the Released Matters on the terms set out in this Deed.

This Deed Witnesses

1. Definitions

In addition to the party signatories identified in Schedule 1, in this Deed:

AFP means Australian Funding Partners Pty Ltd (in lic);

Bolitho Proceeding means proceeding SCI 2012 7195 in the Supreme Court of Victoria, including for the avoidance of doubt the Remitter.

Botman Appeal means proceeding S-APC1 2016 0037, being an appeal of the approval of the settlement with Trust Co.

Business Day means a day other than a Saturday, Sunday or public holiday in Melbourne, Victoria.

Claim means any claim, allegation, debt, cause of action, liability, proceeding or demand of any nature however it arises and whether it is present or future, fixed or unascertained, actual or contingent (whether or not the facts, matters or circumstances giving rise to that claim are known to that person or to any other person at the date of this Deed) and whether at law, in equity, under statute or otherwise.

Committee means BS L's Committee of Debenture Holders.

Compensation Component means the amount of compensation ordered to be paid by the Defendants in the Remitter Judgment amounting to \$11,700,127.

Corporations Act means the *Corporations Act 2001* (Cth).

Costs Component means all costs ordered to be paid by the Defendants in the Remitter Judgment in relation to the GPR's costs of the Botman Appeal and the GPR's and contradictor's costs of the Remitter.

Court means the Supreme Court of Victoria or Supreme Court of New South Wales.

Deed means this deed of settlement and release executed by the Parties.

Defendants mean AFP, Mr O'Bryan, Mr Symons, Mr Zita and Portfolio Law, Mr Alexander Elliott and Katrina Horos in her capacity as the executor of the deceased estate of Mr Peter Limbos.

Effective Date means the date of this Deed.

McKenzie Proceeding means proceeding S-C1 2015 01385 commenced in the Supreme Court of Victoria.

Nominated Account means

Macquarie – Law Practice Trust Account (Melbourne)
BSB: 183-334
Account: 304700040
Swift Code: MACQAU2S
Bank: Macquarie Bank Limited
Branch: 101 Collins Street Melbourne VIC
Reference: SIK.V2C.620/696

Parties means the Parties to this Deed and Party has a corresponding meaning.

Portfolio Law means Portfolio Law Pty Ltd.

Remitter means the remital from the Court of Appeal of the approval of the commission claimed by AFP and legal costs in the Bolitho Proceeding arising from the settlement with Trust Co back to the trial division of the Supreme Court of Victoria.

Remitter Judgment means the judgment in *Bolitho v Bankia Securities Limited (No 18)* (Remitter) [2021] VSC 604.



Related Entity of any Party (including an individual) includes all of the entities identified in the definition of Related Entity in s 9 of the Act

Released Matters means all claims relating or incidental to the:

- a) Bailin Proceedings;
- b) Bostman Appeal;
- c) Remitter;
- d) Remitter Judgment;
- e) Trust Co Proceedings; and
- f) McKenzie Proceedings.

Settlement Approval Orders means orders made by the Court approving the settlement of the Claims against Mr Zde on the terms of the Deed

Settlement Sum means \$95,000.00.

Trust Co means the Trust Company (Nominees) Limited

Trust Co Proceeding means proceeding S CI 2015 01384 commenced in the Supreme Court of Victoria

1.1 Interpretation

in this Deed, except where the context otherwise requires:

- 1.1.1 the singular includes the plural and vice versa, and a gender includes other genders;
- 1.1.2 another grammatical form of a defined word or expression has a corresponding meaning;
- 1.1.3 a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Deed, and a reference to this Deed includes any schedule or annexure;
- 1.1.4 a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- 1.1.5 a reference to time is to Melbourne, Australia time;
- 1.1.6 a reference to a party is to a party to this Deed, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- 1.1.7 a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- 1.1.8 the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions; and
- 1.1.9 a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Deed or any part of it.

1.2 Headings

Headings are for ease of reference only and do not affect interpretation.

2. Conditions precedent

This Deed is subject to and conditional upon each of the following conditions being satisfied:

- 2.1 the SPR receiving the approval of the Committee to settle BSL's Claims against Mr Zila on the terms of this Deed;
- 2.2 the making of the Settlement Approval Orders; and
- 2.3 if the Settlement Approval Orders are made:
 - 2.3.1 any appeal period in respect of the Settlement Approval Orders (whether under the rules of the Court, the Court of Appeal, or the High Court) expires without an appeal being commenced, and/or
 - 2.3.2 in circumstances where an appeal(s) is commenced, or application for special leave is made, in respect of the Settlement Approval Orders, that appeal(s) being finally determined (including any determination in respect of that appeal(s) by the High Court) or the application for special leave refused, the result of which is that the Settlement Approval Orders are made or confirmed.

3. Settlement Sum

- 3.1 In consideration of the releases in clause 4, Mr Zila must pay the Settlement Sum to the Nominated Account as follows:
 - 3.1.1 \$25,000 within 50 days of the Effective Date;
 - 3.1.2 \$25,000 within 90 days of the Effective Date; and
 - 3.1.3 \$35,000 on or before 30 July 2024.
- 3.2 Each instalment of the Settlement Sum is to be paid in full on or within three days of the due date.
- 3.3 Mr Zila must provide the SPR with a remittance evidencing payment of each instalment referred to in clause 3.1 by no later than 5.00pm on the date of payment by way of email to the SPR's solicitors at the email address sam.kingston@maddocks.com.au.

4. Releases

Release by BSL and the SPR

- 4.1 On and from receipt by the SPR of the Settlement Sum in full in accordance with clause 3, BSL and the SPR agree to:
 - 4.1.1 release and discharge Mr Zila and his Related Entities from all Claims relating to the subject matter of the Released Matters; and
 - 4.1.2 not commence or maintain any Claim against Mr Zila relating to the subject matter released in clause 4.1.1 (with the exception of a claim or action for breach or enforcement of this Deed).

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20/07/24

- 4.2 For the avoidance of doubt, the release in clause 4.1 of this Deed does not extend to or prejudice to any Claims made or available to BSL or the SPR against Portfolio Law and the PLC in relation to the Released Matters.

Release by Mr Zita

- 4.3 On and from the Effective Date, Mr Zita agrees to:

4.3.1 release and discharge BSL, the SPR, the Former SPR, and their Related Entities from all Claims relating to the subject matter of the Released Matters, and

4.3.2 not commence or maintain any Claim against BSL, the SPR, the Former SPR, and their Related Entities relating to the subject matter referred to clause 4.3.1 (with the exception of a claim or action for breach or enforcement of this Deed).

5. Bar to further proceedings

- 5.1 This Deed may be pleaded as full and complete defence by a Party to any Claim brought by the other Party relating to the subject matter of the Released Matters, other than in relation to the obligations created under this Deed.

- 5.2 The production of this Deed in any court constitutes a bar against the issue or continuation of legal proceedings against the Parties in respect of the subject matter of the Released Matters, other than in relation to the obligations created under this Deed.

6. Binding effect of this Deed

- 6.1 This Deed binds the Parties and any executor, administrator, transferee, assignee, liquidator or trustee in bankruptcy appointed in respect of it.

- 6.2 This Deed does not become legally binding upon any Party until every Party has executed a counterpart and copies of all counterparts have been exchanged between all Parties.

7. Default

- 7.1 If the Settlement Sum is not paid to the SPR in accordance with clause 3 above, Mr Zita acknowledges and agrees that the SPR may elect to either

7.1.1 treat this Deed as immediately at an end, without affecting any accrued rights of any Party. And no further notice is necessary, or

7.1.2 immediately serve a bankruptcy notice on him for the Settlement Sum (less any payments received from Mr Zita towards the Settlement Sum) and take steps to obtain sequestration and related orders against him in accordance with the *Bankruptcy Act 1956 (Cth)* or

7.1.3 immediately commence proceedings against him for breach of this Deed and enter judgment against him for:

(a) the total amount of the Settlement Sum (less any payments received towards the Settlement Sum);

(b) interest from the date of the default until the date of judgment calculated at the rate prescribed under the *Penalty Interest Rates Act 1973 (Vic)* and



- (c) the assets of BSL and the SPR in so interlocking proceedings and applying for and enforcing that judgment on an indemnity basis;

- 7.2 In the event that OSL and the SPR take steps pursuant to clause 7.1.2, Mr Zita:
- 7.2.1 consents to Banksia and the SPR taking steps to obtain a sequestration and related orders against him in accordance with the *Bankruptcy Act 1986* (Cth);
 - 7.2.2 will not make any application to set aside any bankruptcy notice issued in accordance with this Deed;
 - 7.2.3 will not resist or defend any creditor's petition or related proceedings commenced in accordance with this Deed; and
 - 7.2.4 agrees that this Deed may be pleaded as a complete answer to any application to set aside a bankruptcy notice or proceedings issued in accordance with this Deed.
- 7.3 In the event that BSL and the SPR take steps pursuant to clause 7.1.3, Mr Zita:
- 7.3.1 consents to Banksia and the SPR commencing such proceedings and to the entry of judgment against them for the amount owing under clause 7.1.3; and
 - 7.3.2 agrees that the filing of an affidavit deposed by the SPR:
 - (a) as to the default in payment of the Settlement Sum;
 - (b) as to the amount of the Settlement Sum and any payments made towards the Settlement Sum, as at the date of specification in the affidavit; and
 - (c) exhibiting a copy of this Deed,will be irrevocable proof that the amount owing under clause 7.1.3 is due and payable by him.

8. Warranty

Mr Zita warrants that

- 8.1 he has full power and authority to enter into and perform this Deed;
- 8.2 the matters set out in this Deed are true and accurate;
- 8.3 he has entered into this Deed freely and voluntarily;
- 8.4 he has been advised to take independent legal advice as to the nature, effect and extent of this Deed and has decided not to seek such advice;
- 8.5 no other Party has made any promise, representation or inducement or been party to any conduct integral to the decision to enter into this Deed other than as set out in this Deed;
- 8.6 he is aware that the SPR is relying upon these warranties;
- 8.7 any information he has provided to the SPR and/or his solicitors in relation to his financial position and capacity to pay the Remitter Judgment is accurate, complete and not misleading in any material respect; and



page 11

8.6 He accepts this Deed as fair and reasonable in the circumstances.

9. Governing law

This Deed is governed by the law applying in Victoria and the Parties submit to the non-exclusive jurisdiction of the courts of Victoria.

10. Interpretation

10.1 Words and headings

In this Deed, unless expressed to the contrary:

- 10.1.1 words denoting the singular include the plural and vice versa;
- 10.1.2 the word 'includes' in any form is not a word of limitation;
- 10.1.3 where a word or phrase is defined, another part of speech or grammatical form of that word or phrase has a corresponding meaning;
- 10.1.4 headings and sub-headings are for ease of reference only and do not affect the interpretation of this Deed; and
- 10.1.5 no rule of construction applies to the disadvantage of the Party preparing this Deed on the basis that it prepared or put forward this Deed or any part of it.

10.2 Specific references

In this Deed, unless expressed to the contrary, a reference to

- 10.2.1 a gender includes all other genders;
- 10.2.2 any legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced and includes any subordinate legislation issued under it;
- 10.2.3 any document (such as a deed, agreement or other document) is to that document (or, if required by the context, to a part of it) as amended, varied, substituted or supplemented at any time;
- 10.2.4 writing includes writing in digital form;
- 10.2.5 'this Deed' is to this Deed as amended from time to time;
- 10.2.6 '\$', '\$\$', '\$\$\$' or 'dollars' is a reference to Australian dollars;
- 10.2.7 a clause, schedule or attachment is a reference to a clause, schedule or attachment in or to this Deed;
- 10.2.8 any property or assets of a person includes the legal and beneficial interest of that person in those assets or property (whether as owner, lessee or tenant, licensee or licensor, trustee or beneficiary or otherwise);
- 10.2.9 a person includes a firm, partnership, joint venture, association, corporation or other body corporate.

10.2.10 a person includes the legal personal representative, successors and permitted assigns of that person, and in the case of a trustee, includes any substituted or additional trustees, and

10.2.11 any body (Original Body) which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the Original Body

11. General

11.1 Variation

This Deed may only be varied by a document executed by the Parties.

11.2 Entire agreement and no reliance

11.2.1 This Deed:

- (a) constitutes the entire agreement between the Parties, and
- (b) supersedes and cancels any contract, deed, arrangement, related condition, collateral arrangement, condition, warranty, indemnity or representation imposed, given or made by a Party (or an agent of a Party) prior to entering into this Deed.

11.2.2 The Parties acknowledge that in entering into this Deed, each Party has not relied on any representations made by the other Party (or its agents or employees) other than matters expressly set out in this Deed.

11.3 Liability

If a Party consists of 2 or more people or entities, an obligation of that Party binds each of them jointly and severally.

11.4 Severability

11.4.1 Any provision of this Deed that is held to be illegal, invalid, void, voidable or unenforceable must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.

11.4.2 If it is not possible to read down a provision as required by this clause, part or all of the clause of this Deed that is unlawful or unenforceable will be severed from this Deed and the remaining provisions continue in force.

11.5 Waiver

The failure of a Party at any time to insist on performance of any provision of this Deed is not a waiver of the Party's right at any later time to insist on performance of that or any other provision of this Deed.

11.6 Further assurance

Each Party must promptly execute and deliver all documents and take all other actions necessary or desirable to effect, perfect or complete the transactions contemplated by this Deed, including the conditions precedent in clause 5.



SIGNED

11.7 Survival and enforcement of indemnities

11.7.1 Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the Parties and survives termination of the Deed.

11.7.2 It is not necessary for a Party to incur expense or make payment before enforcing a right of indemnity conferred by this Deed.

11.8 No merger

The warranties, undertakings, agreements and continuing obligations in this Deed do not merge on completion of the transactions contemplated by this Deed.

11.9 Business Day

If a payment or other act is required by this Deed to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.

11.10 Legal costs and expenses

Each Party must pay its own legal costs and other expenses for the negotiation, preparation and execution of this Deed and related documents, unless expressly stated otherwise. For the avoidance of doubt, the SP's costs and costs in the special purpose receive ship of ESL.

11.11 No assignment without consent

A Party must not, without the prior written consent of the other Party:

11.11.1 assign or novate this Deed;

11.11.2 transfer any right or obligation arising from this Deed;

11.11.3 mortgage, charge, create a security interest (as defined in s 61A of the Corporations Act) over, allow a security interest to exist over, or of any way encumber any benefit arising from this Deed; or

11.11.4 subconform the performance of any of its obligations under this Deed.

11.12 Time of the essence

Time is of the essence for all time-based obligations under this Deed.

11.13 Counterparts

11.13.1 The Parties acknowledge and agree that:

(a) a Party may sign this Deed electronically and bind itself to this Deed by executing in that manner; and

(b) a party's signature (whether affixed to this Deed electronically or in handwriting) may be witnessed remotely in accordance with any applicable laws.

11.13.2 A Party whose signature appears in this Deed (whether affixed electronically or in handwriting) acknowledges that it is their signature and that such party affixed (or expressly authorised the affixing of) their signature to this Deed.

11.13.3 This Deed may be executed in any number of counterparts, each of which,



- (a) may be executed electronically or in handwriting and
- (b) will be deemed an original whether kept in electronic or paper form, and all of which taken together will constitute one and the same document

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Schedule 1 Parties


Name	Bankia Securities Limited A.C.N 604 736 438 (Special Purpose Receive Appointed) (In Liquidation)
Address	C/- Maddocks Lawyers, Collins Square, Tower 2, Level 26, 727 Collins Street, Melbourne VIC 3008
Email	sam.angston@maddocks.com.au
Short name	BSL
Name	John Rosa Lindholm
Address	C/- Maddocks Lawyers, Collins Square, Tower 2, Level 25, 727 Collins Street, Melbourne VIC 3008
Email	sam.kindler@maddocks.com.au
Short name	SPR
Name	Peter Damien McCluskey
Address	C/- Maddocks Lawyers, Collins Square, Tower 2, Level 25, 727 Collins Street, Melbourne VIC 3008
Email	www.sam.pet@maddocks.com.au
Short name	Former SPR
Name	Anthony Zita
Address	112 Be Street, Pascoe Vale North VIC 3044
Email	lucy262@gmail.com
Short name	Mr Zita

Handwritten signature and initials, possibly 'S' and 'JL'.

Executed by the Parties as a deed


Executed by Banksia Securities Limited ACN 004)
736 458 (Special Purpose Receiver Appointed) (In)
Liquidation) by being signed sealed and delivered by)
John Ross Lindholm, in the presence of:)


Signature


Alexander Burrows 
Witness

Signed sealed and delivered by John Ross
Lindholm in the presence of


Signature

Alexander Burrows 
Witness

Signed sealed and delivered by Peter Damian
McCluskey in the presence of:


Signature

Alexander Burrows

Alexander Burrows

Witness

Signed sealed and delivered by Anthony Zita in
the presence of


Signature


Samantha Tomlin
Constable 43472
Witness

1 NORTHCOOTE POLICE STATION
2 45 DENNIS STREET NORTHCOOTE 3070



Maddocks

Lawyers
Collins Square, Tower Two
Level 25, 727 Collins Street
Melbourne VIC 3008
Australia

Telephone 61 3 9258 3555
Facsimile 61 3 9258 3688

info@maddocks.com.au
www.maddocks.com.au

DX 259 Melbourne

Deed of Settlement and Release

Banksia Securities Limited ACN 004 736 458 (Special Purpose Receiver Appointed)
(In Liquidation)
and

The Parties Listed in Schedule 1

MS. *CB*

Deed of Settlement and Release

Dated

Parties

The Parties listed in schedule 1.

Background

- A. On 24 December 2012, the Bolitho Proceeding was commenced against, inter alia, BSL. The Bolitho Proceeding is as group proceeding for the purposes of Part 4A of the *Supreme Court Act 1986 (Vic)*.
- B. On 24 June 2014, the SPR and Former SPR were appointed as joint and several liquidators of BSL.
- C. By orders made in the Supreme Court of New South Wales on 30 September 2015 and 29 February 2016, the SPR and the Former SPR were appointed as special purpose receivers of certain assets of BSL.
- D. On 16 December 2019, Mr McCluskey resigned as liquidator and special purpose receiver of BSL.
- E. On 1 November 2018, the Victorian Court of Appeal delivered its judgment in the Botsman Appeal. The Court of Appeal remitted (i) the approval of the funding commission claimed by AFP and (ii) legal costs and other expenses incurred in the Bolitho Proceeding, to the Trial Division of the Supreme Court of Victoria as the Remitter. The Remitter was heard by the Honourable Justice John Dixon.
- F. On 13 November 2019, AFP, two of the Counsel who appeared in the Bolitho Proceeding, Mr Norman O'Bryan and Mr Symons, and the solicitor who was representing Mr Bolitho and his firm, Mr Antony Zita and Portfolio Law, were joined as parties to the Remitter.
- G. The trial of the Remitter commenced on 27 July 2020.
- H. On 6 August 2020, Mr Symons ceased taking steps to defend the Remitter.
- I. On 11 October 2021, Dixon J delivered the Remitter Judgment and ordered that the Defendants must jointly and severally pay the Compensation Component and the Costs Component to the SPR.
- J. On 1 November 2021, Mr Symons became bankrupt and the Symons Trustee was appointed as trustee of his bankrupt estate.
- K. The SPR and Mr Symons have agreed to resolve all Claims arising out of or in relation to the Released Matters on the terms set out in this Deed on a without admission basis.
- L. The Symons Trustee enters into this Deed to give effect to the releases and transactions contemplated insofar as they relate to the interests of Mr Symons or his bankrupt estate.

This Deed Witnesses

[8207698 42778045_2]

MS. ds

1. Definitions

In addition to the party short names identified in Schedule 1, in this Deed:

AFP means Australian Funding Partners Pty Ltd (in liq).

Bolitho Proceeding means proceeding SCI 2012 7185 in the Supreme Court of Victoria, including for the avoidance of doubt the Remitter.

Botsman Appeal means proceeding S APCI 2018 0037, being an appeal of the approval of the settlement with Trust Co.

Business Day means a day other than a Saturday, Sunday or public holiday in Melbourne, Victoria.

Claim means any claim, allegation, debt, cause of action, liability, proceeding or demand of any nature however it arises and whether it is present or future, fixed or unascertained, actual or contingent (whether or not the facts, matters or circumstances giving rise to that claim are known to that person or to any other person at the date of this Deed) and whether at law, in equity, under statute or otherwise.

Committee means BSL's Committee of Debenture Holders.

Compensation Component means the amount of compensation ordered to be paid by the Defendants in the Remitter Judgment amounting to \$11,700,127.

Corporations Act means the *Corporations Act 2001* (Cth).

Costs Component means all costs ordered to be paid by the Defendants in the Remitter Judgment in relation to the SPR's costs of the Botsman Appeal and the SPR's and contradictor's costs of the Remitter.

Court means the Supreme Court of Victoria or Supreme Court of New South Wales.

Deed means this deed of settlement and release executed by the Parties.

Defendants mean AFP, Mr O'Bryan, Mr Symons, Mr Zita and Portfolio Law, Mr Alexander Elliott and Katrina Peiros in her capacity as the executor of the deceased estate of Mr Peter Trimbos.

McKenzie Proceeding means proceeding S CI 2015 01385 commenced in the Supreme Court of Victoria.

Nominated Account means:

Maddocks – Law Practice Trust Account (Melbourne)
BSB: 183-334
Account: 304700040
Swift Code: MACQAU2S
Bank: Macquarie Bank Limited
Branch: 101 Collins Street Melbourne VIC
Reference: STK:MZG:6207696

Parties means the Parties to this Deed and Party has a corresponding meaning.

Portfolio Law means Portfolio Law Pty Ltd.

Remitter means the remittal from the Court of Appeal of the approval of the commission claimed by AFP and legal costs in the Bolitho Proceeding arising from the settlement with Trust Co back to the trial division of the Supreme Court of Victoria.

Remitter Judgment means the judgment in *Bolitho v Banksia Securities Limited (No 18) (Remitter)* [2021] VSC 866.

Related Entity of any Party (including an individual) includes all of the entities identified in the definition of Related Entity in s 9 of the Corporations Act.

Released Matters means all claims relating or incidental to the:

- a) Bolitho Proceeding;
- b) Botsman Appeal;
- c) Remitter;
- d) Remitter Judgment;
- e) Trust Co Proceeding; and
- f) McKenzie Proceeding.

Settlement Approval Orders means orders made by the Court approving the settlement of the Claims against Mr Symons on the terms of this Deed.

Settlement Sum means \$250,000.

Trust Co means the Trust Company (Nominees) Limited.

Trust Co Proceeding means proceeding S CI 2015 01384 commenced in the Supreme Court of Victoria.

1.1 Interpretation

In this Deed, except where the context otherwise requires:

- 1.1.1 the singular includes the plural and vice versa, and a gender includes other genders;
- 1.1.2 another grammatical form of a defined word or expression has a corresponding meaning;
- 1.1.3 a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Deed, and a reference to this Deed includes any schedule or annexure;
- 1.1.4 a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- 1.1.5 a reference to time is to Melbourne, Australia time;
- 1.1.6 a reference to a party is to a party to this Deed, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- 1.1.7 a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- 1.1.8 the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions; and
- 1.1.9 a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Deed or any part of it.

1.2 **Headings**

Headings are for ease of reference only and do not affect interpretation.

2. **Conditions precedent**

This Deed is subject to and conditional upon each of the following conditions being satisfied:

- 2.1 the SPR receiving the approval of the Committee to settle BSL's Claims against Mr Symons on the terms of this Deed;
 - 2.2 the making of the Settlement Approval Orders; and
 - 2.3 if the Settlement Approval Orders are made:
 - 2.3.1 any appeal period in respect of the Settlement Approval Orders (whether under the rules of the Court, the Court of Appeal, or the High Court) expiring without an appeal being commenced; and/or
 - 2.3.2 in circumstances where an appeal(s) is commenced, or application for special leave is made, in respect of the Settlement Approval Orders, that appeal(s) being finally determined (including any determination in respect of that appeal(s) by the High Court) or the application for special leave refused, the result of which is that the Settlement Approval Orders are made or confirmed.
-

3. **Settlement Sum**

Within 7 days of the SPR notifying Mr Symons in writing of the satisfaction of all of the conditions precedent in clause 2, Mr Symons will cause the Settlement Sum to be paid to the SPR and BSL into the Nominated Account.

4. **Releases**

Release by BSL and the SPR

- 4.1 On and from receipt of the Settlement Sum by the SPR in accordance with clause 3, BSL and the SPR agree to:
 - 4.1.1 release and discharge Mr Symons and his Related Entities, including for the avoidance of doubt the Symons Trustee, from all Claims relating to the subject matter of the Released Matters; and
 - 4.1.2 not commence or maintain any Claim against Mr Symons relating to the subject matter released in clause 4.1.1 (with the exception of a claim or action for breach or enforcement of this Deed).
- 4.2 For the avoidance of doubt, the release in clause 4.1 of this Deed does not extend to or prejudice to any Claims made or available to BSL or the SPR against Mr Zita, Portfolio Law and the LPLC in relation to the Released Matters.

Release by Mr Symons

- 4.3 On and from receipt of the Settlement Sum by the SPR in accordance with clause 3, Mr Symons and the Symons Trustee agree to:
 - 4.3.1 release and discharge BSL, the SPR, the Former SPR, and their Related Entities from all Claims relating to the subject matter of the Released Matters; and
- MS. ES

- 4.3.2 not commence or maintain any Claim against BSL, the SPR, the Former SPR, and their Related Entities relating to the subject matter released in clause 4.3.1 (with the exception of a claim or action for breach or enforcement of this Deed).

Proof of debt in Mr Symons' bankrupt estate

- 4.4 To the extent that any Claim released under clause 4.1 has been admitted to proof by the Symons Trustee, on and from receipt of the Settlement Sum by the SPR in accordance with clause 3 the SPR:
- 4.4.1 consents to the revocation by the Symons Trustee of their decision to admit such Claim to proof;
- 4.4.2 withdraws any proof of debt or claim filed with the Symons Trustee; and
- 4.4.3 waives any current or future right to prove in the bankrupt estate.

5. Bar to further proceedings

- 5.1 This Deed may be pleaded as full and complete defence by a Party to any Claim brought by the other Party relating to the subject matter of the Released Matters, other than in relation to the obligations created under this Deed.
- 5.2 The production of this Deed in any court constitutes a bar against the issue or continuation of legal proceedings against the Parties in respect of the subject matter of the Released Matters, other than in relation to the obligations created under this Deed.

6. Binding effect of this Deed

- 6.1 This Deed binds the Parties and any executor, administrator, transferee, assignee, liquidator or trustee in bankruptcy appointed in respect of it.
- 6.2 This Deed does not become legally binding upon any Party until every Party has executed a counterpart and copies of all counterparts have been exchanged between all Parties.

7. Default

- 7.1 If the Settlement Sum is not paid to the SPR in accordance with clause 3 above, Mr Symons acknowledges and agrees that the SPR may elect to either:
- 7.1.1 treat this Deed as immediately at an end, without affecting any accrued rights of any Party, and no further notice is necessary; or
- 7.1.2 immediately commence proceedings against him for breach of this Deed and enter judgment against him for:
- (a) the total amount of the Settlement Sum (less any payments received towards the Settlement Sum);
- (b) interest from the date of the default until the date of judgment calculated at the rate prescribed under the *Penalty Interest Rates Act 1983* (Vic); and
- (c) the costs of BSL and the SPR in commencing proceedings and applying for and entering that judgment on an indemnity basis.

MS. BS

- 7.2 In the event that BSL and the SPR take steps pursuant to clause 7.1.2, Mr Symons:
- 7.2.1 consents to Banksia and the SPR commencing such proceedings and to the entry of judgment against them for the amount owing under clause 7.1.2; and
 - 7.2.2 agrees that the filing of an affidavit deposited by the SPR:
 - (a) as to the default in payment of the Settlement Sum;
 - (b) as to the amount of the Settlement Sum and any payments made towards the Settlement Sum, as at the date of specific in the affidavit; and
 - (c) exhibiting a copy of this Deed,
- will be irrevocable proof that the amount owing under clause 7.1.2 is due and payable by him.

8. Warranty

Each Party warrants that:

- 8.1 they have full power and authority to enter into and perform this Deed;
- 8.2 the matters set out in this Deed are true and accurate;
- 8.3 they have entered into this Deed freely and voluntarily;
- 8.4 it has taken independent legal advice as to the nature, effect and extent of this Deed;
- 8.5 no other Party has made any promise, representation or inducement or been party to any conduct material to the decision to enter into this Deed other than as set out in this Deed;
- 8.6 they are aware that the SPR is relying upon these warranties;
- 8.7 any information they have provided to the SPR and/or his solicitors in relation to their financial position and capacity to pay the Remitter Judgment is accurate, complete and not misleading in any material respect; and
- 8.8 they accept this Deed as fair and reasonable in the circumstances.

9. Governing law

This Deed is governed by the law applying in Victoria and the Parties submit to the non-exclusive jurisdiction of the courts of Victoria.

10. Interpretation

10.1 Words and headings

In this Deed, unless expressed to the contrary:

- 10.1.1 words denoting the singular include the plural and vice versa;
- 10.1.2 the word 'includes' in any form is not a word of limitation;

MS. Eg

- 10.1.3 where a word or phrase is defined, another part of speech or grammatical form of that word or phrase has a corresponding meaning;
- 10.1.4 headings and sub-headings are for ease of reference only and do not affect the interpretation of this Deed; and
- 10.1.5 no rule of construction applies to the disadvantage of the Party preparing this Deed on the basis that it prepared or put forward this Deed or any part of it.

10.2 Specific references

In this Deed, unless expressed to the contrary, a reference to:

- 10.2.1 a gender includes all other genders;
- 10.2.2 any legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced and includes any subordinate legislation issued under it;
- 10.2.3 any document (such as a deed, agreement or other document) is to that document (or, if required by the context, to a part of it) as amended, novated, substituted or supplemented at any time;
- 10.2.4 writing includes writing in digital form;
- 10.2.5 'this Deed' is to this Deed as amended from time to time;
- 10.2.6 'A\$', '\$', 'AUD' or 'dollars' is a reference to Australian dollars;
- 10.2.7 a clause, schedule or attachment is a reference to a clause, schedule or attachment in or to this Deed;
- 10.2.8 any property or assets of a person includes the legal and beneficial interest of that person of those assets or property, whether as owner, lessee or lessor, licensee or licensor, trustee or beneficiary or otherwise;
- 10.2.9 a person includes a firm, partnership, joint venture, association, corporation or other body corporate;
- 10.2.10 a person includes the legal personal representatives, successors and permitted assigns of that person, and in the case of a trustee, includes any substituted or additional trustee; and
- 10.2.11 any body (**Original Body**) which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the Original Body.

11. General

11.1 Variation

This Deed may only be varied by a document executed by the Parties.

11.2 Entire agreement and no reliance

11.2.1 This Deed:

- (a) constitutes the entire agreement between the Parties; and

MS. BS

(b) supersedes and cancels any contract, deed, arrangement, related condition, collateral arrangement, condition, warranty, indemnity or representation imposed, given or made by a Party (or an agent of a Party) prior to entering into this Deed.

11.2.2 The Parties acknowledge that in entering into this Deed, each Party has not relied on any representations made by the other Party (or its agents or employees) other than matters expressly set out in this Deed.

11.3 Liability

If a Party consists of 2 or more people or entities, an obligation of that Party binds each of them jointly and severally.

11.4 Severability

11.4.1 Any provision of this Deed that is held to be illegal, invalid, void, voidable or unenforceable must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.

11.4.2 If it is not possible to read down a provision as required by this clause, part or all of the clause of this Deed that is unlawful or unenforceable will be severed from this Deed and the remaining provisions continue in force.

11.5 Waiver

The failure of a Party at any time to insist on performance of any provision of this Deed is not a waiver of the Party's right at any later time to insist on performance of that or any other provision of this Deed.

11.6 Further assurance

Each Party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Deed, including the conditions precedent in clause 2.

11.7 Survival and enforcement of indemnities

11.7.1 Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the Parties and survives termination of this Deed.

11.7.2 It is not necessary for a Party to incur expense or make payment before enforcing a right of indemnity conferred by this Deed.

11.8 No merger

The warranties, undertakings, agreements and continuing obligations in this Deed do not merge on completion of the transactions contemplated by this Deed.

11.9 Business Day

If a payment or other act is required by this Deed to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.

11.10 Legal costs and expenses

Each Party must pay its own legal costs and other expenses for the negotiation, preparation and execution of this Deed and related documents, unless expressly stated otherwise. For the avoidance of doubt, the SPR's costs are costs in the special purpose receivership of BSL.

MS.ES

11.11 No assignment without consent

A Party must not, without the prior written consent of the other Party:

- 11.11.1 assign or novate this Deed;
- 11.11.2 transfer any right or obligation arising from this Deed;
- 11.11.3 mortgage, charge, create a security interest (as defined in s 51A of the Corporations Act) over, allow a security interest to exist over, or otherwise encumber any benefit arising from this Deed; or
- 11.11.4 subcontract the performance of any of its obligations under this Deed.

11.12 Time of the essence

Time is of the essence for all time-based obligations under this Deed.

11.13 Counterparts

11.13.1 The Parties acknowledge and agree that:

- (a) a Party may sign this Deed electronically and bind itself to this Deed by executing in that manner; and
- (b) a party's signature (whether affixed to this Deed electronically or in handwriting) may be witnessed remotely in accordance with any applicable laws.

11.13.2 A Party whose signature appears in this Deed (whether affixed electronically or in handwriting) acknowledges that it is their signature and that such party affixed (or expressly authorised the affixing of) their signature to this Deed.

11.13.3 This Deed may be executed in any number of counterparts each of which:

- (a) may be executed electronically or in handwriting; and
- (b) will be deemed an original whether kept in electronic or paper form, and all of which taken together will constitute one and the same document.

Schedule 1 Parties

Name	Banksia Securities Limited ACN 004 736 458 (Special Purpose Receive Appointed) (In Liquidation)
Address	C/- Maddocks Lawyers, Collins Square, Tower 2, Level 25, 727 Collins Street, Melbourne VIC 3008
Email	sam.kingston@maddocks.com.au
Short name	BSL
Name	John Ross Lindholm
Address	C/- Maddocks Lawyers, Collins Square, Tower 2, Level 25, 727 Collins Street, Melbourne VIC 3008
Email	sam.kingston@maddocks.com.au
Short name	SPR
Name	Peter Damien McCluskey
Address	C/- Maddocks Lawyers, Collins Square, Tower 2, Level 25, 727 Collins Street, Melbourne VIC 3008
Email	sam.kingston@maddocks.com.au
Short name	Former SPR
Name	Michael William Loosemore Symons (A Bankrupt)
Address	10 Nicholson Street, Hawthorn East VIC 3123
Email	michael.symons@outlook.com
Short name	Mr Symons
Name	Innis Cull and Andrew Yeo in their capacity as trustees of the Bankrupt Estate of Michael William Loosemore Symons
Address	C/- Pitcher Partners, Level 13, 664 Collins Street, Docklands VIC 3008
Email	Innis.Cull@pitcher.com.au
Short name	Symons Trustee



Maddocks

Executed by the Parties as a deed

Executed by Banksia Securities Limited ACN 004)
736 458 (Special Purpose Receiver Appointed) (In)
Liquidation) by being signed, sealed and delivered by)
John Ross Lindholm, in the presence of:) Signature

Alexander Burrows
.....
Witness

Signed sealed and delivered by John Ross)
Lindholm in the presence of:)
.....)
Signature

Alexander Burrows
.....
Witness

Signed sealed and delivered by Peter Damien)
McCluskey in the presence of:)
.....)
Signature

Alexander Burrows
.....
Witness

Signed sealed and delivered by Michael William)
Loosemore Symons (A Bankrupt) in the)
presence of:)
.....)
Signature

.....
Witness Catherine Brooks

Signed, sealed and delivered by Innis Cull in his)
capacity as trustee of the Bankrupt Estate of)
Michael William Loosemore Symons in the)
presence of:)
Signature of Innis Cull

.....
Signature of witness

.....
Print full name of witness

Relevant Period	Compensation Component	Interest accrued on Compensation Component during the Relevant Period	Running balance of outstanding interest from previous periods following application of payment	Current balance of outstanding interest	Current Running Balance of Compensation Component plus Interest	Daily rate of interest
11 October 2021 - 7 November 2021	\$11,700,128.00	\$89,754.41	\$0.00	\$89,754.41	\$11,789,882.41	\$3,205.51 per day
8 November 2021 (receipt of \$1,558,191.39 applied in first instance to interest of \$89,754.41) - 11 November 2021	\$10,231,691.02	\$11,212.81	\$0.00	\$11,212.81	\$10,242,903.83	\$2,803.09 per day
12 November 2021 (receipt of \$1,454,547.54 applied in first instance to interest of \$11,212.81) - 5 April 2023 37	\$8,788,356.29	\$1,227,962.11	\$0.00	\$1,227,962.11	\$10,016,318.40	\$2,407.77 per day
6 April 2023 (receipt of \$375,683.30 applied in first instance to interest of \$1,227,962.11) - 3 May 2023	\$8,788,356.29	\$67,417.53	\$852,278.81	\$919,696.34	\$9,708,052.63	\$2,407.77 per day
4 May 2023 (receipt of \$464,828.83 applied in first instance to interest of \$919,696.34) - 14 September 2023	\$8,788,356.29	\$322,641.03	\$454,867.51	\$777,508.54	\$9,565,864.83	\$2,407.77 per day
15 September 2023 (receipt of \$625,929.27 applied in first instance to interest of \$777,508.54) - 17 September 2023	\$8,788,356.29	\$7,223.31	\$151,579.27	\$158,802.58	\$8,947,158.87	\$2,407.77 per day
18 September 2023 (receipt of \$1,413,197.13) - 26 March 2024	\$7,533,961.74	\$393,757.92	\$0.00	\$393,757.92	\$7,927,719.66	\$2,061.750 per day
27 March 2024 (receipt of \$25,000 applied in first instance to interest of \$393,757.92) - 26 May 2024	\$7,533,961.74	\$125,566.03	\$368,757.92	\$494,323.95	\$8,028,285.69	\$2,058.46 per day
27 May 2024 (receipt of \$35,000 applied in first instance to interest of \$494,323.95) - 29 July 2024	\$7,533,961.74	\$131,741.41	\$459,323.95	\$591,065.36	\$8,125,027.10	\$2,058.46 per day
30 July 2024 (receipt of \$7,000 applied in first instance to interest of \$591,065.36) - 14 September 2024	\$7,533,961.74	\$96,747.60	\$584,065.36	\$680,812.96	\$8,214,774.70	\$2,058.46 per day
15 September 2024 (receipt of \$28,000 applied in first instance to interest of \$680,812.96) - 30 September 2024	\$7,533,961.74	\$32,935.35	\$652,812.96	\$685,748.31	\$8,219,710.05	\$2,058.46 per day

Current balance of Compensation Component	\$7,533,961.74				
Total accrued interest		\$2,506,959.51			
Current balance of total outstanding interest			\$685,748.31		
Current balance of Compensation Component plus interest					\$8,219,710.05

Source	Amounts Paid to SPR	When received into trust account
O'Bryan Insurance	\$1,568,191.39	8-Nov-21
Symons Insurance	\$1,454,547.54	12-Nov-21
Banksia Portfolio Law fees	\$375,683.30	6-Apr-23
Portfolio Law Insurance	\$464,828.83	4-May-23
Half of O'Bryan Settlement Sum (half assigned to costs component)	\$625,929.27	15-Sep-23
Trimbos Insurance	\$1,413,197.13	18-Sep-23
Zita instalment 1	\$25,000.00	27-Mar-24
Zita instalment 2	\$35,000.00	27-May-24
Zita instalment 3	\$7,000.00	31-Jul-24
Zita instalment 4	\$28,000.00	15-Sep-24
Total	\$5,987,377.46	

Costs Component	At 90% recovery of the Costs Component
\$10,600,000	\$9,540,000.00
Half of O'Bryan Settlement Sum (half assigned to compensation component)	\$625,929.27
	\$8,914,070.73

From: [Supreme Court-Court of Appeal Registry](#)
To: "jprice@ghb.com.au"; "MSusic@ghb.com.au"; Sam Kingston; Mathew Gashi
Subject: FW: Alexander Christopher Elliott v John Ross Lindholm in his capacity as Special Purpose Receiver of Banksia Securities Limited (Receivers and Managers Appointed) (In Liquidation) & Ors, S EAPCI 2021 0122
Date: Tuesday, 6 December 2022 4:47:46 PM

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Dear practitioners,

It remains the case that the applicant has not filed the submissions required pursuant to paragraph 2(a) of the order made on 24 October 2022, nor was any response to my email below received.

It is now more than 30 days after the expiry of the time fixed by the order for those submissions to be filed. Accordingly, pursuant to r 64.45(1) of the *Supreme Court (General Civil Procedure) Rules 2015*, the application for leave to appeal is taken to be abandoned. Please note the operation of r 64.45(3) and (4) in particular.

Regards,

Nicholas Roberts

Deputy Registrar (Legal)

Court of Appeal – Supreme Court of Victoria

Telephone: +61 (03) 8600 2065

Registry email: coaregistry@supcourt.vic.gov.au

Web: www.supremecourt.vic.gov.au

From: [Supreme Court-Court of Appeal Registry](#)
To: "jprice@ghb.com.au"; "MSusic@ghb.com.au"; [Sam Kingston](#); [Mathew Gashi](#)
Subject: Alexander Christopher Elliott v John Ross Lindholm in his capacity as Special Purpose Receiver of Banksia Securities Limited (Receivers and Managers Appointed) (In Liquidation) & Ors, S EAPCI 2021 0122
Date: Monday, 30 January 2023 9:46:48 AM

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Dear practitioners,

To summarise the current position: the application for leave to appeal is taken to be abandoned; the first respondent has advised they will oppose any application for the matter not to be taken to be abandoned; and the applicant requests that a multiple day hearing in the week of 24 July 2023 remain in the Court's calendar, but without identifying any steps they would propose to take for the case to be ready.

The Court has finite resources and numerous cases competing for priority. Given the position as summarised above, it is no longer prepared to reserve those dates for this matter in the roster.

If the applicant wishes to pursue his application for leave to appeal, a formal application for an order under r 64.45(4)(a) of the *Supreme Court (General Civil Procedure) Rules 2015* is required. No consideration will be given to when an application for leave to appeal / appeal could be listed for hearing unless an order under r 64.45(4)(a) has been made. In the event an order reinstating the matter is made the parties will be at liberty to express their views on the priority that should be accorded the matter.

Regards,

Nicholas Roberts

Deputy Registrar (Legal)

Court of Appeal – Supreme Court of Victoria

Telephone: +61 (03) 8600 2065

Registry email: coaregistry@supcourt.vic.gov.au

Web: www.supremecourt.vic.gov.au

From: [Supreme Court-Court of Appeal Registry](#)
To: "jprice@ghb.com.au"; "MSusic@ghb.com.au"; Sam Kingston; Mathew Gashi
Subject: Alexander Christopher Elliott v John Ross Lindholm in his capacity as Special Purpose Receiver of Banksia Securities Limited (Receivers and Managers Appointed) (In Liquidation) & Ors, S EAPCI 2021 0122
Date: Monday, 11 September 2023 10:35:47 AM

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Dear practitioners,

As you know, in this proceeding the application for leave to appeal is taken to be abandoned pursuant to r 64.45(1) of the *Supreme Court (General Civil Procedure) Rules 2015* following the applicant's failure to file the submissions required pursuant to paragraph 2(a) of the order made on 24 October 2022. No application for an order under r 64.45(4)(a) has been filed, and no parties have taken any substantive steps for over 12 months.

Pursuant to r 64.46(1), the Court has power to dismiss an application in certain circumstances, including for failure to comply with an order and want of prosecution. The Court also has inherent jurisdiction to dismiss an application in appropriate circumstances.

If either the applicant or first respondent object to the application for leave to appeal being dismissed by the Court, whether pursuant to r 64.46(1) or otherwise, please inform the registry by return email by no later than **18 September 2023** together with brief reasons. The Court will assume there is no objection if no responses are received.

Regards,

Nicholas Roberts

Deputy Registrar (Legal)

Court of Appeal – Supreme Court of Victoria

Telephone: +61 (03) 8600 2065

Registry email: coaregistry@supcourt.vic.gov.au

Web: www.supremecourt.vic.gov.au

18 September 2023

Our Ref: JNP:MSU:ep:664555

TO: Court of Appeal Registry
CC: Maddocks – Sam Kingston and Mathew Gashi
EMAIL: coaregistry@supcourt.vic.gov.au; Sam.Kingston@maddocks.com.au and
Mathew.Gashi@maddocks.com.au

Dear Nicholas,

**Alexander Christopher Elliott v John Ross Lindholm in his capacity as Special Purpose Receiver of
Banksia Securities Limited (Receivers and Managers Appointed) (In Liquidation) & Ors
S EAPCI 2021 0122**

Thank you for your email of 11 September 2023.

The parties are currently engaged in advanced “Without Prejudice” negotiations regarding all aspects of this matter, including this Proceeding. The Applicant has not advanced his Appeal because of these negotiations. Should settlement negotiations fail, it is the Applicant’s intention to take steps to re-enliven his Appeal.

It is proposed that as part of the overall settlement of this matter, that this Proceeding would also be dealt with. Therefore, the Applicant requests that the Court of Appeal extend the date in its email of 11 September 2023 by one month to 18 October 2023.

Yours faithfully,



GARLAND HAWTHORN BRAHE LAWYERS

Principal: John Price
Contact: John Price or Matt Susic
Email: jprice@ghb.com.au or msusic@ghb.com.au
Website: www.ghb.com.au

From: [Mathew Gashi](#)
To: ["coaregistry@supcourt.vic.gov.au"](mailto:coaregistry@supcourt.vic.gov.au)
Cc: [Sam Kingston](#); [Matthew Susic](#); [John Price](#)
Bcc: [M Banksia Securities Limited Receivers Managers Appointed in Liquidation 6207696 Sept to Nov 2023](#)
Subject: RE: Alexander Christopher Elliott v John Ross Lindholm in his capacity as Special Purpose Receiver of Banksia Securities Limited (Receivers and Managers Appointed) (In Liquidation) & Ors - S EAPCI 2021 0122 [MADD-M.FID3723058]
Date: Monday, 18 September 2023 4:39:51 PM
Attachments: [image001.png](#)

Dear Registrar

For the avoidance of doubt, the below correspondence was sent by the Applicant without the consent of the First Respondent.

It is the First Respondent's position that the reasons given by the Applicant in their correspondence for not progressing the Appeal are unacceptable. That position has been communicated to the Applicant in correspondence previously.

We confirm that the First Respondent does not oppose the Court dismissing the Appeal, and confirm that if necessary the First Respondent will oppose any application for the Appeal to be re-enlivened.

Kind regards

Mathew

Mathew Gashi | Senior Associate
Direct +61 3 9258 3774
Mathew.Gashi@maddocks.com.au



Collins Square | Tower Two, Level 25,
727 Collins Street, Melbourne VIC 3008

Mathew Gashi

From: Mathew Gashi
Sent: Thursday, 2 November 2023 4:12 PM
To: Supreme Court-Court of Appeal Registry
Cc: Sam Kingston; 'jprice@ghb.com.au'; 'MSusic@ghb.com.au'
Subject: RE: Alexander Christopher Elliott v John Ross Lindholm in his capacity as Special Purpose Receiver of Banksia Securities Limited (Receivers and Managers Appointed) (In Liquidation) & Ors - S EAPCI 2021 0122 [MADD-M.FID3723058]

Dear Deputy Registrar

We refer to the above matter and confirm that we act for the First Respondent, the special purpose receiver of Banksia Securities Ltd (In Liquidation) (Special Purpose Receiver appointed).

In your below email, you indicated that the Court would not consider dismissing the above proceedings before 18 October 2023 (being the date requested by the Applicant). That time has now passed, and the Applicant has not made any application to re-enliven the Appeal or confirm its intentions in respect of the Appeal.

The Appeal was commenced on 22 November 2021, almost two years ago. In the intervening period the Applicant has not taken any substantive step to progress the Appeal in breach of the Court's orders dated 9 April 2022, 27 July 2022 or 24 October 2022. The last document filed by the Applicant in the Appeal was the Summary for the Court of Appeal dated 24 February 2022.

The Court has accommodated several requests for extensions to the timetable of the Appeal, declared the Appeal to be abandoned on 6 December 2022 and provided the Applicant with an opportunity to explain its intentions for the Appeal and why the Appeal should not be dismissed on 22 January 2023 and 11 September 2023.

We reaffirm the First Respondent's position that he does not oppose the Court dismissing the Appeal, and that the Court has a strong basis to dismiss the Appeal of its own motion pursuant to r 64.46 of the *Supreme Court (General Civil Procedure) Rules 2015* with an order that the Applicant pay the First Respondent's costs on an indemnity basis.

Please confirm if the Court is minded to make those orders of its own motion. This email is copied to the Applicant's solicitors.

Your faithfully

Mathew

Mathew Gashi
Senior Associate
Commercial
Direct +61 3 9258 3774
mathew.gashi@maddocks.com.au



Maddocks

Collins Square | Tower Two, Level 25
727 Collins Street, Melbourne VIC 3008

Our office is located on the traditional lands of the Wurundjeri Woi-wurrung peoples.

From: Supreme Court-Court of Appeal Registry <coaregistry@supcourt.vic.gov.au>
Sent: Monday, 25 September 2023 10:03 AM
To: 'jprice@ghb.com.au' <jprice@ghb.com.au>; 'MSusic@ghb.com.au' <MSusic@ghb.com.au>; Sam Kingston <Sam.Kingston@maddocks.com.au>; Mathew Gashi <Mathew.Gashi@maddocks.com.au>
Subject: RE: Alexander Christopher Elliott v John Ross Lindholm in his capacity as Special Purpose Receiver of Banksia Securities Limited (Receivers and Managers Appointed) (In Liquidation) & Ors - S EAPCI 2021 0122 [MADD-M.FID3723058]

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Dear practitioners,

The 18 September 2023 responses from the applicant and first respondent to my 11 September 2023 email are noted.

The Court will not consider dismissing the application for leave to appeal before 18 October 2023.

Regards,

Nicholas Roberts

Deputy Registrar (Legal)

Court of Appeal – Supreme Court of Victoria

Telephone: +61 (03) 8600 2065

Registry email: coaregistry@supcourt.vic.gov.au

Web: www.supremecourt.vic.gov.au

From: Mathew Gashi <Mathew.Gashi@maddocks.com.au>

Sent: Monday, 18 September 2023 4:40 PM

To: Supreme Court-Court of Appeal Registry <coaregistry@supcourt.vic.gov.au>

Cc: Sam Kingston <Sam.Kingston@maddocks.com.au>; Matthew Susic <MSusic@ghb.com.au>; John Price <JPrice@ghb.com.au>

Subject: RE: Alexander Christopher Elliott v John Ross Lindholm in his capacity as Special Purpose Receiver of Banksia Securities Limited (Receivers and Managers Appointed) (In Liquidation) & Ors - S EAPCI 2021 0122 [MADD-M.FID3723058]

Dear Registrar

For the avoidance of doubt, the below correspondence was sent by the Applicant without the consent of the First Respondent.

It is the First Respondent's position that the reasons given by the Applicant in their correspondence for not progressing the Appeal are unacceptable. That position has been communicated to the Applicant in correspondence previously.

We confirm that the First Respondent does not oppose the Court dismissing the Appeal, and confirm that if necessary the First Respondent will oppose any application for the Appeal to be re-enlivened.

Kind regards

Mathew

Mathew Gashi | Senior Associate

Direct +61 3 9258 3774

Mathew.Gashi@maddocks.com.au



Maddocks

Collins Square | Tower Two, Level 25,
727 Collins Street, Melbourne VIC 3008

From: Emily Price <EMPrice@ghb.com.au> **On Behalf Of** John Price

Sent: Monday, 18 September 2023 4:11 PM

To: 'coaregistry@supcourt.vic.gov.au' <coaregistry@supcourt.vic.gov.au>
Cc: Sam Kingston <Sam.Kingston@maddocks.com.au>; Mathew Gashi <Mathew.Gashi@maddocks.com.au>; John Price <JPrice@ghb.com.au>; Matthew Susic <MSusic@ghb.com.au>
Subject: Alexander Christopher Elliott v John Ross Lindholm in his capacity as Special Purpose Receiver of Banksia Securities Limited (Receivers and Managers Appointed) (In Liquidation) & Ors - S EAPCI 2021 0122

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear Nicholas

Please see **enclosed** email for your attention in regard to the above matter.

John Price
Principal
Garland Hawthorn Brahe Lawyers
Level 14, 461 Bourke Street
Melbourne VIC 3000

Tel: +61 3 9629 5551
Mob: 0411 668 959
Fax: +61 3 9629 2472
Email: jprice@ghb.com.au
Web: www.ghb.com.au

CYBER SECURITY/CYBER CRIME

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Mathew Gashi

From: Supreme Court-Court of Appeal Registry <coaregistry@supcourt.vic.gov.au>
Sent: Wednesday, 1 May 2024 3:38 PM
To: jprice@ghb.com.au; MSusic@ghb.com.au; Sam Kingston; Mathew Gashi
Subject: Alexander Christopher Elliott v John Ross Lindholm in his capacity as Special Purpose Receiver of Banksia Securities Limited (Receivers and Managers Appointed) (In Liquidation) & ors, S EAPCI 2021 0122

Importance: High



Dear parties,

Without further notice, one or more Judges of Appeal will consider dismissing the application for leave to appeal on the Court's own motion.

Kind Regards,

Anna Domine

Senior Lawyer (Court of Appeal)
Court of Appeal - Supreme Court of Victoria
Telephone: (03) 8600 2080
Registry email: coaregistry@supcourt.vic.gov.au
Web: www.supremecourt.vic.gov.au

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
IN THE COURT OF APPEAL
CIVIL DIVISION

S EAPCI 2021 0122

BETWEEN

ALEXANDER CHRISTOPHER ELLIOT

Applicant

and

JOHN ROSS LINDHOLM IN HIS CAPACITY AS SPECIAL PURPOSE
RECEIVER OF BANKSIA SECURITIES LIMITED (RECEIVERS AND
MANAGERS APPOINTED) (IN LIQUIDATION) and other according to
the schedule

Respondents

ORDER OF THE COURT OF APPEAL

JUDGES: The Honourable Justice Walker

DATE MADE: 2 May 2024

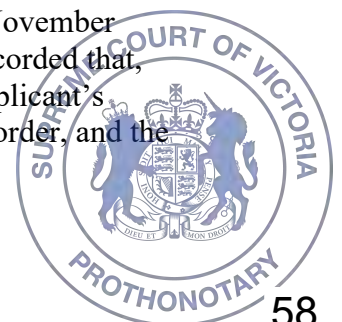
ORIGINATING PROCESS: Application for leave to appeal.

HOW OBTAINED: On the papers.

ATTENDANCE: No attendance.

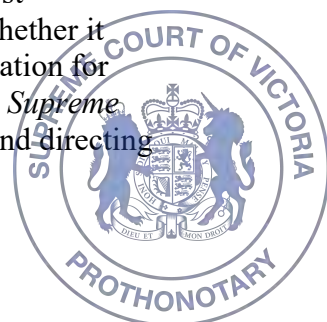
OTHER MATTERS:

- A. The applicant commenced this proceeding by an application for leave to appeal filed 22 November 2021. The only active parties are the applicant and the first respondent.
- B. By orders made 8 April 2022, the applicant was directed to file and serve further written submissions in support of his proposed grounds of appeal by 29 July 2022.
- C. By orders made 27 July 2022, the date by which the applicant was directed to file and serve further written submissions was extended to 22 September 2022.
- D. By orders made 24 October 2022, the date by which the applicant was directed to file and serve further written submissions was extended to 4 November 2022. In that order, the Other Matters recorded that, in light of the previous extension, the applicant's failure to comply with the 27 July 2022 order, and the



fact that the extension request had been made significantly after the written submissions were due to be filed and served, the Court was not minded to afford the applicant any further extensions.

- E. The applicant did not file any written submissions by 4 November 2022.
- F. In an email dated 6 December 2022, the Court observed that the applicant had failed to file written submissions in accordance with the orders made on 24 October 2022 (i.e. by 4 November 2022) and that 30 days had now passed since that default. The Court observed that, pursuant to r 64.45(1)(b) of the *Supreme Court (General Civil Procedure) Rules 2015* the application for leave to appeal was taken to be abandoned.
- G. By email dated 11 September 2023, the Court informed the applicant and first respondent of the Court's power to dismiss an application for leave to appeal pursuant to r 64.46(1) of the *Supreme Court (General Civil Procedure) Rules* and the Court's inherent jurisdiction. It asked the parties to advise, by 18 September 2023, whether they objected to the application being dismissed.
- H. In response to that email, the applicant requested that the Court extend the date by which he was required to respond to 18 October 2023, as he was involved in negotiations relating to the proceeding. The first respondent said that the applicant's reasons for not progressing the application were unacceptable, and that he did not oppose the Court dismissing the application. The first respondent also said that he would oppose any application for the appeal to be reinstated.
- I. By email dated 25 September 2023, the Court informed the applicant and first respondent that the Court would not consider dismissing the application for leave to appeal before 18 October 2023.
- J. Since 25 September 2023 the Court has received no further communication from the applicant.
- K. By email dated 2 November 2023, the first respondent asked the Court to confirm whether it would make orders dismissing the application for leave to appeal pursuant to r 64.46 of the *Supreme Court (General Civil Procedure) Rules* and directing



the applicant to pay the first respondent's costs on an indemnity basis.

- L. The applicant has not taken any steps to seek an order under r 64.45(4) of the *Supreme Court (General Civil Procedure) Rules* that the application for leave to appeal is not taken to be abandoned, or otherwise sought to have the appeal reinstated, or to remedy its default to comply with the Court's orders.
- M. In light of the above matters, the Court considers it appropriate to make orders dismissing the application for leave to appeal pursuant to r 64.46(1)(a) and/or r 64.46(1)(b) of the *Supreme Court (General Civil Procedure) Rules 2015*.

THE COURT OF APPEAL ORDERS THAT:

1. Pursuant to r 64.46 of the *Supreme Court (General Civil Procedure) Rules 2015*, the application for leave to appeal filed 22 November 2021 is dismissed.
2. In accordance with r 64.46(3) of the *Supreme Court (General Civil Procedure) Rules 2015* the applicant pay the first respondent's costs of the application for leave to appeal on an indemnity basis.

DATE AUTHENTICATED: 2 May 2024

PROTHONOTARY



SCHEDULE OF PARTIES

ALEXANDER CHRISTOPHER ELLIOT

First applicant

and

JOHN ROSS LINDHOLM IN HIS CAPACITY AS SPECIAL
PURPOSE RECEIVER OF BANKSIA SECURITIES
LIMITED (RECEIVERS AND MANAGERS APPOINTED)
(IN LIQUIDATION)

First respondent

LAURENCE JOHN BOLITHO

Second respondent

AUSTRALIAN FUNDING PARTNERS PTY LTD

Third respondent

NORMAN O'BRYAN SC

Fourth respondent

MICHAEL SYMONS

Fifth respondent

ANTHONY ZITA AND PORTFOLIO LAW PTY LTD

Sixth respondent

KATERINA PEIROS, AS THE REPRESENTATIVE OF
THE ESTATE OF PETER TRIMBOS

Seventh respondent





FORM 46A

Rule 46.04(1)

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL COURT**

Case: S CI 2012 07185

Filed on: 02/09/2022 09:38 AM
S CI 2012 7185

BETWEEN

LAURENCE JOHN BOLITHO

Plaintiff

and

**BANKSIA SECURITIES LIMITED (ACN 004 736 458) (RECEIVERS AND MANAGERS
APPOINTED) (IN LIQUIDATION) & ORS**

Defendants

SUMMONS

Date of document: 2 September 2022
Filed on behalf of: The First Defendant
Prepared by:
Maddocks Lawyers
727 Collins St
DOCKLANDS VIC 3008

Solicitor's Code: 230
DX: 259
Tel: (03) 9258 3555
Fax: (03) 9258 3666
Ref: DCN:STK: 6207696
Attention: Sam Kingston
Email: sam.kingston@maddocks.com.au

To: The Respondents

You are summoned to attend before the Court on the hearing of an application by the First Defendant for the following orders:

1. Pursuant to rule 47.04 of the *Supreme Court (General Civil Procedure) Rules 2015*, the Court hear and determine the following issue as a preliminary question prior to the hearing of the application:

Are Noysue Pty Ltd and Noysy Pty Ltd bound by the factual findings set out in paragraphs [127]-[162] of Bolitho v Banksia Securities Ltd (No 18) (Remitter) [2021] VSC 666 for the purposes of the determination of the SPR's application for non-party costs dated 18 August 2020?

(Preliminary Question)

2. If the answer to the Preliminary Question is 'yes', an order that paragraphs 1, 2, 3, and 4(f) of Noysue and Noysy's response to the SPR's notice of contentions dated 1 February 2022 be struck out.
3. If the answer to the Preliminary Question is 'no':

- a) paragraph 7 of the orders of Dixon J made on 16 June 2022 (being the date by which the SPR is to file and serve any evidence in reply) be vacated; and
 - b) directions be made for the filing of further evidence and other pre-hearing steps.
4. The SPR's summons dated 18 August 2020 for non-party costs be fixed for hearing as against the Elliott Entities on the same date as the hearing of the Preliminary Question (on an estimate of 2 hours).
 5. Costs.
 6. Such further or other order as the Court thinks fit.

The application will be heard for directions by The Honourable Justice Dixon at Supreme Court, 210 William street, Melbourne on 9 September 2022 at 9:30 am or so soon afterwards as the business of the Court allows.

FILED 2 September 2022

This summons was filed by Maddocks Lawyers of Collins Square, Tower 2, Level 25, 727 Collins Street, Melbourne VIC 3008, solicitor for the First Defendant

SCHEDULE OF PARTIES

LAURENCE JOHN BOLITHO

First Plaintiff

AUSTRALIAN FUNDING PARTNERS LIMITED

Second Plaintiff

and

**JOHN ROSS LINDHOLM
IN HIS CAPACITY AS SPECIAL
PURPOSE RECEIVERS OF BANKSIA SECURITIES LIMITED
(RECEIVERS AND MANAGERS APPOINTED) (IN
LIQUIDATION)**

First Defendant

NORMAN O'BRYAN

Second Defendant

MICHAEL SYMONS

Third Defendant

ANTHONY ZITA AND PORTFOLIO LAW PTY LTD

Fourth Defendant

ALEX CHRISTOPHER ELLIOTT

Fifth Defendant

**KATERINA PEIROS, AS THE REPRESENTATIVE
OF THE ESTATE OF PETER TRIMBOS**

Sixth Defendant

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
GROUP PROCEEDINGS LIST

S CI 2012 07185

BETWEEN:

LAURENCE JOHN BOLITHO & ANOR
(according to the attached Schedule)

Plaintiffs

-and-

JOHN ROSS LINDHOLM IN HIS CAPACITY AS SPECIAL PURPOSE
RECEIVER OF BANKSIA SECURITIES LIMITED (RECEIVERS AND
MANAGERS APPOINTED) (IN LIQUIDATION) & ORS
(according to the attached Schedule)

Defendants

ORDER

JUDGE: The Honourable Justice John Dixon
DATE MADE: 13 September 2022
ORIGINATING PROCESS: Writ dated 23 December 2012
HOW OBTAINED: By summons filed 2 September 2022
ATTENDANCE: Mr J Redwood SC, for the first defendant
Mr J Rudd of counsel, for Noysy Pty Ltd and Noysue Pty Ltd
Mr M Susic, solicitor, for the Estate of Mark Elliott, Decoland Holdings Pty Ltd, MCM (Mt Buller) Developments Pty Ltd and Elliott Legal Pty Ltd
OTHER MATTERS: Nil.

THE COURT ORDERS THAT:

Elliott Entities

1. The SPR's amended summons dated 8 December 2021 (Non-Party Costs Summons) is set down for hearing as against the Estate of Mark Edward Elliott, Elliott Legal Pty Ltd, Decoland Holdings Pty Ltd and MCM (Mt Buller) Developments Pty Ltd (the Elliott Entities) on 15 November 2022 at 10:30am.
2. By 4pm on 8 November 2022, the SPR file and serve a written outline of submissions in respect of the relief sought as against the Elliott Entities.

Noysue Pty Ltd and Noysy Pty Ltd

3. By 4pm on 5 October 2022, the SPR file and serve:

- (a) a further notice of contentions directed to the issue defined by the proposed question in paragraph 1 of the SPR's summons dated 2 September 2022; and
 - (b) any further affidavit(s) on which he intends to rely.
4. By 4pm on 26 October 2022, Noysue Pty Ltd and Noysy Pty Ltd file and serve:
- (a) any response to the SPR's further notice of contentions; and
 - (b) any further affidavit(s) on which they intend to rely.
5. The SPR's summons dated 2 September 2022 is adjourned to 28 November 2022 at 10:30am.
6. The Non-Party Costs Summons as against Noysue Pty Ltd and Noysy Pty Ltd is adjourned to 28 November 2022 at 10:30am for directions.

General

- 7. Costs reserved.
- 8. Liberty to apply.

DATE AUTHENTICATED: 13 September 2022


The Honourable Justice John Dixon

SCHEDULE OF PARTIES

S CI 2012 07185

BETWEEN:

LAURENCE JOHN BOLITHO

First Plaintiff

AUSTRALIAN FUNDING PARTNERS PTY LTD

Second Plaintiff

-and-

JOHN ROSS LINDHOLM IN HIS CAPACITY AS SPECIAL PURPOSE
RECEIVER OF BANKSIA SECURITIES LIMITED (RECEIVERS AND
MANAGERS APPOINTED) (IN LIQUIDATION)

First Defendant

NORMAN O'BRYAN SC

Second Defendant

MICHAEL SYMONS

Third Defendant

ANTHONY ZITA AND PORTFOLIO LAW PTY LTD

Fourth Defendant

ALEXANDER CHRISTOPHER ELLIOTT

Fifth Defendant

KATERINA PEIROS, AS THE REPRESENTATIVE OF THE ESTATE
OF PETER TRIMBOS

Sixth Defendant



IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
GROUP PROCEEDINGS LIST

S CI 2012 07185

BETWEEN:

LAURENCE JOHN BOLITHO & ANOR
(according to the attached Schedule)

Plaintiffs

-and-

JOHN ROSS LINDHOLM IN HIS CAPACITY AS SPECIAL PURPOSE
RECEIVER OF BANKSIA SECURITIES LIMITED (RECEIVERS AND
MANAGERS APPOINTED) (IN LIQUIDATION) & ORS
(according to the attached Schedule)

Defendants

ORDER

JUDGE: The Honourable Justice John Dixon
DATE MADE: 1 March 2023
ORIGINATING PROCESS: Writ dated 23 December 2017
HOW OBTAINED: By amended summons filed 8 December 2021 (amended summons)
ATTENDANCE: Mr M Susic (solicitor) on behalf of Maximilian Elliott, Elliott Legal Pty Ltd, Decoland Holdings Pty Ltd and MCM (Mt Buller) Developments Pty Ltd.
Mr JA Redwood SC with Mr M Grady on behalf of the first defendant.
OTHER MATTERS: The application against the remaining respondents in the amended summons is yet to be heard. The reasons for all the orders made in respect of the amended summons will be delivered together.

THE COURT ORDERS BY CONSENT THAT:

1. Each of:
 - (a) Maximilian Edward Elliott, as the representative of the Estate of Mark Edward Elliott;



- (b) Elliott Legal Pty Ltd (ACN 169 412 391);
- (c) Decoland Holdings Pty Ltd (ACN 007 431 405); and
- (d) MCM (Mt Buller) Developments Pty Ltd (ACN 087 073 872),

pay the costs of and incidental to this proceeding, including the Contradictor's costs, on an indemnity basis.

2 The first defendant's costs of this application are reserved.

DATE AUTHENTICATED: 1 March 2023



The Honourable Justice John Dixon

SCHEDULE OF PARTIES

S CI 2012 07185

BETWEEN:

LAURENCE JOHN BOLITHO First Plaintiff

AUSTRALIAN FUNDING PARTNERS PTY LTD Second Plaintiff

-and-

JOHN ROSS LINDHOLM IN HIS CAPACITY AS SPECIAL PURPOSE
RECEIVER OF BANKSIA SECURITIES LIMITED (RECEIVERS AND
MANAGERS APPOINTED) (IN LIQUIDATION) First Defendant

NORMAN O'BRYAN SC Second Defendant

MICHAEL SYMONS Third Defendant

ANTHONY ZITA AND PORTFOLIO LAW PTY LTD Fourth Defendant

ALEXANDER CHRISTOPHER ELLIOTT Fifth Defendant

KATERINA PEIROS, AS THE REPRESENTATIVE OF THE ESTATE
OF PETER TRIMBOG Sixth Defendant



**IN THE SUPREME COURT OF VICTORIA
COMMERCIAL COURT**



File No. SCI 2012 07185
Case: S CI 2012 07185

Filed on: 20/09/2023 11:35 AM

BETWEEN

LAURENCE JOHN BOLITHO & ANOR

Plaintiffs

AND

**JOHN ROSS LINDHOLM IN HIS CAPACITY AS SPECIAL PURPOSE RECEIVER OF
BANKSIA SECURITIES (RECEIVERS AND MANAGERS APPOINTED) (IN
LIQUIDATION) ACN 004 736 458 & ORS**

Defendants

SPR'S SUBMISSIONS IN RELATION TO MATTERS PERTAINING TO COSTS

Date of document: 20 September 2023
Filed on behalf of: The First Defendant
Prepared by:
Maddocks Lawyers
727 Collins St
MELBOURNE VIC 3008

Solicitor's Code: 230
DX: 259
Tel: (03) 9258 3555
Fax: (03) 9258 3666
Ref:STK:MZG:6207696
Attention: Sam Kingston
Email: sam.kingston@maddocks.com.au

1. These submissions address the following matters:
 - (a) clarification that Dixon J’s orders dated 1 March 2023 require that the Elliott Entities (being the first to the fourth and Seventh respondents to the SPR’s amended summons dated 8 December 2021 (**Non-party Costs Summons**)) pay the SPR’s costs of Supreme Court Proceedings S APCI 2018 0037 (**Botsman Appeal**) on an indemnity basis (**Botsman Appeal Costs**); and
 - (b) the SPR’s entitlement to the costs of the Non-party Costs Summons as it pertains to the Elliott Entities (**Costs of the Application**).

Botsman Appeal Costs

2. At all material times, the SPR sought orders that the Elliott Entities pay the Botsman Appeal Costs on an indemnity basis. In particular, that relief is noted in, *inter alia*, the following:
 - (a) paragraph 2 of his summons dated 18 August 2020;
 - (b) the affidavit of David Charles Newman dated 17 August 2020, [7] - [12];
 - (c) paragraph 2 of his amended summons dated 8 December 2021;
 - (d) the SPR’s Notice of Contentions dated 8 December 2021, [3];
 - (e) the SPR’s submissions dated 9 November 2022 at [172]; and
 - (f) in oral submissions at the hearing on 15 November 2022.
3. At the hearing on 15 November 2022, the representative for the Elliott Entities confirmed that the Elliott Entities consented to the orders sought to be made by the SPR in the Non-party Costs Summons.¹
4. On 1 March 2023, Dixon J made orders in favour of the SPR, which are noted to have been made by consent, that the Elliott Entities “*pay the costs of and incidental to this proceeding, including the Contradictor’s costs, on an indemnity basis [emphasis added]*” (**March Orders**).
5. It has been, and remains, the SPR’s position that the March Orders are expressed in such a way as to include the Botsman Appeal Costs as they constitute “*costs of and incidental to the proceeding*”. In paragraphs [2024] – [2029] of Dixon J’s judgment in *Bolitho v Banksia Securities Limited (No 18) (remitter)* [2021] VSC 666 (**Remitter Judgment**) his Honour confirmed that, amongst other things “*the remitter is not to be regarded as a separate proceeding*” from the Botsman Appeal. So much appears clear to the SPR from the first sentence of [21] of the Reasons which states that “*the orders sought by*

¹ *Lindholm v Elliott & Ors* [2023] VSC 442 (**Reasons**), [7].

the SPR are indubitably sought in the proceeding as the appeal and the Remitter follow on and from, an application under s 33V for approval of a settlement in a group proceeding [emphasis added]’.

6. However, in without prejudice correspondence, the Elliott Entities have taken a contrary view of the interpretation of the March Orders. To date, the Elliott Entities have failed to articulate the reasons for their contrary interpretation of the March Orders on an open basis.² The issue is of material significance because the Botsman Appeal Costs are approximately \$500,000.
7. The SPR seeks confirmation from the Court that the March Orders are intended to operate as set out above at 5.
8. Further or alternatively, the SPR seeks that the March Orders be amended pursuant to the slip rule, contained in r 36.07 of the *Supreme Court (General Civil Procedure) Rules 2015*, to expressly include reference to the Botsman Appeal Costs or include an order in the form sought at paragraph 2 of his amended summons dated 8 December 2021. This is on the basis that:
 - (a) at [28] of the Reasons, his Honour confirms that principles enlivened by the SPR in paragraph 2 of his amended summons dated 8 December 2021 were engaged; and
 - (b) the Elliott Entities expressly consented to the orders sought by the SPR, and on that basis the May Orders can be amended to reflect the parties’ and the Court’s true intention.³

Costs of the Application

9. The SPR submits that Elliott Entities should pay the SPR’s costs of the Non-party Costs Summons on an indemnity basis. This is also material given the SPR’s costs of the Non-party Costs Summons were substantial.
10. The SPR submits that the following three reasons clearly justify an award of indemnity costs in respect of the Non-party Costs in favor of the SPR relating to the Elliott Entities’:
 - (a) failure to file a response to the SPR’s outline of contentions in non-compliance with the orders dated 8 November 2021, 4 February 2022, 21 March 2022, 26 April 2022 and 16 June 2022;⁴

² The SPR’s solicitors wrote to the Elliott Entities’ solicitors seeking an explanation of the Elliott Entities’ position on an open basis on 4 September 2023.

³ See for example *Ying Mui & Ors v Frank Kiang Ngan Hoh & Ors (Ruling No 5) (Slip Rule)* [2017] VSC 211.

⁴ Reasons, [5].

- (b) failure to produce documents by way of discovery in non-compliance with the orders dated 26 April 2022 (which were consented to by the Elliott Entities);⁵ and
- (c) capitulation only at the final hearing for the Non-party Costs Summons on 15 November 2022.⁶

J A REDWOOD

MADDOCKS

⁵ Ibid.

⁶ Ibid, [7].



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DX 259 Melbourne

Deed of Settlement and Release

**Banksia Securities Limited ACN 004 736 458 (Special Purpose Receiver Appointed)
(In Liquidation)**
and

The Parties Listed in Schedule 1

Deed of Settlement and Release

Dated 27 March 2023

Parties

The Parties listed in schedule 1.

Background

- A. On 24 December 2012, the Bolitho Proceeding was commenced against, inter alia, BSL. The Bolitho Proceeding is as group proceeding for the purposes of Part 4A of the *Supreme Court Act 1986 (Vic)*.
- B. On 24 June 2014, the SPR and Former SPR were appointed as joint and several liquidators of BSL.
- C. By orders made in the Supreme Court of New South Wales on 30 September 2015 and 29 February 2016, the SPR and the Former SPR were appointed as special purpose receivers of certain assets of BSL.
- D. On 16 December 2019, Mr McCluskey resigned as liquidator and special purpose receiver of BSL.
- E. On 1 November 2018, the Victorian Court of Appeal delivered its judgment in the Botsman Appeal. The Court of Appeal remitted (i) the approval of the funding commission claimed by AFP and (ii) legal costs and other expenses incurred in the Bolitho Proceeding, to the Trial Division of the Supreme Court of Victoria as the Remitter. The Remitter was heard by the Honourable Justice John Dixon.
- F. On 13 November 2019, AFP, two of the Counsel who appeared in the Bolitho Proceeding, Mr O'Bryan and Mr Michael Symons, and the solicitor who was representing Mr Bolitho and his firm, Mr Antony Zita and Portfolio Law, were joined as parties to the Remitter.
- G. The trial of the Remitter commenced on 27 July 2020.
- H. On 3 and 6 August 2020, Mr O'Bryan and Mr Symons respectively ceased taking steps to defend the Remitter.
- I. On 18 August 2020, the SPR filed the Non-Party Costs Summons in the Remitter seeking orders that the Non-Parties pay the SPR's and Contradictor's costs of the Remitter on an indemnity basis.
- J. On 11 October 2021, Dixon J delivered the Remitter Judgment and ordered that the Defendants must jointly and severally pay the Compensation Component and the Costs Component to the SPR.
- K. On 30 October 2021, Mr O'Bryan became bankrupt and the O'Bryan Trustee was appointed as trustee of his bankrupt estate.
- L. On and from the Operative Date, the SPR and O'Bryan Entities have agreed to resolve all Claims arising out of or in relation to the Released Matters on the terms set out in this Deed.

At the time of execution of this Deed all Claims against the Non-Settling Parties remain unresolved.

- M. The O'Bryan Trustee enters into this Deed to give effect to the releases and transactions contemplated insofar as they relate to the interests of Mr O'Bryan or his bankrupt estate.

This Deed Witnesses

1. Definitions

In addition to the party short names identified in Schedule 1, in this Deed:

AFP means Australian Funding Partners Pty Ltd (in liq).

Bolitho Proceeding means proceeding SCI 2012 7185 in the Supreme Court of Victoria, including for the avoidance of doubt the Remitter.

Botsman Appeal means proceeding S APCI 2018 0037, being an appeal of the approval of the settlement with Trust Co.

Business Day means a day other than a Saturday, Sunday or public holiday in Melbourne, Victoria.

Claim means any claim, allegation, debt, cause of action, liability, proceeding or demand of any nature however it arises and whether it is present or future, fixed or unascertained, actual or contingent (whether or not the facts, matters or circumstances giving rise to that claim are known to that person or to any other person at the date of this Deed) and whether at law, in equity, under statute or otherwise.

Committee means BSL's Committee of Debenture Holders.

Compensation Component means the amount of compensation ordered to be paid by the Defendants in the Remitter Judgment amounting to \$11,700,127.

Corporations Act means the *Corporations Act 2001* (Cth).

Costs Component means the costs ordered to be paid by the Defendants in the Remitter Judgment in relation to the SPR's costs of the Botsman Appeal and the SPR's and contradictor's costs of the Remitter.

Court means the Supreme Court of Victoria or Supreme Court of New South Wales.

Decoland means Decoland Holdings Pty Ltd.

Deed means this deed of settlement and release executed by the Parties.

Defendants mean AFP, Mr O'Bryan, Mr Symons, Mr Zita and Portfolio Law, Mr Alexander Elliott and Katrina Peiros.

Elliott Entities means AFP, Mr Alexander Elliott, Max Elliott, Elliott Legal, MCM and Decoland.

Elliott Legal means Elliott Legal Pty Ltd.

Elliott Non-parties means Max Elliott, Elliott Legal, MCM and Decoland.

Hope & Co Trust Account means

Hope & Co Lawyers Law Practice Trust Account

BSB: 033-003
Account: 593885
Bank: Westpac

Katrina Peiros means Ms Katrina Peiros in her capacity as the executor of the deceased estate of Mr Peter Trimbos.

LPLC means Legal Practitioners Liability Commission.

Max Elliott means Mr Maximilian Elliott in his capacity as executor of the deceased estate of Mr Mark Edward Elliott.

McKenzie Proceeding means proceeding S CI 2015 01385 commenced in the Supreme Court of Victoria.

MCM means MCM (Mount Buller) Developments Pty Ltd.

Nominated Account means:

Maddocks – Law Practice Trust Account (Melbourne)
BSB: 183-334
Account: 304700040
Swift Code: MACQAU2S
Bank: Macquarie Bank Limited
Branch: 101 Collins Street Melbourne VIC
Reference: STK:MZG:6207696

Non-parties mean the Max Elliott, Elliott Legal, Decoland Holdings, MCM, Noysue and Noysy.

Non-party Costs Summons mean the summons filed by the SPR on 18 August 2020, as amended on 8 December 2021.

Non-Settling parties means, collectively, Mr Zita, Portfolio Law, Mr Symons, Katrina Peiros, the LPLC or the Elliott Entities.

O'Bryan Entities means Mr O'Bryan, the O'Bryan Trustee, Noysue and Noysy.

Officer has the meaning given in the Corporations Act.

Operative Date means 14 days from the date of this Deed.

Parties means the Parties to this Deed and Party has a corresponding meaning.

Portfolio Law means Portfolio Law Pty Ltd.

Remitter means the remittal from the Court of Appeal of the approval of the commission claimed by AFP and legal costs in the Bolitho Proceeding arising from the settlement with Trust Co back to the trial division of the Supreme Court of Victoria.

Remitter Judgment means the judgment in *Bolitho v Banksia Securities Limited (No 18) (Remitter)* [2021] VSC 666.

Related Entity of any Party (including an individual) includes all of the entities identified in the definition of Related Entity in s 9 of the Act.

Released Matters means all claims relating or incidental to the:

- a) Bolitho Proceeding;
- b) Botsman Appeal;

- c) Remitter;
- d) Remitter Judgment;
- e) Trust Co Proceeding;
- f) McKenzie Proceeding; and
- g) Non-party Costs Summons.

Settlement Approval Orders means orders made by the Court approving the settlement of the Claims against the O'Bryan Entities on the terms of this Deed.

Settlement Sum means \$1,250,000.

Statutory Declarations means:

- a) the statutory declaration of Susan Marlene Noy declared on 12 December 2022 in relation to the assets and liabilities of Noysy; and
- b) the statutory declaration of Susan Marlene Noy declared on 12 December 2022 in relation to the assets and liabilities of Noysue.

Trust Co means the Trust Company (Nominees) Limited.

Trust Co Proceeding means proceeding S CI 2015 01384 commenced in the Supreme Court of Victoria.

1.1 Interpretation

In this Deed, except where the context otherwise requires:

- 1.1.1 the singular includes the plural and vice versa, and a gender includes other genders;
- 1.1.2 another grammatical form of a defined word or expression has a corresponding meaning;
- 1.1.3 a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Deed, and a reference to this Deed includes any schedule or annexure;
- 1.1.4 a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- 1.1.5 a reference to time is to Melbourne, Australia time;
- 1.1.6 a reference to a party is to a party to this Deed, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- 1.1.7 a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- 1.1.8 the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions; and
- 1.1.9 a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Deed or any part of it.

1.2 Headings

Headings are for ease of reference only and do not affect interpretation.

2. Operative Date

2.1 Other than clause 6.1 of this Deed, this Deed will become effective on and from the Operative Date.

2.2 The Parties acknowledge and agree that:

2.2.1 if the SPR and the O'Bryan Entities have agreed to settle any Claims against any of the Non-Settling Parties prior to the Operative Date, this Deed will be superseded and of no further effect on and from execution of a further settlement deed on terms satisfactory to the SPR and the O'Bryan Entities;

2.2.2 any further settlement deed will be on the same terms as this Deed insofar as it involves the SPR and the O'Bryan Entities and the subject matter of this Deed; and

2.2.3 if no further settlement deed is executed by the Operative Date, this Deed will become effective.

3. Conditions precedent

This Deed is subject to and conditional upon each of the following conditions being satisfied:

3.1 within 7 days of the Operative Date, the O'Bryan Entities paying the Settlement Sum to the Hope & Co Trust Account;

3.2 the SPR receiving the approval of the Committee to settle the Claims against the O'Bryan Entities on the terms of this Deed;

3.3 the making of the Settlement Approval Orders; and

3.4 if the Settlement Approval Orders are made:

3.4.1 any appeal period in respect of the Settlement Approval Orders (whether under the rules of the Court, the Court of Appeal, or the High Court) expiring without an appeal being commenced; and/or

3.4.2 in circumstances where an appeal(s) is commenced, or application for special leave is made, in respect of the Settlement Approval Orders, that appeal(s) being finally determined (including any determination in respect of that appeal(s) by the High Court) or the application for special leave refused, the result of which is that the Settlement Approval Orders are made or confirmed.

4. Settlement Sum

4.1 Investment of the Settlement Sum

The O'Bryan Entities, the SPR and BSL authorise Hope & Co to transfer the Settlement Sum into an interest bearing trust account in the name of Hope & Co to be held pending the satisfaction of the conditions in clauses 3.2 to 3.4 of this Deed.

4.2 Release on satisfaction of conditions precedent

Within 7 days of the satisfaction of the conditions precedent in clause 2, the Settlement Sum and any interest is to be paid to the Nominated Account.

4.3 **Return on failure of conditions precedent**

If any of the conditions precedent in clause 2 are not satisfied or waived by the Parties in writing, the O'Bryan Entities, the SPR and BSL authorise Hope & Co to return the Settlement Sum and any interest to the O'Bryan Entities.

5. **Releases**

Release by BSL and the SPR

5.1 On and from release of the Settlement Sum to the SPR in accordance with clause 4.2, BSL and the SPR agree to:

5.1.1 release and discharge the O'Bryan Entities and their Related Entities from all Claims relating to the subject matter of the Released Matters; and

5.1.2 not commence or maintain any Claim against the O'Bryan Entities relating to the subject matter released in clause 5.1.1 (with the exception of a claim or action for breach or enforcement of this Deed).

5.2 For the avoidance of doubt, the release in clause 5.1 of this Deed does not extend to or prejudice to any Claims made or available to BSL or the SPR against the Non-Settling Parties in relation to the Released Matters.

Release by the O'Bryan Entities

5.3 On and from release of the Settlement Sum to the SPR in accordance with clause 4.2, the O'Bryan Entities and the O'Bryan Trustee agree to:

5.3.1 release and discharge BSL, the SPR, the Former SPR, and their Related Entities from all Claims relating to the subject matter of the Released Matters; and

5.3.2 not commence or maintain any Claim against BSL, the SPR, the Former SPR, and their Related Entities relating to the subject matter released in clause 5.3.1 (with the exception of a claim or action for breach or enforcement of this Deed).

Proof of debt in Mr O'Bryan's bankrupt estate

5.4 To the extent that any Claim released under clause 5.1 has been admitted to proof by the O'Bryan Trustee, on and from release of the Settlement Sum to the SPR in accordance with clause 4.2 the SPR consents to the revocation by the O'Bryan Trustee of their decision to admit such Claim to proof.

6. **Disposal of Proceeding**

6.1 Within 7 days of execution of this Deed, the SPR, Noisy and Noysue must notify the Associate to Dixon J of the conditional settlement of the Claims relating to the subject matter of the Released Matters and seek orders adjourning the Non-party Costs Summons as

against Noysy and Noysue pending satisfaction of the conditions precedent in clause 2 of this Deed.

- 6.2 With 7 days of release of the Settlement Sum to the SPR in accordance with clause 4.2, the SPR must seek orders dismissing the Non-party Costs Summons as against Noysy and Noysue with no order as to costs.
- 6.3 Upon satisfaction of the conditions precedent in clause 2.1 each Party must bear its own costs of and incidental to the Released Matters.

7. Bar to further proceedings

- 7.1 This Deed may be pleaded as full and complete defence by a Party to any Claim brought by the other Party relating to the subject matter of the Released Matters, other than in relation to the obligations created under this Deed.
- 7.2 The production of this Deed in any court constitutes a bar against the issue or continuation of legal proceedings against the Parties in respect of the subject matter of the Released Matters, other than in relation to the obligations created under this Deed.

8. Binding effect of this Deed

- 8.1 This Deed binds the Parties and any executor, administrator, transferee, assignee, liquidator or trustee in bankruptcy appointed in respect of it.
- 8.2 This Deed does not become legally binding upon any Party until every Party has executed a counterpart and copies of all counterparts have been exchanged between all Parties.

9. Default

If the Settlement Sum is not released to the SPR in accordance with clause 4.2 above, Noysy and Noysue acknowledge and agree that:

- 9.1 BSL and the SPR will be entitled to immediately commence proceedings against them for breach of this Deed and enter judgment against them for:
- 9.1.1 the total amount of the Settlement Sum (less any payments received towards the Settlement Sum);
 - 9.1.2 interest from the date of the default until the date of judgment calculated at the rate prescribed under the *Penalty Interest Rates Act 1983* (Vic); and
 - 9.1.3 the costs of BSL and the SPR in commencing proceedings and applying for and entering that judgment on an indemnity basis;
- 9.2 in the event that BSL and the SPR take steps pursuant to clause 9.1, they consent to Banksia and the SPR commencing such proceedings and to the entry of judgment against them for the amount owing under clause 9.1; and
- 9.3 the filing of an affidavit deposed by the SPR:
- 9.3.1 as to the default in payment of the Settlement Sum;
 - 9.3.2 as to the amount of the Settlement Sum and any payments made towards the Settlement Sum, as at the date of specific in the affidavit; and

9.3.3 exhibiting a copy of this Deed,

will be irrevocable proof that the amount owing under clause 9.1 is due and payable by them.

10. Warranty

Each Party warrants that:

- 10.1 they have full power and authority to enter into and perform this Deed;
- 10.2 the matters set out in this Deed are true and accurate;
- 10.3 they have entered into this Deed freely and voluntarily;
- 10.4 it has taken independent legal advice as to the nature, effect and extent of this Deed;
- 10.5 no other Party has made any promise, representation or inducement or been party to any conduct material to the decision to enter into this Deed other than as set out in this Deed;
- 10.6 they are aware that the SPR is relying upon these warranties;
- 10.7 any information they have provided to the SPR and/or his solicitors in relation to their financial position and capacity to pay the Remitter Judgment, including the Statutory Declarations, is accurate, complete and not misleading in any material respect; and
- 10.8 they accept this Deed as fair and reasonable in the circumstances.

11. Governing law

This Deed is governed by the law applying in Victoria and the Parties submit to the non-exclusive jurisdiction of the courts of Victoria.

12. Interpretation

12.1 Words and headings

In this Deed, unless expressed to the contrary:

- 12.1.1 words denoting the singular include the plural and vice versa;
- 12.1.2 the word 'includes' in any form is not a word of limitation;
- 12.1.3 where a word or phrase is defined, another part of speech or grammatical form of that word or phrase has a corresponding meaning;
- 12.1.4 headings and sub-headings are for ease of reference only and do not affect the interpretation of this Deed; and
- 12.1.5 no rule of construction applies to the disadvantage of the Party preparing this Deed on the basis that it prepared or put forward this Deed or any part of it.

12.2 Specific references

In this Deed, unless expressed to the contrary, a reference to:

- 12.2.1 a gender includes all other genders;
- 12.2.2 any legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced and includes any subordinate legislation issued under it;
- 12.2.3 any document (such as a deed, agreement or other document) is to that document (or, if required by the context, to a part of it) as amended, novated, substituted or supplemented at any time;
- 12.2.4 writing includes writing in digital form;
- 12.2.5 'this Deed' is to this Deed as amended from time to time;
- 12.2.6 'A\$', '\$', 'AUD' or 'dollars' is a reference to Australian dollars;
- 12.2.7 a clause, schedule or attachment is a reference to a clause, schedule or attachment in or to this Deed;
- 12.2.8 any property or assets of a person includes the legal and beneficial interest of that person of those assets or property, whether as owner, lessee or lessor, licensee or licensor, trustee or beneficiary or otherwise;
- 12.2.9 a person includes a firm, partnership, joint venture, association, corporation or other body corporate;
- 12.2.10 a person includes the legal personal representatives, successors and permitted assigns of that person, and in the case of a trustee, includes any substituted or additional trustee; and
- 12.2.11 any body (**Original Body**) which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the Original Body.

13. General

13.1 Variation

This Deed may only be varied by a document executed by the Parties.

13.2 Entire agreement and no reliance

13.2.1 This Deed:

- (a) constitutes the entire agreement between the Parties; and
- (b) supersedes and cancels any contract, deed, arrangement, related condition, collateral arrangement, condition, warranty, indemnity or representation imposed, given or made by a Party (or an agent of a Party) prior to entering into this Deed.

13.2.2 The Parties acknowledge that in entering into this Deed, each Party has not relied on any representations made by the other Party (or its agents or employees) other than matters expressly set out in this Deed.

13.3 Liability

If a Party consists of 2 or more people or entities, an obligation of that Party binds each of them jointly and severally.

13.4 **Severability**

13.4.1 Any provision of this Deed that is held to be illegal, invalid, void, voidable or unenforceable must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.

13.4.2 If it is not possible to read down a provision as required by this clause, part or all of the clause of this Deed that is unlawful or unenforceable will be severed from this Deed and the remaining provisions continue in force.

13.5 **Waiver**

The failure of a Party at any time to insist on performance of any provision of this Deed is not a waiver of the Party's right at any later time to insist on performance of that or any other provision of this Deed.

13.6 **Further assurance**

Each Party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Deed, including clause 2.1 and clause 2.2 and the conditions precedent in clause 3.

13.7 **Survival and enforcement of indemnities**

13.7.1 Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the Parties and survives termination of this Deed.

13.7.2 It is not necessary for a Party to incur expense or make payment before enforcing a right of indemnity conferred by this Deed.

13.8 **No merger**

The warranties, undertakings, agreements and continuing obligations in this Deed do not merge on completion of the transactions contemplated by this Deed.

13.9 **Business Day**

If a payment or other act is required by this Deed to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.

13.10 **Legal costs and expenses**

Each Party must pay its own legal costs and other expenses for the negotiation, preparation and execution of this Deed and related documents, unless expressly stated otherwise. For the avoidance of doubt, the SPR's costs are costs in the special purpose receivership of BSL.

13.11 **No assignment without consent**

A Party must not, without the prior written consent of the other Party:

13.11.1 assign or novate this Deed;

13.11.2 transfer any right or obligation arising from this Deed;

13.11.3 mortgage, charge, create a security interest (as defined in s 51A of the Corporations Act) over, allow a security interest to exist over, or otherwise encumber any benefit arising from this Deed; or

13.11.4 subcontract the performance of any of its obligations under this Deed.

13.12 **Time of the essence**

Time is of the essence for all time-based obligations under this Deed.

Schedule 1 Parties

Name: **Banksia Securities Limited ACN 004 736 458 (Special Purpose Receive Appointed) (In Liquidation)**
 Address: **C/- Maddocks Lawyers, Collins Square, Tower 2, Level 25, 727 Collins Street, Melbourne VIC 3008**
 Email: **sam.kingston@maddocks.com.au**
 Short name: **BSL**

Name: **John Ross Lindholm**
 Address: **C/- Maddocks Lawyers, Collins Square, Tower 2, Level 25, 727 Collins Street, Melbourne VIC 3008**
 Email: **sam.kingston@maddocks.com.au**
 Short name: **SPR**

Name: **Peter Damien McCluskey**
 Address: **C/- Maddocks Lawyers, Collins Square, Tower 2, Level 25, 727 Collins Street, Melbourne VIC 3008**
 Email: **sam.kingston@maddocks.com.au**
 Short name: **Former SPR**

Name: **Norman John O'Bryan**
 Address: **C/- Hope & Co Lawyers, Level 4, 91 William Street, Melbourne VIC 3000**
 Email: **david.hope@hopeco.com.au**
 Short name: **Mr O'Bryan**

Name: **Paul Cook in his capacity as trustee of the Bankrupt Estate of Norman John O'Bryan** *19-*
 Address: *PK* **C/- Paul Cook & Associates, 105 Macquarie Street, Hobart Tasmania 7000**
 Email: **p-cook@pco-asm.au** *Deloitte Financial Advisory 68/27 Elizabeth Street, Perth*
 Short name: **O'Bryan's Trustee** *PCOOK@Deloitte.com.au* *PK*

Name: **Noysue Pty Limited ACN 167 179 044**
 Address: **C/- Hope & Co Lawyers, Level 4, 91 William Street, Melbourne VIC 3000**
 Email: **david.hope@hopeco.com.au**
 Short name: **Noysue**

Name: **Noysy Pty Limited ACN 061 266 475**
 Address: **C/- Hope & Co Lawyers, Level 4, 91 William Street, Melbourne VIC 3000**
 Email: **david.hope@hopeco.com.au**
 Short name: **Noysy**



Executed by the Parties as a deed

Executed by **Banksia Securities Limited ACN 004 736 458 (Special Purpose Receiver Appointed) (In Liquidation)** by being signed, sealed and delivered by John Ross Lindholm, in the presence of:

.....
Signature

Sheu.
.....
ANNELOUISE LINDHOLM
Witness

Signed sealed and delivered by **John Ross Lindholm** in the presence of:

.....
Signature

Sheu.
.....
ANNELOUISE LINDHOLM
Witness

Signed sealed and delivered by **Peter Damien McCluskey** in the presence of:

.....
Signature

.....
Witness

Signed sealed and delivered by **Norman John O'Bryan** in the presence of:

.....
Signature

.....
Witness

Executed as a deed by **Noysue Pty Ltd ACN 167 179 044** in accordance with s 127(1) and s 127(3) of the *Corporations Act 2001*:

.....
Signature of Sole Director and Sole Company Secretary

.....
Print full name

Executed by the Parties as a deed

Executed by **Banksia Securities Limited ACN 004 736 458 (Special Purpose Receiver Appointed) (In Liquidation)** by being signed, sealed and delivered by John Ross Lindholm, in the presence of:

Signature

Witness

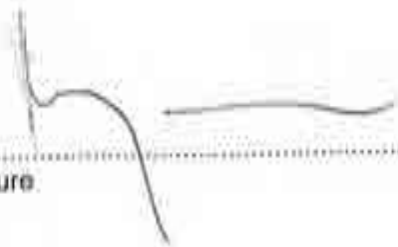
Signed sealed and delivered by **John Ross Lindholm** in the presence of:

Signature

Witness

Signed sealed and delivered by **Peter Damien McCluskey** in the presence of:

Signature



Witness **TADDEO ZANGA**

Signed sealed and delivered by **Norman John O'Bryan** in the presence of:

Signature

Witness

Executed as a deed by **Noysue Pty Ltd ACN 167 179 044** in accordance with s 127(1) and s 127(3) of the *Corporations Act 2001*:

Signature of Sole Director and Sole Company Secretary

Print full name

Executed by the Parties as a deed

Executed by Banksia Securities Limited ACN 004 736 458 (Special Purpose Receiver Appointed) (In Liquidation) by being signed, sealed and delivered by John Ross Lindholm, in the presence of:

Signature

Witness

Signed sealed and delivered by John Ross Lindholm in the presence of:

Signature

Witness

Signed sealed and delivered by Peter Damien McCluskey in the presence of:

Signature

Witness

Signed sealed and delivered by Norman John O'Bryan in the presence of:

Signature



Witness

Executed as a deed by Noysue Pty Ltd ACN 167 179 044 in accordance with s 127(1) and s 127(3) of the Corporations Act 2001:

Signature of Sole Director and Sole Company Secretary

SUSAN MARLENE NOY
Print full name

Executed as a deed by Noisy Pty Ltd ACN 061 266)
475 in accordance with s 127(1) and s 127(3) of the)
Corporations Act 2001.)

Susan M Noy

Signature of Sole Director and Sole Company Secretary

SUSAN MARLENE NOY

Print full name

Signed, sealed and delivered by Paul Cook in his)
capacity as trustee of the Bankrupt Estate of)
Norman John O'Bryan in the presence of.)

Signature of Paul Cook

Signature of witness:


Print full name of witness

Executed as a deed by Noisy Pty Ltd ACN 061 266 }
475 in accordance with s 127(1) and s 127(3) of the }
Corporations Act 2001 }

Signature of Sole Director and Sole Company Secretary

Print full name

Signed, sealed and delivered by Paul Cook in his }
capacity as trustee of the Bankrupt Estate of }
Norman John O'Bryan in the presence of: }


Signature of Paul Cook


Signature of witness

Josune Gay Cook
Print full name of witness

Retired
Hobart, Tasmania



Tower Two, Collins Square
727 Collins Street
Melbourne VIC 3008

ABN: 51 194 660 183
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Facsimile: +61 3 9288 6666

PO Box 2291U
Melbourne VIC 3001
Australia

www.kpmg.com.au

9 May 2023

Circular to Debenture Holders

Dear Sir/Madam

**Banksia Securities Limited
(Receivers and Managers Appointed) (In Liquidation) (Special Purposes Receivers Appointed)
ACN 004 736 458 (Banksia)**

I refer to my appointment as liquidator of Banksia on 24 June 2014 and subsequently as Special Purpose Receiver of certain assets of Banksia on 30 September 2015. I write this letter to you in my capacity as Special Purpose Receiver (**SPR**).

The purpose of this circular is to give an update on the special purpose receivership and to give notice of an application filed in the Supreme Court of Victoria seeking approval for me to settle all claims against Mr Norman O'Bryan (a Bankrupt) and entities to which he and his family are related, Noysue Pty Ltd and Noysy Pty Ltd (**O'Bryan Entities**). The settlement approval application is listed for hearing on 16 June 2023. Details about the settlement and how you can express your views on the settlement are set out below.

Copies of this circular and documents identified below are available on the Banksia Securities webpage <https://kpmg.com/au/en/home/creditors/banksia-securities-limited.html> (**Banksia Webpage**).

1. Background

As outlined in the circular dated 22 June 2022, on 11 October 2021 Justice Dixon ordered, amongst other things, that the Defendants pay the following amounts to me on behalf of debenture holders:

- Compensation of approximately \$11.7m (**Compensation Component**); and
- The following costs on an indemnity basis:
 - My costs of the Botsman Appeal and the Remitter; and
 - The Contradictor's costs of the Remitter,

(Costs Component)

The Costs Component has not been taxed (the Court process for fixing the amount recoverable), but the costs total \$10.6m. On a taxation, I expect to recover between 80% - 90% of the total amount of the costs actually incurred. Overall, it is reasonable to assume that up to approximately \$9.8m would be recoverable.

To date, 91.5 cents in the dollar has been distributed to debenture holders. I anticipate that there will be at least one further distribution and will confirm the likely amount and timing of a further distribution once any further realisations are known.

Recoveries to date

To date, I have received the following amounts in partial satisfaction of the Compensation Component:

Source	Amounts Paid to SPR
Legal Practitioners' Liability Committee (LPLC) on account of Mr O'Bryan's insurance policy	\$1,558,191.39
LPLC on account of Mr Symons' insurance policy	\$1,454,547.54
Portfolio Law	\$375,683.30
LPLC on account of Portfolio Law's insurance policy	\$464,828.83
Total	\$3,853,251.06

Taking into account the realisations to date and interest, the Compensation Component as at 9 May 2023 is \$9,257,670.41. As such, the maximum amount that remains to be paid under the Remitter Judgment is approximately \$19m.

My solicitors and I currently hold the following funds:

- \$4,551,262.20 held by Maddocks as the balance of the funds from the Trust Co Settlement and the amounts received from and on behalf of Portfolio Law; and
- \$2,969,971.41 as the 'SPR Litigation Fund', being the account from which I am funded by the orders of Justice Black

2. Settlement proposals

At various times, proposals to resolve all outstanding claims relating to the Banksia proceedings have been made. At this stage, no global settlement has been reached. In his judgment in *In the matter of Banksia Securities Ltd (recs and mgrs. apptd) (in liq)* [2022] NSWSC 1106, Justice Black acknowledged that, while it was finely balanced, my decision to reject one such global settlement proposal was logical and reached for good reason. Justice Black's judgment is available on the Banksia Webpage.

3. Settlement approval application— entities associated with the O'Bryan family

I have agreed to settle all claims against Mr O'Bryan and the O'Bryan Entities for \$1.25m. The settlement with Mr O'Bryan and the O'Bryan Entities is subject to certain conditions, including Court approval. The proposed settlement will resolve the following as they relate to Mr O'Bryan and the O'Bryan Entities:

- the Remitter Judgment;
- any outstanding costs orders; and
- the summons seeking orders that the O'Bryan Entities and entities associated with the Elliott family (**Elliott Entities**) pay the Costs Component of the Remitter Judgment (**Non-Party Costs Summons**).

My assessment is that the proposed settlement with Mr O'Bryan and the O'Bryan Entities will result in debenture holders receiving a greater return from Mr O'Bryan and the O'Bryan Entities than continuing to pursue enforcement steps against them. More specifically:

- Mr O'Bryan is bankrupt and all claims must be made via his trustee in bankruptcy. Based on the report dated 26 November 2021 issued to creditors by the bankruptcy trustee, a substantial dividend from Mr O'Bryan's bankrupt estate is unlikely.
- I do not currently have judgment against the O'Bryan Entities in the Non-Party Costs Summons. If those claims failed, I would be required to pay the O'Bryan Entities' costs of the application (which are likely to be material). The O'Bryan Entities have vigorously opposed the Non-Party Costs Summons to date,

including by seeking to have Justice Dixon recuse himself from hearing the application. Justice Dixon's judgment is available on the Banksia Webpage.

- Regardless of the outcome of the Non-Party Costs Summons, I have received financial disclosure from the O'Bryan Entities confirming that they do not have any significant assets. Real property and ASIC searches also confirm that neither O'Bryan Entity has any identifiable assets that could be used to meet any judgment.

Accordingly, even if the Non-Party Costs Summons is successful as against the O'Bryan Entities, it is likely that there will be a negligible further return to debenture holders. In other words, the proposed settlement amount of \$1.25m exceeds any return to debenture holders that would result from the continued prosecution of those parties.

Completing a settlement with the O'Bryan Entities will also enable me to continue to progress and focus on claims against the Elliott Entities as discussed below.

4. Update on enforcement steps

I continue to take steps to enforce the Remitter Judgment against the other parties to attempt to maximise the return to debenture holders. A summary of the recent key events is set out below:

- On 1 March 2023, Justice Dixon ordered that the Elliott Entities pay the Costs Component on an indemnity basis. Justice Dixon has not yet published his reasons for judgment for making orders against the Elliott Entities. If the settlement with the O'Bryan Entities is approved, Justice Dixon will be able to release his reasons, and I suspect that those reasons will assist me in pursuing additional enforcement actions against the Elliott Entities.
- I have identified that the Elliott Entities have significant cash assets and real estate holdings. The amount of those assets is likely to exceed the value of the amount currently owing under the Remitter Judgment.
- One of the Defendants, Alex Elliot, commenced an appeal seeking to set aside the Remitter Judgment. Alex Elliot has abandoned his appeal and I am now entitled to the costs of the appeal on an indemnity basis.
- While the payments noted in Section 1 above have been received on behalf of Mr Zita and Portfolio Law, no settlement has been reached with them. If a settlement with Portfolio Law and Mr Zita cannot be reached further enforcement steps will be taken.
- Following Mr Trimbos' death, an amount of \$1,413,197.13 remains in his insurance policy with the LPLC. I am currently in discussions with the LPLC and the executor of Mr Trimbos' estate to receive this amount in part payment of the Compensation Component.

Since delivery of the Remitter Judgment on 11 October 2021, I have incurred approximately \$1.48 million (including GST) in legal costs in undertaking the above steps set out above.

I will provide a further update to debenture holders as enforcement steps continue.

5. Notice to debenture holders

The hearing seeking Court approval of the settlement with Mr O'Bryan and the O'Bryan Entities is scheduled for 16 June 2023. Copies of all non-confidential material filed in support of the approval application will be available on the Banksia Webpage.

If you would like to express any view on the settlement with Mr O'Bryan and the O'Bryan Entities which you would like communicated to the Court, please contact Claudia Bishop by:

- Telephone: (02) 9202 2346;
- Email: cbishop4@kpmg.com.au; or
- Post: GPO Box 2291U, Melbourne, VIC 3001

I am required to file any further evidence and submissions by 26 May 2023. As such, I ask that any comments on the settlement be sent to KPMG by no later than 5pm on 25 May 2023.

Should any debenture holder wish to be heard in respect of the application, you are requested to provide notice to the following email address: cldgroupproceedings@supcourt.vic.gov.au. Ms Bishop can assist any debenture holders having any difficulty providing notice to the Court.

6. Queries about previous distributions

Should you have any queries in relation to previous distributions, please contact Link Market Services on (02) 8767 1029 or email at banksia@linkmarketservices.com.au. Please also contact Link Market Services to notify of any change of address or circumstances.

Should you know of any debenture holder who has changed address, please bring this letter to their attention.

Yours faithfully

Banksia Securities Limited



John Lindholm

Special Purpose Receiver



Lawyers
Collins Square, Tower Two
Level 25, 727 Collins Street
Melbourne VIC 3008
Australia

Telephone 61 3 9258 3555
Facsimile 61 3 9258 3666

info@maddocks.com.au
www.maddocks.com.au

DX 259 Melbourne

Deed of Settlement and Release

Banksia Securities Limited ACN 004 736 458 (Special Purpose Receiver Appointed)
(In Liquidation)
And

The Parties Listed in Schedule 1



Deed of Settlement and Release

Dated

24-May-2023

Parties

The Parties listed in schedule 1.

Background

- A. On 24 December 2012, the Bolitho Proceeding was commenced against, inter alia, BSL. The Bolitho Proceeding is a group proceeding for the purposes of Part 4A of the *Supreme Court Act 1986 (Vic)*.
- B. On 24 June 2014, the SPR and Former SPR were appointed as joint and several liquidators of BSL.
- C. By orders made in the Supreme Court of New South Wales on 30 September 2015 and 29 February 2016, the SPR and the Former SPR were appointed as special purpose receivers of certain assets of BSL.
- D. On 16 December 2019, Mr McCluskey resigned as liquidator and special purpose receiver of BSL.
- E. On 1 November 2018, the Victorian Court of Appeal delivered its judgment in the Botsman Appeal. The Court of Appeal remitted (i) the approval of the funding commission claimed by AFP and (ii) legal costs and other expenses incurred in the Bolitho Proceeding, to the Trial Division of the Supreme Court of Victoria as the Remitter. The Remitter was heard by the Honourable Justice John Dixon.
- F. The trial of the Remitter commenced on 27 July 2020.
- G. On 20 August 2020, Trimbos was joined as a party to the Remitter.
- H. In accordance with the Insurance Documents, the LPLC agreed to extend indemnity to Trimbos in relation to the allegations in the Remitter. After payment of Trimbos' defence costs, approximately \$1,413,197.13 remains available in accordance with the Insurance Documents.
- I. On 24 September 2020, Trimbos passed away.
- J. On 2 November 2020, Katerina Peiros, in her capacity as executor of the Will of Trimbos, was appointed to represent the estate of Trimbos for the purpose of the Bolitho Proceeding and the title of the proceeding was amended accordingly (Bolitho & Anor v Banksia Securities Ltd & Ors (No 15) [2020] VSC 725).
- K. On 11 August 2021, Katerina Peiros was granted probate of the Trimbos Estate.
- L. On 11 October 2021, Dixon J delivered the Remitter Judgment and ordered that the Defendants must jointly and severally pay the Compensation Component and the Costs Component to the SPR.

- M. The SPR and Katerina Peiros have agreed to resolve all Claims arising out of or in relation to the Released Matters on the terms set out in this Deed.
- N. Katerina Peiros enters into this Deed in her capacity as the executor of the Trimbo's Estate.

This Deed Witnesses

1. Definitions

In addition to the party short names identified in Schedule 1, in this Deed:

AFP means Australian Funding Partners Pty Ltd (in liquidation).

Bolitho Proceeding means proceeding S CI 2012 7185 in the Supreme Court of Victoria, including for the avoidance of doubt the Remitter.

Botsman Appeal means proceeding S APCI 2018 0037, being an appeal of the approval of the settlement with Trust Co.

Business Day means a day other than a Saturday, Sunday or public holiday in Melbourne, Victoria.

Claim means any claim, notice, allegation, debt, cause of action, liability, litigation, proceeding, judgement, entitlement to payment or compensation or demand of any nature however it arises and whether it is present or future, fixed or unascertained, actual or contingent (whether or not the facts, matters or circumstances giving rise to that claim are known to that person or to any other person at the date of this Deed) and whether at law, in equity, under statute or otherwise.

Committee means BSL's Committee of Debenture Holders.

Compensation Component means the amount of compensation ordered to be paid by the Defendants in the Remitter Judgment amounting to \$11,700,128.

Corporations Act means the *Corporations Act 2001* (Cth).

Costs Component means the costs ordered to be paid by the Defendants in the Remitter Judgment in relation to the SPR's costs of the Botsman Appeal and the SPR's and contradictor's costs of the Remitter.

Court means the Supreme Court of Victoria or Supreme Court of New South Wales.

Deed means this deed of settlement and release executed by the Parties.

Defendants mean AFP, Mr O'Bryan, Mr Symons, Mr Zita and Portfolio Law, Mr Alexander Elliott and Katerina Peiros (as representative of the Estate of Peter Trimbo's).

Elliott Entities mean AFP, Mr Alexander Elliott, Mr Max Elliott in his capacity as executor of the deceased estate of Mr Mark Edward Elliott, Elliott Legal Pty Ltd, MCM (Mount Buller) Developments Pty Ltd and Decoland Holdings Pty Ltd.

Insurance Documents means:

- a) the LPLC Contract of Professional Indemnity Insurance For Solicitors 2019/2020 (Defence Costs Exclusive Excess);
- b) the Professional Indemnity Insurance for Solicitors Certificate of Insurance for Peter Trimbo's Costs Lawyer (Firm Number 7229) issued on 26 February 2021;

c) any other document relating to Trimbos' insurance with the LPLC.

LPLC means Legal Practitioners Liability Commission.

Nominated Account means:

Maddocks – Law Practice Trust Account (Melbourne)
BSB: 183-334
Account: 304700040
Swift Code: MACQAU2S
Bank: Macquarie Bank Limited
Branch: 101 Collins Street Melbourne VIC
Reference: STK:MZG:6207696

O'Bryan Entities means Mr O'Bryan, Noysue Pty Ltd and Noysy Pty Ltd.

Officer has the meaning given in the Corporations Act.

Parties means the Parties to this Deed and Party has a corresponding meaning.

Portfolio Law means Portfolio Law Pty Ltd.

Remitter means the remittal from the Court of Appeal of the approval of the commission claimed by AFP and legal costs in the Bolitho Proceeding arising from the settlement with Trust Co back to the trial division of the Supreme Court of Victoria.

Remitter Judgment means the judgment in *Bolitho v Banksia Securities Limited (No 18) (Remitter)* [2021] VSC 666.

Related Entity of any Party (including an individual) includes all of the entities identified in the definition of Related Entity in s 9 of the Corporations Act and in respect of Katerina Peiros includes the Trimbos Entities.

Released Matters means all claims relating or incidental to the:

- a) Bolitho Proceeding;
- b) Remitter;
- c) Remitter Judgment;
- d) Trust Co Proceeding; and
- e) Any Claims whatsoever arising out of Trimbos' involvement in any related proceeding whether current or future.

Settlement Approval Orders means orders made by the Court directing that the SPR is justified in settling the Claims against the Trimbos Estate on the terms of this Deed.

Settlement Sum means \$1,413,197.13.

Trimbos means Mr Peter Trimbos (Deceased).

Trimbos Estate means deceased estate of Mr Peter Trimbos.

Trimbos Entities means the Trimbos Estate, Hartwell Legal Pty Ltd, Ms Daphne Voggiagis and the children of Trimbos.

Trust Co means the Trust Company (Nominees) Limited.

Trust Co Proceeding means proceeding S CI 2015 01384 commenced in the Supreme Court of Victoria.

2. Conditions precedent

This Deed is subject to and conditional upon each of the following conditions being satisfied:

- 2.1 the SPR receiving the approval of the Committee to settle the Claims against the Trimbos Estate on the terms of this Deed;
 - 2.2 the making of the Settlement Approval Orders; and
 - 2.3 if the Settlement Approval Orders are made:
 - 2.3.1 any appeal period in respect of the Settlement Approval Orders (whether under the rules of the Court, the Court of Appeal, or the High Court) expiring without an appeal being commenced; and/or
 - 2.3.2 in circumstances where an appeal(s) is commenced, or application for special leave is made, in respect of the Settlement Approval Orders, that appeal(s) being finally determined (including any determination in respect of that appeal(s) by the High Court) or the application for special leave refused, the result of which is that the Settlement Approval Orders are made or confirmed.
-

3. Settlement Sum

3.1 LPLC payment

Immediately on execution of this Deed by all Parties, Katerina Peiros will direct LPLC to make payment of the Settlement Sum into the Nominated Account and the direction will include that the payment must be made by LPLC within 14 days of the date of the direction.

Katerina Peiros must take all necessary steps within her power to procure the LPLC to make payment of the Settlement Sum as set out above.

3.2 Investment of the Settlement Sum

Katerina Peiros, the SPR and BSL authorise Maddocks to transfer the Settlement Sum into an interest bearing trust account in the name of Maddocks to be held pending the satisfaction of the conditions precedent in clauses 2.1 to 2.3 of this Deed.

3.3 Release on satisfaction of conditions precedent

Within 7 days of the satisfaction of the conditions precedent in clause 2, the Settlement Sum and any interest it accrues may be released to the SPR and BSL and applied in part satisfaction of the Compensation Component.

3.4 Return on failure of conditions precedent

If any of the conditions precedent in clause 2 are not satisfied or waived by the Parties in writing, Katerina Peiros, the SPR and BSL authorise for the Settlement Sum and any interest:

- 3.4.1 to be returned to the LPLC; or
- 3.4.2 in the event the LPLC will not accept return of the Settlement Sum, into an account as nominated by Katerina Peiros.

3.5 **Failure of conditions precedent**

If any of the conditions precedent in clause 2 are not satisfied or waived by the Parties in writing, this Deed ceases to have any further force and effect.

4. **Releases**

Release by BSL and the SPR

4.1 On and from release of the Settlement Sum to the SPR in accordance with clause 3.3, BSL and the SPR, immediately and forever, unconditionally and absolutely, agree to:

4.1.1 release and discharge Katerina Peiros and her Related Entities from all Claims relating to the subject matter of the Released Matters; and

4.1.2 not commence or maintain any Claim against Katerina Peiros and her Related Entities relating to the subject matter released in clause 4.1.1 (with the exception of a claim or action for breach or enforcement of this Deed).

4.2 For the avoidance of doubt, the release in clause 4.1 of this Deed does not extend to or prejudice to any Claims made or available to BSL or the SPR against Mr Zita, Portfolio Law, Mr Symons, the LPLC, the Elliott Entities or the O'Bryan Entities in relation to the Released Matters.

Release by Katerina Peiros

4.3 On and from release of the Settlement Sum to the SPR in accordance with clause 3.3, Katerina Peiros and the Trimbos Estate, immediately and forever, unconditionally and absolutely, agree to:

4.3.1 release and discharge BSL, the SPR, the Former SPR, and their Related Entities from all Claims relating to the subject matter of the Released Matters; and

4.3.2 not commence or maintain any Claim against BSL, the SPR, the Former SPR, and their Related Entities relating to the subject matter released in clause 4.3.1 (with the exception of a claim or action for breach or enforcement of this Deed).

5. **Bar to further proceedings**

5.1 Upon satisfaction of the preconditions as provided in Clause 2.1 of this Deed, this Deed may be pleaded (and a copy produced to the court) as full and complete defence and absolute bar by a Party to any Claim brought by the other Party relating to the subject matter of the Released Matters, other than in relation to the obligations created under this Deed.

5.2 The production of this Deed in any court constitutes a bar against the issue or continuation of legal proceedings against the Parties in respect of the subject matter of the Released Matters, other than in relation to the obligations created under this Deed.

6. **Binding effect of this Deed**

6.1 This Deed binds the Parties and any executor, administrator, transferee, assignee, liquidator or trustee in bankruptcy appointed in respect of it.

6.2 This Deed does not become legally binding upon any Party until every Party has executed a counterpart and copies of all counterparts have been exchanged between all Parties.

7. Default

If the Settlement Sum is not paid to the Nominated Account in accordance with clause 3.1 above, Katerina Peiros on behalf of the Trimbos Estate acknowledges and agrees that:

- 7.1 BSL and the SPR will be entitled to immediately commence proceedings against Katerina Peiros on behalf of the Trimbos Estate for breach of this Deed and to enter judgment for:
- 7.1.1 the total amount of the Settlement Sum (less any payments received towards the Settlement Sum);
 - 7.1.2 interest from the date of the default until the date of judgment calculated at the rate prescribed under the *Penalty Interest Rates Act 1983* (Vic); and
 - 7.1.3 the costs of BSL and the SPR in commencing proceedings and applying for and entering that judgment on an indemnity basis;
- 7.2 in the event that BSL and the SPR take steps pursuant to clause 7.1, Katerina Peiros on behalf of the Trimbos Estate consents to Banksia and the SPR commencing such proceedings and to the entry of judgment for the amount owing under clause 7.1; and
- 7.3 the filing of an affidavit deposed by the SPR:
- 7.3.1 as to the default in payment of the Settlement Sum;
 - 7.3.2 as to the amount of the Settlement Sum and any payments made towards the Settlement Sum, as at the date of specific in the affidavit; and
 - 7.3.3 exhibiting a copy of this Deed,
- will be irrevocable proof that the amount owing under clause 7.1 is due and payable by them.

8. Warranty

Each Party warrants that:

- 8.1 they have full power and authority to enter into and perform this Deed;
- 8.2 the matters set out in this Deed are true and accurate;
- 8.3 they have entered into this Deed freely and voluntarily;
- 8.4 they have taken independent legal advice as to the nature, effect and extent of this Deed;
- 8.5 no other Party has made any promise, representation or inducement or been party to any conduct material to the decision to enter into this Deed other than as set out in this Deed;
- 8.6 they are aware that the SPR is relying upon these warranties;
- 8.7 any information they have provided to the SPR and/or his solicitors in relation to their financial position and capacity to pay the Remitter Judgment; and
- 8.8 they accept this Deed as fair and reasonable in the circumstances.

9. Governing law

This Deed is governed by the law applying in Victoria and the Parties submit to the non-exclusive jurisdiction of the courts of Victoria.

10. Interpretation

10.1 Words and headings

In this Deed, unless expressed to the contrary:

- 10.1.1 words denoting the singular include the plural and vice versa;
- 10.1.2 the word 'includes' in any form is not a word of limitation;
- 10.1.3 where a word or phrase is defined, another part of speech or grammatical form of that word or phrase has a corresponding meaning;
- 10.1.4 headings and sub-headings are for ease of reference only and do not affect the interpretation of this Deed; and
- 10.1.5 no rule of construction applies to the disadvantage of the Party preparing this Deed on the basis that it prepared or put forward this Deed or any part of it.

10.2 Specific references

In this Deed, unless expressed to the contrary, a reference to:

- 10.2.1 a gender includes all other genders;
- 10.2.2 any legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced and includes any subordinate legislation issued under it;
- 10.2.3 any document (such as a deed, agreement or other document) is to that document (or, if required by the context, to a part of it) as amended, novated, substituted or supplemented at any time;
- 10.2.4 a reference to time is to Melbourne, Australia time;
- 10.2.5 writing includes writing in digital form;
- 10.2.6 'this Deed' is to this Deed as amended from time to time;
- 10.2.7 'A\$', '\$', 'AUD' or 'dollars' is a reference to Australian dollars;
- 10.2.8 a clause, schedule or attachment is a reference to a clause, schedule or attachment in or to this Deed;
- 10.2.9 any property or assets of a person includes the legal and beneficial interest of that person of those assets or property, whether as owner, lessee or lessor, licensee or licensor, trustee or beneficiary or otherwise;
- 10.2.10 a person includes a firm, partnership, joint venture, association, corporation or other body corporate;
- 10.2.11 a person includes the legal personal representatives, successors and permitted assigns of that person, and in the case of a trustee, includes any substituted or additional trustee; and

10.2.12 any body (**Original Body**) which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the Original Body.

11. General

11.1 Variation

This Deed may only be varied by a document executed by the Parties.

11.2 Entire agreement and no reliance

11.2.1 This Deed:

- (a) constitutes the entire agreement between the Parties; and
- (b) supersedes and cancels any contract, deed, arrangement, related condition, collateral arrangement, condition, warranty, indemnity or representation imposed, given or made by a Party (or an agent of a Party) prior to entering into this Deed.

11.2.2 The Parties acknowledge that in entering into this Deed, each Party has not relied on any representations made by the other Party (or its agents or employees) other than matters expressly set out in this Deed.

11.3 Liability

If a Party consists of 2 or more people or entities, an obligation of that Party binds each of them jointly and severally.

11.4 Severability

11.4.1 Any provision of this Deed that is held to be illegal, invalid, void, voidable or unenforceable must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.

11.4.2 If it is not possible to read down a provision as required by this clause, part or all of the clause of this Deed that is unlawful or unenforceable will be severed from this Deed and the remaining provisions continue in force.

11.5 Waiver

The failure of a Party at any time to insist on performance of any provision of this Deed is not a waiver of the Party's right at any later time to insist on performance of that or any other provision of this Deed.

11.6 Further assurance

Each Party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Deed.

11.7 No merger

The warranties, undertakings, agreements and continuing obligations in this Deed do not merge on completion of the transactions contemplated by this Deed.

11.8 Business Day

If a payment or other act is required by this Deed to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.

11.9 Legal costs and expenses

Each Party must pay its own legal costs and other expenses for the negotiation, preparation and execution of this Deed and related documents, unless expressly stated otherwise. For the avoidance of doubt, the SPR's costs are costs in the special purpose receivership of BSL.

11.10 No assignment without consent

A Party must not, without the prior written consent of the other Party:

11.10.1 assign or novate this Deed;

11.10.2 transfer any right or obligation arising from this Deed;

11.10.3 mortgage, charge, create a security interest (as defined in s 51A of the Corporations Act) over, allow a security interest to exist over, or otherwise encumber any benefit arising from this Deed; or

11.10.4 subcontract the performance of any of its obligations under this Deed.

11.11 Time of the essence

Time is of the essence for all time-based obligations under this Deed.



Schedule 1 Parties

Name	Banksia Securities Limited ACN 004 736 458 (Special Purpose Receiver Appointed) (In Liquidation)
Address	C/- Maddocks Lawyers, Collins Square, Tower 2, Level 25, 727 Collins Street, Melbourne VIC 3008
Email	sam.kingston@maddocks.com.au
Short name	BSL
Name	John Ross Lindholm
Address	C/- Maddocks Lawyers, Collins Square, Tower 2, Level 25, 727 Collins Street, Melbourne VIC 3008
Email	sam.kingston@maddocks.com.au
Short name	SPR
Name	Peter Damien McCluskey
Address	C/- Maddocks Lawyers, Collins Square, Tower 2, Level 25, 727 Collins Street, Melbourne VIC 3008
Email	sam.kingston@maddocks.com.au
Short name	Former SPR
Name	Katerina Peiros personally and in her capacity as the executor of the deceased estate of Mr Peter Trimpos
Address	C/- Hartwell Legal, Suite 8, 1 Milton Parade, Malvern VIC 3144
Email	kpeiros@hartwell-legal.com.au
Short name	Katerina Peiros

Executed by the Parties as a deed

Executed by Banksia Securities Limited ACN 004 736 458 (Special Purpose Receiver Appointed) (In Liquidation) by being signed, sealed and delivered by John Ross Lindholm, in the presence of:

John Ross Lindholm
.....
Signature

Philip Muscari
.....
Witness

Signed sealed and delivered by John Ross Lindholm in the presence of:

John Ross Lindholm
.....
Signature

Philip Muscari
.....
Witness

Signed sealed and delivered by Peter Damien McCluskey in the presence of:

Peter McCluskey
.....
Signature

Philip Muscari
.....
Witness

Signed sealed and delivered by Katerina Peiros personally and in her capacity as executrix of the estate of Peter Timbos (deceased) in the presence of:

DocuSigned by:
Katerina Peiros
.....
Signature
FCA0127E29E04A3...

DocuSigned by:
Angela Sgambaro
.....
Witness
A3DE108E1F5242A...

BETWEEN:

LAURENCE JOHN BOLITHO & ANOR
(according to the attached Schedule)

Plaintiffs

-and-

JOHN ROSS LINDHOLM IN HIS CAPACITY AS SPECIAL PURPOSE
RECEIVER OF BANKSIA SECURITIES LIMITED (RECEIVERS AND
MANAGERS APPOINTED) (IN LIQUIDATION) & ORS
(according to the attached Schedule)

Defendants

ORDER

JUDGE: The Honourable Justice John Dixon
DATE MADE: 30 May 2023
ORIGINATING PROCESS: Writ dated 23 December 2012
HOW OBTAINED: By consent
ATTENDANCE: On the papers
OTHER MATTERS: Nil.

THE COURT ORDERS BY CONSENT THAT:

1. The SPR has leave to file the amended summons in the form located at Annexure A of these orders (Amended Summons).
2. Paragraph 6 of the orders dated 4 April 2023 is vacated.
3. By 4:00 pm on 2 June 2023, the SPR is to:
 - (a) file any additional affidavits he seeks to rely on in support of the Amended Summons;
 - (b) file a confidential opinion of the SPR's counsel in relation to the Amended Summons,
 - (c) file an outline of its submissions in support of the Amended Summons;
 - (d) serve the non-confidential material filed in accordance with the preceding paragraphs on:
 - (i) Noysue Pty Ltd and Noysye Pty Ltd;



(ii) The Sixth Defendant; and

(iii) Mr Botsman; and

(e) cause a notice to be published on the website located at <<https://kpmg.com/au/en/home/creditors/banksia-securities-limited.htm>> to inform debenture holders of the Amended Summons.

4. The SPR has leave to file any further affidavit or exhibit in respect of which confidentiality orders are to be sought, including the confidential opinion referred to in the preceding paragraph, by emailing same to the chambers of the Honourable Justice John Dixon in an email marked '*Confidential affidavit, not to be opened except by direction of a judge or the Court*', and is excused from any requirement to otherwise file and serve such affidavit or exhibit.
5. By 4:00 pm on 9 June 2023, any party who wishes to be heard in respect of the Amended Summons file any affidavit and/or submissions upon which they seek to rely.
6. The Amended Summons is listed for hearing on 16 June 2023 at 10:30 am, on an estimate of half a day.
7. Costs reserved.
8. Liberty to apply.

DATE AUTHENTICATED: 30 May 2023


The Honourable Justice John Dixon

The image shows a red circular seal of the Supreme Court of Queensland. The seal contains the text 'SUPREME COURT OF QUEENSLAND' around the perimeter and a central emblem. A handwritten signature in black ink is written over the seal. Below the seal, the text 'The Honourable Justice John Dixon' is printed.

SCHEDULE OF PARTIES

S CI 2012 07185

BETWEEN:

LAURENCE JOHN BOLITHO	First Plaintiff
AUSTRALIAN FUNDING PARTNERS PTY LTD	Second Plaintiff
-and-	
JOHN ROSS LINDHOLM IN HIS CAPACITY AS SPECIAL PURPOSE RECEIVER OF BANKSIA SECURITIES LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION)	First Defendant
NORMAN O'BRYAN SC	Second Defendant
MICHAEL SYMONS	Third Defendant
ANTHONY ZITA AND PORTFOLIO LAW PTY LTD	Fourth Defendant
ALEXANDER CHRISTOPHER ELLIOTT	Fifth Defendant
KATERINA PEIKOS, AS THE REPRESENTATIVE OF THE ESTATE OF PETER TRIMBOS	Sixth Defendant



FORM 46A

Rule 46.04(1)

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL COURT
GROUP PROCEEDINGS LIST

S CI 2012 07185

BETWEEN

LAURENCE JOHN BOLITHO

Plaintiff

-and-

JOHN ROSS LINDHOLM

in his capacity as several special purpose receiver
of Banksia Securities Limited (receivers and managers appointed)
(in liquidation) and others in accordance with the schedule Defendants

AMENDED SUMMONS

Date of document: 30 May 2023

Solicitor's Code: 230

Filed on behalf of: The First Defendant

DX: 259

Prepared by:

Tel: (03) 9258 3555

Maddocks Lawyers

Fax: (03) 9258 3666

727 Collins St

Ref: DCN.STK: 6207696

MELBOURNE VIC 3008

Attention: Sam Kingston

Email: sam.kingston@maddocks.com.au

To:

Noysue Pty Ltd C/- Hope & Co Lawyers, Level 4, 91 William Street, Melbourne VIC 3000

and

Noysy Pty Ltd C/- Hope & Co Lawyers, Level 4, 91 William Street, Melbourne VIC 3000

and



Norman John O'Bryan C/- Hope & Co Lawyers, Level 4, 91 Williams Street, Melbourne VIC 3000

and

Katerina Peiros C/ Hartwell Legal, Suite 8, 1 Milton Parade, Malvern VIC 3144

You are summoned to attend before the Court on the hearing of an application by the First Defendant for the following orders:

Settlement with the O'Bryan Entities

1. Pursuant to s 283HB of the *Corporations Act 2001 (Cth) (Corporations Act)*, the SPR has the power to settle all claims against Mr Norman O'Bryan, Noysue Pty Ltd (Noysue) and Noysy Pty Ltd (Noysy) (together the O'Bryan Entities) on the terms set out in the binding and conditional deed of settlement dated 27 March 2023 (O'Bryan Settlement Deed).
2. Pursuant to s 283HB of the *Corporations Act*, the SPR is justified in causing Banksia Securities Limited (in liq) (~~rec & mgr appointed~~) to settle its claims made against the O'Bryan Entities on the terms set out in the O'Bryan Settlement Deed.
3. Pursuant to s 33V(1) of the *Supreme Court Act 1986 (Vic) (Act)*, the SPR's claims against the O'Bryan Entities be dismissed.
4. Pursuant to ss 33V(2) and 33ZF of the Act, the settlement sum of \$1.25 million payable by the O'Bryan Entities is to be distributed to all debenture-holders of Banksia pari passu in accordance with the settlement distribution scheme approved by the Honourable Justice Dixon on 22 May 2019.
5. Such further or other orders as the Court deems fit.

Settlement with the Sixth Defendant

6. Pursuant to s 283HB of the Corporations Act, the SPR has the power to settle all claims against Ms Katerina Peiros as the representative of the estate of Peter Trimbo (Sixth Defendant) on the terms set out in the binding and conditional deed of settlement dated 24 May 2023 (Trimbo Settlement Deed).
7. Pursuant to s 283HB of the Corporations Act, the SPR is justified in causing Banksia Securities Limited (in liq) to compromise its claims made against the Sixth Defendant, including its rights to enforce the Remitter Judgment, on the terms set out in the Trimbo Settlement Deed.
8. Such further or other orders as the Court deems fit.



The application will be heard by the Honourable Justice Dixon at the Supreme Court, 210 William street, Melbourne on 16 June 2013 at 10:30 am or so soon afterwards as the business of the Court allows.

FILED June 2023

This summons was filed by Maddocks Lawyers of Collins Square, Tower 2, Level 25, 727 Collins Street, Melbourne VIC 3008, solicitor for the First Defendant





Tower Two, Collins Square
727 Collins Street
Melbourne VIC 3008

ABN: 51 194 660 183
Telephone: +61 3 9288 5555
Facsimile: +61 3 9288 6666

PO Box 2291U
Melbourne VIC 3001
Australia

www.kpmg.com.au

2 June 2023

Circular to Debenture Holders

Dear Sir/Madam

**Banksia Securities Limited
(In Liquidation) (Special Purposes Receivers Appointed)
ACN 004 736 458 (Banksia)**

I refer to my appointment as liquidator of Banksia on 24 June 2014 and subsequently as Special Purpose Receiver of certain assets of Banksia on 30 September 2015. I write this circular to you in my capacity as Special Purpose Receiver (**SPR**).

The purpose of this circular is to give notice of an application filed in the Supreme Court of Victoria seeking approval for me to settle all claims against the Deceased Estate of Mr Peter Trimbos (**Estate**). The settlement approval application is listed for hearing on 16 June 2023. Details about the settlement and how you can express your views on the settlement are set out below.

Please refer to the circular to debenture holders dated 9 May 2023 for further details regarding the settlement approval application for the entities associated with the O'Bryan family, which is also set down to be heard on 16 June 2023.

A copy of this circular and documents identified below are available on the Banksia Securities webpage <https://kpmg.com/au/en/home/creditors/banksia-securities-limited.html> (**Banksia Webpage**).

1. Settlement approval application– Deceased Estate of Mr Peter Trimbos

I have agreed to settle all claims against the Estate for \$1,413,197.13 being the balance of his insurance policy with the Legal Practitioners' Liability Committee (**LPLC**). The settlement with the Estate is subject to certain conditions, including Court approval. The proposed settlement will resolve the following as they relate to the Estate:

- the Remitter Judgment; and
- any outstanding costs orders in favor of the SPR.

In order to reduce delay and costs, I have asked that the application to approve the settlement with the Estate be heard together with the settlement with Mr O'Bryan and the O'Bryan Entities on 16 June 2023.

My assessment is that the proposed settlement with the Estate is fair and reasonable having regard to the following matters:

- The offer from the Estate is limited to the proceeds from the balance of his insurance policy with the LPLC. In other words, the Estate is not contributing any of its own assets in the settlement. Although, I consider that I have an immediate entitlement to the insurance proceeds pursuant to section 51 of the *Insurance Contracts Act 1984* (Cth), the settlement will avoid the costs and delay of undertaking steps to recover the proceeds directly from the LPLC.
- The Estate' net asset position totals approximately \$940,000, comprising primarily of an investment property. Although there appears to be equity available in the investment property, Mr Trimbos' widow has asserted an equitable interest in the property. If that claim was accepted, it would reduce the potential return to debenture holders.

- Additionally, it is also possible that the claim from Mr Trimbos' widow would lead to litigation which would delay and further reduce any potential return to debenture holders.
- The alternative to accepting the settlement offer is enforcing the Remitter Judgment against the Estate. This would require an application to bankrupt the Estate and result in additional costs being incurred. In addition, the quantum and timing of any return to debenture holders from the bankrupt estate would be uncertain.

Completing a settlement with the Estate (in addition to O'Bryan and the O'Bryan Entities) will enable me to continue to progress and focus on claims against the Elliott Entities as discussed in the circular to debenture holders dated 9 May 2023.

2. Notice to debenture holders

As mentioned previously, the hearing seeking Court approval of the settlement with the Estate (and the Mr O'Bryan and the O'Bryan Entities) is scheduled for 16 June 2023.

If you would like to express any view on the settlement with the Estate which you would like communicated to the Court, please contact Claudia Bishop by:

- Telephone: (02) 9202 2346;
- Email: cbishop4@kpmg.com.au; or
- Post: GPO Box 2291U, Melbourne, VIC 3001

I ask that any comments on the settlement be sent to KPMG by no later than 5pm on 9 June 2023.

Should any debenture holder wish to be heard in respect of the application, you are requested to provide notice to the following email address: cldgroupproceedings@supcourt.vic.gov.au. Ms Bishop can assist any debenture holders having any difficulty providing notice to the Court.

3. Queries about previous distributions

Should you have any queries in relation to previous distributions, please contact Link Market Services on (02) 8767 1029 or email at banksia@linkmarketservices.com.au. Please also contact Link Market Services to notify of any change of address or circumstances.

Should you know of any debenture holder who has changed address, please bring this letter to their attention.

Yours faithfully

Banksia Securities Limited



John Lindholm
Special Purpose Receiver



Tower Two, Collins Square
727 Collins Street
Melbourne VIC 3008

ABN: 51 194 660 183
Telephone: +61 3 9288 5555
Facsimile: +61 3 9288 6666

PO Box 2291U
Melbourne VIC 3001
Australia

www.kpmg.com.au

13 June 2023

To Debenture Holders

**Banksia Securities Limited
(In Liquidation) (Special Purposes Receivers Appointed)
ACN 004 736 458 (Banksia)**

Dear Sir/Madam

I advise that the O'Bryan and Trimbos settlement applications (Bolitho v Banksia Securities Limited (S CI 2012 7185)) will be heard on **16 June 2023** by the Honourable Justice John Dixon. The hearing will be conducted at the Supreme Court of Victoria, Banco (Court 1), 210 William Street, Melbourne VIC 3000 at 10:30 am.

Debenture holders will be able to watch the hearing via live stream. Details of the live stream are as follows:

Date and time: June 16 2023 at 10:30AM AEST
URL: <https://vimeo.com/event/3493245>

Please refer to the circulars to debenture holders dated 9 May 2023 and 2 June 2023 for further details regarding the settlement approval applications. Copies of the circulars are available on the Banksia Securities webpage at the following link: <https://kpmg.com/au/en/home/creditors/banksia-securities-limited.html>

If you have any queries regarding the settlement application hearing or the Special Purpose Receivership please contact Claudia Bishop at cbishop4@kpmg.com.au.

Yours faithfully

Banksia Securities Limited

John Lindholm
Special Purpose Receiver

Rules 64.02, 64.03, 64.30, 64.31



Case: S EAPCI 2023 0090

Filed on: 04/09/2023 09:01 AM

FORM 64A

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
IN THE COURT OF APPEAL

S APCI 20

BETWEEN

NORMAN O'BRYAN

Applicant/Appellant

and

JOHN ROSS LINDHOLM in his capacity as
special purpose receiver of Banksia Securities
Ltd) (receivers and managers appointed) (in
liquidation)

Respondent

APPLICATION FOR LEAVE TO APPEAL

Date of Document: 4 September 2023

Filed on behalf of: The Applicant

Applicant's name and address: Norman O'Bryan

73 Hughes Road, Blairgowrie, Victoria 3942

Tel: 0419 290 857

Email: nobryan57@gmail.com

Respondent's or lawyer's name and address: Maddocks Lawyers
727 Collins Street, Docklands, Vic, 3008

Solicitor Code: 230

Tel: (03) 9258 3555

Fax: (03) 9258 3666

Ref: Sam Kingston

Email: sam.kingston@maddocks.com.au

1. Decision from which the application for leave is made:

Judicial Officer: The Honourable Justice John Dixon

Court: The Supreme Court of Victoria

Date of decision made: 31 July 2023 ([2023 VSC 442])

Court file number: S CI 2012 7185

2. Is the whole of the decision sought to be appealed or appealed?

No, only the findings made against the Applicant in the judgment at [2023] VSC 442 at [39], [40], [62], [74], [75], [76] and [93].

3. Is leave to appeal required?

Yes.

4. If leave to appeal is not required, state why:

N/A

5. Is an oral hearing of the leave application requested?

Yes.

6. Reasons for granting leave to appeal:

- A. It is a basic principle of procedural fairness, a requirement of natural justice, and a human right which is enshrined in s. 24(1) of the *Charter of Human Rights and Responsibilities Act 2006* (Vic), that a party to a proceeding before any court must be given adequate notice of any finding which might be made against them or which may adversely affect them, and also must be given a proper opportunity to challenge the possible finding by evidence and submissions. No such notice or opportunity was given to the Applicant in connection with the findings made against him in the judgment under appeal.
- B. The failure to give the Applicant any notice of the findings which were made against him in the judgment below, or any opportunity to respond by evidence and submissions, constituted breaches of procedural fairness and of natural justice.
- C. The judge below made critical findings in [2023] VSC 442 at [39], [40], [62], [74], [75], [76] and [93] about what he characterised as a fraud in relation to the transfer of 500,000 shares in the litigation funding company Australian Funding Partners Ltd (AFPL) after the shares were sold and transferred by Noysue Pty Ltd to Regent Support Pty Ltd in December 2014, following the decision in *Bolitho v Banksia Securities Ltd (No 4)* [2014] VSC 582 (the findings).
- D. The findings of fraud were a central element in a related finding (J [76]) that the Applicant, when acting as senior counsel, had deliberately misled counsel for the other parties and the Court when he informed them in December 2014 that the

shares in AFPL which had been previously owned by Noysue Pty Ltd had been sold and transferred absolutely to an unrelated third party, but had not informed them about the continuing existence of a supposed bare trust in respect of the shares which the judge below found to have been created, presumably at the time of the sale and transfer (J [74]).

- E. The judge below made the findings:
- (a) after having reconsidered the evidence before the Court and the findings which he had made earlier in the proceedings in [2021] VSC 666 at [126]f.;
 - (b) in circumstances where the Applicant was not given any notice that the judge below would be reconsidering the evidence and the findings which he had made earlier in the proceedings or that the findings, including new and different findings, might be made in the judgment below following that reconsideration;
 - (c) in circumstances where the Applicant was not afforded any opportunity to respond to, tender relevant and admissible contradictory evidence, or make submissions to challenge and refute the findings before they were made;
 - (d) without adequate evidence to support the findings, especially in light of their seriousness;
 - (e) without reference to evidence which contradicted the findings, including in particular a notice given by Regent Support Pty Ltd to AFPL at the time of the share transfer in December 2014, which evidenced the existence of an express trust in respect of the transferred shares in which neither the Applicant nor any person connected to him had any possible interest, which was highly relevant to, and which contradicted, the findings. The document had been discovered late by AFPL: [2021] VSC 132 at [10]. The Applicant had sought to tender the document earlier in the proceedings in 2021, but the judge below had refused to allow the Applicant to tender the document into evidence at that time: [2021] VSC 132. The document remained relevant and admissible in 2023;
 - (f) despite the fact that Noysy Pty Ltd and Noysue Pty Ltd (which were the subject of a separate application brought by the Respondent for non-party costs orders) had, to the knowledge of both the Court and the Respondent, joined issue on and denied the allegations which led to the findings and had filed with the Court both documentary and sworn testamentary evidence to refute them (including the document referred to in (e) above), which evidence was not considered by the judge below before making the findings.
- F. The effect of these errors of law individually and together led to very serious findings of fraud being made against the Applicant:
- (a) following a denial of procedural fairness;

- (b) in breach of the rules of natural justice;
 - (c) without adequate evidence to support them; and
 - (d) in the face of documentary and testamentary evidence contradicting them.
- G. In the circumstances the findings against the Applicant should be overturned.
- H. The appeal has real prospects of success and it is in the interests of justice that the appeal be heard.

7. Grounds or proposed grounds of appeal:

- A. The failure to give the Applicant proper notice, or any opportunity to respond by evidence and submissions, before findings of fraud were made against him constituted a denial of procedural fairness and a breach of natural justice.
- B. The breaches referred to in appeal ground A require that the findings against the Applicant in J paras [39], [40], [62], [74], [75], [76] and [93] be set aside.
- C. The judge below erred in finding that the transfer of 500,000 shares in Australian Funding Partners Ltd (AFPL) by Noysue Pty Ltd to Regent Support Pty Ltd in December 2014 was a sham (J [75]).
- D. The judge below erred in finding (J[76]) that the Applicant made an arrangement or reached an understanding with Mark Elliott that maintained what was alleged to be the Applicant's interest in AFPL, pursuant to which:
- a. Regent Support Pty Ltd, an entity controlled by Mark Elliott, held the AFP shares as bare trustee for Noysue Pty Ltd (J[74]); and
 - b. The Applicant thereby retained an ongoing financial interest in the litigation and an opportunity to improperly profit from it.
- E. The judge below erred in finding (J[75]) that the share transfer form by which Noysue Pty Ltd transferred the shares in AFPL to Regent Support Pty Ltd misrepresented the transaction.
- F. The judge below erred in finding (J[76]) that the Applicant deceived the court, and officers of the court, into thinking that the Applicant and Noysue Pty Ltd had disposed of "their financial interest in AFP".
- G. The judge below erred in finding (J[62]) that no person or entity associated with the Applicant received consideration for the share transfer.
- H. The judge below erred in finding (J[62]) that the payments made by

Decoland Pty Ltd to Noysy Pty Ltd were more likely to be payments relating to the settlement of another class action funded by AFP.

8. Orders sought:

- A. The Applicant has leave to appeal.
- B. The appeal is allowed.
- C. The findings against the Applicant in paragraphs [39], [40], [62], [74], [75], [76] and [93] of the judgment of the Honourable Justice John Dixon delivered on 31 July 2023 ([2023] VSC 442) are set aside.

9. Other applications:

Nil.

10. Extension of time requested:

No.

11. Stay applied for:

No.

12. Is the application for leave or appeal urgent?:

No.

13. Persons to be served with notice:

The Respondent

Date: 4 September 2023



Norman O'Bryan



IN THE SUPREME COURT OF VICTORIA AT
MELBOURNE

IN THE COURT OF APPEAL

S APCI 20

Case: S EAPCI 2023 0090

Filed on: 04/09/2023 09:01 AM

BETWEEN

NORMAN O'BRYAN

Applicant/Appellant

and

JOHN ROSS LINDHOLM in his capacity as special
purpose receiver of Banksia Securities Ltd) (receivers
and managers appointed) (in liquidation)

Respondent

APPLICANT'S WRITTEN CASE

Date of Document: 4 September 2023

Filed on behalf of: The Applicant

Applicant's name and address: Norman O'Bryan

73 Hughes Road, Blairgowrie, Victoria 3942

Tel: 0419 290 857

Email: nobryan57@gmail.com

1. The judge below made critical findings (J paras [39], [40], [62], [74], [75], [76] and [93]) about what he characterised as a fraud in relation to the transfer of 500,000 shares in the litigation funding company Australian Funding Partners Ltd (**AFPL**) after the shares were sold and transferred by Noysue Pty Ltd to Regent Support Pty Ltd in December 2014, following the decision in *Bolitho v Banksia Securities Ltd (No 4)* [2014] VSC 582 (**the findings**).
2. The findings were a central element in the related finding (J [76]) that the Applicant, when acting as senior counsel, had deliberately misled counsel for the other parties and the Court when he informed them in December 2014 that the shares in AFPL which had been previously owned by Noysue Pty Ltd had been sold and transferred absolutely to an unrelated third party, but had not informed them about the continuing existence of a supposed

bare trust in favour of Noysue Pty Ltd in respect of the shares, which the judge below found to have been created, presumably at the time of the sale and transfer (J [74]).

3. The judge below made the findings:
- (a) after having reconsidered the evidence before the Court and the findings which he had made earlier in the proceedings in [2021] VSC 666 at [126]f.;
 - (b) without having ensured that notice had been given to the Applicant that the findings, including the new and different findings might be made;
 - (c) in circumstances where the Applicant in fact received no notice that such findings had been sought by the Respondent or that they might be made;
 - (d) in circumstances where the Applicant was not given any opportunity to respond to, tender relevant contradictory evidence or make submissions to refute the findings before they were made;
 - (e) without adequate evidence to support the findings, especially in light of their seriousness;
 - (f) without reference to contemporaneous documents which contradicted the findings, including in particular a notice given by Regent Support Pty Ltd to AFPL at the time of the share transfer in December 2014, which evidenced the existence of a contradictory express trust in respect of the transferred shares, being a trust in which neither the Applicant nor any person connected to him had any possible interest. The document had been discovered late by AFPL. The judge below had refused the Applicant's application to tender the document in the proceedings in 2021 ([2021] VSC 132). The document remained relevant and admissible to contradict the findings in 2023;
 - (g) despite the fact that Noysy Pty Ltd and Noysue Pty Ltd (which were the subject of a separate application by the Respondent for non-party costs orders) had, to the knowledge of both the Court and the Respondent, joined issue on and denied the allegations and had filed with the Court both documentary and sworn testamentary evidence to refute them (including the documents referred to in (e) above), which evidence was not considered by the judge below.

Summary of Evidence

4. The evidence at the trial showed that on 11 December 2014, shortly after the delivery of the judgment in *Bolitho (No 4)* [2014] VSC 582, Noysue Pty Ltd (the shareholding company, of which the Applicant's wife was at all times the sole director and shareholder) transferred its shares in AFPL to Regent Support Pty Ltd (**Regent Support**), a company in the Elliott family group of companies.¹ Regent Support was thereupon registered by AFPL as the holder of those shares.² The share transfer³ showed the consideration for the transfer as \$500,000, being the issue price paid for the shares held by Noysue Pty Ltd earlier in 2014.
5. By letter to the company secretary of AFPL (then called BSL Litigation Partners Limited) dated 14 December 2014, Regent Support gave notice that the shares which Regent Support had acquired in AFPL from Noysue were held by it on trust for AMEO Investments Pty Ltd, a company wholly-owned and controlled by Decoland Holdings Pty Ltd, another Elliott family company.⁴
6. Regent Support's letter of 14 December 2014 was discovered late by AFPL. The Contradictor alleged a bare trust in favour of Noysue Pty Ltd in respect of the shareholding⁵. The Applicant sought to tender the late-discovered letter in order to refute this allegation.⁶ The tender was refused by the Court on 16 March 2021⁷.
7. The letter dated 14 December 2014 by which Regent Support declared an express trust over the AFPL shares remained relevant and admissible evidence in 2023 to contradict any allegation of bare trust, sham or fraud in connection with the share transfer. Noysue Pty Ltd and Noysue Pty Ltd both relied upon the letter in the contested non-party costs application brought by the Respondent against them in order to disprove allegations of bare trust, sham, fraud or misleading share transfer. No contrary evidence existed.

¹ Standard transfer form from Noysue to Regent Support Pty Ltd dated 11/12/14: [**AFP.003.001.1061**] Regent Support is a company in the Elliott group: [**AID.010.021.0001**]

The Applicant confirmed the transfer of his wife's shares to other counsel in the Banksia class action immediately after it occurred: [**CBP.004.001.9616**]

The transfer was also confirmed in the contemporaneous submissions which were settled by the Applicant, served on all parties and filed with the Court in December 2014 (at para 10): [**CBP.004.004.1384**] and [**CBP.004.004.1385**]

² Register of Members of BSL Litigation Partners Ltd (as AFPL was then called): [**AFP.003.001.1062 at 1064**].

³ [**AFP.003.001.1061**] Standard Transfer Form

⁴ AMEO Investments Pty Ltd and Decoland Holdings Pty Ltd are both companies in the Elliott group: [**AID.010.021.0001**]

⁵ Contradictor's closing submissions dated 26 February 2021, para 395(a). Cf. [2021] VSC 666 at [127].

⁶ Email correspondence from Arnold Bloch Leibler on behalf of AFPL dated 8 September 2020 and attachments.

⁷ [2021] VSC 132

8. Decoland Holdings Pty Ltd (the holding company of AMEO Investments Pty Ltd, on behalf of which Regent Support held the shares which had been transferred to it by Noysue) paid two instalments of \$300,000 each to Susan Noy and her family trustee (Noysy Pty Ltd) respectively in 2016. The first instalment was paid by Decoland Holdings Pty Ltd on 9 February 2016 into the bank account of Noysy Pty Ltd (from which the original subscription monies for the Noysue shareholding in AFPL had come)⁸ and the second instalment was paid on 24 May 2016, directly into Susan Noy's personal bank account⁹. The contemporaneous documentary evidence (all of which was in evidence before the Court) was as follows:
- (a) On 8 February 2016, Mark Elliott sent an email to Cecilia Bui (Westpac) instructing Westpac to transfer \$300,000 from Decoland Holdings Pty Ltd to Sue Noy (see J[54]): **[ABL.001.0305.00034]**;
 - (b) On 9 February 2016, Andrea Saliba (Westpac) sent an email to Mark Elliott attaching a remittance form in respect of the instructed transfer of \$300,000 from Decoland Holdings Pty Ltd to Sue Noy: **[ABL.001.0279.00032]**;
 - (c) The bank remittance form is **[ABL.001.0279.00033]**;
 - (d) NAB (Noysy's bank) issued a credit advice showing the receipt of \$300,000 paid by Decoland Holdings Pty Ltd into Noysy's bank account on 9 February 2016: **[NOB.500.015.0001]**;
 - (e) On 23 May 2016, Mark Elliott sent another email to Cecilia Bui (Westpac) instructing Westpac to transfer \$300,000 from the 'EEIT equity account' to Sue Noy: **[ABL.001.0273.00001]**;
 - (f) On 24 May 2016, Westpac issued a remittance form in respect of the instructed transfer of \$300,000 from Decoland Holdings Pty Ltd to Sue Noy: **[ABL.001.0279.00026]**;
 - (g) Ms Noy's bank statement showed the receipt of \$300,000 from Decoland Holdings Pty Ltd on 24 May 2016: **[NOB.503.010.0001]**.
9. The evidence summarised above proved that Elliott intended both of the payments to be made to or on behalf of Susan Noy, not anybody else.

⁸ **[NOB.500.015.0001]**

⁹ S M Noy bank account statement for 24 May 2016: **[NOB.503.010.0001]**

10. The evidence at trial showed that the only transaction that ever happened between Susan Noy and Mark Elliott (or either of their interests) was the acquisition and disposal of the Noysue Pty Ltd shareholding in AFPL in 2014.
11. There was no evidence tendered at the trial that Regent Support Pty Ltd, AMEO Investments Pty Ltd, Decoland Holdings Pty Ltd or any other entity associated with Mark Elliott had previously paid anything in consideration for the transfer of Noysue's shares in AFPL to Regent Support in December 2014. The natural and reasonable inference which ought to have been drawn was that at least \$500,000 of the \$600,000 in payments which were made to Noysy Pty Ltd's and Ms Noy's bank accounts respectively in February and May 2016 was intended to discharge Regent Support's obligation to pay for the shares which had been transferred to it by Noysue in December 2014. The reason for the payment of the additional \$100,000 was explained in the affidavit of Norman O'Bryan dated 4 August 2022 which was filed by Noysy Pty and Noysue Pty Ltd in the non-party costs application brought against them by the Respondent.
12. The documentary and testamentary evidence summarised above proved that neither the Applicant nor any other person or entity connected with the Applicant had any economic, financial or other interest in AFPL after Noysue Pty Ltd disposed of its shares in AFPL on 11 December 2014, following the ruling in *Bolitho (No 4)*. The affidavits which were filed by Noysy Pty Ltd and Noysue Pty Ltd in the non-party costs application against them were to the same effect. All of the above evidence remained relevant and admissible in 2023.

Findings complained of

A. The payments findings

13. The judge below stated (at J[62]) that in the remitter judgment he had concluded that:
 - (a) the payments [*sic. There was in fact only one such payment*]¹⁰ made by Decoland to Noysy were "more likely to be payments relating to the settlement of another class action funded by AFP";
 - (b) "it had not been established that neither [*sic*] Noysue nor Noysy was paid any sum for the transfer of Noysue's shares in AFP in pretended compliance with *Bolitho No. 4* as the Applicant contended"; and

¹⁰ This payment, directed by Elliott on 8 February 2016, is the same payment referred to in J[54]. See [ABL.001.0305.00034], para 8(a) above.

- (c) the Applicant “had pointed to payments of sums on dates and in amounts that did not correlate with the purported share transfer but appeared to correlate with the receipt of funds from the settlement of that [other] class action”.
14. In the relevant part of the remitter judgment [2021] VSC 666 (**RJ**) to which the judge below referred at J[62], the judge had found (RJ[132(b)]) that on 24 May 2016, Decoland Pty Ltd made a payment of \$300,000 to a bank account operated by Noysy Pty Ltd. The documentary evidence which was before the Court prior to the delivery of the judgment below contradicted that finding and showed that the relevant payment was made directly into the bank account of Susan Noy, as Elliott had requested of his bank, Westpac (see paras 8 (e) and (f) above).
 15. Contrary to the finding in RJ[132(b)] referred to above, at J[54] the judge said that “the documents tendered in the Remitter revealed an example of Elliott, of his own accord, instructing the Westpac Bank to transfer \$300,000 from Decoland to Sue Noy on 8 February 2016”. The findings in J[54] and J[62] thereby contradict one another. J[54] is correct: see paras 8(a) and (b) above. J[54] is also irreconcilable with the finding at RJ[132(a)], where the judge had made no mention of the fact that Elliott had expressly instructed his bank (Westpac) to pay Susan Noy, not Noysy Pty Ltd. RJ[133] and [134] (which are likely to be the RJ paragraphs to which the judge referred at J[62]) are infected by the same errors.
 16. Further, the finding in J[54] contradicts the finding made at RJ[131] that no payment was ever made to Susan Noy in consideration for the purchase of the Noysue shareholding in AFPL. The judge below did not explain any of the above inconsistencies between the judgment below and the remitter judgment or why he had changed his mind about the payments made to Susan Noy following his reconsideration of the evidence.
 17. The findings in J[54] and J[62] show that the judge below had reconsidered both the evidence about these payments and the findings which he had made in the remitter judgment about them and, following that reconsideration, had changed his mind about both the effect of the evidence and his earlier findings. The judge’s reconsideration of the evidence and his earlier findings were undertaken without notice to the Applicant and without providing the Applicant with any opportunity to address the evidence or the

different conclusions which the judge below proposed to draw in the judgment below before making his findings of sham and fraud against the Applicant.

18. Further, affidavits which relied upon and referred to the documents referred to in para 8 above and which contradicted the findings in J[62] were filed by Noysy Pty Ltd and Noysue Pty Ltd in connection with the Respondent's separate application for non-party costs orders against them.
19. In December 2022, Noysy Pty and Noysue Pty Ltd applied to the judge below to recuse himself from the non-party costs application against them on the grounds of apprehended bias. The judge dismissed the application: [2022] VSC 761. In the course of this judgment, the judge made it clear that he understood that Noysy Pty and Noysue Pty Ltd intended to tender evidence and make submissions which would contradict findings which the judge had earlier made against the Applicant in connection with the share sale and transfer by the Noysue Pty Ltd which had occurred in 2014: [2022] VSC 761 at [6]f.
20. The Applicant was given no notice of the proposed new findings, nor any opportunity to address them by evidence or submissions. The documentary evidence which the Applicant would have relied on had been tendered both at the remitter trial and on the Respondent's non-party costs application against Noysy Pty Ltd and Noysue Pty Ltd before the judge below. The failure to give the Applicant notice, or any opportunity to tender relevant evidence or make submissions, constituted a denial of procedural fairness and a breach of natural justice¹¹. The payments findings should be set aside.

B. The bare trust and sham findings

21. In J [74] the judge below found that "*in substance, MCM remained a bare trustee of the shares*". There was no evidence whatsoever of a bare trust of the AFPL shareholding in favour of Noysue Pty Ltd (or anybody else) after it transferred the shares to Regent Support Pty Ltd in December 2014.

¹¹ SDCV v Director-General of Security (2022) 405 ALR 209, 242 [133]f., 251 [172]f.

22. In particular, no evidence existed or was tendered by any party to establish the three certainties which are required to create a trust¹²: there was no evidence that it was ever the intention of Noysue Pty Ltd, Regent Support Pty Ltd or anyone else to create a bare trust; there was no evidence that the subject matter of the supposed bare trust (the shareholding in AFPL) was intended to be held on trust for anyone other than AMEO Investments Pty Ltd; and there was no evidence that the Applicant, or any person or entity associated with him, was the intended beneficiary of a bare trust.
23. There was contemporaneous documentary evidence of a trust in respect of the AFPL shareholding after it was transferred by Noysue Pty Ltd to Regent Support Pty Ltd in 2014. That was an express written trust and its beneficiary was AMEO Investments Pty Ltd, not the Applicant or any person or entity connected with the Applicant.
24. The documentary and testamentary evidence that was filed by Noysue Pty Ltd and Noysue Pty Ltd in opposition to the Respondent's non-party costs application (which is summarised above) proved that Elliott had intended that both of the payments which were made by Decoland Pty Ltd in 2016 were to be paid to Sue Noy, the sole director and shareholder of Noysue Pty Ltd, which had transferred the shares to Regent Support in 2014 and which had no bank account of its own.
25. Accordingly the findings of fraud, bare trust and sham which were made in J[74] and J[75] have no evidentiary foundation and should be set aside.
26. The Applicant was given no notice of the proposed findings, nor any opportunity to address them by evidence or submissions below. The evidence which the Applicant would have relied on had been tendered both at the remitter trial in 2021 and on the Respondent's non-party costs application before the judge below in 2023. The failure to give the Applicant notice, or any opportunity to tender relevant evidence or make submissions, constituted a denial of procedural fairness and a breach of natural justice. The bare trust and sham findings made in the paragraphs identified above should be set aside.

C. The misleading of opposing counsel and Court findings

¹² Garrett v L'Estrange (1911) 13 CLR 430, 434, 435; Kauter v Hilton (1953) 90 CLR 86, 97; Byrnes v Kendle (2011) 243 CLR 253, 262 [16], 290 [114]

- 126 In J[76], the judge below found that *“the misleading share transfer form enabled Elliott and O’Bryan to represent to the legal representatives of other parties that Noysue no longer had any financial interest in AFP such that formal court orders implementing the Bolitho No. 4 ruling were not necessary and none were made. How Elliott, O’Bryan, Symons and AFP deceived the court, and officers of the court, into thinking that O’Bryan and Noysue had disposed of their financial interest in AFP, is described at length in the Remitter Judgment. The crux of this conduct was that it permitted O’Bryan to remain as senior counsel for Mr Bolitho while avoiding the clear directive of the court. MCM assisted both O’Bryan and Elliott to remain conflicted and in control of the proceeding in a position to ensure they (or their entities) benefitted from the proceeding at the expense of the debenture holders. Had the other parties not been persuaded not to press the court for injunctive relief, the opportunity for the Elliott and O’Bryan entities to improperly profit would have been severely constrained.”*
27. The documentary and testamentary evidence that was filed by Noysy Pty Ltd and Noysue Pty Ltd on the Respondent’s non-party costs application (which is summarised above) proved that the 2014 share transfer form was not misleading because Noysue Pty Ltd had divested itself of the AFPL shareholding absolutely in 2014 and thereafter neither the Applicant nor any person associated with him had any further interest of any sort in AFPL.
28. Before reconsidering the earlier remitter evidence and findings, and making the findings in J [39], [40], [62], [74], [75] [76] and [93], the judge below should have ensured that the Applicant was given notice that the findings might be made, and given the Applicant the opportunity to tender the evidence referred to above and to make submissions to refute the findings. The failure to do these things denied the Applicant procedural fairness and constituted breaches of natural justice.
29. The findings that were made against the Applicant in paras [39], [40], [62], [74], [75], [76] and [93] of the judgment below based upon the errors of law complained of above should be set aside.

Date: 4 September 2023

A handwritten signature in black ink, reading "Norman O'Bryan". The signature is written in a cursive style with a large, prominent 'N' and 'B'.

Norman O'Bryan



Rules 64.03, 64.08, 64.10, 64.13, 64.38

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
IN THE COURT OF APPEAL

Case: S EAPCI 2023 0090

Filed on: 04/09/2023 09:01 AM

S APCI 20

BETWEEN

NORMAN O'BRYAN

Applicant/Appellant

and

JOHN ROSS LINDHOLM in his
capacity as special purpose receiver of
Banksia Securities Ltd) (receivers and
managers appointed) (in
liquidation)

Respondent

APPLICATION OTHER THAN FOR LEAVE TO APPEAL

Date of Document: 4 September 2023

Filed on behalf of: The Applicant

Applicant's name and address: Norman O'Bryan

73 Hughes Road, Blairgowrie, Victoria 3942

Tel: 0419 290 857

Email: nobryan57@gmail.com

Respondent's or lawyer's name and address: Maddocks Lawyers

727 Collins Street, Docklands, Vic, 3008

Solicitor Code: 230

Tel: (03) 9258 3555

Fax: (03) 9258 3666

Ref: Sam Kingston

Email: sam.kingston@maddocks.com.au

TO: The Registrar

AND TO: The Respondent, John Ross Lindholm, c/- Maddocks Lawyers, 727 Collins Street, Docklands, Vic, 3008

I wish to apply for the following order:

The following documents are admitted into evidence on the appeal:

1. The affidavit of Susan Marlene Noy dated 4 August 2022 (and the exhibits thereto).
2. The affidavit of Norman John O'Bryan dated 4 August 2022 (and the exhibits thereto).
3. The documents which were discovered by Australian Funding Partners Ltd, attached to the email from Lara O'Rorke of Arnold Bloch Liebler dated 8 September 2020 (6:02pm).

This application is made on the following ground:

1. The documents are relevant and admissible evidence but were not considered by the judge below before making the findings which are the subject of this appeal because the Applicant was given no opportunity to tender the documents or to make submissions about them or any other part of the evidence which was considered by the judge below before making the findings which are the subject of the appeal.

Date: 4 September 2023



Norman O'Bryan



IN THE SUPREME COURT OF VICTORIA AT
MELBOURNE

IN THE COURT OF APPEAL

S APCI 20

Case: S EAPCI 2023 0090

Filed on: 04/09/2023 09:01 AM

BETWEEN

NORMAN O'BRYAN

Applicant/Appellant

and

JOHN ROSS LINDHOLM in his capacity as special
purpose receiver of Banksia Securities Ltd) (receivers
and managers appointed) (in liquidation)

Respondent

**APPLICANT'S SUBMISSIONS IN SUPPORT OF
APPLICATION TO TENDER EVIDENCE**

Date of Document: 4 September 2023

Filed on behalf of: The Applicant

Applicant's name and address: Norman O'Bryan

73 Hughes Road, Blairgowrie, Victoria 3942

Tel: 0419 290 857

Email: nobryan57@gmail.com

1. The documents which the Applicant seeks leave to tender at the hearing of the appeal are the same documents which the Applicant would have tendered and relied upon if he had been given an opportunity to do so at the hearing below.
2. The documents are few in number and highly relevant to the issues on the appeal. Their reception into evidence will enable the Court of Appeal to finally dispose of the appeal with expedition and economy.
3. The documents are:
 - (a) a notice given by Regent Support Pty Ltd to Australian Funding Partners Ltd at the time of the share transfer by Noysue Pty Ltd to Regent Support Pty Ltd in December 2014, which evidenced the existence of a contradictory express trust in respect of the transferred shares, being a trust in which neither the Applicant nor any person connected to him had any possible interest. The document had been discovered late by

AFPL as a business record. The judge below refused the Applicant's application to tender the document in the proceedings in 2021 ([2021] VSC 132). The document remained relevant and admissible to contradict the findings which were made against the Applicant in 2023 following the judge's reconsideration of the evidence (but not this highly relevant document);

- (b) the affidavit of Susan Noy dated 4 August 2022. This affidavit was filed in opposition to the Respondent's non-party costs application made against Noisy Pty Ltd and Noysue Pty Ltd. No answering evidence was filed in response to it. Ms Noy's evidence remained relevant and admissible in respect of the fraud findings made against the applicant by the judge below. No opportunity was given to the applicant to tender this affidavit and rely upon it to challenge and refute the findings of fraud.
 - (c) the affidavit of Norman O'Bryan dated 4 August 2022. This affidavit was also filed in opposition to the Respondent's non-party costs application made against Noisy Pty Ltd and Noysue Pty Ltd. No answering evidence was filed in response to it. The Applicant's evidence remained relevant and admissible in respect of the fraud findings made by the judge below. No opportunity was given to the Applicant to tender this affidavit and rely upon it to challenge and refute the findings of fraud.
4. It is submitted that the fresh evidence rule has no application in circumstances where the applicant complains of a denial of procedural fairness and a breach of natural justice. The evidence referred to above (and all of the other evidence referred to in the Applicant's written case in support of the application for leave to appeal) existed before the judgment below was delivered. The Applicant's complaint and the basis for the appeal is that he was given no opportunity to tender the evidence below or make submissions about the totality of the evidence before judgment was given against him.

Date: 4 September 2023



Norman O'Bryan



IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
IN THE COURT OF APPEAL

Case: S EAPCI 2023 0090
Filed on: 04/09/2023 09:01 AM

S APCI 20

BETWEEN

NORMAN O'BRYAN

Applicant/Appellant

and

JOHN ROSS LINDHOLM in his capacity as
special purpose receiver of Banksia Securities
Ltd) (receivers and managers appointed) (in
liquidation)

Respondent

DRAFT SUMMARY FOR COURT OF APPEAL

Date of document: 4 September 2023

Filed on behalf of: The Applicant

Party's name and address: Norman O'Bryan

73 Hughes Road, Blairgowrie, Vic, 3942

Email: nobryan57@gmail.com

A. Summary of facts

1. The proceeding in respect of which the judgment below was delivered was a non-party costs application made by the Respondent against several non-parties. The Applicant was a party to the proceeding but not a party to the non-party costs application. No documents in connection with the non-party costs application were served upon the Applicant by any party to it, save that a copy of the summons commencing the application was served on Noisy Pty and Noysue Pty Ltd via the Applicant's email address in 2020.
2. The non-party costs application against Noisy Pty and Noysue Pty Ltd was contested by them and was compromised before hearing.
3. The non-party costs application against the remaining non-parties was determined on 1 March 2023 by consent. It is the subject of the judgment below and this application for leave to appeal: [2023] VSC 442.

4. The Applicant has requested that the Respondent provide him with copies of all relevant documents for the purpose of this application for leave to appeal. Once received, relevant documents will be included in the appeal book index.

B. Summary of proceedings and issues

5. For the reasons explained above, apart from what appears in the judgment below at [2023] VSC 442, the Applicant knows nothing about what transpired and has none of the documents or communications in respect of the non-party costs application which is the subject of those parts of the judgment below which are the subject of the appeal.
6. The Applicant became aware of the judgment below when it was published on 31 July 2023.
7. The judgment below at paras [39], [40], [62], [74], [75], [76] and [93] makes findings of fraud against the Applicant.
8. The Applicant was given no notice that such findings had been sought or might be made against him.
9. In December 2022, Noysy Pty and Noysue Pty Ltd applied to the judge below to recuse himself from the non-party costs application against them on the grounds of apprehended bias. The judge dismissed the application: [2022] VSC 761.
10. In 2021, the Applicant had applied to the judge below to receive into evidence a document that had been discovered late by Australian Funding Partners Pty Ltd and was relevant to the findings in [2021] VSC 666 [126]f. which were the subject of the recusal application referred to in para 9 above. The judge below refused the application to tender the document ([2021] VSC 132).
11. The Applicant submits that the findings at paras [39], [40], [62], [74], [75], [76] and [93] should be set aside because they are the product of:
 - (a) a denial of procedural fairness; and
 - (b) a breach of natural justice.
12. The Applicant also contends that the findings at paras [39], [40], [62], [74], [75], [76] and [93] should be set aside because:
 - (a) they have no evidentiary foundation; and

(b) they are contradicted by evidence which was not considered by the judge below.

Date: 4 September 2023

A handwritten signature in black ink, reading "Norman O'Bryan". The signature is written in a cursive style with a large, prominent 'N' and 'O'.

Norman O'Bryan

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
IN THE COURT OF APPEAL



S APCI 20

Case: S EAPCI 2023 0090

Filed on: 04/09/2023 09:01 AM

Applicant/Appellant

BETWEEN

NORMAN O'BRYAN

and

JOHN ROSS LINDHOLM in his capacity as
special purpose receiver of Banksia Securities
Ltd) (receivers and managers appointed) (in
liquidation)

Respondent

DRAFT APPLICATION BOOK INDEX

Date of Document: 4 September 2023

Filed on behalf of: The Applicant

Applicant's name and address: Norman O'Bryan
73 Hughes Road, Blairgowrie, Victoria 3942

Tel: 0419 290 857

Email: nobryan57@gmail.com

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23.	<i>Bolitho v Banksia Securities Ltd (No. 17)</i> [2021]	16 March 2021	C41 – C51

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24.	<i>Bolitho & Anor v Banksia Securities Limited & Ors (No 19)</i> [2022] VSC 761 (J Dixon J)	9 December 2022	C52 – C63
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27.	Submissions dated 15 December 2014 [CBP.004.004.1385]	15 December 2014	D5 – D12
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30.	Email correspondence from Arnold Bloch Leibler on behalf of AFPL dated 8 September 2020 and attachments.	8 September 2020	D19 – D21
31.	Email from Mark Elliott to Cecilia Bui (Westpac) instructing Westpac dated 8 February 2016 [ABL.001.0305.00034]	8 February 2016	D22
32.	Email from Andrea Saliba (Westpac) to Mark Elliott dated 9 February 2016 [ABL.001.0279.00032]	9 February 2016	D23 – D24
33.	Bank remittance form [ABL.001.0279.00033]	9 February 2016	D25
34.	NAB credit advice re receipt of \$300,000 paid by Decoland Holdings Pty Ltd into Noysy's bank account on 9 February 2016 [NOB.500.015.0001]	9 February 2016	D26
35.	Email from Mark Elliott to Cecilia Bui (Westpac) dated 23 May 2016 [ABL.001.0273.00001]	23 May 2016	D27
36.	Westpac remittance form dated 24 May 2016 [ABL.001.0279.00026]	24 May 2016	D28 – D29
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IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
IN THE COURT OF APPEAL



S APCI 20

Case: S EAPCI 2023 0090

Filed: 04/09/2023 09:01 AM
Applicant/Appellant

BETWEEN

NORMAN O'BRYAN

and

JOHN ROSS LINDHOLM in his capacity as
special purpose receiver of Banksia Securities
Ltd) (receivers and managers appointed) (in
liquidation) and others (as per the schedule)

Respondents

LIST OF AUTHORITIES

Date of Document: 4 September 2023

Filed on behalf of: The Applicant

Applicant's name and address: Norman O'Bryan

73 Hughes Road, Blairgowrie, Victoria 3942

Tel: 0419 290 857

Email: nobryan57@gmail.com

Part A Cases and legislation to be read from at the hearing

1. SDCV v Director-General of Security (2022) 405 ALR 209, 242 [133]f., 251 [172]f.
2. HT v The Queen (2019) 269 CLR 403, 416 [17], 426 [55], 430 [64].
3. Assistant Commissioner Condon v Pompano Pty Ltd (2013) 252 CLR 38, 99 [156], 105 [177]

Part B Cases and legislation to be referred to but not read from at the hearing

1. Garrett v L'Estrange (1911) 13 CLR 430, 434, 435
2. Kauter v Hilton (1953) 90 CLR 86, 97
3. Byrnes v Kendle (2011) 243 CLR 253, 262 [16], 290 [114]

Part C Textbooks and journal articles

N/A

Date: 4 September 2023



Norman O'Bryan

SCHEDULE

JOHN ROSS LINDHOLM as special purpose receiver of Banksia Securities Ltd (receivers and managers appointed) (in liquidation)	First Respondent
MAXIMILLIAN ELLIOTT as personal representative of the estate of Mark Edward Elliott	Second Respondent
DECOLAND HOLDINGS PTY LTD	Third Respondent
ELLIOTT LEGAL PTY LTD	Fourth Respondent
MCM (MT BULLER) DEVELOPMENTS PTY LTD	Fifth Respondent
NOYSY PTY LTD	Sixth Respondent
NOYSUE PTY LTD	Seventh Respondent
MICHAEL SYMONS	Eighth Respondent
ANTHONY ZITA AND PORTFOLIO LAW PTY LTD	Ninth Respondent

ALEX CHRISTOPHER ELLIOTT

Tenth Respondent

KATERINA PEIROS

Eleventh Respondent

as personal representative of the estate of Peter Trimbos



S CI 2012 7185
Case: S EAPCI 2023 0090
Filed on: 04/09/2023 09:01 AM

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMERCIAL COURT
GROUP PROCEEDINGS LIST

JOHN ROSS LINDHOLM in his capacity as Special Purpose
Receiver of Banksia Securities Limited (ACN 004 736 458)
(Receivers and Managers Appointed) (in liquidation)

Plaintiff

v

MAXIMILLIAN ELLIOTT as personal representative of the
estate of Mark Edward Elliott and others (as per the attached
schedule)

Non-Parties

AND

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
GENERAL LIST

S ECI 2023 01922

In the matter of

ALEXANDER CHRISTOPHER ELLIOTT (A SOLICITOR)

JUDGE: John Dixon J
WHERE HELD: Melbourne
DATE OF HEARING: 15 November 2022; 16 June 2023
DATE OF JUDGMENT: 31 July 2023
CASE MAY BE CITED AS: Lindholm v Elliott & Ors
MEDIUM NEUTRAL CITATION: [2023] VSC 442

CORPORATIONS - Special purpose receivers appointed to corporation - Compromise of non-party claim for costs brought in group proceeding- Whether special purpose receivers are justified in compromising claim - *Corporations Act 2001* (Cth) s 283HB.

GROUP PROCEEDINGS - Settlement - Approval - *Supreme Court Act 1986* (Vic) Part 4A.

LEGAL PRACTITIONERS - Roll of practitioners - Consequence of breach of the overarching obligations to the administration of justice - Whether practitioner a fit and proper person - Whether removal of name required.

PRACTICE AND PROCEDURE - Costs - Costs sought from non-parties - Principles -
Supreme Court Act (1986, (Vic) ss 24, 33ZF.

APPEARANCES:

IN S CI 2012 7185

Counsel

Solicitors

For the Plaintiff

Mr J Redwood SC with
Mr M Grady

Maddocks

For the Non-Parties
Maximillian Elliott,
Decoland Holdings Pty Ltd,
Elliott Legal Pty Ltd and
MCM (Mt Buller)
Developments Pty Ltd

Garland Hawthorn Brahe

For the Non-Parties Noysue
Pty Ltd and Noysy Pty Ltd

Ms W Harris KC with Mr J
Rudd

Hope & Co

APPEARANCES:

IN S ECI 2023 01922

Counsel

Solicitors

For the Solicitor

Mr A Strahan KC with
Mr A Christophersen

Garland Hawthorn Brahe

For the Contradictor

Mr T Scotter

Victorian Legal Services
Commissioner

HIS HONOUR:

Introduction

1 John Ross Lindholm in his capacity as Special Purpose Receiver of Banksia Securities Limited (ACN 004 736 458) (Receivers and Managers Appointed) (in liquidation) (**SPR**) by summons sought costs orders against the following entities that were not parties to the proceeding (the **non-parties**) -

(a) Maximillian Elliott as personal representative of the Estate of Mark Edward Elliott (**Estate of Mark Elliott**);

(b) **Decoland** Holdings Pty Ltd;

(c) **Elliott Legal** Pty Ltd;

(d) **Noysue** Pty Ltd;

(e) **Noisy** Pty Ltd; and

(f) **MCM** (Mt Buller) Developments Pty Ltd.

2 The application was heard in two parts, as the application was contested by Noysue and Noisy (the **O'Bryan entities**) and not contested by the remaining respondents (the **Elliott entities**).

3 The SPR sought orders against each of the non-parties that it pay the SPR's costs of and incidental to the appeal and the Remitter and the Contradictor's costs of and incidental to the Remitter, to be assessed on an indemnity basis. The appeal is the proceeding reported as *Botsman v Bolitho*,¹ in which the Court of Appeal remitted to the Trial Division for determination the issue of the approval of the distribution from the Settlement Sum of the claim for legal costs and disbursements and the funder's commission. The Remitter is reported as *Bolitho v Banksia Securities Ltd (No 18) (remitter)*.²

¹ (2018) 57 VR 68.

² [2021] VSC 666 and referred to in these reasons as **J:[#]**.

4 The summons was first issued and served on 18 August 2020, prior to the completion of the hearing of the Remitter, and has since been amended. It was supported by affidavits of David Charles Newman sworn 17 August 2020, and Samuel Roadley Kingston sworn 5 November 2021, 3 February 2022 and 15 June 2022. The SPR also filed a Notice of Contentions and Written Submissions.

Position of the Elliott entities

5 The Elliott entities did not file any response to the SPR's Notice of Contentions and have not filed any affidavits in response to those filed by the SPR. Further, none of the Elliott entities complied with directions given by the court in respect of the summons. On 8 November, 2021, they were directed to file and serve a response to the SPR's outline of contentions. On 4 February 2022, orders were again made that the Elliott entities file and serve any response to the SPR's outline of contentions. On 21 March 2022, the time for compliance with this order was extended. Time was again extended on 26 April 2022 and Decoland, Elliott Legal and MCM consented to orders that they each discover documents, identified by category, by 1 June 2022. On 16 June 2022, time was again extended for a response to the Notice of Contention and for discovery. I further ordered that if the Elliott entities did not comply with the order to file a response they could not file such notice other than by leave of the court and, on the hearing of the summons, could not rely on any factual contention that ought to have been set out in such notice except by leave.

6 On 13 September, 2022, there being continuing non-compliance with prior orders by the Elliott entities, the non-party costs summons, insofar as it sought relief against those entities, was set down for hearing on 15 November 2022. Insofar as relief was sought against the O'Bryan entities, the summons was adjourned to 28 November 2022 for further directions.

7 When each of these orders were made and directions given, the Elliott entities were legally represented as they were when the summons came on for hearing on 15 November 2022. Having failed to comply with any direction from or order of the court leading up to the hearing, the SPR enquired whether the Elliott entities were

consenting to the relief sought. The following exchange then occurred.

- HIS HONOUR: So perhaps before we ask him if he consents to something, what are you asking that he consents to?
- MR REDWOOD: Whether he consents to the orders in the form of the summons.
- HIS HONOUR: In the form of the summons?
- MR REDWOOD: Yes.
- MR SUSIC: Yes, Your Honour. I'm not in a position to resist any order sought by the SPR today, due to my client's inaction throughout this application.
- HIS HONOUR: So you're not in a position to resist?
- MR SUSIC: No, and my client will consent to - - -
- HIS HONOUR: You're not consenting?
- MR SUSIC: No, they would. I do.
- HIS HONOUR: They do consent?
- MR SUSIC: Yes. Yes, Your Honour.

8 Notwithstanding this consent, counsel for the SPR proposed, and the court agreed, to take the court through the substance of the application.

The SPR's case against the Elliott entities.

Principles

9 The court's power to award costs is found in s 24(1) of the *Supreme Court Act 1986* (Vic) which provides that:

Unless otherwise expressly provided by this or any other Act or by the [Supreme Court Rules], the costs of and incidental to all matters in the Court ... is in the discretion of the Court and the Court has full power to determine by whom and to what extent the costs are to be paid.

This power includes the power to make a costs order against a person who is not a party to the litigation.³

10 The discretion conferred is a 'wide untrammelled discretion'. In *Bischof v*

³ *Knight v FP Special Assets Ltd* (1992) 174 CLR 178.

Adams,⁴ Gobbo J declined to constrain to limited and specified types of cases the Court's discretion as to the circumstances in which costs orders against non-parties could be made. His Honour said that this contention—

... is a misleading one to the extent that it is founded on the proposition that a discretion that it is not confined by the terms of the statute must be exercised within the confines of past decisions. ... It is implicit there is a wide untrammelled discretion.⁵

- 11 That said, it is accepted that the discretion is exercised against non-parties with caution. In the first place, a non-party costs order requires justification for departing from the general rule that only parties to proceedings are exposed to costs orders. Ordinarily it would not be just to award costs against a non-party. Secondly, as it is not a question of power, confining the circumstances in which an order is made is a question of discretion and the discretion has been described in the cases as exercised 'with considerable caution', granted only 'sparingly', or when exceptional circumstances (those falling outside the ordinary run of cases) make such an order 'reasonable and just'. However, the discretion is to be exercised 'judicially' and in accordance with general legal principles pertaining to the law of costs.⁶
- 12 The SPR submitted that the authorities demonstrate that the essential consideration is whether, in the particular circumstances of the case,⁷ it is just and equitable that the non-party pay the costs of a party to the litigation.⁸
- 13 Being a fact-intensive exercise, previous cases should be approached cautiously. That said, the SPR submitted that the following observations from prior cases, if seen as illustrative rather than controlling, identify considerations that may be relevant to the exercise of the discretion.
- 14 In *FPM Constructions v Council of the City of Blue Mountains*,⁹ the New South Wales

⁴ *Bischof v Adams* (1992) 2 VR 198, 203.

⁵ See also *Norbis v Norbis* (1986) 161 CLR 513, 519.

⁶ The many authorities for these propositions are collected and reviewed by Professor Dal Pont in *Law of Costs*, 4th ed, LexisNexis, [22.17].

⁷ *Carter v Caason* [2916] VSCA 236, [13]; *Yu v Cao* (2016) 91 NSWLR 190, 219.

⁸ *Vestris v Cashman* (1998) 72 SASR 449, 468.

⁹ [2005] NSWCA 340, [210].

Court of Appeal noted that the following were common or recurring features of the exercise of the discretion:

- (a) the unsuccessful party to the proceedings was the moving party, not the defendant;
- (b) the source of funds for the litigation was the non-party or its principal;
- (c) the conduct of the litigation was unreasonable or improper;
- (d) the non-party, or its principal, had an interest (not necessarily financial) which was equal to or greater than that of the party or, if financial, was a substantial interest; and
- (e) the unsuccessful party was insolvent or could otherwise be described as a person of straw.

15 In *Slea Pty Ltd v Connective Services*,¹⁰ Robson J added to or reframed the range of considerations:

- (a) the non-party has engaged in an abuse of process in the broad sense;
- (b) the conduct of the litigation was unreasonable, improper, or not bona fide;
- (c) the non-party is a (not the) real party to the litigation in critical and important respects (which does not require that the non-party have control over the litigation); and
- (d) the non-party, with knowledge of impropriety, permitted a case to proceed.

16 The SPR drew particular attention to the proposition that the inquiry is less about the status of the non-party. Rather, the emphasis should be on conduct: is the non-party the real litigant in the sense that the court can be satisfied that without their initiative and finance the litigation would not have been pursued by the party, and

¹⁰ [2022] VSC 136, [1645]. See also *1165 Stud Road Pty Ltd v Power (No 2)* [2015] VSC 735, [80].

who stood to benefit materially from its success. Put another way, is the non-party really 'gaining access to justice for his own purposes'.¹¹ While this approach does not require actual misconduct, as is suggested in some other cases, the SPR submitted that it was not the fact of funding but the purpose for which the proceeding was funded that is relevant in this case. As Phillips MR stated in *Gulf Azoz Shipping v Idisi*:¹²

If the intervention is in bad faith, or for some ulterior motive, then the intervener will be at risk in relation to costs occasioned as a consequence of his intervention

Misconduct, fraud and abuse of process as a basis for making a non-party liable for costs are well established.

17 This court in *Burns Philp & Co Ltd v Bhagat* approved of dicta from a Canadian case:¹³

In my opinion, where [the non-party], is the sole owner of all the shares of Oasis Hotel Ltd; and ... conceives a scheme to defraud the insurers of Oasis Hotel Ltd; and where he puts that scheme into effect; and where he uses proceedings in the Supreme Court of British Columbia as the instrument of his fraud; and where he attempts to deceive the Court; then the Supreme Court of British Columbia has power to order that [the non-party] pay to the insurers their party and party costs of those proceedings, notwithstanding that he is not a party to the record in those proceedings.

18 Although the SPR contended that notions of exceptionality should not be pressed too far, that issue was moot given the findings expressed about the conduct of Mark Elliott and his entities. The corrosion of the proper administration of justice engaged the public interest and limited the weight to be afforded to consideration that might be thought to limit the exercise of the discretion in this case.

19 The focus on whether it would be just and equitable to require a non-party to pay costs incorporates considerations of whether their conduct was a cause of costs being incurred. Causation is a discretionary consideration.¹⁴ It is sufficient if the non-party is an actor in important and critical respects. Exclusive control of the litigation sets

¹¹ *Dymocks Franchise Systems (NSW) Pty Ltd v Todd (No. 2) (New Zealand)* [2004] 1 WLR 2807, 2815.

¹² [2004] EWCA Civ 292, [54].

¹³ (1993) 1 VR 203, 217-8.

¹⁴ *Arundel Chiropractic Centre Pty Ltd v Deputy Commissioner of Taxation* (2001) 179 ALR 406, 414 [37].

the bar too high.¹⁵

20 The SPR further submitted that s 33ZF of the *Supreme Court Act* is an additional source of power to order that the Elliott entities pay the costs (or an amount equivalent to the costs) of the Remitter. Section 33ZF confers a wide power on the court to fashion such orders ‘as are necessary to do justice in the proceeding’.

21 By this submission, the orders sought by the SPR are indubitably sought ‘in the proceeding’ as the appeal and the Remitter follow on and from, an application under s 33V for approval of a settlement in a group proceeding. Importantly, the distinction between this application and other occasions when s 33ZF has been judicially considered is that what is sought on this application is not payments from group members to a third-party but payments to group members from non-parties closely linked with parties joined to the proceeding. The wide power and discretion to fashion appropriate orders to do justice in the proceeding is to be viewed from this perspective. The SPR posed the question as:

... how could justice be done in this proceeding if group members were left to pay for the enormous costs associated in uncovering a scandalous fraud perpetrated upon them and the Court if those standing behind the parties to that fraud were not held liable for those costs?

22 The question to be answered under s 33ZF is in substance the same as that to be addressed when considering whether to make a non-party costs order, save that the context of the exercise of power under s 33ZF is that the proceeding is a group proceeding in which the court has a protective jurisdiction in respect of the interests of group members in a settlement.

23 The SPR submitted that an application for non-party costs is a summary procedure.¹⁶ As such, costs ought to be kept within proper bounds and full blown satellite litigation is to be avoided.¹⁷ The rationale that identifies why a summary procedure

¹⁵ *Kebaro Pty Ltd v Saunders* [2003] FCAFC 5, [111]-[113].

¹⁶ *Flinn v Flinn* [1999] 3 VR 712, 755.

¹⁷ *Centrehigh Ltd v Amen* [2013] EWHC 625 (Ch), [42]; *Total Spares & Supplies Ltd v Antares SRL* [2006]

is appropriate and fair is the central issue. If the non-party's connection with the underlying proceeding is sufficient in degree, it would be perverse and inconsistent with principles of finality in litigation for the non-party to be permitted to turn the costs application into a fresh piece of substantive litigation going over and challenging the facts and evidence in the underlying proceeding. Put another way, a summary procedure is logical and appropriate where the non-party was a 'real party' to the underlying proceeding.

24 The SPR further submitted that by reference to the same principle, the general rule that findings made in a proceeding are not admissible against a third party may not apply and that the court's findings in the Remitter are admissible against the non-parties.

25 After stating the general rule in *Flynn v Flynn*,¹⁸ the Court of Appeal observed:

... there are exceptions which enable findings made in litigation to be used against someone who was not a party to that litigation for the purposes of a summary procedure. Specifically, it has been laid down in England by the Court of Appeal that on an application against a non-party seeking an order for the costs of the litigation the applicant may in an appropriate case be permitted to rely on evidence given and facts found in the litigation.

26 Those English cases may be noted. In *Symphony Group Plc v Hodgson*,¹⁹ Balcombe LJ held that the departure from the usual rule that judicial findings are not admissible against a third party can be justified 'if the connection of the non-party with the original proceedings was so close that he will not suffer any injustice by allowing this exception to the general rule'. Staughton LJ expressed the test as 'it must be just and fair that the stranger should be bound by that evidence and those findings.'

27 In *Deutsche Bank AG v Sebastian Holdings Inc*,²⁰ the non-party costs procedure was described as 'summary in nature, in the sense that the judge would make an order based on the evidence given and the facts found at trial, together with his assessment

EWHC 1537 (Ch), [48]; *Grecoair Inc v Tilling* [2009] EWHC 115, [42].

¹⁸ [1999] 3 VR 712, 755.

¹⁹ [1994] QB 179.

²⁰ [2016] EWCA Civ 23, [17].

of the behaviour of those involved in the proceedings'. Following *Symphony*, the court stated that in any given case the nature and degree of the non-party's connection to the proceeding will govern whether it is just and fair that the non-party be bound by the evidence given at trial and the trial judge's findings. A close connection of some kind is necessary. The court identified the need for a fact sensitive analysis to determine whether there would be injustice or prejudice if the non-party was bound by the trial findings.

28 The following analysis demonstrates that these principles have been appropriately engaged.

Circumstances of the Elliott parties generally

29 The SPR submitted that the relationship of each of the non-parties to the proceedings, and the misconduct at the heart of the Remitter, is so close that there is no rational basis upon which it could be contended that it is neither just nor fair to determine this application by reference to the facts found in the Remitter.

30 A number of general considerations of relevance may be noted.

31 First, none of the Elliott entities has contended that it is not in the interests of justice that they be ordered to pay the costs sought by the SPR.

32 Second, none of the Elliott entities filed any evidence that establishes the existence of any prejudice said to be suffered by them as a result of the adoption of a summary procedure and made no submission to that effect.

33 Third, Mark Elliott was the 'central player' in the litigation and the mastermind of the misconduct examined in the Remitter.²¹

34 Fourth, Mark Elliott was at all times the 'real solicitor' for Bolitho and Elliott Legal was his law firm and his alter ego.²²

²¹ J:[90].

²² J:[88]-[89].

- 35 Fifth, Decoland and MCM were both entities associated with and controlled by Mark Elliott. His knowledge is to be attributed to those entities under the primary rules of attribution.
- 36 Sixth, the non-parties received ample warning that the SPR intended to seek a non-party costs order. Mr Elliott was put on notice of a possible personal liability for costs on 10 February 2020. As already noted, the summons was first issued and served during the trial (on 17 August 2020) well in advance of closing submissions and the summons was supported by the detail of the allegations against the non-parties found in Mr Newman’s affidavit. The Elliott entities could have, but did not, seek leave to intervene in the Remitter. When closing submissions commenced, I remarked that the issues in relation to non-party costs summons, when they ultimately come on, do inevitably turn on the evidentiary base that was established at the trial. The SPR submitted that I could infer that the Elliott entities must be taken to have made a deliberate forensic and strategic decision to sit back and let the trial take its course in the knowledge that the court’s findings would form the basis for this application.
- 37 Seventh, there was a pattern of persistent and unexplained breaches of the court’s orders noted earlier. In particular, the Elliott entities have not filed any outline of contentions in opposition to those filed by the SPR, despite being directed by the court to do so. Secondly, the Elliott entities are in default in respect of their discovery obligations and in breach of s 26 of the *Civil Procedure Act 2010* (Vic), in circumstances where the SPR is a stranger to the affairs of the non-parties and their relations with the defendants. Adverse findings were made in the Remitter against Mark Elliott and AFP about compliance with discovery obligations. Were it not for the attitude taken by the Elliott entities at the hearing, the court could have considered whether an inference was open that any documents in the possession of the Elliott entities would not have assisted their defence of this application and the inferences that the SPR contended are reasonably open on the evidence might more

comfortably be drawn.²³

38 Eighth, the Bolitho Proceeding was a representative action, a group proceeding under Part 4A of the *Supreme Court Act*, in which the group consisted of more than 16,000 debenture holders. In that context, duties of undivided loyalty to group members require that it is only the interests of the litigants that are advanced when there is the prospect of any conflict. As the Remitter judgment explained, the defendants engaged in egregious breaches of their fiduciary duties to group members, as well as repeated breaches of their obligations under the *Civil Procedure Act*.

39 Ninth, the Remitter uncovered a scheme to fraudulently enrich AFP, Elliott, and the lawyer parties as more particularly described in the Remitter judgment. In a nutshell, at the expense of debenture holders, the defendants sought to achieve and then divide up ill-gotten spoils from the Bolitho litigation and then to thwart the proper administration of justice and retain their illegitimate financial gains. Once they achieved court approval of their settlement scheme through breach of their duties to the proper administration of justice, there was a concerted campaign, over the course of two years and three months, to conceal their misconduct.²⁴ Their method was the manner of management of the funder, AFP, and each of the defendants to the Remitter had an integral role in that fraudulent scheme,²⁵ which in substance required abuse of the processes of the court and desecration of the proper administration of justice. In this context, the current application requires assessment of the extent and participation in this scheme of each entity both individually and collectively as there were different roles – enabler, potential beneficiary, material assister etc.

40 Tenth, Elliott and O’Byryan deliberately chose to use a poorly capitalised funder, AFP, to shield them from exposure to liabilities in the endeavour of prosecuting the

²³ *Li v The Herald & Weekly Times Pty Ltd* [2007] VSC 109, [305].

²⁴ J:[816].

²⁵ J:[2097].

class action. AFP was never capable of paying, from its own funds, any adverse costs order in the Banksia Proceeding or meeting any order for compensation. So much was clear from the evidence of Mr Tony Samuel at the trial of the Remitter. In his opinion, as at 30 June 2018, AFP had a current asset deficiency, had generated significant losses, and had significant negative cash flows. AFP's financial capacity to meet existing liabilities at various other dates between FY14 and FY18 was poor, and it had been required to fund negative cash flows by raising additional equity. Mr Samuel also opined that prior to the commencement of the trial of the Remitter, AFP did not have the capacity to meet an adverse costs order that might be made in the Remitter (then estimated to be in the order of \$5 to \$7million) and could only do so if it was able to raise more debt or more equity. Mr McGing, an actuary, considered that AFP's capital at risk was limited to the book value of its net assets from time to time that he notionally assessed as not exceeding \$2m.

41 Although AFP contested these opinions through the evidence of Mr Houston, I was not persuaded to accept his evidence. To the extent that Mr Houston suggested the AFP might be financially supported by its 'owners and directors', he begged the question of from whom such financial support might come. One could suspect that the Elliott entities may have been among those on whose door AFP knocked.

42 As the SPR correctly summarised:

AFP maintained a claim for payment to it of a substantial funding commission and reimbursement of legal costs. This is despite the Court finding that there was never a proper basis for AFP's claim for funding commission and legal costs of almost \$20 million, which was in fact a fraud: J-[70]. Accordingly, AFP, with the material assistance of others, advanced a fraudulent claim for almost three years in circumstances where it did not have the financial capacity to pay any adverse costs order, leaving the debenture-holders to suffer that cost.

43 Eleventh, the cost of the Remitter has been funded by the debenture holders, out of funds held on their behalf by the SPR that would otherwise have been available for distribution, who have also experienced delay in receipt of their entitlements while the defendants contested the Remitter to avoid disclosure of the fraudulent scheme.

Although the Remitter was, in substance, a laborious, costly and delayed²⁶ examination of the professional conduct of lawyers and a litigation funder, conducted by the court of its own motion, it was not funded by a regulator or by government. It is true that the Remitter resulted in a far greater distribution of the Trust Co settlement sum to debenture-holders than the original proposed settlement, but at a cost to debenture holders funds in excess of \$10m.

44 The SPR submitted, and I agree, this is a weighty consideration as it is plainly contrary to the interests of justice for debenture-holders to be left to bear the substantial costs of the Remitter, whilst the primary contraveners pay nothing, which leads to the next issue.

45 Twelfthly, by reason of the insolvency or lack of means of the principal contraveners, the SPR has not been able to effect substantial recovery of the judgment from them. As at November 2022, the SPR had recovered \$3,012,728.93 from the Legal Practitioners Liability Committee towards the compensation component of the Remitter judgment. The SPR had not recovered any funds in respect of the costs component of the Remitter judgment. No other recoveries had been made by the time of the hearing of the application against the Elliott entities. As at November 2022, it appeared unlikely that there would be any recoveries from the judgment debtors as AFP is in liquidation, O'Bryan and Symons are bankrupts, and Zita and Trimbos do not appear to be of substantial means. A substantial percentage of available professional indemnity insurance cover was spent in defence of the Remitter proceeding.

Circumstances of the specific Elliott entities

Estate of Mark Elliott

46 Through his various entities (AFP, Decoland and Elliott Legal), Elliott was the real and effective litigant in that the dominant purpose of the fraudulent conduct was to further his personal and commercial interests. His participation in the Remitter

²⁶ J:[3].

proceeding only ended abruptly with his death. He was the central player in the fraudulent scheme. I described O'Bryan and Elliott as the masterminds and summarised his involvement in the fraudulent scheme in the Remitter judgment.

Mark Elliott was the architect of one of the darkest chapters in the legal history of this State. He fraudulently inflated his claim for fees at the time of the Partial Settlement, and encouraged O'Bryan and Symons to do the same in respect of their fees in the Trust Co Settlement. He destroyed relevant documents to avoid disclosure of his conduct. He swore false affidavits. He attempted to intimidate litigants, unrepresented group members and other officers of the court, to pursue his own financial interests and conceal his wrongdoing. He provided false information and instructions to AFP's solicitors, intending to hamper the Contradictor's investigations.²⁷

47 The SPR submitted, and I agree, these findings alone justify that his Estate pay the costs incurred in uncovering and redressing his misconduct that lay at the heart of the scheme. However, as the SPR further submitted, a number of specific features of his involvement provide additional, and independent, bases for the imposition of a non-party costs order.

(a) Elliott was the principal person exercising control over, and responsibility for, the conduct of the Bolitho proceeding. I found that Mr Zita was largely a 'post box', chosen by Elliott to facilitate his control of the litigation in order to advance his own interests.²⁸ This was an essential feature of his fraudulent scheme, enabling him to misrepresent to both the court and the other practitioners with whom the plaintiff dealt that Bolitho's legal representatives were independent from the funder, AFP. Elliott misused his position, being a solicitor and a person otherwise bound to observe the overarching obligations, to conduct the litigation in his own interests in a deception of the court and a repeated abuse of its processes. His misconduct and dereliction of duty was most serious and egregious.

(b) As the managing director and through his corporate entities, the major shareholder in AFP, Elliott exerted complete control over AFP which was his

²⁷ J:[90].

²⁸ J:[195].

alter ego.²⁹ The essence of the scheme was that AFP maintain a claim, with no proper basis, to a substantial funding commission and for payment of substantial legal costs. This business model, implemented at Elliott's direction,³⁰ was effected through his control of AFP and its claims against a settlement fund and of the proceedings and the benefits to be received by Bolitho that would constitute a settlement fund. Absent these claims, it was the debenture holders who were entitled to the settlement fund.

(c) The Remitter judgment documents a number of instances of misconduct that comfortably establish an entitlement to non-party costs against his estate. These instances of misconduct were a course of conduct that was a direct attempt to interfere with the proper administration of justice in order to conceal his wrongdoing, to evade proper scrutiny:

- (i) Harassing and intimidating correspondence to Mrs Botsman, designed to foreclose any scrutiny of his conduct.³¹
- (ii) Causing AFP to pursue an injunction to restrain Mrs Botsman from prosecuting her appeal.³²
- (iii) Bringing an application for security for costs against Mrs Botsman in an attempt to intimidate her to withdraw her appeal.³³
- (iv) Developing and implementing a campaign to intimidate counsel for the SPR in the appeal.³⁴
- (v) Threatening to terminate the settlement, alleging that the conduct of counsel for the SPR amounted to breach of it.³⁵

²⁹ J:[87],[89].

³⁰ J:[2097].

³¹ J:[882], [886], [1614].

³² J:[860].

³³ J:[1614].

³⁴ J:[944].

³⁵ J:[993]-[999].

(d) Elliott engaged in deliberate and dishonest destruction of inculpatory documents for the purposes of avoiding discovery in the Remitter.³⁶

(e) Elliott was a solicitor and an officer of the court. The Remitter judgment records the myriad ways he was in serious dereliction of his duties to the proper administration of justice and guilty of serious misconduct.

48 The SPR submitted in concluding its submissions in respect of Mark Elliott's estate that his close and intimate connection with every aspect of the proceedings permits an inference I ought to draw that:

Mr Elliott commenced the Bolitho Proceeding for the dominant purpose of furthering his commercial interests through the implementation of the fraudulent scheme, with the goal of unjustly enriching himself. In doing so, he abused the processes of the Court and used the Court itself as the instrument of that fraud. He went to extraordinarily lengths, and engaged in egregious misconduct, in order to keep that fraud hidden.

It is clear from the Remitter judgment that I am satisfied that I ought to do so, and have done so.

49 I would add, in case it is thought to have been overlooked, that Elliott's death does not preclude the court from making a costs order against his estate. Although the Elliott entities did not suggest otherwise, I have so concluded for the like reasons as were set out in the Remitter judgment in relation to the estate of Peter Trimbo.³⁷ The right to a costs order is not a cause of action as that term is properly understood. Section 29 of the *Administration and Probate Act 1958* (Vic) has no application. The question to be asked when exercising the broad and untrammelled discretion granted by s 24 of the *Supreme Court Act* is whether in all the circumstances the interests of justice require that a costs order be made against that person's estate.

50 The SPR pointed to four matters on this question.

(a) The close and intimate connection that Elliott had with every aspect of the

³⁶ J:[66], [93(b)], [1138]-[1161]

³⁷ J:[2071]-[2081].

proceeding as the person who stood to benefit most from it. His conduct contributed greatly to the costs incurred by the SPR in the remitter as he attempted to conceal his wrongdoing.

(b) Elliott died shortly before the trial, and the facts, matters and circumstances making it just for a non-party costs order to be made against him all occurred prior to his death.

(c) Before he died, Elliott swore false affidavits in the Remitter.³⁸

(d) The Contradictor put Elliott squarely on notice of a costs order prior to his death.

51 I am satisfied that the interests of justice require an order that Maximillian Edward Elliott, as the representative of the Estate of Mark Edward Elliott, deceased, pay the costs of and incidental to this proceeding including, for the avoidance of doubt, the Contradictor's costs, to be assessed on an indemnity basis.

52 However, the Estate of Mark Elliott has net liabilities of \$494,136.

Decoland

53 I am satisfied as to the following matters, which were not contested.

54 Elliott was a director of Decoland between 28 March 2000 and February 2020. The other director was his wife, Pina Elliott, who has been a director since 26 June 1990. Elliott and Pina Elliott each held 50% of the issued share capital in Decoland. From at least the date of the commencement of the Bolitho Proceeding until his death, Elliott was the directing mind and will of Decoland such that it was his alter ego.³⁹ I found in the Remitter judgment that Elliott's practice was to exercise complete control over his corporate vehicles, including AFP and Elliott Legal,⁴⁰ and I am satisfied that he

³⁸ J:[92].

³⁹ In the sense described in *Tesco Supermarkets Ltd v Natrass* [1972] AC 153, 170-1. See further *Brambles Holdings v Carey* (1976) 15 SASR 270, 279; *Krakovski v Eurolynx Properties Ltd* (1995) 183 CLR 563, 582-3; *ACCC v Prysmian Cavi E Sistemi SRL (No 12)* [2016] ATPR 42-525 [224]; *Commonwealth Bank of Australia v Kojic* (2016) 249 FCR 421, 452-3 [127]-[128].

⁴⁰ J:[89].

did so in respect of Decoland, as the SPR contended. There was no evidence of Pina Elliott, or any other person, exercising any control over the affairs of Decoland, nor did the Elliott entities put contentions in support of an alternative interpretation of events. The Elliott entities refused to comply with court orders for discovery that might have shed light on such matters. The documents tendered in the Remitter revealed an example of Elliott, of his own accord, instructing the Westpac Bank to transfer \$300,000 from Decoland to Sue Noy on 8 February 2016.

55 Decoland was the trustee of the Elliott Equities Investment Trust and the MEE Superannuation Fund, which I am informed by the SPR have very considerable assets. It is unclear whether the transactions and holdings I am about to describe represent business of one or other of these trusts.

56 Decoland owns 450,000 fully paid shares in AFP, representing approximately 34% of AFP's issued share capital. Decoland owns 50% of the issued shares in AMEO Investments Pty Ltd ACN 167 221 507 that owns 50,000 fully paid shares in AFP representing approximately 4% of AFP's issued share capital. Plainly, Decoland holds a substantial interest in AFP.

57 I have earlier noted the evidence in the Remitter established that AFP was thinly capitalised with limited ability to meet its liabilities and that it served a purpose of protecting the interests of those who stood behind it, including Decoland. Decoland was the real funder of the Bolitho proceeding and of AFP's claim and defence in the Remitter. It provided the initial capital together with the O'Brian entities (considered later in these reasons). Two further matters that support this finding can be noted. First, AFP entered into contingent fee arrangements with its legal services providers so that it did not have to meet those legal costs as and when they were incurred. Secondly, Decoland provided funds to AFP on an 'ad-hoc' basis, via a loan account, when required to meet expenses. Decoland paid at least \$2,130,000 to AFP to enable it to maintain the Bolitho proceeding by 24 payments in sums varying between \$5,000 and \$990,000 between 3 February 2016 and 23 August 2019 that the SPR could identify from the documents discovered in the Remitter.

58 My finding that Elliott was the alter ego of both AFP and Decoland satisfied me that Decoland knew that until 13 August 2020, AFP maintained a claim for payment of a substantial funding commission and 'reimbursement' of substantial legal fees in the Bolitho Proceeding, which claims lacked a proper basis. It was with that knowledge that Decoland funded AFP's claims in the Remitter as its payments to AFP enabled it to pay the substantial fees of AFP's solicitors in the Remitter, Arnold Block Leibler. There is an evident trail of funds from Decoland to AFP to Arnold Block Leibler. This had the direct consequence of enabling AFP to delay the exposure of its fraudulent activities, increasing the costs burden of the Remitter for the SPR and delaying group members' receipt of entitlements. Decoland was a real funder of AFP in the Bolitho proceeding.

59 As Elliott intended, Decoland benefited from, and stood to benefit further from, the Bolitho Proceeding, which was demonstrated by documents discovered in the Remitter. It was the entity that was to principally receive the fruits of Elliott's fraudulent scheme. It was the single largest shareholder in AFP, while Elliott was not himself a shareholder. It seems probable that Decoland received funds as trustee for the trusts earlier mentioned although I cannot make any positive finding in that respect as Decoland did not comply with orders that it make discovery.

60 Discovery in the Remitter enabled an analysis of how Decoland benefited from the partial settlement. On 12 December 2016, AFP received \$5,240,000, being the settlement sum approved in the partial settlement. It transferred \$400,000 to Elliott Legal, who transferred that sum to Decoland. On 13 December 2016, AFP transferred \$397,500 to Elliott Legal with the description 'ELP/L-Banksia fees' and Elliott Legal then transferred \$400,000 to Decoland. Almost the entire funding commission claimed by AFP and approved was received by Decoland.

61 Decoland also received eight payments from AFP between 4 May 2016 and 18 October 2019 totalling \$2,040,000. However, the SPR could not identify the purpose of these payments only having access to the bank statements of AFP. Decoland provided no explanation, despite the payments being particularised in the SPR's

contentions. In conjunction with Decoland's refusal to comply with discovery orders, I can more comfortably infer that these substantial payments were to benefit Decoland, or to return capital to it, or to repay loans made by Decoland to continue to support AFP and its activities.

62 In the Remitter, I concluded that the payments made by Decoland to Noysy were more likely to be payments relating to the settlement of another class action funded by AFP, *Camping Warehouse v Downer EDI*. I concluded that it had not been established that neither Noysue nor Noysy was paid any sum for the transfer of Noysue's shares in AFP in pretended compliance with *Bolitho No. 4* as O'Bryan contended. In the Remitter, O'Bryan pointed to payments of sums on dates and in amounts that did not correlate with the purported share transfer but appeared to correlate with the receipt of funds from the settlement of that class action.

63 I am satisfied that Decoland was knowingly involved in, and assisted, the conduct of AFP and Elliott in abusing the processes of the court and using these processes as an instrument of the fraud that they attempted.

64 I am satisfied that the interests of justice require an order that Decoland pay the costs of and incidental to this proceeding including, for the avoidance of doubt, the Contradictor's costs, to be assessed on an indemnity basis.

Elliott Legal

65 Elliott was a director and company secretary of Elliott Legal, an incorporated legal practice that is wholly owned by Decoland. Alex Elliott was also a director in 2016-2017 and since February 2020.

66 My findings in the Remitter establish the following matters.

(a) Elliott as the managing director of Elliott Legal was in practice as a solicitor in his role with that firm. Alex Elliott also practised as a solicitor in his role with that firm as both an employee and a director.

(b) Zita, the solicitor on the record for Mr Bolitho, acted as directed by Elliott

such that Elliott, including when acting as the principal of Elliott Legal, exercised actual control of the conduct of the proceeding on matters of substance to Zita's exclusion.

(c) Elliott's knowledge and state of mind, as discussed above, is attributable to Elliott Legal such that Elliott Legal is complicit in the acts, omissions, and misconduct of Elliott and Alex Elliott (who also acted as directed by Elliott).

67 Elliot Legal charged fees of \$797,500 in the Bolitho proceeding and benefitted from the maintenance of that proceeding. It is a reasonable inference from what occurred with the partial settlement that it stood to benefit from the payments of approximately \$20 million sought by AFP from the Trust Co settlement. That is so for at least the reason that the payment from the proceeds of the partial settlement was less than what it claimed to be owed on account of its fees. Further, my findings in relation to Elliott's conduct in compiling the fee claims of O'Bryan, Symons and Zita also permit that inference to be drawn.

68 For the reasons already explained in respect of Decoland, Elliott Legal knew that Elliott caused the Bolitho proceeding to be instituted and maintained and that Elliott engaged in conduct that abused the processes of the court to prosecute a fraudulent scheme. Elliott legal was complicit in this conduct and assisted in its execution. For example, Elliott Legal permitted Elliott (and Alex Elliott) to use its office, computers, and email address to conduct the Bolitho Proceeding. Elliott Legal rather than Portfolio Law responded to telephone queries from debenture-holders. Elliott was across the passwords to all computers and programs at Elliott Legal. I am satisfied that I can readily infer that but for the *Bolitho No.4* decision, Elliott Legal would have remained the firm on the record and continued to directly, rather than indirectly, conduct the litigation and perpetrate the Elliotts' fraud. The fact that it did so covertly and in contravention of *Bolitho No. 4* is further basis for the imposition of non-party costs.

69 While so conducting the proceeding through Portfolio Law, Elliott Legal was also

AFP's personal solicitor too, even when other solicitors, such as ABL were retained. I can readily infer that in this capacity, Elliott Legal enabled and assisted in the fraudulent scheme. The SPR gave the following example drawn from the findings in the Remitter. In the circumstances of the partial settlement, I found that Elliott Legal fraudulently inflated its fees claim to be paid from the partial settlement. It then acted as solicitor for AFP when it sought a funding commission that was based, in part, on those inflated fees.

70 In the remitter, I made findings about document destruction by Elliott. This conduct involved Elliott Legal property (its computers, phones and accounts) and took place at its offices.

71 I am satisfied that in the circumstances of Elliott Legal's conduct in, and in relation to, the proceeding, as I have described it in the Remitter, it is just and equitable in all the circumstances that Elliott Legal pay the costs sought by the SPR. Further, as an incorporated legal practice, Elliott Legal engaged in conduct that was in serious dereliction of its duties to the court, and constituted serious misconduct, such that a costs order ought to be made against it. It would constitute a grave injustice to debenture holders to conclude otherwise.

MCM (Mt Buller) Developments Pty Ltd (MCM)

72 MCM was formerly named Regent Support Pty Ltd.

73 Although its involvement in the proceeding was not direct, like the other Elliott entities already discussed, it was no less significant. On 14 December 2014, Pina Elliott was the sole director and shareholder of MCM when it became the legal owner of 500,000 shares in AFP following a transfer from the O'Bryan entity, Noysue, on whose behalf Noysy had initially subscribed \$500,000 for those shares. O'Bryan and Susan Noy were at all relevant times the directors and shareholders (in equal shares) of Noysy and it was the trustee of two trusts until in or around March 2021, Susanorman Family Trust and the Norman O'Bryan Superannuation Fund. Susan Noy was the sole director and shareholder of Noysue, which held 500,000 shares in AFP from 20 January 2014 to 14 December 2014.

74 I am satisfied that Elliott directed the affairs of MCM. Importantly, he signed the share transfer form produced in evidence at the Remitter in support of the contention that Noysue had disposed of its interest in AFP consequent on the *Bolitho No. 4* ruling. I am also satisfied that Elliott did not cause MCM (or any other Elliott entity on its behalf) to pay Noysue the consideration noted on the transfer form. In substance, MCM remained a bare trustee of the shares.⁴¹

75 This transaction was a sham that was part of Elliott's fraudulent scheme.⁴² While MCM was not directly involved in the sense that Elliot and Decoland, for example, were involved, the share transfer transaction was critical.

76 The misleading share transfer form enabled Elliott and O'Bryan to represent to the legal representatives of other parties that Noysue no longer had any financial interest in AFP such that formal court orders implementing the *Bolitho No. 4* ruling were not necessary and none were made. How Elliott, O'Bryan, Symons and AFP deceived the court, and officers of the court, into thinking that O'Bryan and Noysue had disposed of their financial interest in AFP, is described at length in the Remitter Judgment. The crux of this conduct was that it permitted O'Bryan to remain as senior counsel for Mr Bolitho while avoiding the clear directive of the court. MCM assisted both O'Bryan and Elliott to remain conflicted and in control of the proceeding in a position to ensure they (or their entities) benefitted from the proceeding at the expense of the debenture holders. Had the other parties not been persuaded not to press the court for injunctive relief, the opportunity for the Elliott and O'Bryan entities to improperly profit would have been severely constrained.

77 MCM was knowingly involved in, and assisted, this conduct. I am satisfied that Elliott's knowledge and intentions are to be imputed to MCM for the same reasons as are discussed above in respect of Decoland. There was evidence in the remitter that supported the inference that Elliott's practice or habit was to control family companies. Although not a director of MCM, he executed the transfer form. That

⁴¹ J:[127].

⁴² J:[130].

conduct was inconsistent with a proper discharge of fiduciary obligations by MCM's director.

78 I can more comfortably draw these inferences against MGM for three reasons. It consented to the orders made, offering nothing in opposition to the SPR's contentions or the relief being sought before it did so. It wilfully failed to observe court orders to make discovery, and led no evidence that Pina Elliott had anything to do with these transactions. Had the director of MCM required it to transact legitimately and the continued involvement of O'Bryan as senior counsel been terminated – there being not a shred of evidence that MCM could pay the consideration due to Noysue, while the director's fiduciary obligations hardly permitted MCM to transfer shares of at least that value in the absence of binding consideration – the foundational premise of personal control of the proceeding by its funders would have been thwarted.⁴³

Quantum of the judgment being entered

79 No submission was made that the court ought to apportion the total legal costs of the Remitter between the Elliott entities. Given that fraud is involved, it will not be in the interests of justice to do so. In this case each of Decoland, Elliott Legal and MCM were used by Elliott and AFP as instruments to perpetrate their fraud on the court and debenture holders while attempting to shield each of the primary wrongdoers from any substantial liability in connection with their maintenance of the Bolitho Proceeding. For the same reasons that I gave when dismissing the attempts by the parties to seek proportionate judgments against them,⁴⁴ it is not in the interests of justice that the risks that any non-party held liable for the costs may be insolvent or otherwise able to frustrate execution of a judgment be borne by the debenture holders.

80 Further, as alter egos of Elliott, it is appropriate to order that costs be assessed on an indemnity basis where the non-party to pay such costs has engaged in

⁴³ Compare *Hardsted Pty Ltd v Tomanek* (2018) 55 VR 158, 186-7 [116]-[118].

⁴⁴ J:[2120]-[2115].

unmeritorious or deliberately improper conduct that would warrant the court both showing its disapproval and, at the same time, preventing the winning party from being left out of pocket. Such conduct, both in the course of the proceeding and in the course of this non-party costs application, has been documented above.

81 For these reasons on 1 March 2023, I ordered that each of:

- (a) Maximillian Elliott as personal representative of the Estate of Mark Edward Elliott (Estate of Mark Elliott);
- (b) Decoland Holdings Pty Ltd;
- (c) Elliott Legal Pty Ltd; and
- (d) MCM (Mt Buller) Developments Pty Ltd,

pay the costs of and incidental to the proceeding, including the Contradictor's costs, on an indemnity basis.

Noysue & Noysy

82 Before the application in respect of the O'Bryan entities for non-party costs orders came on for hearing the claim was compromised.

83 On 2 June 2023, after the SPR reached that settlement with the O'Bryan entities, and O'Bryan himself, he amended the non-party costs summons to instead seek the court's approval of this settlement, pursuant to ss 283HB of the *Corporations Act 2001* (Cth) and ss 33V(1), (2) and 33ZF of the *Supreme Court Act*. The SPR sought a declaration that it has the power to settle the claims against O'Bryan, Noysue and Noysy, and is justified in doing so on the agreed terms. For the following reasons, I will make that declaration and the appropriate supporting orders.

84 For this purpose, I note that the compensation component of the Remitter Judgment is approximately \$11.7M and the costs component is approximately \$10.6M, although those costs have not been assessed. Mr Lindholm has opined that on an assessment he is likely to be entitled to more than \$9.5M. The costs have not been

assessed pending negotiations for resolution of the execution of the Remitter Judgment, given the additional costs likely to be involved in a costs assessment. Further costs in respect of non-party recoveries are estimated at approximately \$600,000.

85 After allowing for recoveries from the Legal Practitioners Liability Committee of the balance remaining in the policies in respect of O'Bryan and Symons and the return of fees of \$375,683 by Zita and adding interest, the current outstanding balance of the compensation component of the judgment exceeds \$9.7M. Accepting Mr Lindholm's estimate of the likely outcome of a costs assessment, the liability of the contraveners exceeds \$19.7M and the exposure of the non-parties in respect of costs likely exceeds \$9.5M. Although Mr Lindholm has described in detail the course of settlement negotiations with all contraveners and non-parties in a confidential affidavit, which I have noted, those negotiations remain ongoing and there is no benefit to be achieved by disclosing that information in these reasons.

86 The parties concluded the settlement deed on 27 March 2023. The salient terms are:

- (a) The claims against the O'Bryan entities are dismissed;
- (b) The entities will pay a settlement sum of \$1.25m to the SPR, to be distributed to all debenture-holders of Banksia *pari passu* in accordance with the settlement distribution scheme approved by me on 22 May 2019;
- (c) This settlement sum is in full and final satisfaction of O'Bryan's liability under the Remitter Judgment, and to compromise the SPR's claims for non-party costs order against Noysue and Noysy.

87 The SPR submitted that the proposed settlement is fair and reasonable and in the interests of debenture-holders because:

- (a) There is little to no likelihood of substantial financial recovery from O'Bryan using any enforcement steps available to the SPR and no realistic possibility of substantial financial recovery against Noysue and Noysy within the

- foreseeable future;
- (b) Settlement will prevent material risks and delays in recovery, including potential appeals, associated with continuing to pursue the non-party costs summons; and
 - (c) Settlement allows the SPR to focus his efforts and finite resources on more productive avenues for substantial financial recovery.

88 I accept, as the SPR submitted, that I have the power to make these orders under the court's broad remedial and protective jurisdiction conferred by s 283HB of the *Corporations Act*, to make any order the court considers appropriate to protect the interests of debenture holders,⁴⁵ as well as s 33V(1) of the *Supreme Court Act*, given that this involves approval of a settlement of claims arising from a class action, for the ultimate benefit of group members.

89 The ultimate question is whether the decision to enter into the settlement was fair and reasonable and in the interests of debenture holders. In order to answer this question, I do not have to reconsider all the factors the SPR has considered, but rather to be satisfied that the decision is proper and reasonable, which usually requires assessment of the SPR's reasons for the settlement, and the process by which the decision was reached.⁴⁶

90 The wishes of the debenture holders and their reactions are an important consideration;⁴⁷ the court should be satisfied there is no error of law or bad faith or impropriety; and should pay due regard to the commercial judgment of the SPR, and the legal advice he has received.⁴⁸ Other relevant factors include the history, complexity and stage of proceeding and the risk of continuing to litigate the claim, the risk of recovery, and the prospect of obtaining a greater sum, to ascertain

⁴⁵ *Re Banksia Securities (in liquidation) (rec & mgr apptd)* [2018] NSWSC 629, [17]-[32]; *Banksia Securities Ltd v Insurance House Pty Ltd (Settlement Approval)* [2020] VSC 123, [12]-[17].

⁴⁶ *Re One.Tel Networks Ltd* (2014) 99 ACSR 247, 256 [36].

⁴⁷ *Banksia Settlement Approval*, [20], [25(g)] (n 45).

⁴⁸ *Ibid* [21].

whether the decision is within the reasonable range of potential outcomes, having regard to the circumstances known or reasonably foreseeable to the SPR and his advisors.⁴⁹

91 In assessing the relevant factors, I have had regard to:

- (a) An affidavit of Samuel Roadley Kingston, with the settlement deed attached; and
- (b) Three affidavits deposed to by the SPR, John Ross Lindholm, two of which were confidential.

92 I have also taken into account –

- (a) a joint opinion of counsel prepared for the purposes of this application. Counsel have advised Mr Lindholm that his prospects of success against the O’Bryan Entities in the non-party costs application are better than even but carry material risk, noting that these entities have aggressively contested the application. The prospect of further delay through appeals cannot be discounted and neither can the prospect of protracted litigation to execute any judgment.
- (b) a joint opinion of counsel provided to the Supreme Court of New South Wales on the SPR’s application for directions that he was justified in not accepting a global settlement offered by each of the judgment debtors to the Remitter Judgment;
- (c) a joint opinion prepared by counsel for the SPR prior to his decision to reject a subsequent global settlement offer made by each of the judgment debtors to the Remitter Judgment; and,
- (d) Mr Lindholm’s views about, and reasons for, resolving the claims with O’Bryan and the O’Bryan entities set out in the two confidential affidavits he

⁴⁹ Ibid [25]-[26].

has sworn.

93 The SPR has acknowledged that the settlement sum seems low (10.7% of compensation awarded, excluding costs), particularly given O'Bryan's central role in, and culpability in respect of, the fraud. He accepts that the settlement does not result in a substantial financial return to debenture-holders, who may struggle to accept that it is, in his opinion, a fair and reasonable resolution of the judgment and ongoing dispute with those parties. However, he has been guided by an objective comparison of the benefit in getting in those funds now, against the prospects of further financial recovery and the cost and delay involved in further enforcement steps.

94 The SPR advanced, as the overwhelming consideration, the poor prospects of substantial financial recovery from the bankrupt O'Bryan and the O'Bryan entities within any reasonable period of time. The SPR has provided evidence of his knowledge of the financial position of O'Bryan, Noysue and Noysy and his analysis of the enforcement and financial recovery prospects and I accept his analysis of those matters. Mr Lindholm has also taken account of the long history of this matter and the demographic profile of debenture-holders, in concluding that it is in the best interests of debenture-holders not to commit their funds to funding further investigations into Mr O'Bryan's financial affairs.

95 Noting that the settlement is clearly out of proportion with the gravity and nature of the misconduct O'Bryan has been found to have committed, Mr Lindholm has, as I accept he must, distinguished between the personal position of the bankrupt O'Bryan, who has contributed nothing, and the position of the entities that are to contribute the settlement funds. It is not for Mr Lindholm, in his position as SPR, to ensure that the public interest considerations that emerged in the remitter proceeding,⁵⁰ are satisfactorily resolved. The purpose of his appointment was to protect the interests of debenture holders by maximising their recoveries by a

⁵⁰ The judgment was referred to the police but, to date, no action is apparent.

considered cost-benefit analysis. Although there has been some distraction generated by some individuals seeking separate compromise of claims that they personally might have against the contraveners, it was not Mr Lindholm's role to resolve such claims notwithstanding that they have been raised in negotiations. The committee of debenture holders unanimously supported the proposed settlement with O'Bryan and the O'Bryan Entities, but with a reluctance that was solely based on their financial position.

96 From this material, I am satisfied that:

- (a) the SPR has followed proper process in negotiating the settlement – there is certainly no question of impropriety or bad faith.
- (b) the reasons given for accepting the settlement offer are cogent.
- (c) the reasoning is supported by sound advice from counsel.
- (d) the debenture holder committee has expressed unanimous support for the settlement and none have objected.
- (e) the debenture holders are elderly and payments should be effected as soon as possible.

97 Further, and importantly, I am satisfied that Mr Lindholm is objectively entitled to conclude the terms of settlement with O'Bryan and the O'Bryan entities, when assessed from both legal and economic viewpoints, the terms being within an acceptable range, although I agree that the settlement must be regarded as being at the low end of that range.

98 For these reasons, I will make the necessary orders approving the settlement.

Peter Trimbos

99 The SPR also sought court approval of a settlement with the estate of Peter Trimbos, deceased, in respect of the judgment debt and any other claims against Ms Katerina Peiros as representative of the estate.

100 The settlement deed in respect of this claim, concluded on 24 May 2023, provided that the Legal Practitioners Liability Committee pay \$1,413,197.13 to the SPR, being the balance of the available limit of Mr Trimbos's policy of insurance. The estate is not otherwise making any financial contribution.

101 The SPR submitted that the proposal was fair and reasonable and in the interests of debenture holders because:

- (a) It allows for swift recovery of Trimbos's available insurance proceeds, without the cost and delay of having to take legal steps to recover the proceeds; and
- (b) There are no other commercially viable sources of recovery from Trimbos's estate.

102 This settlement may also be considered low because it is limited to insurance proceeds to which the SPR has a statutory entitlement under s 51 of the *Insurance Contracts Act 1984* (Cth), without any additional payment by the estate. However, there was no evidence to suggest that Trimbos was a man of wealth. His only available asset was an investment property in his name with available equity of around \$500,000 in respect of which his widow asserts an equitable interest as the beneficiary of a constructive trust. It appears likely any efforts to enforce the judgment against the property would lead to further disputes with the widow and it is open to Mr Lindholm, acting reasonably from both legal and economic perspectives to conclude it is not commercially viable or appropriate to commit debenture holders' resources to further litigation with a very limited upside when there are other more fruitful avenues to pursue.

Distribution

103 In an earlier judgment,⁵¹ I considered the proper basis for the distribution of settlement sums received from previous settlements. It is proper and reasonable for

⁵¹ *Banksia Settlement Approval*, [103]-[108] (n 45).

any distribution of some or all or the settlement sums hereby approved to occur on a *pari passu* basis and in accordance with the previously established distribution scheme.

Alexander Christopher Elliott - S ECI 2023 01922

- 104 On 11 October 2021, I ordered that Alex Elliott show cause whether, in the context of the findings published in *Bolitho v Banksia Securities Ltd (No 18) (remitter)* [2021] VSC 666, he is a fit and proper person to remain on the roll of persons admitted to the legal profession kept by this court.
- 105 Mr Elliott appealed against some of those findings and undertook to the court not to seek a practising certificate pending the resolution of his appeal. The appeal was not prosecuted and was deemed to have been abandoned. When the show cause motion was called on, I appointed the Victorian Legal Services Commissioner as a contradictor.
- 106 Subsequently, the court was informed that Mr Elliott and the contradictor agreed that the appropriate response to the court's findings is that Mr Elliott's name be removed from the roll of practitioners kept by the court and that insofar as it is necessary, Mr Elliott consented to such removal.
- 107 I will order that the name and other particulars of Alexander Christopher Elliott be removed from the roll of Australian lawyers kept by the court.



Case: S EAPCI 2023 0090
SCI 2012 07155
Filed on: 04/09/2023 09:01 AM

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
GROUP PROCEEDINGS LIST

BETWEEN:

LAURENCE JOHN BOLITHO & ANOR
(according to the attached Schedule)

Plaintiffs

-and-

JOHN ROSS LINDHOLM IN HIS CAPACITY AS SPECIAL PURPOSE
RECEIVER OF BANKSIA SECURITIES LIMITED (RECEIVERS AND
MANAGERS APPOINTED) (IN LIQUIDATION) & ORS
(according to the attached Schedule)

Defendants

ORDER

JUDGE:	The Honourable Justice John Dixon
DATE MADE:	1 March 2023
ORIGINATING PROCESS:	Writ dated 23 December 2017
HOW OBTAINED:	By amended summons filed 8 December 2021 (amended summons)
ATTENDANCE:	Mr M Susic (solicitor) on behalf of Maximilian Elliott, Elliott Legal Pty Ltd, Decoland Holdings Pty Ltd and MCM (Mt Buller) Developments Pty Ltd. Mr JA Redwood SC with Mr M Grady on behalf of the first defendant.
OTHER MATTERS:	The application against the remaining respondents in the amended summons is yet to be heard. The reasons for all the orders made in respect of the amended summons will be delivered together.

THE COURT ORDERS BY CONSENT THAT:

1. Each of:
 - (a) Maximilian Edward Elliott, as the representative of the Estate of Mark Edward Elliott;



- (b) Elliott Legal Pty Ltd (ACN 169 412 391);
- (c) Decoland Holdings Pty Ltd (ACN 007 431 405); and
- (d) MCM (Mt Buller) Developments Pty Ltd (ACN 087 073 872),

pay the costs of and incidental to this proceeding, including the Contradictor's costs, on an indemnity basis.

2 The first defendant's costs of this application are reserved.

DATE AUTHENTICATED: 1 March 2023



The Honourable Justice John Dixon

SCHEDULE OF PARTIES

S CI 2012 07185

BETWEEN:

LAURENCE JOHN BOLITHO First Plaintiff

AUSTRALIAN FUNDING PARTNERS PTY LTD Second Plaintiff

-and-

JOHN ROSS LINDHOLM IN HIS CAPACITY AS SPECIAL PURPOSE
RECEIVER OF BANKSIA SECURITIES LIMITED (RECEIVERS AND
MANAGERS APPOINTED) (IN LIQUIDATION) First Defendant

NORMAN O'BRYAN SC Second Defendant

MICHAEL SYMONS Third Defendant

ANTHONY ZITA AND PORTFOLIO LAW PTY LTD Fourth Defendant

ALEXANDER CHRISTOPHER ELLIOTT Fifth Defendant

KATERINA PEIROS, AS THE REPRESENTATIVE OF THE ESTATE
OF PETER TRIMBOG Sixth Defendant



IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
GROUP PROCEEDINGS LIST



S.C.L. 2013/07185
Case: S.E.A.P.C. 2023 0090
Filed on: 04/09/2023 09:01 AM

BETWEEN:

LAURENCE JOHN BOLIPIO & ANOR
(according to the attached Schedule)

Plaintiffs

-and-

JOHN ROSS LINDHOLM IN HIS CAPACITY AS SPECIAL PURPOSE
RECEIVER OF BANKSIA SECURITIES LIMITED (RECEIVERS AND
MANAGERS APPOINTED) (IN LIQUIDATION) & ORS
(according to the attached Schedule)

Defendants

ORDER



JUDGE: The Honourable Justice John Dixon
DATE MADE: 31 July 2023
ORIGINATING PROCESS: Writ dated 23 December 2012
HOW OBTAINED: By amended summons filed 2 June 2023
ATTENDANCE: Ms W Harris KC, with Mr J Rudd for Noysue Pty Ltd and
Noysy Pty Ltd
Mr J Redwood SC, with Mr M Grady for the first defendant
Ms K Peiros (solicitor) and Angela Sgambaro (solicitor) for the
estate of Mr Peter Triunbus
OTHER MATTERS: Nil.

THE COURT ORDERS THAT:

1. The first defendant has the power to settle all claims against Norman O'Bryan, Noysue Pty Ltd, Noysy Pty Ltd (together, **O'Bryan Entities**) on the terms set out in the settlement deed of 27 March 2023.
2. The first defendant is justified in causing Banksia Securities Limited (in liq) (rec & mgrs apptd) to settle its claims made against the O'Bryan Entities, including its rights to enforce the Remitter Judgment, on the terms set out in the settlement deed of 27 March 2023.
3. The first defendant's claims against the O'Bryan Entities are dismissed.
4. The settlement sum of \$1.25million payable by the O'Bryan Entities is to be distributed

to all debenture-holders of Banksia pari passu in accordance with the settlement distribution scheme approved by the court on 22 May 2019.

5. The first defendant has the power to settle all claims against Katerina Peiros as representative of the estate of Peter Trimbus (sixth defendant) on the terms set out in the deed of settlement dated 24 May 2023.
6. The first defendant is justified in causing Banksia to compromise its claims made against the sixth defendant, including its rights to enforce the Remitter Judgment, on the terms set out in the deed of settlement dated 24 May 2023.

DATE AUTHENTICATED: 31 July 2023


.....
The Honourable Justice John Dixon.


SCHEDULE OF PARTIES

S CI 2012 07185

BETWEEN:

LAURENCE JOHN BOLITHO



First Plaintiff

AUSTRALIAN FUNDING PARTNERS PTY LTD

Second Plaintiff

~~and~~

JOHN ROSS LINDHOLM IN HIS CAPACITY AS SPECIAL PURPOSE
RECEIVER OF BANKSIA SECURITIES LIMITED (RECEIVERS AND
MANAGERS APPOINTED) (IN LIQUIDATION)

First Defendant

NORMAN O'BRYAN SC

Second Defendant

MICHAEL SYMONS

Third Defendant

ANTHONY ZITA AND PORTFOLIO LAW PTY LTD

Fourth Defendant

ALEXANDER CHRISTOPHER ELLIOTT

Fifth Defendant

KATERINA PIROS, AS THE REPRESENTATIVE OF THE ESTATE
OF PETER TRIMBOS

Sixth Defendant

Email Letter

Lawyers
Collins Square, Tower Two
Level 25, 727 Collins Street
Melbourne VIC 3008
Australia

Telephone 61 3 9258 3555
Facsimile 61 3 9258 3666

info@maddocks.com.au
www.maddocks.com.au

DX 259 Melbourne

From Mathew Gashi	Date 20 September 2023
Direct 03 9258 3774	Email mathew.gashi@maddocks.com.au
Partner Sam Kingston	

To Norman O'Bryan	Organisation	Email nobryan57@gmail.com
-----------------------------	---------------------	-------------------------------------

Our Ref STK:MZG:6207696

Dear Mr O'Bryan

**Norman O'Bryan v John Ross Lindholm in his capacity as special purpose receiver of Banksia Securities Limited (recs & mangrs appts) (in liq)
Supreme Court of Victoria – Court of Appeal Proceeding S EAPCI 2023 0090 (Appeal)**

We refer to your emails received on 8 September 2023.

The SPR's position is that Appeal should be withdrawn immediately as, amongst other things:

1. you do not have standing to bring the Appeal as an undischarged bankrupt;
2. the Appeal seeks to relitigate matters arising from the judgment in *Bolitho v Banksia Securities Limited (No 17)* [2021] VSC 132 (**2021 Judgment**) and *Bolitho v Banksia Securities Limited (No 18)* (remitter) [2021] VSC 666 (**Remitter Judgment**); and
3. maintenance of the Appeal is inconsistent with the terms of the Deed of Settlement and Release executed by you and SPR dated 27 March 2023 (**Deed**).

The SPR will agree to the Appeal being dismissed with no order as to costs if consent orders can be agreed by no later than **5:00 pm 21 September 2023**. The basis for the SPR's position is expanded on below.

Standing to bring the Appeal

You are an undischarged bankrupt and do not have standing to bring an appeal in respect of a provable debt.¹ As noted below, the Appeal seeks to relitigate matters arising from the 2021 Judgment and also, more critically, the findings made in the Remitter Judgment which were part of the basis for orders of compensation and costs being made against you.² The SPR has lodged a Proof of Debt with your trustee in bankruptcy in relation to your liability arising from the Remitter Judgment and this proof was accepted in your trustee's report to creditors dated 28 November 2021. In the absence of an

¹ See, *Cummins v Claremont Petroleum NL & Anor* (1996) 137 ALR 1.

² *Ibid*, 17.

explanation to the contrary, you cannot bring the Appeal in your name on the basis for the existing grounds of appeal.

Re-litigation of findings in the Remitter Judgment

The Appeal seeks to set aside paragraphs [39], [40], [62], [74], [75], [76] and [93], which relate to the SPR's uncontested claims against the Elliott Entities. However, those paragraphs simply restate findings made by Dixon J in paragraphs [92], [96] - [102], [127] - [140], [754], [816], [1660] – [1664], [1672], [1694] and [2097] of the Remitter Judgment, amongst others.

You have been on notice of the matters raised in the SPR's Non-party Costs Summons since being served with the material on 18 August 2020. Similar allegations were raised by the Contradictor as early as 11 October 2019 in the Contradictor's Revised List of Issues. You had an opportunity to address those matters in the trial of the Remitter but, through your counsel, indicated on 2 August 2020 that you would not contend against the Court making findings in respect of you in accordance with the Contradictor's allegations.

You subsequently sought to open the case against you in the Remitter in relation to the subject matter of the Appeal despite your clear and unambiguous capitulation to the claims made against you by the Contradictor on 2 August 2020. That application was rejected, and the reasons are recorded in the 2021 Judgment.

As is made plain from your written case, this Appeal simply attempts to relitigate issues which have been determined in the 2021 Judgment and the Remitter Judgment. The time to seek any appeal of the 2021 Judgment and the Remitter Judgment has long since passed and is in any event contrary to your capitulation to the Court.

Release of matters relating to the Appeal

As you know, on 27 March 2023, you and the SPR entered into the Deed. Relevantly, the Deed contained the following:

1. Pursuant to clause 3 of the Deed, the Deed was subject to and conditional on, amongst other things, the 'Settlement Approval Orders' being made.
2. Pursuant to clause 5.3 of the Deed, on and from release of the 'Settlement Sum' you, as one of the 'O'Bryan Entities', agreed to:
 - 2.1 release and discharge BSL, the SPR, the Former SPR, and their Related Entities from all Claims relating to the subject matter of the Released Matters; and
 - 2.2 not commence or maintain any Claim against BSL, the SPR, the Former SPR, and their Related Entities relating to the subject matter released.
3. Released Matters included, relevantly, all claims relating or incidental to the Remitter, the Remitter Judgment, the Bolitho Proceeding and the Non-party Costs Summons
4. Pursuant to clause 7 of the Deed, the Deed can be pleaded as a complete bar to any further proceedings relating to the subject matter of the Released Matters.

The Appeal is not in respect of the Settlement Approval Orders, as it relates only to certain findings of Dixon J in his reasons for judgment recorded in *Lindholm v Elliott* [2023] VSC 442 concerning the SPR's Non-Party Costs Summons against the Elliott Entities. As such, on 15 September 2023 the SPR received the Settlement Sum due under the Deed, and its terms came into effect.

The Appeal is directly inconsistent with the releases you have provided in the Deed as, amongst other things, you have named the SPR as a respondent to the Appeal.

Security for the SPR's costs of the Appeal

The SPR is concerned that you do not have the financial wherewithal to meet a costs order, should one be made in his favour in the Appeal. In particular:

1. On 29 October 2021 you became bankrupt and remain an undischarged bankrupt; and
2. Your trustee in bankruptcy has not identified any significant assets in your name and it appears unlikely that there will be any dividend paid to creditors.

As you know, the Appeal will cause the SPR to be put to significant expense. It is difficult to precisely quantify the SPR's costs, as they will depend upon matters such as:

1. the necessity for the SPR to bring interlocutory applications, such as potential applications relating to the security for costs, and the work involved in responding to your application other than leave to appeal;
2. the ultimate nature and extent of the documentary records for the Appeal; and
3. the likely length of the Appeal having regard to the above matters.

In our experience and making reasonable assumptions, based on the nature of the matters raised in your application for leave to appeal, we estimate that the SPR's costs of the Appeal (up to and including a one day final hearing) will be approximately \$130,000.00 (excluding GST) as set out in the table at Schedule 1. If successful in the Appeal, the SPR would expect to recover at least 70% of the costs incurred (approximately \$78,000) on a taxation on the standard basis.

The SPR requests that you confirm that you provide security the SPR's their costs in the sum of \$78,000. In the absence of that confirmation the SPR will proceed on the basis that you do not have sufficient funds available to meet a costs order.

Conclusion

The SPR will agree to the Appeal being dismissed with no order as to costs if consent orders can be agreed by no later than **5:00 pm 21 September 2023**. Please confirm whether you will agree to orders being made in these terms.

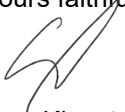
If you will not agree to resolving the Appeal on this basis, please confirm by 5:00 pm 21 September 2023:

1. that you agree to provide security for the SPR's costs in the amount set out above;
2. whether you are represented in the Appeal, and if so provide us with the contact details of your legal representatives; and
3. your, and any legal representatives, availability to appear at a directions hearing in respect of the Appeal in the weeks commencing either 2 October 2023 or 9 October 2023.

Finally, we note that at this stage of the Appeal, the SPR will not incur the cost of producing the documents requested in your email received at 10:11 am on 8 September 2023.

The SPR will tender this correspondence in relation to the substantive issues and in seeking to recover his costs on an indemnity basis.

Yours faithfully



Sam Kingston
Partner

Schedule 1 – Estimate of costs

The personnel required to carry out work in this Appeal on behalf of the SPR, as well as their charge-out rates, are as follows:

Role	Hourly Rate
Solicitors	
Partner	\$740 (plus GST)
Senior Associate	\$500 (plus GST)
Lawyer	\$380 (plus GST)
Counsel	
Senior Counsel	\$950 (plus GST)
Junior Counsel	\$375 (plus GST)

Item	Counsel's costs (plus GST)	Solicitors' costs (plus GST)	Other expenses (plus GST)
Interlocutory Applications			
Preparing for and appearing at no more than 2 interlocutory or directions hearings: <ul style="list-style-type: none"> • 1 day senior counsel • 2 days for junior counsel; • 1 day for Partner; and • 2 days for Senior Associate or Lawyer. 	\$17,000.00	\$11,000.00	
Review claims			
Consideration of application for leave to appeal and written case: <ul style="list-style-type: none"> • 1 day senior counsel; • 1 day for junior counsel; and 	\$13,250.00	\$4,000.00	

<ul style="list-style-type: none"> • ½ day for Partner; and • ½ day for Senior Associate or Lawyer. 			
Document review			
<p>Reviewing critical documents, and documents referenced in application other than leave to appeal, and leave application book</p> <ul style="list-style-type: none"> • ½ day senior counsel; • 1 day for junior counsel; and • 1 day for Senior Associate or Lawyer. 	\$8,500.00	\$3,000.00	
Preparation of Written Case			
<p>Preparing and settling response:</p> <ul style="list-style-type: none"> • 1 day senior counsel; • 2 days for junior counsel; • 2hrs for Partner; and • 2hrs Senior Associate or Lawyer. 	\$17,000.00	\$2,500.00	
Preparation of Agreed Summary			
<p>Assuming that the facts are not contested:</p> <ul style="list-style-type: none"> • ½ day for junior counsel; and • 2hrs for Senior Associate or Lawyer. 	\$1,900.00	\$1,000.00	
Preparing for hearing			



Preparation for hearing: <ul style="list-style-type: none">• 1 day for senior counsel;• 1 day for junior counsel;• 1 day for Senior Associate or Lawyer.	\$13,250.00	\$3,000.00	\$5,000.00
Trial			
Attendance at hearing of the Appeal <ul style="list-style-type: none">• 1 day for senior counsel;• 1 day for junior counsel;• 1 day for Partner; and• 1 day Senior Associate or Lawyer.	\$13,250.00	\$8,000.00	
Miscellaneous attendances not captured above			
General matter management, correspondence with the parties, counsel and the court, other attendances, research and supervision.	\$5,000.00	\$10,000.00	
Disbursements			
Miscellaneous non-trial expenses such as fees to third party electronic trial document management providers, transcription fees, court filing fees and other court related fees and other general expenses.			\$10,000.00
TOTAL	\$72,150.00	\$42,500.00	0

73 Hughes Road
Blairgowrie, Vic. 3942

21 September 2023

Dear Mr Kingston,

O'Bryan v Lindholm S EAPCI 2023 0090

I refer to your letter dated 20 September 2023.

I respond as follows to the matters you have raised.

1. My appeal has nothing to do with any provable debt in my bankruptcy. I do not seek any orders which could affect my bankrupt estate in any respect. Accordingly my bankruptcy does not prevent me from prosecuting my appeal.
2. I have no legal representation as I cannot afford any.
3. I am unable to offer any security for costs because I have no assets.
4. If security is ordered I will be unable to continue my appeal.
5. I do not seek to relitigate any issues earlier decided. My appeal concerns only the process which led to the findings made by J Dixon J in the judgment dated 31 July 2023. As you know, these findings differ from those earlier made in the decisions you refer to.
6. The settlement deed has not yet taken effect: cl.3.4.1. Even if it had, my appeal is not inconsistent with the settlement agreement. I do not seek any orders against your client, even as to costs. In those circumstances it is difficult to understand why your client would seek to oppose my appeal and incur unnecessary costs in doing so.
7. I reiterate my request first made on 8 September 2023 that you provide me with copies of all documents and correspondence which passed between your office and the Court in connection with your client's application for non-party costs. I need these documents for the appeal book index. If you will not provide them voluntarily I will seek orders from the Court of Appeal compelling you to do so.

Yours faithfully,



Norman O'Bryan



Rule 64.33

FORM 64H

**IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
IN THE COURT OF APPEAL**

Case: S EAPCI 2023 0090

Filed on: 21/09/2023 02:47 PM

File No. S EAPCI 2023 0090

BETWEEN

NORMAN O'BRYAN

Applicant

and

**JOHN ROSS LINDHOLM in his capacity as special purpose receiver of
Banksia Securities Limited (receivers and managers appointed) (in
liquidation)**

Respondent

NOTICE OF OBJECTION TO COMPETENCY

Date of document: 21 September 2023

Filed on behalf of: The Respondent

Prepared by:

Maddocks

Collins Square, Tower 2

Level 25, 727 Collins Street

Melbourne VIC 3008

DX 259 Melbourne

Tel: (03) 9258 3555

Fax: (03) 9258 3666

Ref:STK:MZG:6207696

Attention: Sam Kingston

E-mail address: sam.kingston@maddocks.com.au

TO: the Registrar

AND TO the Applicant

The Respondent objects to the competency of Appeal.

Grounds:

1. The Applicant has no standing to bring the application in circumstances where he is an undischarged bankrupt.
2. The Applicant's application is an abuse of process because it constitutes a collateral attack on matters:
 - a. already expressly determined by the Honourable Justice Dixon in his reasons for judgment contained in *Bolitho v Banksia*

Securities Limited (No 17) [2021] VSC 132 and *Bolitho v Banksia Securities Limited (No 18)* (remitter) [2021] VSC 666;

- b. which otherwise relate to orders sought by the Respondent against the following entities by his amended summons dated 8 December 2022 (**Non-party Costs Summons**), with their consent:
 - i. Maximillian Elliott as personal representative of the Estate of Mark Edward Elliott;
 - ii. Decoland Holdings Pty Ltd;
 - iii. Elliott Legal Pty Ltd; and
 - iv. MCM (Mt Buller) Developments Pty Ltd; and
 - c. which the Applicant has been on notice of in relation to the Non-party Costs Summons since 18 August 2020, and more generally on notice of in the context of the remitter proceedings before Dixon J since at least 11 October 2019, in circumstances where on 3 August 2020 the Applicant’s counsel indicted to the Court, amongst other things, that the Applicant would not contend “*against the court making findings in respect of him in accordance with those allegations*”.
3. The Applicant seeks to set-aside findings in *Lindholm v Elliott & Ors* [2023] VSC 442 that would have no material effect on the outcome or the orders made in the proceeding.
 4. The Applicant is precluded from maintaining this Application by virtue of the operation of a deed of settlement and release signed by the Applicant and Respondent on 27 March 2023, a copy of which is annexed as **Attachment A** to this notice.

Further, the Respondent applies for the question of competency to be heard and determined before the hearing of the appeal and before any written response is required by Respondent to the written materials filed by the Applicant.

Date: 21 September 2023

Maddocks

Signed
Maddocks
For the Respondent



Maddocks

Lawyers
Collins Square, Tower Two
Level 25, 727 Collins Street
Melbourne VIC 3008
Australia

Telephone 61 3 9258 3555
Facsimile 61 3 9258 3666

info@maddocks.com.au
www.maddocks.com.au

DX 259 Melbourne

Deed of Settlement and Release

**Banksia Securities Limited ACN 004 736 458 (Special Purpose Receiver Appointed)
(In Liquidation)
and**

The Parties Listed in Schedule 1

Deed of Settlement and Release

Dated 27 March 2023

Parties

The Parties listed in schedule 1.

Background

- A. On 24 December 2012, the Bolitho Proceeding was commenced against, inter alia, BSL. The Bolitho Proceeding is as group proceeding for the purposes of Part 4A of the *Supreme Court Act 1986 (Vic)*.
- B. On 24 June 2014, the SPR and Former SPR were appointed as joint and several liquidators of BSL.
- C. By orders made in the Supreme Court of New South Wales on 30 September 2015 and 29 February 2016, the SPR and the Former SPR were appointed as special purpose receivers of certain assets of BSL.
- D. On 16 December 2019, Mr McCluskey resigned as liquidator and special purpose receiver of BSL.
- E. On 1 November 2018, the Victorian Court of Appeal delivered its judgment in the Botsman Appeal. The Court of Appeal remitted (i) the approval of the funding commission claimed by AFP and (ii) legal costs and other expenses incurred in the Bolitho Proceeding, to the Trial Division of the Supreme Court of Victoria as the Remitter. The Remitter was heard by the Honourable Justice John Dixon.
- F. On 13 November 2019, AFP, two of the Counsel who appeared in the Bolitho Proceeding, Mr O'Bryan and Mr Michael Symons, and the solicitor who was representing Mr Bolitho and his firm, Mr Antony Zita and Portfolio Law, were joined as parties to the Remitter.
- G. The trial of the Remitter commenced on 27 July 2020.
- H. On 3 and 6 August 2020, Mr O'Bryan and Mr Symons respectively ceased taking steps to defend the Remitter.
- I. On 18 August 2020, the SPR filed the Non-Party Costs Summons in the Remitter seeking orders that the Non-Parties pay the SPR's and Contradictor's costs of the Remitter on an indemnity basis.
- J. On 11 October 2021, Dixon J delivered the Remitter Judgment and ordered that the Defendants must jointly and severally pay the Compensation Component and the Costs Component to the SPR.
- K. On 30 October 2021, Mr O'Bryan became bankrupt and the O'Bryan Trustee was appointed as trustee of his bankrupt estate.
- L. On and from the Operative Date, the SPR and O'Bryan Entities have agreed to resolve all Claims arising out of or in relation to the Released Matters on the terms set out in this Deed.

At the time of execution of this Deed all Claims against the Non-Settling Parties remain unresolved.

- M. The O'Bryan Trustee enters into this Deed to give effect to the releases and transactions contemplated insofar as they relate to the interests of Mr O'Bryan or his bankrupt estate.

This Deed Witnesses

1. Definitions

In addition to the party short names identified in Schedule 1, in this Deed:

AFP means Australian Funding Partners Pty Ltd (in liq).

Bolitho Proceeding means proceeding SCI 2012 7185 in the Supreme Court of Victoria, including for the avoidance of doubt the Remitter.

Botsman Appeal means proceeding S APCI 2018 0037, being an appeal of the approval of the settlement with Trust Co.

Business Day means a day other than a Saturday, Sunday or public holiday in Melbourne, Victoria.

Claim means any claim, allegation, debt, cause of action, liability, proceeding or demand of any nature however it arises and whether it is present or future, fixed or unascertained, actual or contingent (whether or not the facts, matters or circumstances giving rise to that claim are known to that person or to any other person at the date of this Deed) and whether at law, in equity, under statute or otherwise.

Committee means BSL's Committee of Debenture Holders.

Compensation Component means the amount of compensation ordered to be paid by the Defendants in the Remitter Judgment amounting to \$11,700,127.

Corporations Act means the *Corporations Act 2001* (Cth).

Costs Component means the costs ordered to be paid by the Defendants in the Remitter Judgment in relation to the SPR's costs of the Botsman Appeal and the SPR's and contradictor's costs of the Remitter.

Court means the Supreme Court of Victoria or Supreme Court of New South Wales.

Decoland means Decoland Holdings Pty Ltd.

Deed means this deed of settlement and release executed by the Parties.

Defendants mean AFP, Mr O'Bryan, Mr Symons, Mr Zita and Portfolio Law, Mr Alexander Elliott and Katrina Peiros.

Elliott Entities means AFP, Mr Alexander Elliott, Max Elliott, Elliott Legal, MCM and Decoland.

Elliott Legal means Elliott Legal Pty Ltd.

Elliott Non-parties means Max Elliott, Elliott Legal, MCM and Decoland.

Hope & Co Trust Account means

Hope & Co Lawyers Law Practice Trust Account

BSB: 033-003
Account: 593885
Bank: Westpac

Katrina Peiros means Ms Katrina Peiros in her capacity as the executor of the deceased estate of Mr Peter Trimbos.

LPLC means Legal Practitioners Liability Commission.

Max Elliott means Mr Maximilian Elliott in his capacity as executor of the deceased estate of Mr Mark Edward Elliott.

McKenzie Proceeding means proceeding S CI 2015 01385 commenced in the Supreme Court of Victoria.

MCM means MCM (Mount Buller) Developments Pty Ltd.

Nominated Account means:

Maddocks – Law Practice Trust Account (Melbourne)
BSB: 183-334
Account: 304700040
Swift Code: MACQAU2S
Bank: Macquarie Bank Limited
Branch: 101 Collins Street Melbourne VIC
Reference: STK:MZG:6207696

Non-parties mean the Max Elliott, Elliott Legal, Decoland Holdings, MCM, Noysue and Noysy.

Non-party Costs Summons mean the summons filed by the SPR on 18 August 2020, as amended on 8 December 2021.

Non-Settling parties means, collectively, Mr Zita, Portfolio Law, Mr Symons, Katrina Peiros, the LPLC or the Elliott Entities.

O'Bryan Entities means Mr O'Bryan, the O'Bryan Trustee, Noysue and Noysy.

Officer has the meaning given in the Corporations Act.

Operative Date means 14 days from the date of this Deed.

Parties means the Parties to this Deed and Party has a corresponding meaning.

Portfolio Law means Portfolio Law Pty Ltd.

Remitter means the remittal from the Court of Appeal of the approval of the commission claimed by AFP and legal costs in the Bolitho Proceeding arising from the settlement with Trust Co back to the trial division of the Supreme Court of Victoria.

Remitter Judgment means the judgment in *Bolitho v Banksia Securities Limited (No 18) (Remitter)* [2021] VSC 666.

Related Entity of any Party (including an individual) includes all of the entities identified in the definition of Related Entity in s 9 of the Act.

Released Matters means all claims relating or incidental to the:

- a) Bolitho Proceeding;
- b) Botsman Appeal;

- c) Remitter;
- d) Remitter Judgment;
- e) Trust Co Proceeding;
- f) McKenzie Proceeding; and
- g) Non-party Costs Summons.

Settlement Approval Orders means orders made by the Court approving the settlement of the Claims against the O'Bryan Entities on the terms of this Deed.

Settlement Sum means \$1,250,000.

Statutory Declarations means:

- a) the statutory declaration of Susan Marlene Noy declared on 12 December 2022 in relation to the assets and liabilities of Noysy; and
- b) the statutory declaration of Susan Marlene Noy declared on 12 December 2022 in relation to the assets and liabilities of Noysue.

Trust Co means the Trust Company (Nominees) Limited.

Trust Co Proceeding means proceeding S CI 2015 01384 commenced in the Supreme Court of Victoria.

1.1 Interpretation

In this Deed, except where the context otherwise requires:

- 1.1.1 the singular includes the plural and vice versa, and a gender includes other genders;
- 1.1.2 another grammatical form of a defined word or expression has a corresponding meaning;
- 1.1.3 a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Deed, and a reference to this Deed includes any schedule or annexure;
- 1.1.4 a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- 1.1.5 a reference to time is to Melbourne, Australia time;
- 1.1.6 a reference to a party is to a party to this Deed, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- 1.1.7 a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- 1.1.8 the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions; and
- 1.1.9 a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Deed or any part of it.

1.2 **Headings**

Headings are for ease of reference only and do not affect interpretation.

2. **Operative Date**

2.1 Other than clause 6.1 of this Deed, this Deed will become effective on and from the Operative Date.

2.2 The Parties acknowledge and agree that:

2.2.1 if the SPR and the O'Bryan Entities have agreed to settle any Claims against any of the Non-Settling Parties prior to the Operative Date, this Deed will be superseded and of no further effect on and from execution of a further settlement deed on terms satisfactory to the SPR and the O'Bryan Entities;

2.2.2 any further settlement deed will be on the same terms as this Deed insofar as it involves the SPR and the O'Bryan Entities and the subject matter of this Deed; and

2.2.3 if no further settlement deed is executed by the Operative Date, this Deed will become effective.

3. **Conditions precedent**

This Deed is subject to and conditional upon each of the following conditions being satisfied:

3.1 within 7 days of the Operative Date, the O'Bryan Entities paying the Settlement Sum to the Hope & Co Trust Account;

3.2 the SPR receiving the approval of the Committee to settle the Claims against the O'Bryan Entities on the terms of this Deed;

3.3 the making of the Settlement Approval Orders; and

3.4 if the Settlement Approval Orders are made:

3.4.1 any appeal period in respect of the Settlement Approval Orders (whether under the rules of the Court, the Court of Appeal, or the High Court) expiring without an appeal being commenced; and/or

3.4.2 in circumstances where an appeal(s) is commenced, or application for special leave is made, in respect of the Settlement Approval Orders, that appeal(s) being finally determined (including any determination in respect of that appeal(s) by the High Court) or the application for special leave refused, the result of which is that the Settlement Approval Orders are made or confirmed.

4. **Settlement Sum**

4.1 **Investment of the Settlement Sum**

The O'Bryan Entities, the SPR and BSL authorise Hope & Co to transfer the Settlement Sum into an interest bearing trust account in the name of Hope & Co to be held pending the satisfaction of the conditions in clauses 3.2 to 3.4 of this Deed.

4.2 **Release on satisfaction of conditions precedent**

Within 7 days of the satisfaction of the conditions precedent in clause 2, the Settlement Sum and any interest is to be paid to the Nominated Account.

4.3 **Return on failure of conditions precedent**

If any of the conditions precedent in clause 2 are not satisfied or waived by the Parties in writing, the O'Bryan Entities, the SPR and BSL authorise Hope & Co to return the Settlement Sum and any interest to the O'Bryan Entities.

5. **Releases**

Release by BSL and the SPR

5.1 On and from release of the Settlement Sum to the SPR in accordance with clause 4.2, BSL and the SPR agree to:

- 5.1.1 release and discharge the O'Bryan Entities and their Related Entities from all Claims relating to the subject matter of the Released Matters; and
- 5.1.2 not commence or maintain any Claim against the O'Bryan Entities relating to the subject matter released in clause 5.1.1 (with the exception of a claim or action for breach or enforcement of this Deed).

5.2 For the avoidance of doubt, the release in clause 5.1 of this Deed does not extend to or prejudice to any Claims made or available to BSL or the SPR against the Non-Settling Parties in relation to the Released Matters.

Release by the O'Bryan Entities

5.3 On and from release of the Settlement Sum to the SPR in accordance with clause 4.2, the O'Bryan Entities and the O'Bryan Trustee agree to:

- 5.3.1 release and discharge BSL, the SPR, the Former SPR, and their Related Entities from all Claims relating to the subject matter of the Released Matters; and
- 5.3.2 not commence or maintain any Claim against BSL, the SPR, the Former SPR, and their Related Entities relating to the subject matter released in clause 5.3.1 (with the exception of a claim or action for breach or enforcement of this Deed).

Proof of debt in Mr O'Bryan's bankrupt estate

5.4 To the extent that any Claim released under clause 5.1 has been admitted to proof by the O'Bryan Trustee, on and from release of the Settlement Sum to the SPR in accordance with clause 4.2 the SPR consents to the revocation by the O'Bryan Trustee of their decision to admit such Claim to proof.

6. **Disposal of Proceeding**

6.1 Within 7 days of execution of this Deed, the SPR, Noisy and Noysue must notify the Associate to Dixon J of the conditional settlement of the Claims relating to the subject matter of the Released Matters and seek orders adjourning the Non-party Costs Summons as

against Noysy and Noysue pending satisfaction of the conditions precedent in clause 2 of this Deed.

- 6.2 With 7 days of release of the Settlement Sum to the SPR in accordance with clause 4.2, the SPR must seek orders dismissing the Non-party Costs Summons as against Noysy and Noysue with no order as to costs.
- 6.3 Upon satisfaction of the conditions precedent in clause 2.1 each Party must bear its own costs of and incidental to the Released Matters.

7. Bar to further proceedings

- 7.1 This Deed may be pleaded as full and complete defence by a Party to any Claim brought by the other Party relating to the subject matter of the Released Matters, other than in relation to the obligations created under this Deed.
- 7.2 The production of this Deed in any court constitutes a bar against the issue or continuation of legal proceedings against the Parties in respect of the subject matter of the Released Matters, other than in relation to the obligations created under this Deed.

8. Binding effect of this Deed

- 8.1 This Deed binds the Parties and any executor, administrator, transferee, assignee, liquidator or trustee in bankruptcy appointed in respect of it.
- 8.2 This Deed does not become legally binding upon any Party until every Party has executed a counterpart and copies of all counterparts have been exchanged between all Parties.

9. Default

If the Settlement Sum is not released to the SPR in accordance with clause 4.2 above, Noysy and Noysue acknowledge and agree that:

- 9.1 BSL and the SPR will be entitled to immediately commence proceedings against them for breach of this Deed and enter judgment against them for:
- 9.1.1 the total amount of the Settlement Sum (less any payments received towards the Settlement Sum);
 - 9.1.2 interest from the date of the default until the date of judgment calculated at the rate prescribed under the *Penalty Interest Rates Act 1983* (Vic); and
 - 9.1.3 the costs of BSL and the SPR in commencing proceedings and applying for and entering that judgment on an indemnity basis;
- 9.2 in the event that BSL and the SPR take steps pursuant to clause 9.1, they consent to Banksia and the SPR commencing such proceedings and to the entry of judgment against them for the amount owing under clause 9.1; and
- 9.3 the filing of an affidavit deposed by the SPR:
- 9.3.1 as to the default in payment of the Settlement Sum;
 - 9.3.2 as to the amount of the Settlement Sum and any payments made towards the Settlement Sum, as at the date of specific in the affidavit; and

9.3.3 exhibiting a copy of this Deed,

will be irrevocable proof that the amount owing under clause 9.1 is due and payable by them.

10. Warranty

Each Party warrants that:

- 10.1 they have full power and authority to enter into and perform this Deed;
- 10.2 the matters set out in this Deed are true and accurate;
- 10.3 they have entered into this Deed freely and voluntarily;
- 10.4 it has taken independent legal advice as to the nature, effect and extent of this Deed;
- 10.5 no other Party has made any promise, representation or inducement or been party to any conduct material to the decision to enter into this Deed other than as set out in this Deed;
- 10.6 they are aware that the SPR is relying upon these warranties;
- 10.7 any information they have provided to the SPR and/or his solicitors in relation to their financial position and capacity to pay the Remitter Judgment, including the Statutory Declarations, is accurate, complete and not misleading in any material respect; and
- 10.8 they accept this Deed as fair and reasonable in the circumstances.

11. Governing law

This Deed is governed by the law applying in Victoria and the Parties submit to the non-exclusive jurisdiction of the courts of Victoria.

12. Interpretation

12.1 Words and headings

In this Deed, unless expressed to the contrary:

- 12.1.1 words denoting the singular include the plural and vice versa;
- 12.1.2 the word 'includes' in any form is not a word of limitation;
- 12.1.3 where a word or phrase is defined, another part of speech or grammatical form of that word or phrase has a corresponding meaning;
- 12.1.4 headings and sub-headings are for ease of reference only and do not affect the interpretation of this Deed; and
- 12.1.5 no rule of construction applies to the disadvantage of the Party preparing this Deed on the basis that it prepared or put forward this Deed or any part of it.

12.2 Specific references

In this Deed, unless expressed to the contrary, a reference to:

- 12.2.1 a gender includes all other genders;
- 12.2.2 any legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced and includes any subordinate legislation issued under it;
- 12.2.3 any document (such as a deed, agreement or other document) is to that document (or, if required by the context, to a part of it) as amended, novated, substituted or supplemented at any time;
- 12.2.4 writing includes writing in digital form;
- 12.2.5 'this Deed' is to this Deed as amended from time to time;
- 12.2.6 'A\$', '\$', 'AUD' or 'dollars' is a reference to Australian dollars;
- 12.2.7 a clause, schedule or attachment is a reference to a clause, schedule or attachment in or to this Deed;
- 12.2.8 any property or assets of a person includes the legal and beneficial interest of that person of those assets or property, whether as owner, lessee or lessor, licensee or licensor, trustee or beneficiary or otherwise;
- 12.2.9 a person includes a firm, partnership, joint venture, association, corporation or other body corporate;
- 12.2.10 a person includes the legal personal representatives, successors and permitted assigns of that person, and in the case of a trustee, includes any substituted or additional trustee; and
- 12.2.11 any body (**Original Body**) which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the Original Body.

13. General

13.1 Variation

This Deed may only be varied by a document executed by the Parties.

13.2 Entire agreement and no reliance

13.2.1 This Deed:

- (a) constitutes the entire agreement between the Parties; and
- (b) supersedes and cancels any contract, deed, arrangement, related condition, collateral arrangement, condition, warranty, indemnity or representation imposed, given or made by a Party (or an agent of a Party) prior to entering into this Deed.

13.2.2 The Parties acknowledge that in entering into this Deed, each Party has not relied on any representations made by the other Party (or its agents or employees) other than matters expressly set out in this Deed.

13.3 Liability

If a Party consists of 2 or more people or entities, an obligation of that Party binds each of them jointly and severally.

13.4 **Severability**

13.4.1 Any provision of this Deed that is held to be illegal, invalid, void, voidable or unenforceable must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.

13.4.2 If it is not possible to read down a provision as required by this clause, part or all of the clause of this Deed that is unlawful or unenforceable will be severed from this Deed and the remaining provisions continue in force.

13.5 **Waiver**

The failure of a Party at any time to insist on performance of any provision of this Deed is not a waiver of the Party's right at any later time to insist on performance of that or any other provision of this Deed.

13.6 **Further assurance**

Each Party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Deed, including clause 2.1 and clause 2.2 and the conditions precedent in clause 3.

13.7 **Survival and enforcement of indemnities**

13.7.1 Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the Parties and survives termination of this Deed.

13.7.2 It is not necessary for a Party to incur expense or make payment before enforcing a right of indemnity conferred by this Deed.

13.8 **No merger**

The warranties, undertakings, agreements and continuing obligations in this Deed do not merge on completion of the transactions contemplated by this Deed.

13.9 **Business Day**

If a payment or other act is required by this Deed to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.

13.10 **Legal costs and expenses**

Each Party must pay its own legal costs and other expenses for the negotiation, preparation and execution of this Deed and related documents, unless expressly stated otherwise. For the avoidance of doubt, the SPR's costs are costs in the special purpose receivership of BSL.

13.11 **No assignment without consent**

A Party must not, without the prior written consent of the other Party:

13.11.1 assign or novate this Deed;

13.11.2 transfer any right or obligation arising from this Deed;

13.11.3 mortgage, charge, create a security interest (as defined in s 51A of the Corporations Act) over, allow a security interest to exist over, or otherwise encumber any benefit arising from this Deed; or

13.11.4 subcontract the performance of any of its obligations under this Deed.

13.12 **Time of the essence**

Time is of the essence for all time-based obligations under this Deed.

Schedule 1 Parties

Name:	Banksia Securities Limited ACN 004 736 458 (Special Purpose Receive Appointed) (In Liquidation)
Address:	C/- Maddocks Lawyers, Collins Square, Tower 2, Level 25, 727 Collins Street, Melbourne VIC 3008
Email:	sam.kingston@maddocks.com.au
Short name:	BSL
Name:	John Ross Lindholm
Address:	C/- Maddocks Lawyers, Collins Square, Tower 2, Level 25, 727 Collins Street, Melbourne VIC 3008
Email:	sam.kingston@maddocks.com.au
Short name:	SPR
Name:	Peter Damien McCluskey
Address:	C/- Maddocks Lawyers, Collins Square, Tower 2, Level 25, 727 Collins Street, Melbourne VIC 3008
Email:	sam.kingston@maddocks.com.au
Short name:	Former SPR
Name:	Norman John O'Bryan
Address:	C/- Hope & Co Lawyers, Level 4, 91 William Street, Melbourne VIC 3000
Email:	david.hope@hopeco.com.au
Short name:	Mr O'Bryan
Name:	Paul Cook in his capacity as trustee of the Bankrupt Estate of Norman John O'Bryan
Address:	C/- Paul Cook & Associates, 105 Macquarie Street, Hobart Tasmania 7000
Email:	p-cook@pco-asm.au <i>Deloitte Financial Advisory 68/27 Elizabeth P. COOK @ Deloitte.com.au</i>
Short name:	O'Bryan's Trustee
Name:	Noysue Pty Limited ACN 167 179 044
Address:	C/- Hope & Co Lawyers, Level 4, 91 William Street, Melbourne VIC 3000
Email:	david.hope@hopeco.com.au
Short name:	Noysue
Name:	Noysy Pty Limited ACN 061 266 475
Address:	C/- Hope & Co Lawyers, Level 4, 91 William Street, Melbourne VIC 3000
Email:	david.hope@hopeco.com.au
Short name:	Noysy



Executed by the Parties as a deed

Executed by **Banksia Securities Limited ACN 004 736 458 (Special Purpose Receiver Appointed) (In Liquidation)** by being signed, sealed and delivered by John Ross Lindholm, in the presence of:

.....
Signature

Ann
.....
Witness

Signed sealed and delivered by **John Ross Lindholm** in the presence of:

.....
Signature

Ann
.....
Witness

Signed sealed and delivered by **Peter Damien McCluskey** in the presence of:

.....
Signature

.....
Witness

Signed sealed and delivered by **Norman John O'Bryan** in the presence of:

.....
Signature

.....
Witness

Executed as a deed by **Noysue Pty Ltd ACN 167 179 044** in accordance with s 127(1) and s 127(3) of the *Corporations Act 2001*:

.....
Signature of Sole Director and Sole Company Secretary

.....
Print full name

Executed by the Parties as a deed

Executed by **Banksia Securities Limited ACN 004 736 458 (Special Purpose Receiver Appointed) (In Liquidation)** by being signed, sealed and delivered by John Ross Lindholm, in the presence of:

Signature

Witness

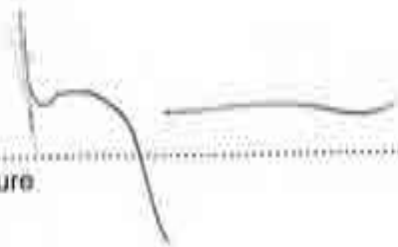
Signed sealed and delivered by **John Ross Lindholm** in the presence of:

Signature

Witness

Signed sealed and delivered by **Peter Damien McCluskey** in the presence of:

Signature



Witness **TADDEO ZANGA**

Signed sealed and delivered by **Norman John O'Bryan** in the presence of:

Signature

Witness

Executed as a deed by **Noysue Pty Ltd ACN 167 179 044** in accordance with s 127(1) and s 127(3) of the *Corporations Act 2001*:

Signature of Sole Director and Sole Company Secretary

Print full name

Executed by the Parties as a deed

Executed by Banksia Securities Limited ACN 004 736 458 (Special Purpose Receiver Appointed) (In Liquidation) by being signed, sealed and delivered by John Ross Lindholm, in the presence of:

Signature

Witness

Signed sealed and delivered by John Ross Lindholm in the presence of:

Signature

Witness

Signed sealed and delivered by Peter Damien McCluskey in the presence of:

Signature

Witness

Signed sealed and delivered by Norman John O'Bryan in the presence of:

Signature



Witness

Executed as a deed by Noysue Pty Ltd ACN 167 179 044 in accordance with s 127(1) and s 127(3) of the Corporations Act 2001:

Signature of Sole Director and Sole Company Secretary

SUSAN MARLENE NOY

Print full name

Executed as a deed by Noisy Pty Ltd ACN 061 266)
475 in accordance with s 127(1) and s 127(3) of the)
Corporations Act 2001.)

Susan M Noy

Signature of Sole Director and Sole Company Secretary

SUSAN MARLENE NOY

Print full name

Signed, sealed and delivered by Paul Cook in his)
capacity as trustee of the Bankrupt Estate of)
Norman John O'Bryan in the presence of.)

Signature of Paul Cook

Signature of witness:

Print full name of witness



Executed as a deed by Noisy Pty Ltd ACN 061 266 }
475 in accordance with s 127(1) and s 127(3) of the }
Corporations Act 2001 }

Signature of Sole Director and Sole Company Secretary

Print full name

Signed, sealed and delivered by Paul Cook in his }
capacity as trustee of the Bankrupt Estate of }
Norman John O'Bryan in the presence of: }


Signature of Paul Cook


Signature of witness

Josune Gay Cook
Print full name of witness

Retired
Hobart, Tasmania

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
IN THE COURT OF APPEAL
CIVIL DIVISION

S EAPCI 2023 0090

BETWEEN

NORMAN O'BRYAN

Applicant

and

JOHN ROSS LINDHOLM IN HIS CAPACITY AS SPECIAL PURPOSE
RECEIVER OF BANKSIA SECURITIES LTD) (RECEIVERS AND
MANAGERS APPOINTED) (IN LIQUIDATION)

Respondent

ORDER OF THE COURT OF APPEAL

JUDICIAL REGISTRAR: Judicial Registrar Pedley

DATE MADE: 13 October 2023

ORIGINATING PROCESS: Application for leave to appeal.

HOW OBTAINED: On the papers.

ATTENDANCE: No attendance.

- OTHER MATTERS:
1. On 31 July 2023, the Honourable Justice John Dixon delivered reasons for judgment on various applications in Trial Division proceeding S CI 2012 07185: *Lindholm v Elliott & Ors* [2023] VSC 442 ('Judgment'). Among other things, it addressed:
 - (a) the respondent's application, by an amended summons filed 8 December 2021, for costs orders against various non-parties – his Honour's order on that application was made on 1 March 2023; and
 - (b) the respondent's application, by an amended summons filed 2 June 2023, for approval of settlements with the applicant and others – his Honour's order on that application was made on 31 July 2023.



2. The application for leave to appeal in this proceeding was filed on 4 September 2023. In it, the applicant states that he seeks to challenge various findings against him in the Judgment. Also on 4 September 2023, the applicant filed an application other than for leave to appeal by which he applies for various documents to be ‘admitted into evidence on the appeal’.
3. On 21 September 2023, the respondent filed a notice of objection to competency pursuant to r 64.33(1) of the *Supreme Court (General Civil Procedure) Rules 2015*. Pursuant to r 64.33(2), the applicant must therefore establish the competency of the application for leave to appeal.
4. As contemplated by r 64.33(3), the respondent states in the notice that they apply for the question of competency to be heard and determined before the hearing of the appeal. The respondent also states that the question of competency should be heard and determined before they are required to respond to the materials filed by the applicant.
5. Having regard to the issues raised by the grounds of objection stated in the respondent’s notice, the Court considers it appropriate for the question of competency to be determined before the respondent is required to file any response to either the application for leave to appeal or application other than for leave to appeal.
6. By email from the registry on 27 September 2023, the parties were invited to comment on a proposed order. The applicant and respondent responded on 28 September 2023 and 11 October 2023 respectively. Among other things:
 - (a) the applicant contends that the notice of objection to competency does not satisfy the requirement of r 64.33 to state ‘specifically’ the grounds of objection, that the respondent should therefore put on submissions in support of the notice first, and that he (the applicant) will be able to respond within one month;



- (b) the respondent advised that they have ‘refined’ the notice of objection to competency and seek leave to file an amended notice, that they intend to apply for security for costs, and that they intend to apply for summary judgment and/or a stay of the application for leave to appeal.

7. This order:

- (a) extends the time for the respondent to file responses to the application for leave to appeal and application other than for leave to appeal to a date to be fixed; and
- (b) sets a timetable for the respondent to file an amended notice of objection to competency, any application for security for costs, and any application for summary judgment and/or a stay of the application for leave to appeal, and for steps to prepare those for determination.

THE COURT OF APPEAL ORDERS THAT:

1. The time for the respondent to file any material in response to the applicant’s application for leave to appeal and application other than for leave to appeal is extended to a date to be fixed.
2. The respondent has leave to file and serve an amended notice of objection to competency (both marked-up and clean versions) by 4:00 pm on 18 October 2023.
3. The respondent must file and serve any application for:
 - (a) security for costs; and/or
 - (b) summary judgment and/or a stay of the application for leave to appeal (‘summary judgment / stay’),
 (in the form of an application other than for leave to appeal in accordance with Form 64B) by 4:00 pm on 1 November 2023.
4. The respondent must, on the question of competency of the application for leave to appeal and in support of any application for security for costs and/or summary judgment / stay, file and serve by 4:00 pm on 1 November 2023:
 - (a) submissions of no more than 15 pages;
 - (b) any affidavit relied upon; and
 - (c) a list of authorities with pinpoint references.



5. The applicant must, on the question of competency and in response to any application for security for costs and/or summary judgment / stay, file and serve by 4:00 pm on 29 November 2023:
 - (a) in relation to any application for security for costs and/or or summary judgment / stay, either a notice of opposition in accordance with Form 64D or a notice of intention not to respond or contest in accordance with Form 64E;
 - (b) submissions of no more than 15 pages;
 - (c) any affidavit relied upon; and
 - (d) a list of authorities with pinpoint references.
6. Costs are reserved.

DATE AUTHENTICATED: 13 October 2023

PROTHONOTARY





Rule 64.33

FORM 64H

**IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
IN THE COURT OF APPEAL**

Case: S EAPCI 2023 0090

Filed on: 18/10/2023 03:09 PM

File No. S APCI 2023 0090

BETWEEN

NORMAN O'BRYAN

Applicant

and

**JOHN ROSS LINDHOLM in his capacity as special purpose receiver of
Banksia Securities Limited (receivers and managers appointed) (in
liquidation)**

Respondent

AMENDED NOTICE OF OBJECTION TO COMPETENCY

*Filed pursuant to the orders of Judicial Registrar Pedley dated 13
October 2023*

Date of document: 18 October 2023

Filed on behalf of: The Respondent

Prepared by:

Maddocks

Collins Square, Tower 2

Level 25, 727 Collins Street

Melbourne VIC 3008

DX 259 Melbourne

Tel: (03) 9258 3555

Fax: (03) 9258 3666

Ref:STK:MZG:6207696

Attention: Sam Kingston

E-mail address: sam.kingston@maddocks.com.au

TO: the Registrar

AND TO the Applicant

The Respondent objects to the competency of Appeal.

Grounds:

1A. The appeal is incompetent because it is not an appeal from a judgment, order or ruling of the Court.

1B. The Applicant does not have standing to bring the appeal because:

- a) he is not a party to, or bound by, the orders to which the impugned findings relate; and/or
- b) he is not aggrieved or prejudicially affected by, or has a sufficient interest in, the orders made by the Court.

2. The Applicant is precluded from maintaining this Application by virtue of the operation of a deed of settlement and release signed by the Applicant and Respondent on 27 March 2023, a copy of which is annexed as **Attachment A** to this notice.

Further, the Respondent applies for the question of competency to be heard and determined before the hearing of the appeal and before any written response is required by Respondent to the written materials filed by the Applicant.

Date: 18 October 2023

Maddocks

Signed

Maddocks

For the Respondent



Maddocks

Lawyers
Collins Square, Tower Two
Level 25, 727 Collins Street
Melbourne VIC 3008
Australia

Telephone 61 3 9258 3555
Facsimile 61 3 9258 3666

info@maddocks.com.au
www.maddocks.com.au

DX 259 Melbourne

Deed of Settlement and Release

**Banksia Securities Limited ACN 004 736 458 (Special Purpose Receiver Appointed)
(In Liquidation)
and**

The Parties Listed in Schedule 1

Deed of Settlement and Release

Dated 27 March 2023

Parties

The Parties listed in schedule 1.

Background

- A. On 24 December 2012, the Bolitho Proceeding was commenced against, inter alia, BSL. The Bolitho Proceeding is as group proceeding for the purposes of Part 4A of the *Supreme Court Act 1986 (Vic)*.
- B. On 24 June 2014, the SPR and Former SPR were appointed as joint and several liquidators of BSL.
- C. By orders made in the Supreme Court of New South Wales on 30 September 2015 and 29 February 2016, the SPR and the Former SPR were appointed as special purpose receivers of certain assets of BSL.
- D. On 16 December 2019, Mr McCluskey resigned as liquidator and special purpose receiver of BSL.
- E. On 1 November 2018, the Victorian Court of Appeal delivered its judgment in the Botsman Appeal. The Court of Appeal remitted (i) the approval of the funding commission claimed by AFP and (ii) legal costs and other expenses incurred in the Bolitho Proceeding, to the Trial Division of the Supreme Court of Victoria as the Remitter. The Remitter was heard by the Honourable Justice John Dixon.
- F. On 13 November 2019, AFP, two of the Counsel who appeared in the Bolitho Proceeding, Mr O'Bryan and Mr Michael Symons, and the solicitor who was representing Mr Bolitho and his firm, Mr Antony Zita and Portfolio Law, were joined as parties to the Remitter.
- G. The trial of the Remitter commenced on 27 July 2020.
- H. On 3 and 6 August 2020, Mr O'Bryan and Mr Symons respectively ceased taking steps to defend the Remitter.
- I. On 18 August 2020, the SPR filed the Non-Party Costs Summons in the Remitter seeking orders that the Non-Parties pay the SPR's and Contradictor's costs of the Remitter on an indemnity basis.
- J. On 11 October 2021, Dixon J delivered the Remitter Judgment and ordered that the Defendants must jointly and severally pay the Compensation Component and the Costs Component to the SPR.
- K. On 30 October 2021, Mr O'Bryan became bankrupt and the O'Bryan Trustee was appointed as trustee of his bankrupt estate.
- L. On and from the Operative Date, the SPR and O'Bryan Entities have agreed to resolve all Claims arising out of or in relation to the Released Matters on the terms set out in this Deed.

At the time of execution of this Deed all Claims against the Non-Settling Parties remain unresolved.

- M. The O'Bryan Trustee enters into this Deed to give effect to the releases and transactions contemplated insofar as they relate to the interests of Mr O'Bryan or his bankrupt estate.

This Deed Witnesses

1. Definitions

In addition to the party short names identified in Schedule 1, in this Deed:

AFP means Australian Funding Partners Pty Ltd (in liq).

Bolitho Proceeding means proceeding SCI 2012 7185 in the Supreme Court of Victoria, including for the avoidance of doubt the Remitter.

Botsman Appeal means proceeding S APCI 2018 0037, being an appeal of the approval of the settlement with Trust Co.

Business Day means a day other than a Saturday, Sunday or public holiday in Melbourne, Victoria.

Claim means any claim, allegation, debt, cause of action, liability, proceeding or demand of any nature however it arises and whether it is present or future, fixed or unascertained, actual or contingent (whether or not the facts, matters or circumstances giving rise to that claim are known to that person or to any other person at the date of this Deed) and whether at law, in equity, under statute or otherwise.

Committee means BSL's Committee of Debenture Holders.

Compensation Component means the amount of compensation ordered to be paid by the Defendants in the Remitter Judgment amounting to \$11,700,127.

Corporations Act means the *Corporations Act 2001* (Cth).

Costs Component means the costs ordered to be paid by the Defendants in the Remitter Judgment in relation to the SPR's costs of the Botsman Appeal and the SPR's and contradictor's costs of the Remitter.

Court means the Supreme Court of Victoria or Supreme Court of New South Wales.

Decoland means Decoland Holdings Pty Ltd.

Deed means this deed of settlement and release executed by the Parties.

Defendants mean AFP, Mr O'Bryan, Mr Symons, Mr Zita and Portfolio Law, Mr Alexander Elliott and Katrina Peiros.

Elliott Entities means AFP, Mr Alexander Elliott, Max Elliott, Elliott Legal, MCM and Decoland.

Elliott Legal means Elliott Legal Pty Ltd.

Elliott Non-parties means Max Elliott, Elliott Legal, MCM and Decoland.

Hope & Co Trust Account means

Hope & Co Lawyers Law Practice Trust Account

BSB: 033-003
Account: 593885
Bank: Westpac

Katrina Peiros means Ms Katrina Peiros in her capacity as the executor of the deceased estate of Mr Peter Trimbos.

LPLC means Legal Practitioners Liability Commission.

Max Elliott means Mr Maximilian Elliott in his capacity as executor of the deceased estate of Mr Mark Edward Elliott.

McKenzie Proceeding means proceeding S CI 2015 01385 commenced in the Supreme Court of Victoria.

MCM means MCM (Mount Buller) Developments Pty Ltd.

Nominated Account means:

Maddocks – Law Practice Trust Account (Melbourne)
BSB: 183-334
Account: 304700040
Swift Code: MACQAU2S
Bank: Macquarie Bank Limited
Branch: 101 Collins Street Melbourne VIC
Reference: STK:MZG:6207696

Non-parties mean the Max Elliott, Elliott Legal, Decoland Holdings, MCM, Noysue and Noysy.

Non-party Costs Summons mean the summons filed by the SPR on 18 August 2020, as amended on 8 December 2021.

Non-Settling parties means, collectively, Mr Zita, Portfolio Law, Mr Symons, Katrina Peiros, the LPLC or the Elliott Entities.

O'Bryan Entities means Mr O'Bryan, the O'Bryan Trustee, Noysue and Noysy.

Officer has the meaning given in the Corporations Act.

Operative Date means 14 days from the date of this Deed.

Parties means the Parties to this Deed and Party has a corresponding meaning.

Portfolio Law means Portfolio Law Pty Ltd.

Remitter means the remittal from the Court of Appeal of the approval of the commission claimed by AFP and legal costs in the Bolitho Proceeding arising from the settlement with Trust Co back to the trial division of the Supreme Court of Victoria.

Remitter Judgment means the judgment in *Bolitho v Banksia Securities Limited (No 18) (Remitter)* [2021] VSC 666.

Related Entity of any Party (including an individual) includes all of the entities identified in the definition of Related Entity in s 9 of the Act.

Released Matters means all claims relating or incidental to the:

- a) Bolitho Proceeding;
- b) Botsman Appeal;

- c) Remitter;
- d) Remitter Judgment;
- e) Trust Co Proceeding;
- f) McKenzie Proceeding; and
- g) Non-party Costs Summons.

Settlement Approval Orders means orders made by the Court approving the settlement of the Claims against the O'Bryan Entities on the terms of this Deed.

Settlement Sum means \$1,250,000.

Statutory Declarations means:

- a) the statutory declaration of Susan Marlene Noy declared on 12 December 2022 in relation to the assets and liabilities of Noysy; and
- b) the statutory declaration of Susan Marlene Noy declared on 12 December 2022 in relation to the assets and liabilities of Noysue.

Trust Co means the Trust Company (Nominees) Limited.

Trust Co Proceeding means proceeding S CI 2015 01384 commenced in the Supreme Court of Victoria.

1.1 Interpretation

In this Deed, except where the context otherwise requires:

- 1.1.1 the singular includes the plural and vice versa, and a gender includes other genders;
- 1.1.2 another grammatical form of a defined word or expression has a corresponding meaning;
- 1.1.3 a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Deed, and a reference to this Deed includes any schedule or annexure;
- 1.1.4 a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- 1.1.5 a reference to time is to Melbourne, Australia time;
- 1.1.6 a reference to a party is to a party to this Deed, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- 1.1.7 a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- 1.1.8 the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions; and
- 1.1.9 a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Deed or any part of it.

1.2 **Headings**

Headings are for ease of reference only and do not affect interpretation.

2. **Operative Date**

2.1 Other than clause 6.1 of this Deed, this Deed will become effective on and from the Operative Date.

2.2 The Parties acknowledge and agree that:

2.2.1 if the SPR and the O'Bryan Entities have agreed to settle any Claims against any of the Non-Settling Parties prior to the Operative Date, this Deed will be superseded and of no further effect on and from execution of a further settlement deed on terms satisfactory to the SPR and the O'Bryan Entities;

2.2.2 any further settlement deed will be on the same terms as this Deed insofar as it involves the SPR and the O'Bryan Entities and the subject matter of this Deed; and

2.2.3 if no further settlement deed is executed by the Operative Date, this Deed will become effective.

3. **Conditions precedent**

This Deed is subject to and conditional upon each of the following conditions being satisfied:

3.1 within 7 days of the Operative Date, the O'Bryan Entities paying the Settlement Sum to the Hope & Co Trust Account;

3.2 the SPR receiving the approval of the Committee to settle the Claims against the O'Bryan Entities on the terms of this Deed;

3.3 the making of the Settlement Approval Orders; and

3.4 if the Settlement Approval Orders are made:

3.4.1 any appeal period in respect of the Settlement Approval Orders (whether under the rules of the Court, the Court of Appeal, or the High Court) expiring without an appeal being commenced; and/or

3.4.2 in circumstances where an appeal(s) is commenced, or application for special leave is made, in respect of the Settlement Approval Orders, that appeal(s) being finally determined (including any determination in respect of that appeal(s) by the High Court) or the application for special leave refused, the result of which is that the Settlement Approval Orders are made or confirmed.

4. **Settlement Sum**

4.1 **Investment of the Settlement Sum**

The O'Bryan Entities, the SPR and BSL authorise Hope & Co to transfer the Settlement Sum into an interest bearing trust account in the name of Hope & Co to be held pending the satisfaction of the conditions in clauses 3.2 to 3.4 of this Deed.

4.2 **Release on satisfaction of conditions precedent**

Within 7 days of the satisfaction of the conditions precedent in clause 2, the Settlement Sum and any interest is to be paid to the Nominated Account.

4.3 **Return on failure of conditions precedent**

If any of the conditions precedent in clause 2 are not satisfied or waived by the Parties in writing, the O'Bryan Entities, the SPR and BSL authorise Hope & Co to return the Settlement Sum and any interest to the O'Bryan Entities.

5. **Releases**

Release by BSL and the SPR

5.1 On and from release of the Settlement Sum to the SPR in accordance with clause 4.2, BSL and the SPR agree to:

- 5.1.1 release and discharge the O'Bryan Entities and their Related Entities from all Claims relating to the subject matter of the Released Matters; and
- 5.1.2 not commence or maintain any Claim against the O'Bryan Entities relating to the subject matter released in clause 5.1.1 (with the exception of a claim or action for breach or enforcement of this Deed).

5.2 For the avoidance of doubt, the release in clause 5.1 of this Deed does not extend to or prejudice to any Claims made or available to BSL or the SPR against the Non-Settling Parties in relation to the Released Matters.

Release by the O'Bryan Entities

5.3 On and from release of the Settlement Sum to the SPR in accordance with clause 4.2, the O'Bryan Entities and the O'Bryan Trustee agree to:

- 5.3.1 release and discharge BSL, the SPR, the Former SPR, and their Related Entities from all Claims relating to the subject matter of the Released Matters; and
- 5.3.2 not commence or maintain any Claim against BSL, the SPR, the Former SPR, and their Related Entities relating to the subject matter released in clause 5.3.1 (with the exception of a claim or action for breach or enforcement of this Deed).

Proof of debt in Mr O'Bryan's bankrupt estate

5.4 To the extent that any Claim released under clause 5.1 has been admitted to proof by the O'Bryan Trustee, on and from release of the Settlement Sum to the SPR in accordance with clause 4.2 the SPR consents to the revocation by the O'Bryan Trustee of their decision to admit such Claim to proof.

6. **Disposal of Proceeding**

6.1 Within 7 days of execution of this Deed, the SPR, Noisy and Noysue must notify the Associate to Dixon J of the conditional settlement of the Claims relating to the subject matter of the Released Matters and seek orders adjourning the Non-party Costs Summons as

against Noysy and Noysue pending satisfaction of the conditions precedent in clause 2 of this Deed.

- 6.2 With 7 days of release of the Settlement Sum to the SPR in accordance with clause 4.2, the SPR must seek orders dismissing the Non-party Costs Summons as against Noysy and Noysue with no order as to costs.
- 6.3 Upon satisfaction of the conditions precedent in clause 2.1 each Party must bear its own costs of and incidental to the Released Matters.

7. Bar to further proceedings

- 7.1 This Deed may be pleaded as full and complete defence by a Party to any Claim brought by the other Party relating to the subject matter of the Released Matters, other than in relation to the obligations created under this Deed.
- 7.2 The production of this Deed in any court constitutes a bar against the issue or continuation of legal proceedings against the Parties in respect of the subject matter of the Released Matters, other than in relation to the obligations created under this Deed.

8. Binding effect of this Deed

- 8.1 This Deed binds the Parties and any executor, administrator, transferee, assignee, liquidator or trustee in bankruptcy appointed in respect of it.
- 8.2 This Deed does not become legally binding upon any Party until every Party has executed a counterpart and copies of all counterparts have been exchanged between all Parties.

9. Default

If the Settlement Sum is not released to the SPR in accordance with clause 4.2 above, Noysy and Noysue acknowledge and agree that:

- 9.1 BSL and the SPR will be entitled to immediately commence proceedings against them for breach of this Deed and enter judgment against them for:
- 9.1.1 the total amount of the Settlement Sum (less any payments received towards the Settlement Sum);
 - 9.1.2 interest from the date of the default until the date of judgment calculated at the rate prescribed under the *Penalty Interest Rates Act 1983* (Vic); and
 - 9.1.3 the costs of BSL and the SPR in commencing proceedings and applying for and entering that judgment on an indemnity basis;
- 9.2 in the event that BSL and the SPR take steps pursuant to clause 9.1, they consent to Banksia and the SPR commencing such proceedings and to the entry of judgment against them for the amount owing under clause 9.1; and
- 9.3 the filing of an affidavit deposed by the SPR:
- 9.3.1 as to the default in payment of the Settlement Sum;
 - 9.3.2 as to the amount of the Settlement Sum and any payments made towards the Settlement Sum, as at the date of specific in the affidavit; and

9.3.3 exhibiting a copy of this Deed,

will be irrevocable proof that the amount owing under clause 9.1 is due and payable by them.

10. Warranty

Each Party warrants that:

- 10.1 they have full power and authority to enter into and perform this Deed;
- 10.2 the matters set out in this Deed are true and accurate;
- 10.3 they have entered into this Deed freely and voluntarily;
- 10.4 it has taken independent legal advice as to the nature, effect and extent of this Deed;
- 10.5 no other Party has made any promise, representation or inducement or been party to any conduct material to the decision to enter into this Deed other than as set out in this Deed;
- 10.6 they are aware that the SPR is relying upon these warranties;
- 10.7 any information they have provided to the SPR and/or his solicitors in relation to their financial position and capacity to pay the Remitter Judgment, including the Statutory Declarations, is accurate, complete and not misleading in any material respect; and
- 10.8 they accept this Deed as fair and reasonable in the circumstances.

11. Governing law

This Deed is governed by the law applying in Victoria and the Parties submit to the non-exclusive jurisdiction of the courts of Victoria.

12. Interpretation

12.1 Words and headings

In this Deed, unless expressed to the contrary:

- 12.1.1 words denoting the singular include the plural and vice versa;
- 12.1.2 the word 'includes' in any form is not a word of limitation;
- 12.1.3 where a word or phrase is defined, another part of speech or grammatical form of that word or phrase has a corresponding meaning;
- 12.1.4 headings and sub-headings are for ease of reference only and do not affect the interpretation of this Deed; and
- 12.1.5 no rule of construction applies to the disadvantage of the Party preparing this Deed on the basis that it prepared or put forward this Deed or any part of it.

12.2 Specific references

In this Deed, unless expressed to the contrary, a reference to:

- 12.2.1 a gender includes all other genders;
- 12.2.2 any legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced and includes any subordinate legislation issued under it;
- 12.2.3 any document (such as a deed, agreement or other document) is to that document (or, if required by the context, to a part of it) as amended, novated, substituted or supplemented at any time;
- 12.2.4 writing includes writing in digital form;
- 12.2.5 'this Deed' is to this Deed as amended from time to time;
- 12.2.6 'A\$', '\$', 'AUD' or 'dollars' is a reference to Australian dollars;
- 12.2.7 a clause, schedule or attachment is a reference to a clause, schedule or attachment in or to this Deed;
- 12.2.8 any property or assets of a person includes the legal and beneficial interest of that person of those assets or property, whether as owner, lessee or lessor, licensee or licensor, trustee or beneficiary or otherwise;
- 12.2.9 a person includes a firm, partnership, joint venture, association, corporation or other body corporate;
- 12.2.10 a person includes the legal personal representatives, successors and permitted assigns of that person, and in the case of a trustee, includes any substituted or additional trustee; and
- 12.2.11 any body (**Original Body**) which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the Original Body.

13. General

13.1 Variation

This Deed may only be varied by a document executed by the Parties.

13.2 Entire agreement and no reliance

13.2.1 This Deed:

- (a) constitutes the entire agreement between the Parties; and
- (b) supersedes and cancels any contract, deed, arrangement, related condition, collateral arrangement, condition, warranty, indemnity or representation imposed, given or made by a Party (or an agent of a Party) prior to entering into this Deed.

13.2.2 The Parties acknowledge that in entering into this Deed, each Party has not relied on any representations made by the other Party (or its agents or employees) other than matters expressly set out in this Deed.

13.3 Liability

If a Party consists of 2 or more people or entities, an obligation of that Party binds each of them jointly and severally.

13.4 **Severability**

13.4.1 Any provision of this Deed that is held to be illegal, invalid, void, voidable or unenforceable must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.

13.4.2 If it is not possible to read down a provision as required by this clause, part or all of the clause of this Deed that is unlawful or unenforceable will be severed from this Deed and the remaining provisions continue in force.

13.5 **Waiver**

The failure of a Party at any time to insist on performance of any provision of this Deed is not a waiver of the Party's right at any later time to insist on performance of that or any other provision of this Deed.

13.6 **Further assurance**

Each Party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Deed, including clause 2.1 and clause 2.2 and the conditions precedent in clause 3.

13.7 **Survival and enforcement of indemnities**

13.7.1 Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the Parties and survives termination of this Deed.

13.7.2 It is not necessary for a Party to incur expense or make payment before enforcing a right of indemnity conferred by this Deed.

13.8 **No merger**

The warranties, undertakings, agreements and continuing obligations in this Deed do not merge on completion of the transactions contemplated by this Deed.

13.9 **Business Day**

If a payment or other act is required by this Deed to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.

13.10 **Legal costs and expenses**

Each Party must pay its own legal costs and other expenses for the negotiation, preparation and execution of this Deed and related documents, unless expressly stated otherwise. For the avoidance of doubt, the SPR's costs are costs in the special purpose receivership of BSL.

13.11 **No assignment without consent**

A Party must not, without the prior written consent of the other Party:

13.11.1 assign or novate this Deed;

13.11.2 transfer any right or obligation arising from this Deed;

13.11.3 mortgage, charge, create a security interest (as defined in s 51A of the Corporations Act) over, allow a security interest to exist over, or otherwise encumber any benefit arising from this Deed; or

13.11.4 subcontract the performance of any of its obligations under this Deed.

13.12 **Time of the essence**

Time is of the essence for all time-based obligations under this Deed.

Schedule 1 Parties

Name	Banksia Securities Limited ACN 004 736 458 (Special Purpose Receive Appointed) (In Liquidation)
Address	C/- Maddocks Lawyers, Collins Square, Tower 2, Level 25, 727 Collins Street, Melbourne VIC 3008
Email	sam.kingston@maddocks.com.au
Short name	BSL
Name	John Ross Lindholm
Address	C/- Maddocks Lawyers, Collins Square, Tower 2, Level 25, 727 Collins Street, Melbourne VIC 3008
Email	sam.kingston@maddocks.com.au
Short name	SPR
Name	Peter Damien McCluskey
Address	C/- Maddocks Lawyers, Collins Square, Tower 2, Level 25, 727 Collins Street, Melbourne VIC 3008
Email	sam.kingston@maddocks.com.au
Short name	Former SPR
Name	Norman John O'Bryan
Address	C/- Hope & Co Lawyers, Level 4, 91 William Street, Melbourne VIC 3000
Email	david.hope@hopeco.com.au
Short name	Mr O'Bryan
Name	Paul Cook in his capacity as trustee of the Bankrupt Estate of Norman John O'Bryan
Address	C/- Paul Cook & Associates, 105 Macquarie Street, Hobart Tasmania 7000
Email	p-cook@pco-asm.au Deloitte Financial Advisory P.COOK@deloitte.com.au
Short name	O'Bryan's Trustee
Name	Noysue Pty Limited ACN 167 179 044
Address	C/- Hope & Co Lawyers, Level 4, 91 William Street, Melbourne VIC 3000
Email	david.hope@hopeco.com.au
Short name	Noysue
Name	Noisy Pty Limited ACN 061 266 475
Address	C/- Hope & Co Lawyers, Level 4, 91 William Street, Melbourne VIC 3000
Email	david.hope@hopeco.com.au
Short name	Noisy



Executed by the Parties as a deed

Executed by **Banksia Securities Limited ACN 004 736 458 (Special Purpose Receiver Appointed) (In Liquidation)** by being signed, sealed and delivered by John Ross Lindholm, in the presence of:

.....
Signature

Sheu.
.....
ANNELOUISE LINDHOLM
Witness

Signed sealed and delivered by **John Ross Lindholm** in the presence of:

.....
Signature

Sheu.
.....
ANNELOUISE LINDHOLM
Witness

Signed sealed and delivered by **Peter Damien McCluskey** in the presence of:

.....
Signature

.....
Witness

Signed sealed and delivered by **Norman John O'Bryan** in the presence of:

.....
Signature

.....
Witness

Executed as a deed by **Noysue Pty Ltd ACN 167 179 044** in accordance with s 127(1) and s 127(3) of the *Corporations Act 2001*:

.....
Signature of Sole Director and Sole Company Secretary

.....
Print full name

Executed by the Parties as a deed

Executed by **Banksia Securities Limited ACN 004 736 458 (Special Purpose Receiver Appointed) (In Liquidation)** by being signed, sealed and delivered by John Ross Lindholm, in the presence of:

Signature

Witness

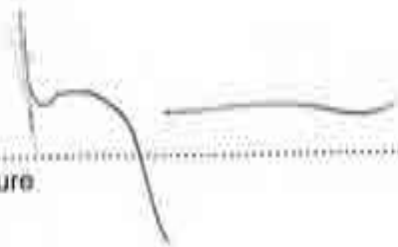
Signed sealed and delivered by **John Ross Lindholm** in the presence of:

Signature

Witness

Signed sealed and delivered by **Peter Damien McCluskey** in the presence of:

Signature



Witness **TADDEO ZANGA**

Signed sealed and delivered by **Norman John O'Bryan** in the presence of:

Signature

Witness

Executed as a deed by **Noysue Pty Ltd ACN 167 179 044** in accordance with s 127(1) and s 127(3) of the *Corporations Act 2001*:

Signature of Sole Director and Sole Company Secretary

Print full name

Executed by the Parties as a deed

Executed by Banksia Securities Limited ACN 004 736 458 (Special Purpose Receiver Appointed) (In Liquidation) by being signed, sealed and delivered by John Ross Lindholm, in the presence of:

Signature

Witness

Signed sealed and delivered by John Ross Lindholm in the presence of:

Signature

Witness

Signed sealed and delivered by Peter Damien McCluskey in the presence of:

Signature

Witness

Signed sealed and delivered by Norman John O'Bryan in the presence of:

Signature



Witness

Executed as a deed by Noysue Pty Ltd ACN 167 179 044 in accordance with s 127(1) and s 127(3) of the Corporations Act 2001:

Signature of Sole Director and Sole Company Secretary

SUSAN MARLENE NOY
Print full name

Executed as a deed by Noisy Pty Ltd ACN 061 266)
475 in accordance with s 127(1) and s 127(3) of the)
Corporations Act 2001.)

Susan M Noy

Signature of Sole Director and Sole Company Secretary

SUSAN MARLENE NOY

Print full name

Signed, sealed and delivered by Paul Cook in his)
capacity as trustee of the Bankrupt Estate of)
Norman John O'Bryan in the presence of.)

Signature of Paul Cook

Signature of witness:

Print full name of witness



Executed as a deed by Noisy Pty Ltd ACN 061 266 }
475 in accordance with s 127(1) and s 127(3) of the }
Corporations Act 2001 }

Signature of Sole Director and Sole Company Secretary

Print full name

Signed, sealed and delivered by Paul Cook in his }
capacity as trustee of the Bankrupt Estate of }
Norman John O'Bryan in the presence of: }


Signature of Paul Cook


Signature of witness

Josune Gay Cook
Print full name of witness

Retired
Hobart, Tasmania



Rules 64.03, 64.08, 64.10, 64.13, 64.38

FORM 64B

Case: S EAPCI 2023 0090

Filed on: 01/11/2023 04:02 PM

**IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
IN THE COURT OF APPEAL**

File No. S EAPCI 2023 0090

BETWEEN

NORMAN O'BRYAN

Applicant

and

JOHN ROSS LINDHOLM in his capacity as special purpose receiver of Banksia Securities Limited (receivers and managers appointed) (in liquidation)

Respondent

APPLICATION OTHER THAN FOR LEAVE TO APPEAL OR CROSS-APPEAL

Date of document: 1 November 2023

Filed on behalf of: Respondent

Prepared by:

Maddocks Lawyers

727 Collins St

MELBOURNE VIC 3008

Solicitor's Code: 230

DX: 259

Tel: (03) 9258 3555

Fax: (03) 9258 3666

Ref:STK:6207696

Attention: Sam Kingston

Email: sam.kingston@maddocks.com.au

TO: The Registrar

AND TO: The Respondent, Norman O'Bryan of 73 Hughes Road, Blairgowrie VIC 3942

I wish to apply for the following orders:

1. The application for leave to appeal be struck out as incompetent.
2. Alternatively, summary dismissal of the application for leave to appeal.
3. Alternatively to (1) and (2), orders that:

- a. the Applicant give security for the Respondent's costs of and incidental to his application for leave to appeal, and any appeal, in a sum fixed by the Court by providing security in that amount in a form satisfactory to the Prothonotary;
 - b. the Applicant's application for leave to appeal be stayed pending the provision of security; and
 - c. if the Applicant does not provide security in the time fixed by the Court for doing so, the application for leave to appeal be dismissed.
4. The Applicant pay the Respondent's costs of and incidental to this application.
 5. The Applicant pay the Respondent's costs of and incidental to the application for leave to appeal.

This application is made on the following grounds:

1. In relation to (1) above, the grounds are set out in the Respondent's Amended Form 64H Notice of Objection to Competency filed by leave on 18 October 2023.
2. In relation to (2), the application for leave to appeal has no real prospect of success.
3. In relation to (3), the Applicant is an undischarged bankrupt and is impecunious and there is a real likelihood that any costs order made in favour of the Respondent would be unsatisfied.

Date: 1 November 2023

Maddocks

Signed
Maddocks
Solicitors for the Respondent

Note:

An application other than for leave to appeal or cross-appeal must be filed with an affidavit and any additional documents required to be filed, at the time of commencing the application, by any applicable practice direction.

An application must be accompanied by the applicable filing fee.

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
IN THE COURT OF APPEAL
CIVIL DIVISION

S EAPCI 2023 0090

BETWEEN

NORMAN O'BRYAN

Applicant

and

JOHN ROSS LINDHOLM IN HIS CAPACITY AS SPECIAL PURPOSE
RECEIVER OF BANKSIA SECURITIES LTD (RECEIVERS AND
MANAGERS APPOINTED) (IN LIQUIDATION)

Respondent

ORDER OF THE COURT OF APPEAL

JUDGES: The Honourable Justice Kennedy
The Honourable Justice Walker
The Honourable Justice Macaulay

DATE MADE: 13 June 2024

ORIGINATING PROCESS: Application for leave to appeal.

HOW OBTAINED: At the hearing of the application other than for leave to
appeal.

ATTENDANCE: The applicant appeared in person.
Mr M Grady, counsel for the respondent.

OTHER MATTERS: Not applicable.

THE COURT OF APPEAL ORDERS THAT:

1. The application for leave to appeal dated 4 September 2023 is struck out.
2. The applicant pay the respondent's costs of the respondent's application other than for leave to appeal or cross-appeal dated 1 November 2023 on the standard basis.
3. The applicant pay the respondent's costs of the application for leave to appeal on the standard basis.

DATE AUTHENTICATED: 13 June 2024

PROTHONOTARY



Email Letter

Lawyers
Collins Square, Tower Two
Level 25, 727 Collins Street
Melbourne VIC 3008
Australia

Telephone 61 3 9258 3555
Facsimile 61 3 9258 3666

info@maddocks.com.au
www.maddocks.com.au

DX 259 Melbourne

From Mathew Gashi	Date 17 June 2024	
Direct 03 9258 3774	Email mathew.gashi@maddocks.com.au	
Partner Sam Kingston		
To Norman O'Bryan	Organisation	Email nobryan57@gmail.com

Our Ref STK:MZG:6207696

Dear Mr O'Bryan

**Norman O'Bryan v John Ross Lindholm in his capacity as special purpose receiver of Banksia Securities Limited (recs & mangrs appts) (in liq)
Supreme Court of Victoria – Court of Appeal Proceeding S EAPCI 2023 0090 (Appeal)**

We refer to the orders of the Court of Appeal dated 13 June 2024, and the Court's judgment in *O'Bryan v Lindholm* [2024] VSCA 130 (**Reasons**).

As you know, the Appeal has been struck out and you have been ordered to pay the SPR's costs on a standard basis (**Costs**).

The full amount of the Costs incurred by the SPR calculated on a solicitor and own client basis is \$92,849.21 inc GST, broken down as follows:

1. \$52,459.00 inc GST in professional fees (**Fees**); and
2. \$40,390.83 inc GST in outlays, including \$38,987.21 in counsel's fees (**Outlays**).

Debenture holders were put to significant expense by the SPR having to respond to the Appeal in order to preserve the findings and orders of Dixon J, and the SPR is clearly entitled to recover the Costs. Notwithstanding that you are currently an undischarged bankrupt, the SPR's entitlement to the Costs will not be released on your impending discharge given that it is not a provable debt for the purposes of your current bankruptcy.¹

In our **attached** letter dated 20 September 2023, the SPR requested that you agree to the Appeal being dismissed with no order as to costs for reasons that included that the Appeal was inconsistent with the terms of the Deed of Settlement and Release. You declined the SPR's offer on 21 September

¹ See *Bankruptcy Act 1966* (Cth), ss 82 and 153; See for example, *116 46 859 Pty Ltd (Formerly Palermo Seafoods Pty Ltd) v Menniti* [2020] FCCA 24, [17].

2023. The Reasons clearly articulate that summary judgment would have been awarded to the SPR on the basis set out in our letter if not for the Appeal otherwise being struck out.

In order to avoid further costs and the delays associated with seeking a taxation, the SPR proposes that his entitlement to recover the Costs be resolved on the following basis:

1. You agree to pay \$71,866.23 inc GST in full and final satisfaction of the Costs (**Agreed Sum**). The Agreed Sum is calculated as follows:
 - 1.1 The full amount of the Outlays (\$40,390.83 inc GST); and
 - 1.2 without any admission, an amount for the Fees that is reduced by 40% (\$31,475.40 inc GST).
2. You pay the Agreed Sum within 14 days of acceptance of this offer.
3. On and from payment of the Agreed Sum, the parties release and discharge each other from any further claims arising out of or in relation to the Appeal.

This offer is open for acceptance for 14 days, after which it will lapse and no longer be capable of acceptance.

This offer is more than reasonable, particularly as the SPR has applied a generous discount to the Fees and in circumstances where you previously declined an offer to resolve the Appeal on more favourable terms.

If this offer is not accepted, the SPR will rely on this letter in support of an application that you pay the costs of any taxation on an indemnity basis in accordance with the principles set out in *Calderbank v Calderbank* [1975] 3 All ER 333 as subsequently applied in *Hazeldene's Chicken Farm v Victorian Workcover Authority (No 2)* [2005] VSCA 298 and other Victorian cases.

To the extent necessary, this and past correspondence will be tendered on the substantive issues and in respect of the question of costs.

The SPR's rights are expressly reserved.

Yours faithfully



Sam Kingston
Partner

Email Letter

Lawyers
Collins Square, Tower Two
Level 25, 727 Collins Street
Melbourne VIC 3008
Australia

Telephone 61 3 9258 3555
Facsimile 61 3 9258 3666

info@maddocks.com.au
www.maddocks.com.au

DX 259 Melbourne

From Sam Kingston	Date 31 August 2022	
Direct 03 9258 3378	Email sam.kingston@maddocks.com.au	
To Chris Botsman	Organisation	Email cabotsman@gmail.com

Our Ref STK:6207696

Dear Mr Botsman

Bolitho v Banksia Securities Ltd (No 18) (Remitter)

We refer to our letter dated 29 July 2022, and our email dated 5 August 2022.


Please find **attached** the following:

1. orders of Justice Black dated 12 August 2022; and
2. the judgment of his Honour Justice Black in *In the matter of Banksia Securities Limited (receivers and managers appointed) (in liquidation)* [2022] NSWSC 1106 (**Directions Judgment**).

The orders confirm that the SPR is justified in rejecting the current settlement proposal received from the Contraveners and Non-parties. The SPR will continue to take all reasonable steps to resolve all outstanding claims in the Banksia Proceedings. We will continue to keep you updated on any further settlement discussions.

For the reasons outlined in paragraphs 57 and 58 of the Directions Judgment, the SPR can no longer press for any compensation payments to your mother and Mr Pitman. To the extent that Mrs Botsman continues to press for any compensation payments, she is able to pursue a private claim against the Contraveners directly, or appear at any settlement approval application to make submissions about any payments from the settlement sum.

Yours faithfully


Sam Kingston
Partner

The Associate to the Honourable Justice Dixon
Supreme Court of Victoria
Commercial Court Registry
45 Little Bourke Street
Melbourne 3000

7 September 2022

Dear Associate,

Banksia Proceedings

This is a joint letter, written on behalf of Mr Botsman and Mr Pitman.¹ As we have done throughout these proceedings,² we have been trying to promote and protect the best interests of debenture holders. Since the Remitter Judgment (**RJ**) and the 14 February 2002 settlement proposal (**Settlement Proposal**) we have written dozens of emails and letters to the SPRs. With the benefit of that correspondence and the recent hearing before Black J, we summarise the current status of efforts to secure finality for debenture holders.

From receipt of the Settlement Proposal, Messrs Botsman and Pitman have criticised the similarities with the Trust Co settlement and in particular, the fresh attempt to rely on sweeping confidentiality provisions.

1. In a 23 February 2022 letter Mr Botsman asked, rhetorically, why debenture holders should accept an offer limited to the return of *their own money* (as costs) with no payment in respect of the \$11.7m judgment (as compensation) while being afforded “no insight into the composition of the offer” (and Mr Botsman asked the SPRs whether the contraveners’ insistence on opacity sounded familiar – a clear reference to the broad confidentiality regime criticised by the Court of Appeal).³
2. In a 2 March 2022 letter Mr Botsman highlighted differences between the two settlements, noting: (a) that the present settlement is preceded by a 696 page judgment recording the most brazen fraud committed on judges and the public in Australian legal history; (b) the proponents of the Settlement Proposal were the architects of the fraud; and (c) the confidentiality that tainted the Trust Co settlement made it unlikely that a lack of transparency would be tolerated again.⁴

Mr Botsman has also criticised a perceived failure to maximise recovery under the judgment.

3. The SPRs have said that recovery will not be pursued against the enablers who “stood by, failing in their duty to protect”⁵ because recovery efforts would be “rigorously defended”. Mr Botsman has responded that: (a) if the prospect of a rigorous defence was an appropriate filter, the contradictors would have abandoned their pursuit of the contraveners; (b) the Remitter Judgment recorded the role of the enablers to an extent that practically invited

¹ Where the active voice is used, the context supplies the identity of the speaker.

² Between 2014 and 2018 Mr Botsman wrote dozens of emails and letters to insolvency practitioners and lawyers involved in the case in an effort to minimise duplication and maximise recovery.

³ A copy of the 23.02.22 letter is **Annexure A**.

⁴ A copy of the 02.03.22 letter is **Annexure B**.

⁵ RJ [3].

third-party proceedings; and (c) having regard to the judgment, it would be inappropriate to substitute their views for the concerns expressed by this Court.⁶

4. Whereas the judgment is clear that the costs of prosecuting the contravening conduct “must” be repaid in the manner that most completely compensates those that funded it,⁷ the SPRs have argued that a taxation discount is appropriate. While accepting the general proposition that costs are discounted on taxation, we have tried to emphasise the facts that make this case ‘special’.⁸

Following the publication of the Remitter Judgment Mr Botsman invited the SPRs to stand aside on the basis that even a perception of sympathy for the lawyer defendants would undermine the integrity of recovery efforts necessary to restoring public confidence in the administration of justice.⁹ In support of this perception, he has referred, inter alia, to:

5. The “strong relationship” between Mark Elliott and Mr Lindholm that was admitted by Alex Elliott;
6. The majority of Mr Lindholm’s committee writing to the Court on 2 May 2019 (i.e., after the contradictors foreshadowed serious concerns in their 16 April 2019 Revised List of Issues) to support the contraveners settlement proposal and to criticise Messrs Botsman and Withers;¹⁰ and
7. Numerous (oleaginous) email exchanges between Lindholm and Messrs O’Bryan and Elliott.

Against this backdrop, the SPRs were clearly on notice that their conduct would be scrutinised and that any repeat of the tactics employed in the Trust Co settlement would hamper recovery efforts, impede the restoration of public confidence, and therefore invite renewed examination of their fitness. Of course, being accountable for their submissions referencing the age and suffering of debenture holders should have obviated the need for the correspondence that contributed to this backdrop.¹¹

It is, therefore, an extraordinary indictment on the SPRs efforts to secure finality for debenture holders that it has taken a judgment from Black J to nix a settlement proposal that even an ‘idiot’¹² like Mr Botsman could see was a ‘non-starter’. How many debenture holders have died or suffered a material decline in their faculties between 14 February 2022 (the date of the Settlement Proposal) and the 18 August 2022 publication of Justice Black’s judgment? How much debenture-holder money was spent in connection with the hearing? What is the opportunity cost of failing to immediately quash a settlement proposal that combined confidentiality and bankruptcy to limit the contravener’s contributions in a manner that flouted the Court of Appeals findings on confidentiality and the findings of this Court regarding fraud and deception? Such profligate use of debenture-holder time and money reveals a stark disparity between the SPRs statements and their actions.

⁶ As was submitted in the remitter, it is scandalous that the enablers should profit from their abdications with money from the contraveners that should have been paid to debenture holders.

⁷ RJ [2051].

⁸ Points made in Mr Botsman’s 2 March 2022 letter.

⁹ Letter from Mr Botsman dated 29 October 2021.

¹⁰ A copy of this letter is **Annexure C**.

¹¹ Mr Botsman commenced his 23 February 2022 letter with the observation in the judgment of Croft J that debenture holders had been profoundly impacted in a way that transcended their economic losses, which losses were magnified by their advanced age. His Honour adopted that observation from the SPR’s submissions.

¹² RJ [874].

It is not just the fact of the hearing that illustrates this disparity, but the conduct of the hearing too. The SPRs have acknowledged that the bullying that Mrs Botsman was subjected to was 'outrageous'. Unlike Justice Black, they are aware of all the facts and circumstances justifying this description as well as Mrs Botsman's consistent efforts to promote maximum recovery for *all* debenture holders.¹³ Yet one of the outcomes of the hearing before Justice Black is that Mrs Botsman is now expected to bring separate proceedings in respect of her treatment, although: (a) the contraveners apparently seek releases from Mrs Botsman as part of the *current* proceedings; (b) separate proceedings would therefore prolong finality, not hasten it; and (c) the Settlement Proposal indicates that the contraveners are unrepentant and truculent, such that separate proceedings would only expose Mrs Botsman to all the circumstances that made her treatment so 'outrageous' the first time. This disparity has crystallised in circumstances where:

8. Mr Botsman was not given *practical* notice of the 4 August 2022 hearing. The 29 July 2022, email giving notice of the hearing was sent at the height of the English summer holidays. Mr Botsman was on holiday in Norway.¹⁴ He did not return from vacation until 2 August 2022. The email was sent to his personal (gmail) account: compared with his work email address, his review of personal emails is at best, intermittent (especially during the holidays).
9. Even if he had been given practical notice of the hearing (it is implausible that the hearing was only conceived of on Friday 29 July 2002) the SPRs required Mr Botsman to sign a confidentiality agreement, a precondition that he could not possibly agree to (for all the reasons mentioned in 1-2, above).
10. In circumstances where Mrs Botsman was not represented and in circumstances where relations between the SPRs and Messrs Botsman/Pitman are antagonistic (see paragraphs 14(a)-(f) below), it was important to ensure that the Botsman's positions were accurately represented. It is apparent from the judgment that this did not occur:
 - a. Mr Botsman clearly distinguished between his efforts to increase recovery for all debenture-holders and *separate* payments from (largely) *separate* wrongdoers deriving from the (largely) *separate* topic of the 'outrageous' treatment of Mrs Botsman and Mr Pitman so as to avoid the possibility of available funds being diverted to Mrs Botsman (in circumstances where, it can be inferred from the attempts to mask contributions, that sufficient funds will ultimately be available to address both purposes);
 - b. While proposing a form of financial accountability (in the form of compensation from all the practitioners involved in the outrageous treatment of Mrs Botsman (and Mr Pitman)), the Botsmans made it plain that their first preference was for non-financial accountability (involving criminal charges and disciplinary investigations for those

¹³ See, for example, RJ [889].

¹⁴ For fear of another 'Davos moment', Mr Botsman has limited this disclosure to the country, not the exact location. In the Court of Appeal, the contraveners' assumed Mr Botsman was in Davos to ski (RJ [915]). In fact, Mr Botsman was in Davos for the World Economic Forum (attending seminars on his present practice areas – Fintech and Blockchain) and subsequently in London for meetings with prospective employers. It was from London that he helped Mr Pitman prepared for the 31 January 2018 approval hearing before Croft. The episode perfectly illustrates the dangers of making assumptions without regard for the facts.

involved in the bullying) and they clearly framed financial and non-financial accountability as strict alternatives;

- c. The Botsmans indicated that in the event of their financial accountability proposal finding acceptance, payment would be shared with other adversely impacted debenture holders and potentially, the Trimbos family; and
- d. Because their proposal was not accepted, the Botsman's withdrew their proposal of financial accountability by an email to Maddocks dated 19 July 2022. Mr Botsman has not corresponded with the SPRs since that time. Debenture-holder time and money was devoted to a topic that was moot (save to the extent that it overlapped with releases apparently sought by the contraveners).

In terms of explanations for these stark disparities there are at least 3 factors in play.

11. First is a history of sympathetic relations with the contraveners at odds with the SPRs responsibilities to debenture holders. Relevant factors are set out at 5-8, above. Other examples include:
 - a. Mr Lindholm offering to help Mark Elliott and Mr O'Bryan deal with the Botsman 'circus';¹⁵
 - b. Messrs O'Bryan and Elliott making requests of Mr Lindholm (including, outrageous requests such as sacking Mr Redwood) in the evident expectation that their requests would be acceded to;¹⁶
 - c. While Mr Lindholm did not accede to the unethical request to sack Mr Redwood, it would appear from the fact that Mr Lindholm subsequently benched Mr Redwood, that Mr Lindholm was doing what he could to accommodate the contraveners' wishes;¹⁷ and
 - d. Consistent with the majority of the Committee supporting the contraveners in their 2 May 2019 submissions to the Court, Mr Lindholm recently complained to Mr Pitman about the amount of publicity that the case has received. To the extent Mr Lindholm was suggesting that the publicity was unwarranted, it reveals an extraordinary level of sympathy for the contraveners.
12. The second factor concerns *animus* towards the Botsmans and Mr Pitman. One can well understand the *animus* of Mr O'Bryan and the Elliott family towards Messrs Botsman and Pitman. Less hard to understand is why the fiduciaries responsible for the best interests of debenture holders would share the same views. And yet:
 - a. The majority of Mr Lindholm's Committee criticised Mr Botsman and Mr Withers in their 2 May 2019 submissions in support of the contravener's proposed settlement;
 - b. Numerous disparaging statements have been made about Mr Pitman, including, Mark Elliott describing Mr Pitman as an 'old fool';¹⁸
 - c. A member of the Committee, Don McKenzie, warned Mr Pitman not to have anything to do with Mr Botsman;

¹⁵ RJ [903].

¹⁶ RJ [905],

¹⁷ RJ [944], [955].

¹⁸ For the reasons explained in Mr Botsman's [date] letter, this disparaging statement is unlikely to have emanated from Mr Elliott (who had not met Mr Pitman) but from his friend, Mr Lindholm, who knew Mr Pitman through the committee.

- d. Mr Lindholm offered to help Messrs O'Bryan and Elliott evict Mrs Botsman from her home and describing Mrs Botsman's appeal as resembling a 'circus';¹⁹
- e. Even before the hearing before Black J, the SPR's solicitors were seeking to characterise Mrs Botsman as opportunistic;²⁰
- f. Mr Botsman was not afforded practical notice of the hearing before Black J and his proposals (appear)²¹ to have been misrepresented.

13. The third factor is indifference. When the Trust Co appointed liquidators were looking for practitioners to fill the roles of SPRs and their lawyers, they were not looking for practitioners who would aggressively pursue the interests of debenture holders. Quite the opposite. The tactic very nearly succeeded because late in 2014 the SPRs recommended settling the case for less than 14c in the dollar and before the case against Trust Co had been properly developed. Debenture holders have been paying the price for this approach to settlements ever since.

At this point, the explanation for the disparities is irrelevant. The SPRs ought to be accountable for the ongoing disparities between their statements and their actions. Unless an appropriate settlement that delivers appropriate finality is achieved within weeks and/or unless the SPRs are prepared to adopt a more aggressive/less accommodating stance towards the contraveners, we will give further consideration to bringing an application to replace the SPRs.

An appropriate financial settlement would involve:

1. Annulment of the bankruptcies (so as to enable);
2. Payment of at least \$17m to debenture holders, with such payment to include contributions from the enablers; and
3. (Only to the extent that the contraveners press for releases from Mrs Botsman and Mr Pitman and only to the extent that a substantial portion of the judgment is paid to all debenture holders), the payment of compensation from the contraveners and their enablers to Mrs Botsman and Mr Pitman.

Yours sincerely,

Chris Botsman and Keith Pitman

¹⁹ RJ [903].

²⁰ Whereas Maddocks 22 June 2022 letter insinuated that Mrs Botsman was taking a new position in relation to compensation, that insinuation was based on a wilful misreading of Mr Botsman's 2 March 2022 letter.

²¹ Because confidentiality was interposed as a pre-condition, neither Mr Botsman nor Mr Pitman have sighted the materials relied on before Black J.

2 March 2022

Dear Sirs:

Banksia Securities Ltd (SPRs appointed)

I refer to Mr Lindholm's 23 February Memorandum to the Debenture Holder Committee regarding the settlement offer apparently put by the lawyer defendants and others involved in the Banksia litigation (**Settlement Proposal**).

This is my second response to the Settlement Proposal. My first response was sent on the eve of a telephone conference on the morning of 23 February 2022 (**First Response**). The First Response appealed to you to vigorously respond to the Settlement Proposal in the name of helping to restore public confidence in the administration of justice. I was compelled to write by disquieting similarities to the Trust Co settlement and a strong desire to avoid having to spend time unravelling another unfair settlement. However, based on previous conduct (including the committee members/SPRs choosing not to share my concerns with the rest of the committee and Mr Lindholm's apparent disdain for legal advice)¹, I am under no illusion that my appeal/the correspondence will probably be ignored.

Accordingly, my first purpose in writing is to highlight the stark differences between this settlement and the Trust Co settlement and to make it clear that if this settlement works unfairness to debenture-holders I will combine the facts recorded in the judgment and the non-judgment facts that I am aware of to make it clear where responsibility for the unfairness lies. The backdrop to this settlement includes the following unique circumstances:

- A 696-page judgment that comprehensively records the most brazen fraud committed on judges and the public in Australia's legal history;²
- The architects of this fraud and "others" who "stood by, failing in their duty to protect"³ are the prospective beneficiaries of this Settlement Proposal;
- The absence of a contradictor in the Trust Co settlement makes it highly probable that a contradictor will be appointed in this case;
- The confidentiality that tainted the Trust Co settlement makes it unlikely that a lack of transparency will be tolerated in this case;
- In terms of costs recovery, the judgment is clear that the costs of prosecuting the contravening conduct "must" be repaid in the manner that "most completely" compensates those that funded it;⁴
- Equally, the judgment is adamant that elderly debenture holders are entitled to significant compensation - \$11.7 million – for the delay and the expense and the risk that they were subjected to by the contraveners' conduct;

¹ RFJ [281]

² I reiterate the point made in my First Response that in the extraordinary context of the judgment, and the context provided by the narrow scope of the remitter, acclaiming the absence of adverse findings against you as a blanket answer to the myriad concerns I have raised, is telling.

³ RFJ [3]

⁴ RFJ [2051]. In those circumstances, it is not clear why – contrary to the opening paragraphs of Mr Lindholm's memorandum – debenture holders should have to cover \$2.3m in costs. They had no say over the costs incurred, which were generally approved by Black J and/or Gleeson JA.

- The judgment references the possibility of debenture holders being denied recovery of their judgment and juxtaposes the potential unfairness of the lawyers (the “others”) who enabled the contraveners being paid (for failing in their duty to protect);⁵
- The judgment assiduously details facts that would justify the removal of Alex Elliott’s name from the roll of solicitors;
- Whereas the essential facts underpinning the fraud were known to you (the utter impossibility of the lawyer defendants’ fees (and hence AFP’s commission) being legitimate having regard to the work carried out by your own lawyers with debenture-holders’ money) it will not be open to you to deploy, on this occasion, a defence that you were misled by the lawyer defendants.

In such circumstances, the likelihood of the Settlement Proposal being approved has to be considered remote. In such a case, questions will inevitably arise about your involvement in brokering such settlements.

My second purpose in writing is to elaborate on items that, I respectfully submit, should be addressed as part of an appropriate resolution.

Compensation for my mother. The details of the ignominious campaign of intimidation waged against my mother are recorded in the judgment. Although it failed to procure the withdraw of the appeal, it caused significant emotional and physical distress. In terms of emotional distress, my mother’s anguish is apparent from the following email exchanges on 27 and 29 March 2018 (emphasis added):

On 27 Mar 2018, at 5:21 pm, wendy <wbotsman@gmail.com> wrote:

Do I reply to this saying to refer all matters to you?

Bit scary

Sent from my iPad

Begin forwarded message:

From: wbotsman <wbotsman@gmail.com>

Date: 27 March 2018 at 14:07:36 ACDT

To: Christopher Botsman <botsman@newchambers.com.au>

Subject: Fwd: Laurence Bolitho -ats- Wendy Botsman S APCI 2018 0037

----- Original message -----

From: Portfolio Law <bolithoclassaction@portfoliolaw.net.au>

Date: 27/3/18 1:19 pm (GMT+10:00)

To: wbotsman@gmail.com

Subject: Laurence Bolitho -ats- Wendy Botsman S APCI 2018 0037

Dear Ms Botsman

Please find attached letter.

Sincerely

Anthony Zita

Director

⁵ RFJ [2132]

On 29 Mar 2018, at 2:03 pm, wendy <wbotsman@gmail.com> wrote:

Hi Chris

Hope you all arrived safely & had some sleep during the flight.

Just arrived back from the football tonight to find an envelope in the door with a business card

Philip Scicluna Investigator Process Server Commercial Agent.
Contact ASAP All Hours 0407 797 382
Office 08 8223 4092
Email:philscicluna65@gmail.com

I can only imagine this is connected with Laurence Bolitho & the letter from Portfolio Law re my assets.

WHAT SHOULD I DO ESPECIALLY IF THEY COME KNOCKING ON MY DOOR AGAIN?

Love to all
Mum XXXX

In terms of physical distress, during a visit to Sydney in 2018, my very stoic mother had to be prescribed medication to deal with the stress occasioned by the proceedings. With the exception of Mr Zita, none of the lawyer defendants has deigned to apologise. The same lawyer defendants who were prepared to forego a \$75,000 payment to Mr Bolitho to help secure their ‘spoils’,⁶ and the “others” who stood by, failing utterly in their duty to protect, should pay considerably more to my mother for the extensive distress that they have caused. With their share portfolios, their chalets, their expensive representation and their apparent access to the significant sums of money represented by the Settlement Proposal, it is appropriate that the lawyer defendants (and their enablers) handsomely compensate the retired nurse they terrorised.

Compensation/an apology to Mr Pitman. Mr Pitman has been treated abominably. When Elliott described Mr Pitman as “an old fool”,⁷ he was not speaking from first-hand experience because he had no such experience of dealing with Mr Pitman. Rather, he was relaying the sentiments of other members of the Committee. I know this because similar sentiments were expressed to me by committee members before I was introduced to Mr Pitman. While the SPRs/the committee were fawning over Elliott and O’Bryan, the “old fool” spotted the ‘rip-off’ and had the courage to act on his convictions. In a series of emails to Mr Pitman in January 2018, the late Rob Lea accurately summarised Mr Pitman’s prescience and his courage:

Email from Lea to Pitman

In effect Keith ol mate, the Committee who are supposed to be taking care of the interests of the Debenture Holders interests and maximising returns in this debacle have let you down/thrown in the towel. I dunno mate/ run with the “Botsman submission” I think, go it alone with Chris, Ask Chris up front’ – Will he be “Contradictor”??? I am astonished that the

⁶ RFJ [263]

⁷ RFJ [791]

other Committee members don't think the \$17-18 million that is being "scammed" off the Trustco settlement is simply excessive????!!!! Hang in there mate/Rob

Email from Lea to Pitman

Yes mate, unfortunately the Committee has lost sight of their prime purpose/aim ie: to maximise the return to the poor bloody tortured Banksia Debenture Holders and not roll over/seek the easy way out as they are now doing. What gets me, Keith ol mate, is when you were agonising over yr letter, drafting and redrafting again and again without any support from the Committee a Pitt Street Barrister was putting together a similar letter with identical concerns with the "ripoff". Hang in there mate/Rob.

Having regard to the disgraceful way in which he has been treated, the significant contribution he made to objecting to the settlement and assisting with the appeal and provision for compensation of up to \$25,000 for persons aggrieved by the conduct of a law practice, it is appropriate to compensate Mr Pitman.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'CBotsman', enclosed in a thin black rectangular border.

Chris Botsman

From: [Supreme Court-Justice John Dixon Chambers](#)
To: [christopher botsman](#)
Cc: [Sam Kingston](#); [Mathew Gashi](#); [Susan Pitman](#); [John Price](#); [David Hope Hope & Co](#); [Matthew Susic](#); [Supreme Court-Major Torts List](#)
Subject: RE: Banksia Proceedings
Date: Thursday, 8 September 2022 9:53:26 AM

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear Mr Botsman, Mr Pitman and practitioners

I refer to the email below which attached letters addressed to his Honour Justice John Dixon, as well as an email from Mr Pitman to chambers yesterday indicating that further letters addressed to his Honour have been dispatched to the Court. His Honour has asked me to convey the following:

1. Any communication to the Court regarding a proceeding ought to be copied to all parties in the proceeding. The relevant parties are copied herein.
2. His Honour does not intend to consider the contents of the letters in advance of, or for the purposes of, the directions hearing tomorrow unless persuaded to do so in an open court hearing.
3. The usual method of communication with the Court with respect to a proceeding is to make submissions in open court or to file material in the form of an affidavit.
4. Mr Botsman and Mr Pitman, if you wish to put something to the Court during the directions hearing tomorrow morning, you may apply for leave to appear at the directions hearing at 9:30am tomorrow, Friday 9 September 2022, and chambers will send you the Zoom details for the virtual hearing.

Mr Pitman has also sought the observers link for tomorrow's directions. The link is below:

URL: <https://vimeo.com/event/2406812>

Kind regards

Amy Armstrong

Associate to the Honourable Justice John Dixon

Supreme Court of Victoria | 210 William Street Melbourne VIC 3000 | DX 210608

T +61 (03) 8600 2463 | **F** +61 (03) 9603 6200 | **E** chambers.justicejohndixon@supcourt.vic.gov.au

NOTE: Practitioners are referred to Paragraphs 6.3, 6.5 and 6.9 of *Practice Note SC Gen 4 of 2017*. Any correspondence with the Court must be sent simultaneously to all other parties and must be confined to uncontroversial matters. Telephone communications must be confined to administrative and routine matters. Requests for legal or procedural advice will not be answered.

The Supreme Court of Victoria acknowledges Aboriginal and Torres Strait Islander peoples as the First Peoples and Traditional Owners and Custodians of the land and waterways upon which our lives depend. We acknowledge and pay our respects to ancestors of this country, Elders, knowledge holders and leaders – past and present. We extend that respect to all Aboriginal and Torres Strait Islander peoples.

From: [christopher botsman](#)
To: [Supreme Court-Justice John Dixon Chambers](#)
Cc: [Sam Kingston](#); [Mathew Gashi](#); [Susan Pittman](#); [John Price](#); [David Hope Hope & Co](#); [Matthew Susic](#); [Supreme Court-Major Torts List](#)
Subject: Re: Banksia Proceedings
Date: Thursday, 8 September 2022 10:26:19 PM

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear Associate:

I apologise for failing to explain the basis on which we wrote to the Court unbidden. Pursuant to s 33Y notices, we have previously written to this Court (and other courts) concerning settlement proposals.

We had hoped that by sharing our concerns at this 'early' stage, we might avoid the repeat of history portended by recent developments, and hence the necessity for us (and others) to make s 33Y submissions in the future.

The explanation is self-serving but it does have the virtue of deriving from a motivation to promote debenture-holders' best interests (by making the Court aware of alternative perspectives) supported by an 8-year investment in trying to improve outcomes for all debenture holders.

No disrespect was intended and I apologise for any inconvenience caused and for not taking the time to include the email addresses of the non-SPR parties.

If the Court requires it, I will make myself available this evening (UK time) to enter an apology in person, but I hope that this written apology will suffice.

In terms of the contents of the letters, I have heard what the Court has already said and I do not propose to say anything further.

Yours sincerely,

Chris Botsman

From: [Supreme Court-Justice John Dixon Chambers](#)
To: [christopher botsman](#); [Supreme Court-Justice John Dixon Chambers](#)
Cc: [Sam Kingston](#); [Mathew Gashi](#); [Susan Pitman](#); [John Price](#); [David Hope Hope & Co](#); [Matthew Susic](#); [Supreme Court-Major Torts List](#)
Subject: RE: Banksia Proceedings
Date: Friday, 9 September 2022 9:19:52 AM

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear Mr Botsman

His Honour accepts your explanation and an apology is not necessary.

Kind regards

Amy Armstrong

Associate to the Honourable Justice John Dixon

Supreme Court of Victoria | 210 William Street Melbourne VIC 3000 | DX 210608

T +61 (03) 8600 2463 | **F** +61 (03) 9603 6200 | **E** chambers.justicejohndixon@supcourt.vic.gov.au

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From: [christopher botsman](#)
To: [Sam Kingston](#)
Cc: [Mathew Gashi](#)
Subject: Re: Private and Confidential - Settlement of claims against the O'Bryan Entities [MADD-M.FID3512115]
Date: Wednesday, 19 April 2023 1:15:39 AM
Attachments: [image001.png](#)

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear Sirs:

I have not opened the attachments to your recent emails.

The reasons are outlined in my letter of 9 November 2022 (My Letter).

I will reconsider my position if you provide meaningful answers to the questions in My Letter.

Sincerely,

Email Letter

Lawyers
Collins Square, Tower Two
Level 25, 727 Collins Street
Melbourne VIC 3008
Australia

Telephone 61 3 9258 3555
Facsimile 61 3 9258 3666

info@maddocks.com.au
www.maddocks.com.au

DX 259 Melbourne

From Sam Kingston	Date 21 April 2023	
Direct 03 9258 3378	Email sam.kingston@maddocks.com.au	
To Chris Botsman	Organisation	Email cabotsman@gmail.com

Our Ref STK:6207696

Dear Mr Botsman

Banksia Securities Ltd (Special Purpose Receiver Appointed) (In Liquidation) Settlement of claims against the O'Bryan Entities

We refer to your email dated 19 April 2023.

You have said that you will not open the attachments to our recent emails until you receive "*meaningful answers*" to your letter dated 9 November 2022. We responded to your letter in our letter dated 13 December 2022 and have received no response. As stated in our 13 December 2022 letter, it is not in debenture holders' interests to continue to debate your assertions about historical matters in correspondence. Rather, the SPR remained willing to constructively engage with you about settlement discussions and other enforcement steps being taken by the SPR.

The purpose of our recent emails was to confirm various matters relating to the recent settlement with the O'Bryan Entities. We understand from your comments in *Lawyerly* that you are aware of that settlement and have already expressed some views in relation to it.

It is of course a matter for you if you choose not to read material that we send to you. As stated in our recent emails, we will continue to send you a copy of the settlement approval application, all non-confidential material in support and, on receipt of the confidentiality undertaking, any confidential material filed in the application. We will also send you a link to the directions hearing on 2 May 2023 to enable you to participate to the extent you wish to.

Finally, we again confirm that this and all other correspondence will be included in the material that will be filed in the settlement approval application.

Yours faithfully


Sam Kingston
Partner

From: mandckearney mandckearney <mandckearney@bigpond.com>
Sent: Wednesday, 22 March 2023 2:58 PM
To: Lindholm, John <johnlindholm@kpmg.com.au>
Cc: Muscari, Philip <pmuscari1@kpmg.com.au>; clairford@y7mail.com
Subject: [EXTERNAL] Banksia Settlement

CAUTION: This Email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.

Dear Mr Lindholm,

I along with many and ageing Debenture Holders (including Bill Radley and his supporters and Keith Pitman and his supporters), I am becoming more disgruntled at the ongoing legal proceedings causing significant delays in a final settlement for Banksia debenture holders.

It seemed after the Remitter proceedings that a final settlement should have been with us. However, additional delays caused by the Contravenors, through their legal team, has added further Legal and Receivership costs to any forthcoming settlement and depleted existing proceeds held by you as the Special Purpose Receiver (SPR).

Therefore, I ,as an aggrieved debenture holder, would like to know if debenture holders may be worse off financially than we would have been if the Contravenors had succeeded with their scam way back in 2018.

Making this request is important because it signals to you as the S.P.R that a settlement that puts debenture holders in a worse position (than the position we would have been

in if the scam had not been exposed) will not be tolerated by me and the other debenture holders I have mentioned. To account for the ongoing delays, any settlement should be the full amount as ordered by Justice Dixon or at least a significant improvement on the last pitiful settlement offer that you put before Justice Black in the N.S.W. Supreme Court.

To ensure that we are not short changed by the ongoing delays I have some Questions/Queries:

1. Since taking over from McGrath Nicol how much;
 - a) has been collected from various parties for debenture holders with details of separate entity payments.

The following amounts have been collected in relation to the Remitter Judgment:

Source	Amounts Paid to SPR
Legal Practitioners' Liability Committee (LPLC) on account of Mr O'Bryan's insurance policy	\$1,558,191.39
LPLC on account of Mr Symons' insurance policy	\$1,454,547.54
Portfolio Law	\$375,683.30
LPLC on account of Portfolio Law's insurance policy	\$464,828.83
Total	\$3,853,251.06

Prior to the Remitter, the SPR recovered \$83.75m for the benefit of debenture holders from the following sources: the settlement with Banksia former directors and officers of \$13.25m, the settlement with Trust Co of \$64m and settlement with Banksia's insurer and underwriters of \$6.5m.

The following distributions have been made to debenture holders:

Total distributions				All unrepresented payments as at 31-Jan-2023		
Distribution	Date	c / \$	\$ (approx.)	No. of accounts	\$	% of dist.
1	Dec-12	20.0	132,600,000	469	118,397	0.1%
2	May-13	45.0	298,350,000	407	362,849	0.1%
3	Oct-13	5.0	33,150,000	627	64,354	0.2%
4	Dec-13	8.0	53,040,000	649	109,123	0.2%
5	Apr-14	2.0	13,260,000	923	42,334	0.3%
6	Mar-17	2.0	13,260,000	1,957	285,130	2.2%
7	Jun-19	6.5	42,000,000	2,621	1,836,962	4.4%
8	Jul-20	1.0	6,633,089	3,440	404,509	6.1%
9	May-21	2.0	13,264,168	3,656	907,440	6.8%
TOTAL		91.5	605,557,256	14,749	4,131,099	0.68%

b) was collected or transferred from McGrath Nicol to you?

Since the SPR's appointment, the following amounts have been paid to the SPR by Banksia's former receivers:

- \$10 million, approved by his Honour Justice Black on 29 February 2016;
- \$6 million, approved by his Honour Justice Black on 19 February 2018; and
- \$1.2 million, approved by his Honour Justice Black on 19 February 2018.

2. Would you please confirm the amount of debenture holder money paid to McGrath

Nicol? Was it \$44m approx?

Please see below copy of receipts and payments from the period 6 October 2015 to 26 May 2023:

Receipts and payments		\$
Receipts		
Refund BAS Interest		1,347
Funding from R&M		17,464,168
Court Order Settlement funds		63,025,905
GST Control: GST Inputs (Outputs)		960,279
Insurance Income		1,007,961
Interest Income		157,162
Investment Income		147,619
Recoveries in respect to Remittal Judgement		3,012,739
Refund of Transcript Costs		20,455
Settlement funds - Insurance House		5,500,000
Transfer from R&M		1,584,225
Total receipts		92,881,860
Payments		
Expense claim		(1,831)
Legal disbursements		(8,852,149)
Legal Fees		(7,809,494)
Link Market Services		(692,184)
Document Storage		(745)
Appointee Disbursements		(10,311)
Appointee Fees		(2,146,465)
Distribution to Debenture Holders		(67,578,313)
Ernst & Young payment		(15,389)
McGrathNicol legal fees		(628,397)
McGrathNicol: BSL R&M Legal disbursements		(57,923)
McGrathNicol: BSL R&M Legal Fees (Ashurst)		(960,341)
Bolitho Legal - Insurance House		(76,000)
GST Control		(1,100,534)
Payment to LJ & LJ Bolitho		(75,000)
Total payments		(90,005,076)
Net receipts / (payments)		2,876,784

3. Since taking over from McGrath Nicol how much debenture holder funds have been spent;

a) in the period between taking over from McGrath Nicol to the end of the Court Appeal proceeding?

b) from the end of the Court of Appeal proceeding to the end of the Remitter proceeding?

c) and since the Remitter proceeding

See above table and note that:

- The SPR's legal costs incurred in relation to the Court of Appeal Proceeding were: \$564,144.58 (inc GST).
- The SPR's legal costs of the Remitter were \$3,410,323.21 (inc GST);
- The Contradicator's legal costs of the Remitter were \$6,664,372.56 (inc GST); and
- Since the Remitter Judgment was handed down, the SPR has incurred legal fees of approximately \$1.48 million (inc GST) in enforcing the Remitter Judgment.

4. How much more debenture holder funds do you anticipate spending to finalise a settlement and distribute funds to debenture holders?

At present, this is uncertain and depends on whether a negotiated outcome is able to be reached, or if further Court proceedings are necessary. If further Court proceedings are necessary, which every effort is being made to avoid, the SPR will provide a further update to debenture holders.

Best wishes,

Michael Kearney
(former CPA Practice Partner, Kearney and Crowe)
Trustee for the MC and CJ Kearney Superannuation Fund.

From: [Muscari, Philip](#)
To: mandckearney@bigpond.com
Cc: [Lindholm, John](#)
Subject: RE: [EXTERNAL] FW: Banksia Settlement - Third request
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image003.jpg](#)
[image004.jpg](#)
[image005.jpg](#)

Dear Michael,

Thank you for the emails.

We appreciate that the proceedings have continued for an unreasonably long time and share your frustration. As you correctly outlined in your email, the delay is a result of the Defendant's misconduct that was identified in the Remitter Proceedings and the combative approach taken by the Defendants. Despite the difficulties, the external administration of Banksia has resulted in debenture holders receiving distributions equating to 91.5c for every dollar of outstanding principal.

By way of brief update, we note the following:

- The Lawyer Parties (O'Bryan, Symons, Zita and Portfolio Law), Alex Elliot, Mr Trimbos's Estate and Australian Funding Partners Pty Ltd were ordered to pay the following pursuant to the Remitter Judgment:
 - Compensation of approximately \$11.7m (**Compensation Component**);
 - The Special Purpose Receiver's (**SPR**) costs of the Botsman Appeal and the Remitter on an indemnity basis; and
 - The Contradictor's costs of the Remitter on an indemnity basis.
- The SPR and Contradictor's combined costs total approximately \$10.6m (**Costs Component**);
- We recently received Judgment that certain entities related to the Elliot Family are liable for the Costs Component; and
- We are continuing to pursue enforcement steps to recover the Remitter Judgment amount whilst simultaneously negotiating with the Defendants in an attempt to achieve a resolution in a timely manner.

In relation to the Remitter Judgment, to date we have received c. \$3m in insurance proceeds and expect that there will be additional significant realisations. We have, at all times, worked to finalise the Proceedings and the special purpose receivership as quickly and cost efficiently as possible. Debenture holders are entitled to significant sums of money arising from the Remitter Judgment, and it is the SPR's role to ensure that as much of that amount is recovered for the debenture holders as possible.

We consider that debenture holders are not worse off financially than they would have been if the Defendants had succeeded with their scam in 2018 as:

- The \$12.8m in funder's commission was never remitted to the litigation funders;
- c. \$3m in insurance proceeds has already been recovered;
- we are in a position to recover the costs component of \$10.6m in full; and

- we are continuing to pursue enforcement steps to recover further amounts of the compensation component.

We understand your frustration and the impact of the collapse of Banksia has had on debenture holders, and all efforts are being made to improve the return to debenture holders and finalise the special purpose receivership as soon as possible. However, it is not possible to provide a timeframe for a final distribution to debenture holders at this stage.

Kind regards,
Phil

Philip Muscari

Manager
Deal Advisory

KPMG
Tower Two
Collins Square
727 Collins Street
Melbourne VIC 3008 Australia

Tel +61 3 8663 8779
pmuscari1@kpmg.com.au

kpmg.com.au



From: mandckearney@bigpond.com <mandckearney@bigpond.com>

Sent: Tuesday, 25 April 2023 12:15 PM

To: Lindholm, John <johnlindholm@kpmg.com.au>

Cc: Muscari, Philip <pmuscari1@kpmg.com.au>

Subject: [EXTERNAL] FW: Banksia Settlement - Third request

Importance: High

CAUTION: This Email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.

Dear Mr Lindholm,

I look forward to your response.

Michael Kearney
Trustee for Debenture Holder
Trustee for MC & CJ Kearney Superannuation Fund.

From: mandckearney mandckearney <mandckearney@bigpond.com>
Sent: Saturday, April 15, 2023 12:46 PM
To: johnlindholm@kpmg.com
Cc: pmuscari1@kpmg.com
Subject: Re: Banksia Settlement
Importance: High

Dear Mr Lindholm,

Further to my recent email to you (see below) I am disappointed that I haven't received a reply.

Particularly I am anxious to receive responses to the four questions I raised on payments made and to be made during the liquidation of Banksia.

I look forward to your response at your earliest convenience as I am not reluctant to gather other Debenture Holder's signatures to request the same information.

Regards

Michael Kearney
Trustee for Debenture Holder
Trustee for MC & CJ Kearney Superannuation Fund.

----- Original Message -----

From: "mandckearney mandckearney" <mandckearney@bigpond.com>
To: johnlindholm@kpmg.com.au
Cc: pmuscari1@kpmg.com.au; clairford@y7mail.com
Sent: Wednesday, 22 Mar, 2023 At 2:57 PM
Subject: Banksia Settlement

Dear Mr Lindholm,

I along with many and ageing Debenture Holders (including Bill Radley and his supporters and Keith Pitman and his supporters), I am becoming more disgruntled at the ongoing legal proceedings causing significant delays in a final settlement for Banksia debenture holders.

It seemed after the Remitter proceedings that a final settlement should have been with us. However, additional delays caused by the Contravenors, through their legal team, has added further Legal and Receivership costs to any forthcoming settlement and depleted existing proceeds held by you as the Special Purpose Receiver (SPR).

Therefore, I ,as an aggrieved debenture holder, would like to know if debenture holders may be worse off financially than we would have been if the Contravenors had succeeded with their scam way back in 2018.

Making this request is important because it signals to you as the S.P.R that a settlement that puts debenture holders in a worse position (than the position we would have been in if the scam had not been exposed) will not be tolerated by me

and the other debenture holders I have mentioned. To account for the ongoing delays, any settlement should be the full amount as ordered by Justice Dixon or at least a significant improvement on the last pitiful settlement offer that you put before Justice Black in the N.S.W. Supreme Court.

To ensure that we are not short changed by the ongoing delays I have some Questions/Queries:

1. Since taking over from McGrath Nicol how much;
 - a) has been collected from various parties for debenture holders with details of separate entity payments.
 - b) was collected or transferred from McGrath Nicol to you?
2. Would you please confirm the amount of debenture holder money paid to McGrath Nicol? Was it \$44m approx?
3. Since taking over from McGrath Nicol how much debenture holder funds have been spent;
 - a) in the period between taking over from McGrath Nicol to the end of the Court Appeal proceeding?
 - b) from the end of the Court of Appeal proceeding to the end of the Remitter proceeding?
 - c) and since the Remitter proceeding
4. How much more debenture holder funds do you anticipate spending to finalise a settlement and distribute funds to debenture holders?

Best wishes,

Michael Kearney
(former CPA Practice Partner, Kearney and Crowe)
Trustee for the MC and CJ Kearney Superannuation Fund.



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727 Collins Street
Melbourne VIC 3008

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Melbourne VIC 3001
Australia

www.kpmg.com.au

30 May 2023

Dear Mr Kearney

**Bolitho & Anor v Special Purpose Receiver of Banksia Securities Ltd & Ors
Supreme Court of Victoria Proceeding S CI 2012 7185 (Proceedings)**

I refer to your email dated 28 March 2023, which was sent to me in my capacity as Special Purpose Receiver of Bankia Securities Limited (Receivers and Managers Appointed) (In Liquidation) (**Banksia**).

As set out in my email dated 27 April 2023, I agree that the Proceedings have continued for an unreasonably long time and share your frustration. The delay is a result of the misconduct by the litigation funder and individuals associated with the Bolitho class action that was identified in the Remitter Proceedings and the combative approach taken by those parties.

Several queries raised in your email have been addressed in my previous response, and in the circular to debenture holders dated 9 May 2023 (a copy of which is **attached** for your reference). However, for ease of reference, I note the following:

1. Prior to the Remitter Judgment, I recovered \$83.75m from the settlement with Banksia's former directors and officers (\$13.25m), the settlement with Trust Co (\$64m) and settlement with Banksia's insurer and underwriters (\$6.5m).
2. The following amounts have been collected in relation to the Remitter Judgment to date:

Source	Amount paid to SPR
Legal Practitioners' Liability Committee (LPLC) on account of Mr O'Bryan's insurance policy	\$1,558,191.39
LPLC on account of Mr Symons' insurance policy	\$1,454,547.54
Portfolio Law	\$375,683.30
LPLC on account of Portfolio Law's insurance policy	\$464,828.83
Total	\$3,853,251.06

3. I have not at this stage agreed to resolve all outstanding claims arising from the Remitter Judgment. I have rejected a global settlement offer that was provided to me because I considered it to not be fair and reasonable, and in the interests of debenture holders.
4. I have entered into individual settlements with Mr O'Bryan, Noysue Pty Ltd and Noysue Pty Ltd (\$1.25m), and Ms Katerina Peiros as the representative for the deceased estate of Mr Peter Trimbos (\$1.4m). The hearing of the approval applications for these settlements is scheduled for 16 June 2023. Please refer to the circular to debenture holders for further details about the hearing, and consider further updates which will be posted to the webpage at <https://kpmg.com/au/en/home/creditors/banksia-securities-limited.html>.
5. On 1 March 2023, Justice Dixon ordered that the Elliott Entities pay the Costs Component of the Remitter Judgment on an indemnity basis. Justice Dixon has not yet published his reasons for making orders against the Elliott Entities and the Costs Component has not been subject to a costs assessment. If the settlement with the entities associated with Mr O'Bryan is approved, Justice Dixon will be able to release his reasons. Once I have those reasons I will be in a better position to consider what further enforcement steps should be taken and the costs that might be involved.

6. I continue to negotiate and/or take enforcement steps in relation to the remaining claims against entities associated with the Elliott family, Mr Zita and Portfolio Law and the Legal Practitioners' Liability Committee.
7. Since my appointment, the following amounts have been paid to me by Banksia's former receivers:
 - a. \$10 million, in accordance with orders made by his Honour Justice Black on 29 February 2016;
 - b. \$6 million, in accordance with orders made by his Honour Justice Black on 19 February 2018; and
 - c. \$1.2 million, in accordance with orders made by his Honour Justice Black on 19 February 2018.
8. My legal costs incurred in relation to the Court of Appeal proceeding brought by Ms Wendy Botsman were \$564,144.58 (incl. GST).
9. My legal costs of the Remitter were \$3,410,323.21 (incl. GST). The Contradictor's legal costs of the Remitter were \$6,664,372.56 (incl. GST).
10. Since the Remitter Judgment was handed down, I have incurred legal fees of approximately \$1.48m (incl. GST) in enforcing the Remitter Judgment and taking the other steps summarised in the circular to debenture holders.
11. To date, the following distributions have been made to debenture holders:

Total distributions				All unrepresented payments as at 31 Jan 2023		
#	Date	c / \$	\$ (approx.)	No. of accounts	\$	% of distribution
1	Dec-12	20.0	132,600,000	469	118,397	0.1%
2	May-13	45.0	298,350,000	407	362,849	0.1%
3	Oct-13	5.0	33,150,000	627	64,354	0.2%
4	Dec-13	8.0	53,040,000	649	109,123	0.2%
5	Apr-14	2.0	13,260,000	923	42,334	0.3%
6	Mar-17	2.0	13,260,000	1,957	285,130	2.2%
7	Jun-19	6.5	42,000,000	2,621	1,836,962	4.4%
8	Jul-20	1.0	6,633,089	3,440	404,509	6.1%
9	May-21	2.0	13,264,168	3,656	907,440	6.8%
Total		91.5	605,557,256	14,749	4,131,099	0.68%

12. Any questions about the costs of Banksia's former receivers (McGrathNicol) should be referred directly to them.

I reiterate that I understand your frustration and the impact that the collapse of Banksia has had on debenture holders. All efforts are being made to improve the return to debenture holders and finalise the special purpose receivership as soon as possible. However, it is not possible to provide a timeframe for a final distribution to debenture holders at this stage.

Please feel free to let us know if you have any further comments or questions about the status of the Proceedings.

Yours faithfully
Banksia Securities Limited



John Lindholm
Special Purpose Receiver

Enough already! Greed, hubris and indifference in the time of Banksia



Opinion | 2024-01-26 10:22 am | By Chris Bateman



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Epic chutzpah. As a lawyer, I have always been fascinated – and appalled – by epic chutzpah. In its traditional Yiddish setting, chutzpah describes a person who, having killed his parents, demands leniency on the basis that he is an orphan. As an expression of self-entitlement, chutzpah overlaps with the ‘power lie’, defined by writer Masha Gessen as “... the lie of the bigger kid who took your hat and is wearing it – while denying that he took it.”

Epic chutzpah transfixes with its unblinking self-belief. Doublethink espoused with utter conviction. Scorn and derision heaped on the naysayers, even as detection becomes inevitable. Occasionally, contrived remorse. Always indignation.



Chris Boltmann

Are these people born with extraordinary self-entitlement? Or is it learned? Following Enron, I moved from London to New York – the ultimate forum for displays of chutzpah. Over seven years in New York I encountered plenty of chutzpah. But nothing remotely epic. I had to wait until 2018, when I was a barrister in Sydney, for my first encounter with epic chutzpah. It came from a quarter I wasn’t expecting: from within the legal profession.

In the insolvency of Bankasia Securities Limited three highly-credentialed lawyers, Mark Elliott, Norman O’Byran and Michael Symons deployed an ‘entrepreneurial business model’ that Elliott and O’Byran developed for class actions. By waiting until after settlements to invoice, O’Byran and Elliott inflated their fees and the commission they received via a litigation funder while simultaneously eliminating the risk that the commission was supposed to reward.

Numerically speaking, their frauds were relatively modest. Only 16,115 ‘ordinary’ people (largely retirees from rural Victoria) were impacted in a scam that raised spoils of only \$5.2 million (plus prospective spoils of \$19.3 million).

For legal fiduciaries to claim a ‘fee for no service’ while peddling relief from the failings of more distant fiduciaries (the directors, trustees and auditors who caused Bankasia’s collapse) takes chutzpah. To add an epic quality, the lawyer defendants variously:

1. Ignored a judge’s admonition not to mix control of the litigation with a financial interest in the litigation by deceptively arranging their affairs to achieve the forbidden combination;
2. Bullied and intimidated a client who dared to question their inflated fee claims to the point that the client was prescribed medication;
3. Responded to an appeals judge doubting their fee claims by fabricating documents (among other falsehoods, ‘paid’ stamps were placed on unpaid invoices);
4. Used post-appeal proceedings to destroy incriminating documents and indulge in a cynical game of ‘chicken’, deploying hyper-aggressive (and hopeless) defences to conceal the truth, knowing that they would be forced by their own incriminating documents to ‘swerve’ (via a last-minute capitulation); and

CATEGORIES

- Practice Areas
- Class Actions
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- Opinion

3. Reneged on capitulation promises to compensate debenture holders and promote finality by refusing to make financial disclosures, threatening further hopeless interjectory disputes, and then deflecting accountability by interposing bankruptcy and confidentiality.

Elliott and O'Bryan's 'entrepreneurial business model' misappropriated client funds by design. By aggressively defending their indefensible model, they forced their clients – retired teachers, nurses and farmers – to spend millions and waste precious years.

'Ordinary' people trampled by professional fiduciaries

Besides a professional interest, my interest in Banksia is personal. Members of my family are among the people impacted. In the appeal that uncovered the scam I was a lawyer for – and the son of – the debenture holder who objected to the \$19.3 million settlement.

My involvement should have ceased long ago. But even with their debasement documented in a 696-page judgment, the lawyer defendants have resisted financial and emotional closure for the surviving debenture holders.

I was introduced to Banksia by my mother, Wendy Botsman. Mum's sister lived in Kyabram, where Banksia was based. From family gatherings I was aware that Mum had deposited savings with Banksia, along with her sisters and now deceased parents.

Banksia was a non-bank lender: a 'shadow bank'. It issued debentures to the public and invested the proceeds in property projects. These secured investments were subject to the prudential and statutory oversight of a professional trustee, Trust Company (Nominees) Limited (Trust Co). Trust Co used this security interest to appoint receivers when, in October 2012, Banksia collapsed owing some \$660 million to debenture holders largely comprised of retirees from rural Victoria.

In July 2014 Mum forwarded documents from Elliott inviting Banksia's debenture holders to join a class action. Mum asked whether she should join the class. I read the documents, made enquiries and conducted research.

I learned that Banksia's collapse prompted parallel proceedings. First was a class action, commenced in December 2012 by Elliott, with Lawrence Bolitho acting as the representative plaintiff. Bolitho sued Banksia, Trust Co and Banksia's directors and auditors on behalf of Banksia's debenture holders. Elliott coordinated the litigation and the funding through his vehicle, Australian Funding Partners Pty Ltd, in which O'Bryan had a stake. In due course, Justice Anne Ferguson (as her Honour the Chief Justice then was) expressed concern that Elliott and O'Bryan should not be allowed to run the case while having a significant financial interest in the funder.

Second was a claim by Banksia's insolvency practitioner, commenced in November 2014 by Banksia receiver Tony McGrath of McGrath Nicol against Banksia's directors, officers, auditors and solicitors – but not his appointor, Trust Co. To overcome the appearance of a conflict, special purpose receivers John Lindholm and Peter McCluskey of Ferrier Hodgson were appointed in June 2014 to add a claim



Banksia settlement
objector Wendy
Botsman

against Trust Co, which they duly did in March 2015.

The parallel proceedings resolved in two stages. In August 2016 Banksia's directors and advisers settled the claims in both proceedings for \$13.25 million. Because this settlement did not include Trust Co, it became known as the partial settlement. Of the settlement sum, \$5.2 million went to the Bolitho class action and \$8.02 million went to the SPRs, who returned it to debenture holders (the fees of the SPRs and their lawyers were paid from a separate tranche of debenture holder' funds).

In November 2017, Trust Co agreed to settle both proceedings for \$64 million. Instead of apportionment (dividing the settlement sum between the two proceedings to reflect their respective contributions) it was agreed that \$19.3 million would be paid to Elliott's AFPL, ostensibly to cover the legal costs of the class action and a commission reflecting the risk the funder had assumed in financing Bolitho's case. The balance would be paid to debenture holders.

The materials forwarded by Mum in July 2014 included a funding agreement. The letter covering the agreement presented a stark choice: debenture holders could either opt into the class action or fund proceedings themselves. This was misleading. Elliott appreciated that independent receivers could procure all relevant claims (as the SPRs eventually did) and a class action supported by receivers would not require debenture holders to pay a 30 per cent commission to a litigation funder.

On 18 January 2018 I exchanged emails with debenture holder committee head Bruce Lloyd. I wrote:

"From my perspective, the fears I had at the outset that lawyers would benefit at the expense of debenture holders are being realised. How is it in the best interests of debenture holders for Mark Elliott to receive an exorbitant premium in circumstances where most of the legal work has been carried out by the receiver's lawyers. I propose to object."

Bruce wrote back: "One of our committee [Keith Pitman] is thinking of pursuing Elliott's share, but to the rest of us we acknowledged that without Elliott in the early days no action may have been taken... we accept the reality of Mark Elliott."

The emphasised words reflected a fundamental misunderstanding that the committee repeatedly relied on. As of October 2015 the SPRs had the technical means; the funding (\$10 million of debenture-holder money); and the expertise (solicitors at Maddocks guided by experienced barristers) to bring all relevant claims under 'one roof'. Doing so would have freed debenture holders from the duplicative fee claims of the lawyer defendants; and the funder's 30 per cent commission.

By August 2015, it was well known that Elliott's entrepreneurial business model was under sustained judicial attack. Two of Elliott's other cases had been stayed as an abuse of process and another dismissed. An application to stay the Banksia class action as an abuse of process would have been pushing against an open door.

The disparity in relative contributions was stark. The SPRs incurred legal costs of \$4.8 million to produce 91 per cent of the evidence by documents (44 out of 46) or 98 per cent by volume (1,614 out of 1644 pages). By contrast, the lawyer defendants charged \$3.38 million to produce nine per cent of the evidence by documents or two per cent of the evidence by volume. This meant that Symons, who did very little work, charged approximately the same fees as SPR barrister Jonathon Redwood, who did

most of the work.



SPIR barrister Jonathan Redwood
SC

Over a 30-month period, the fees of the SPRs' barristers totalled \$2.1 million, or \$69,696 per month. Over a 17-month period, Bolitho's barristers (O'Bryan and Symons) claimed fees of \$3 million (roughly \$187,500 per month). In terms of barristers, Bolitho was charging about three times as much to do about one-fifth of the work. This is the arithmetic of implausibility.

Mum decides to object

On 19 January 2018, when I sat down with Mum to discuss a notice to group members advising them of the Trust Co settlement, I was not aware of the extent of the fraud. My spectator's perspective was that the fees were implausible. After discussing the notice and the history, Mum decided to object to the settlement. We prepared a letter of objection, and I emailed a digital version of the letter to the court.

The drafting was rushed. My wife and I were leaving for the airport. Before I left, I emailed a digital version of the letter to the court.

The objection letter addressed: (a) the amount of the settlement sum (\$64 million against claims valued at \$170 million); (b) the fees claimed by Bolitho (based on relative contributions, \$4.75 million seemed excessive); and (c) the commission (based on the formula used in the partial settlement, the funder's commission should have been about \$5 million, not \$12.5 million).

I concluded the objection letter with a calculated gamble. To convey the strength of our conviction that the settlement was flawed, I said that we would withdraw the objection if a contradictor was appointed (and I pointed out that contradictors had already been appointed in respect of far less significant applications). I sent a copy of the letter to fellow objector Keith Pitman.

Keith replied with a copy of his objection. Even as layman, Keith saw the fundamental problem. The involvement of the SPRs made the Bolitho proceeding unnecessary. The Bolitho proceeding was an obvious waste of debenture-holder money. The courage that Keith displayed was extraordinary. He was standing up to a committee he had been working with for years, knowing that future meetings were inevitable. In O'Bryan and Elliott he was standing up to Melbourne legal royalty. While all around him were fawning, Keith had the courage to follow the facts – without being distracted by credentials, reputation and/or wealth.

On 30 January 2018, Justice Croft considered the Trust Co settlement. On the day of the hearing, I was in London preparing for a job interview. In the lead up to the interview, I helped Keith prepare for the hearing. I explained court procedures and etiquette and prepared remarks. As a conclusion to those remarks, I proposed the following submission:

"I wish to conclude by noting that as I said in my letter, about 80 per cent of the Banksia investors are over 55 years of age and



most are in their 70s or 80s. In an age where income inequality is making news all over the world, it beggars belief that already wealthy lawyers should profit at the expense of retirees who stand to receive a partial return on investments that in many cases they could not afford to lose. The unfairness is all the more stark when one considers that it would have been an easy matter, based on established precedents in this case, to appoint a contradictor to provide some comfort to debenture holders – and the court – that the settlement is fair and reasonable.²⁸

Despite Keith's remarks and our objections, Justice Croft approved the settlement. The approval cleared the way for most of the roughly \$19.3 million to be paid to the lawyer defendants as part of their 'fee for no service' scam.

From a subsequent review of the transcript I could see that the consequences of the substantial overlap between the Bolitho and Banksia proceedings had not been made clear to the judge. It seemed obvious that the vast bulk of the work underpinning the settlement had been carried out by the SPRs – not Bolitho's lawyers. Yet, the calculation of the funder's commission assumed that the Bolitho lawyers had done all the work. It did not appear that the judge had considered Mum's objection properly, or at all.

Considering an appeal

I began thinking about an appeal. I recognised that I was going to need help. As a commercial litigator in London and New York I had seen enough doublethink in action to know that even if they had no objective entitlement to the payments, O'Bryan and Elliott would fight like hell. In such a high-stakes case I couldn't perform the work of a solicitor and barrister, and protect Mum, and maintain the rest of my practice.

The first person I thought of was barrister Christopher Withers. I had known Chris since law school in Adelaide. Our careers had overlapped at law firms in London and New York. I knew that he was an excellent lawyer. More importantly, I knew that he cared deeply about the legal profession and the role that lawyers should play.

I started working on potential grounds of appeal. I talked to Mum and Keith about whether they would be prepared to be appellants. Mum was apprehensive about taking on lawyers. She wanted to know whether she would have to give evidence. Keith had similar concerns.

On 27 February 2018 I sent an email to the lawyers for Bolitho and the SPRs indicating that I had instructions to file grounds of appeal. Subsequently, I received a call from O'Bryan. He had a proposal. Wouldn't it be better for all concerned if we mediated our differences? We exchanged a few texts. I suspected that O'Bryan's



Banksia debenture holder
Keith Pittman



proposal was a pretext for getting the appeal time-barred. I was right, O'Bryan failed to follow-up.

On 20 March 2018 I filed the application for leave to appeal. The grounds of appeal covered the transparency of the settlement approval process, the reasonableness of the settlement sum and the reasonableness of the funder's commission.

Six days later I emailed a copy of the appeal papers to solicitor Anthony Zita — the solicitor on the record for the class action. Through Zita, the lawyer defendants responded by requesting Mum's address and asserted that the barristers' conduct rules prevented me from acting for her. On 27 March 2018 Elliott emailed Mum. He knew that he shouldn't be contacting a layperson direct, but his needs were more important.

"I am trying to contact Wendy Diane Botsman of [address]. I have some information for her urgent consideration. Is this the correct email address?"

Mum responded by asking Elliott to forward any important information to me and provided my chambers' email address. Elliott never contacted me with the "important information". His goal was intimidation — not communication. To forestall further intimidation, I called Zita. After a lengthy pause, I was told Zita was not available, but that he would call me back. Nineteen minutes later Zita sent an email to Mum at the email address used by Elliott. Zita did not return my call, before or after sending his email. The email attached a letter foreshadowing an application for security for costs in the appeal.

The letter stated that "... Mr Bolitho's costs of the application for leave to appeal will be at a minimum approximately \$160,000". It forecast "...significant additional costs being incurred by the sixteen other parties to the application for leave to appeal", and estimated that "... the respondents' collective costs of the application for leave to appeal will be in the range of \$500,000 — \$1 million". It asked Mum to disclose her "personal financial position" by 4pm on March 29, including the value of any "unencumbered assets" available to satisfy an adverse costs order and make a proposal for the giving of security in the amount of \$160,000.

On 27 March 2018 Mum forwarded Zita's email to me. Her email conveyed how scared she was. "Do I reply to this saying to refer all matters to you? Bit scary".

March 2018 — July 2018: The funder uses a hopeless countersuit to pressure Mum to drop the appeal

On behalf of the funder, Elliott retained Arnold Bloch Leibler. In a 29 March, 2018 letter, ABL asserted that Mum's conduct in seeking leave to appeal involved breaches of nine provisions of the funding agreement and caused the funder to incur losses of at least \$37,023 per week.

To give the countersuit a patina of respectability, the funder sought permanent and interlocutory relief to restrain the appeal. But such injunctive relief was never pressed. The only point of the proceeding was to pressure Mum to drop the appeal.

On the morning of 29 March, 2018 an ABL solicitor asked me whether I had instructions to accept service and gave me until 12.30pm to respond. At 12:39pm ABL made arrangements with a process

server for the originating process to be personally served on Mum. Thankfully, Mum was out when the process server knocked.

On 5 April, the lawyer defendants communicated a settlement offer to Mum. The letter expressed concern that Mum's appeal would delay the distribution to the detriment of elderly debenture holders relying on the debentures to fund their retirements and offered to pay Mum the remaining principal and interest she was due as well as the costs of filing the leave application. It contended that the application for leave had no prospects of success in part because Mum had not filed a valid objection and failed to attend the hearing. The letter was a Freudian reveal. Mum's motivation was not to obtain preferential treatment, but to obtain a better outcome for her family and other debenture holders.

The funder's claim was dismissed with costs. Justice Ross Robson acknowledged that the funder was motivated by a desire to intimidate Mum, but declined to award her indemnity costs.

May 2018 – November 2018: Preparing for the appeal hearings

By May 2018, Elliott and O'Bryan were getting restless. In a letter to Lindholm, Elliott said: "As we discussed last week, AFPL is chasing Wendy Botsman for breaching the [funding agreement] she signed in March 2015 and we go to court on 24 May for the trial. I fully expect to own a holiday house in Magill, SA in due course, that being the current home of Wendy Botsman."

It was a classic 'power lie'. Elliott was going to evict a client (a retired nurse) from her home to defend a claim that, objectively, he knew he had no entitlement to.

O'Bryan, who was copied to the exchange, had his own ideas on how Lindholm could help (emphasis added): "On the Mrs Botsman appeal, one of Botsman's supposedly big points (according to him) is that Maddocks did all the work on the two cases and we did none and therefore our legal costs are too high and the funder deserves nothing. It would help a lot if they would confirm, in court and outside (i.e. in Botsman's ear), that all the work done on the expert evidence for trial ... was shared (i.e. Michael & I contributed fully to all briefings .etc). [John Lindholm] paid for most of it, but that was only because he had got \$10M of debentureholders' money from Black J. ... I want JL to give clear instructions to his legal team not to support this nonsense."

Another 'power lie'. Extreme self-entitlement (I deserve to be paid as if I have done a lot of work) displaces objective reality (I know that I did virtually no work because other lawyers, paid for by Lindholm, did most of the work). The ability to assimilate such incompatible beliefs is a hallmark of high hubris.

Late in June 2018 Mum visited my family in Sydney for a week. In the course of her visit, she went to see a local GP. The stress of Banksia was taking a toll. In that typically selfless way of mothers she could just about contain her own fears about the litigation. But seeing the adverse impact the litigation was having on her son's family exacerbated her existing anxiety. The spike in stress triggered a rash for



NORMAN O'BRYAN

which a doctor had to prescribe medication. It forced a realisation on me that lawyers have absolutely no insight into the toll that litigation takes on 'ordinary' people. In particular, we have no conception of how stressful and demoralising it is to be opposed by parties that use their wealth and power to abuse court processes.

The appeal hearing: Whelan JA 'joins the dots' but lawyers 'double-down'

June 8, 2018 should have marked the end of the Banksia saga. In the course of argument that day Justice Simon Whelan made the very comparison that revealed the fee claims of Banksia class action lawyers to be implausible. The correspondence between the SPRs fee notes and their work product proved that the SPRs had done virtually all the work and forced the lawyers to rely on formulaic fluff to try to justify their fees.

Whelan JA: There is no doubt they [the SPRs] compiled most of the evidence.

O'Bryan: Compiled in a sense that their name appears on the cover of the file.

Whelan JA: I have read the file. I have read the fee notes. There is no doubt they [the SPRs] compiled most of the evidence.

O'Bryan: I have not read their fee notes, your Honours.

Whelan JA: You seem to spend a lot of time reading their witness statements.

O'Bryan: No, we spent a lot of time preparing their witness statements, your Honours.

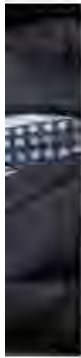
O'Bryan's words represented a shameless lie. In an effort to substantiate their 'fee for no service' scam the lawyer defendants responded to Whelan JA's checkmate by placing 'paid' stamps on unpaid invoices (and engaged in numerous other fabrications). But not even industrial-scale fraud could mask the comparison of relative contributions that made the fee claims implausible.

The appeal succeeded. On 1 November 2018 the Court of Appeal allowed the appeal as it pertained to the commission and fees. The process by which these amounts were approved had miscarried. The appeals court remitted the question of fees and commission to a different trial court.

November 2018 – April 2019: The remitter and how the contradictors unravelled the 'fee for no service' scam



In terms of a contradictor, Withers seemed like the obvious choice to assist the new trial court. He had done a brilliant job on limited preparation and he was familiar with the issues. Following a hearing, the court opted instead to appoint Melbourne counsel as contradictor – Peter Jopling AM QC with Jennifer Collins as his junior. While I was dismayed at the possibility that the Melbourne legal establishment was 'circling the wagons', my fears were largely misplaced: Jopling and Collins did a brilliant job of exposing the scam.



Contractor Peter Hopling KC

Beginning in March 2019 the contractor alleged serious misconduct by the lawyer defendants. O’Byran, Symons and AFPL vigorously denied the allegations and maintained their full entitlement to fees and a commission. But reality was catching up. On 16 April 2019, the contractor filed detailed particulars of misconduct disqualifying the lawyers from receiving fees and a commission.

One of the ‘darkest chapters’ in Victoria’s legal history

Only after the contractor’s opening submissions had laid bare the true extent of their appalling conduct (including with the lawyers’ own damning documents) did the surviving defendants capitulate (and purport to express remorse for their actions).

Elliott’s resistance ended in February 2020. Shortly after he was asked to substantiate his alleged practice of routine document destruction, Elliott committed suicide. Turns out, the practice was not routine, but selective to Banksia.

The capitulation was expressed to be total: O’Byran dropped any claim to recover his costs, conceded he should no longer be allowed to practise law and consented to any findings made in relation to costs. Symons followed suit.

In the subsequent remitter judgment the Justice John Dixon found that the funder and lawyers acting for Bolitho – including O’Byran and Symons – engaged in a fraudulent scheme to claim more than \$19 million in costs and commission. O’Byran, Symons, plus Zita, Alex Elliott, the estate of cost consultant Peter Trimbo and the funder (together, the judgment defendants) were ordered to pay damages of approximately \$11.7 million. They were also ordered to pay the costs of the SPRs and contractor (a combined sum of roughly \$10.6 million) on an indemnity basis. The total bill for their appalling misconduct was \$22.3 million plus interest.

The judgment deconstructed the scam. Elliott had reverse engineered the \$5.2 million costs claim after the Trust Co settlement had been reached and divided that amount into fee targets for each of O’Byran, Symons and Zita. Justice Dixon found. O’Byran and Symons fabricated costs agreements and invoices to give the impression that they had spent hundreds of hours of time on the matter, when no such work was ever undertaken.

Justice Dixon took care to address the conduct of the legal practitioners representing the parties. The history of the matter alerted them that they needed to exercise “extreme care in the proper discharge of their obligations to the court”, he said. The judgment noted the tendency for bad behaviour in litigation to be obscured by concerted efforts to “avoid the cleansing effects of transparency” and questioned whether “untenable” defences were maintained beyond an acceptable point in the remitter. He called on practitioners for renewed resolve to change litigation culture.

Post-remitter settlement discussions (déjà vu all over again)



In October and November 2021 O'Bryan, Symons and the APPL entered into personal and corporate bankruptcies. In O'Bryan's case, it was an extraordinary act. In the lead up to the remitter hearing he was working on 50 to 60 different matters. His daily rate was about \$10,000. In a single month (May 2017) O'Bryan charged more than \$300,000 to other (i.e., non-Banksia) matters.

Justice John Dixon

In around February 2022, I read the coroner's report concerning Trimbos. [News of Trimbos' death](#) in September 2020 hit me hard. The coroner's report, confirming suicide, hit me harder still. I experienced pangs of guilt over the role that the appeal had played in his untimely passing.

Trimbos should never have agreed to act as Elliott and O'Bryan's costs stooge. His conduct in the Banksia matter was egregious. But he was put in that position by Elliott and O'Bryan. Their monstrous need to assert themselves took a life.

In February 2022 the judgment defendants [proposed to settle the judgment debt of \\$22.3 million](#) (excluding accruing interest) with a payment of \$7.6 million (\$10.6 million with the benefit of a \$3 million insurance policy).

In emails to the SPR I described the settlement proposal as "derisory". Refunding debenture holders some of the money – their money – wasted on the cynical and hopeless arguments of the lawyer defendants without paying the full price (\$11.7 million in compensation) for their orgy of self-entitlement was insulting. I expressed dismay over the fresh reliance on confidentiality by the bankrupt O'Bryan. After everything the Court of Appeal had said (at considerable cost to debenture holders in time and money) about secrecy and the lies of the lawyer defendants, how could a settlement that masked the source of contributions possibly stand?

The defendants revised their settlement proposal. The SPRs responded by approaching the Supreme Court of New South Wales for guidance on whether they would be justified in accepting/not accepting the revised proposal.

Justice Ashley Black [concluded that the SPRs were justified](#) in refusing the proposal and gave substantial weight to the SPRs concerns around the fresh reliance on confidentiality (concerns they first expressed in February 2022). For the SPRs to properly consider settlement offers, greater transparency was required.

Despite Justice Black's guidance, in February/March 2023 I learned that O'Bryan was allowed to mask the source of his own [\\$1.25m settlement offer](#). Based on his May 2017 invoicing, the offer equated to about four month's work. It certainly did not reflect the significant wealth generated by O'Bryan over the course of his long and successful career. With everything that had transpired, the realisation that O'Bryan was allowed to manipulate the system was exasperating. The [settlement was approved](#) by Justice Dixon in July 2023. Justice for debenture holders was denied.

Trashing the joint – Elliott, O'Bryan and Symons

According to [Alex Elliott's barrister](#), his father Mark Elliott was a "fierce litigator". He was nothing of the sort. He was a bully who gamed the system to supplement his significant wealth. In retreat, he

leveraged his wealth and scorched-earth tactics to force his opponents to accept significantly less than their just deserts.

What explains this epic chutzpah? To an extent it is a behaviour we are predisposed to. In an experiment involving a game of Monopoly rigged to ensure rich and poor players, none of the rich players attributed their inevitable success to luck. Instead, success was attributed to acumen or competence.

Imagine the cumulative effects of such Monopoly moments in real life. At every turn, life (in the form of earnings and 'press') affirms your specialness. Layer after layer of affirmation confirms your entitlement to ever higher rewards. From your vantage point as a high priest of the law or finance you come to see that rules are intended for muggles, and discretionary for people like you on special, destined-for-greatness trajectories.

The Elliott credo has permeated every facet of the Banksia fraud and attempted cover-up. According to the contradictor, the lawyer defendants believed that "... by staring down and dragging out [the] remitter for nearly two years, they could bury the enormity of their collective misdeeds".

The lengths to which O'Bryan would go to promote his needs above the proper administration of justice are revealed by his response to being ordered by Justice Dixon to produce an affidavit. Not only did he use the affidavit to give a false account of his conduct, he pressured other witnesses to corroborate his false account.

Symons' mindset is illustrated by his capitulation, which occurred only after he had cross-examined some witnesses and which omitted the contrition expressed in the O'Bryan capitulation.

Because of the extraordinary greed and hubris of these lawyers, more than 16,000 ordinary Australians suffered and continue to suffer.

The 'bad-apple' hypothesis

Despite its notoriety as a discredited theory, the 'bad apple' theory – that shortcomings are the results of one or two bad actors and avowedly not a reflection on the system – is deployed in Banksia in support of assurances that the system is working as it should. While appropriately recording and deprecating the lawyer defendants' chevauchee through the paramount duty and the lives of debenture holders, the court was also careful to contain the fallout. Thus, Justice Dixon:

1. Found that "... the civil justice system protected the litigants";
2. Observed that a bad apple is not the harbinger of a diseased orchard;
3. Diagnosed the problems presented by Banksia in terms of bad apples (speaking extrajudicially, his Honour said that Banksia was very atypical because the conduct of the lawyer defendants was abnormal);
4. Saw no reason to be concerned about the capacity of the legal system to properly self-regulate (speaking extrajudicially, his Honour said Banksia showed that the legal system is able to protect itself from rogue operators);
5. Noted the restorative capacity of the system to protect fundamental values and to protecting the integrity of the system by preserving the common law's absolute commitment to the proper administration of justice; and

6. Concluded that the duty to always engender and protect the proper administration of justice remained deeply rooted in the legal profession as illustrated by the integrity and commitment of the overwhelming majority of practitioners.

The appeal that triggered the unraveling of the 'fees for no services' scam depended on one lawyer. The appeal did not vindicate the capacity of the system for self-regulation or the commitment of the majority of the profession to the proper administration of justice. It was a highly contingent longshot; a freak occurrence.

Without alignment of the following coincidences, the 'system' would have prevented a proper contest, suspended the operation of the supposedly paramount duty, overruled the objection of the layman Keith Pitman, who spotted the essence of the scam, and allowed the wealthy lawyer defendants to misappropriate \$19.3 million belonging to retired teachers, farmers and nurses:

1. A debenture holder happened to have a relationship with a lawyer with the relevant expertise and the right connection (another barrister with relevant expertise);
2. The nature of the relationship was such that the debenture holder trusted the lawyer and the barrister to act in high-stakes litigation;
3. To represent the debenture holder, the lawyer was prepared to absorb enormous financial risks as well as other forms of intimidation aimed at the debenture holder (and the lawyer);
4. The mitigation strategies of the lawyer and the barrister and the resilience of the debenture holder were, together, just enough to overcome the efforts of the lawyer defendants to intimidate the debenture holder and the lawyer into abandoning appeal (attempts that included a cynical countersuit); and
5. The lawyer's risk assessment was impacted by his vanity (selfishly prioritising unique and strongly held views on inequality and justice ahead of the needs of his family), his naivety and his stubbornness.

Banksia should not be pitched as a triumph of restorative justice. Justice for debenture holders is not the striking-off of the lawyer defendants from the roll. Striking off is a vindication of the values of 'the system'. Purifying the roll does not help to restore wasted money and time to debenture holders (those that are still alive and competent).

Insisting, against such a backdrop, that the system is working as it should is itself confirmation that something is amiss. The failings revealed by Banksia are endemic – not niche. Overcharging, especially in connection with class actions, is notorious. Returns to funders and lawyers frequently exceed returns to the class. Bullying and intimidation are widespread. The system did not protect its principal litigant (my mother) from bullying. The conduct of the lawyer defendants was uniquely appalling, but bullying, intimidation and overcharging are not abnormal.

Old Lessons, Urgent New Learnings – Without Duties there are No Rights

Is it grandiose to suggest that there are lessons that should be learned from the Banksia saga? Only 16,000 people were impacted by Banksia against millions impacted by the Great Financial Crisis for, notoriously, only one incarceration (in the US). As importantly, none of the thinking that went into the GFC has been rebuked. Yes, regulation has helped make most banks more resilient (for a time) but the

fundamental alchemy at the heart of banking hasn't changed. If nothing of consequence excluding reputational damage followed the GFC, why should we be exercised – at all – about Banksia?

Because accountability matters.

There was no accountability following the GFC because the flawed thinking that contributed to it was so widely held that policy makers would have been implicated (a non-starter). Such hypocrisy gets noticed. The failings and the lack of accountability fomented a hatred of 'elites'. The lessons could not be clearer. Failing to deliver accountability has adverse consequences that are both inevitable and unpredictable.

My mother has been told that she has a right to bring proceedings against O'Bryan and others for the bullying they inflicted. But instead of muddying resolution of the current proceedings, she has been told she must bring separate proceedings. What is the value of that right if she knows, from bitter personal experience, that the courts will do nothing to: (a) protect her from bullying and intimidation; (b) prevent its processes from being abused by her wealthy opponents; and/or (c) prevent any victory she secures from being financially pyrrhic (by the deployment of bankruptcy, trusts, and scorched-earth tactics)? The answer is the value is nil.

Delivering accountability is the special responsibility of lawyers. As auditors of legality and the inheritors of a fiduciary law tradition that uses accountability to counterbalance strong powers with strong duties, courts are well placed to promote the accountability necessary to overcome trust deficits. But if the courts cannot meet the challenge posed by one of the 'darkest chapters' in Victoria's legal history, change will ensue. The conduct of O'Bryan and Elliott – and so many other lawyers around the common law world – is classic rent-seeking. The idea that markets will permit such behavior indefinitely ignores the history of innovation. In a world of smart contracts, for example, the role of lawyers is significantly diminished. AI will diminish their role even further.

Accountability? Finally?

Debenture holders have died without finality and with their retirements/legacies spent financing the self-entitlement of the lawyer defendants. Their money has been misappropriated and compensation delayed. Blood has been spilled. Why should the lawyer defendants keep their wealth while victims worry about money? So what does accountability for Banksia entail?

In terms of financial accountability, debenture holders must be reunited with their money and compensated for being kept out of their money by the tactical game-playing of the judgment defendants. To begin with, that means \$22.3 million plus interest. We can start with the \$5.2 million the lawyer defendants misappropriated from debenture holders in the partial settlement. Then there is the proceeds of the per-claim insurance policies of O'Bryan and Symons (which would appear to be worth at least \$4 million given the SPRs submission that the proceedings disclosed multiple losses, with the \$2 million limit applying in respect of each loss). That leaves \$10.2 million plus interest.

Considering that the Elliott estate – which has yet to pay anything towards the judgment debt – has properties worth at least \$10 million, that should be an easy enough task.

It also means compensating debenture holders for: (a) the litigation practices they have been subjected to that are not covered by the remitter judgment; and (b) bullying and intimidation they have been

subjected to. In other words, a general fund to compensate all debenture holders for the financial waste occasioned by unfair litigation practices and the financial and other losses of Mum and Keith. The fund should also benefit the Trimbos family. Contributors to this fund should include all practitioners and participants who have caused waste and bullying in this case.

The Good Fight

As a trend-spotter and thought-leader my wife has met and mentored many entrepreneurs who have gone on to enjoy extraordinary financial success. Wealth that would make even O'Bryan and Elliott envious. On the eve of a significant liquidity event one of them made a gift to all of those who had helped her/him attain success. Imagine. Instead of assimilating significant wealth and all its accoutrements (including scores of sycophantic supplicants) as confirmation of preternatural brilliance, this person was self-aware enough to grasp that her/his success was the product of inputs imparted by a collaborative journey. In a world besotted with shiny, shallow things, it is an emphatic reminder that there are people of substance with talent and humility. And besides these virtual unicorns, there are immensely talented people who are also deeply principled.

My formative years spent working for criminal lawyers and judges in Adelaide led me to believe that lawyers, and the law, exist to serve the community. The fight I have fought for the past 8.5 years to prevent rent-seeking in Banksia is a tribute: (a) to those (and subsequent) mentors; (b) to the transformative role that the law has historically played in improving the lives of 'ordinary' people; (c) to the debenture holders who have died waiting for finality; and (d) to the significant sacrifices made by Mum and Keith Pitman. I am also keenly aware that I have a unique responsibility to speak for all those prevented by power dynamics from voicing the concerns I have expressed.

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMERCIAL COURT
CORPORATIONS LIST



BETWEEN:

LAURENCE JOHN BOLITHO

Plaintiff

-and-

BANKSIA SECURITIES LIMITED ACN 004 736 458 (RECEIVERS AND
MANAGERS APPOINTED)(IN LIQUIDATION) & ORS
(according to the attached Schedule)

Defendants

ORDER

JUDGE: The Honourable Justice John Dixon
DATE MADE: 22 May 2019
ORIGINATING
PROCESS: Writ
HOW OBTAINED: At directions hearing on 22 May 2019
ATTENDANCE: Ms S Jacobson of counsel, for Mr L J Bolitho
Mr S R Horgan QC with Mr C J Tran for Australian Funding
Partners Limited
Mr P Jopling QC with Ms J Collins, as contradictor
Mr R A Dick SC for Mr Lindholm and Mr McCluskey in their
capacity as joint and several special purpose receivers of the
Banksia Securities Limited (receivers and managers appointed)
(in liquidation) (SPRs)
OTHER MATTERS: Nil

THE COURT ORDERS THAT:

1. By 4 June 2019, AFPL and Portfolio Law are to transfer all settlement proceeds held by them on behalf of the debenture holders of Banksia (including interest that has accrued on those funds) to the account referred to in paragraph 2 of the Orders of the Court made 17 May 2019 (**Maddocks Settlement Account**).
2. By 4 June 2019, the SPRs are directed and authorised to distribute \$42 million from the funds held in the Maddocks Settlement Account, together with any amount available to be released for distribution from the 'Existing BSL Litigation Fund' by reason of the settlement with Trust Co (**Interim Distribution Sum**), as follows:

- (a) \$75,000 to the plaintiff in S CI 2012 07185 (**Mr Bolitho**) in accordance with clause 3.1.2 of the Deed of Settlement executed 4 December 2017 between Mr Bolitho, AFPL, the SPRs and Trust Co; and
 - (b) the balance to the debenture holders of Banksia in accordance with their statutory duties as liquidators.
3. In respect of the distribution of the interim distribution sum, I further direct:
 - (a) that AFPL and its solicitors must cooperate expeditiously with the SPRs in managing communications from debenture holders;
 - (b) costs incurred by the SPRs, excluding payments made to Link Market Services, which may be deducted from the Maddocks Settlement Account, are costs incurred in the special purpose receivership that are subject to approval by the Supreme Court of New South Wales. Any claim by any other party to costs in respect of this interim distribution are reserved.
4. Paragraph 8 of the orders of the Court dated 22 November 2018, paragraph 2 of the orders of the Court dated 1 February 2019, paragraph 9 of the orders of the Court dated 1 March 2019 (**1 March Order**), and paragraph 1 of the orders of the Court dated 8 March 2019 are varied so that, on and from 4 June 2019, the contradictor's costs, Mr Phillips' costs and the costs of the Expert (as defined in paragraph 8 of the 1 March Order) are to be borne, in the first instance, from the Maddocks Settlement Account.
5. The SPRs file and serve an interim report concerning the distribution of the Interim Distribution Sum by 22 August 2019.
6. Subject to further order of the court, by 13 December 2019, any unrepresented cheques will be cancelled.
7. The SPRs file and serve a final report concerning the steps taken in relation to any unrepresented payments by 20 December 2019.
8. Liberty to apply.
9. Costs are reserved.

DATE AUTHENTICATED: 22 May 2019


The Honourable Justice John Dixon



SCHEDULE OF PARTIES



BETWEEN:

LAURENCE JOHN BOLITHO

Plaintiff

-and-

BANKSIA SECURITIES LIMITED (ACN 004 736 458)

First Defendant

THE TRUST COMPANY (NOMINEES) LTD (ACN 000 154 441)

Third Defendant

RSD CHARTERED ACCOUNTANTS (ABN 60 616 244 309)
(FORMERLY KNOWN AS RICHMOND SINNOTT AND
DELAHUNTY)

First Third Party

PATRICK JOHN GODFREY

Second Third Party

NICHOLAS LIVINGSTONE CARR

Third Third Party

PETER WILLIAM KEATING

Fourth Third Party

GEOFFREY GRENVILLE SKEWES

Fifth Third Party

GEOFFREY S A LIPSHUT

Sixth Third Party

MAXWELL BROWN & BROWN (A PARTNERSHIP)

Seventh Third Party

LANTERN LEGAL GROUP PTY LTD
T/A HARWOOD ANDREWS

Eighth Third Party

INSURANCE HOUSE PTY LTD (ACN 006 500 072)

Ninth Third Party

THE CHANNEL SYNDICATE 2015

Tenth Third Party

THE AMTRUST SYNDICATE 1206

Eleventh Third Party

CHAUCER SYNDICATES LIMITED

Twelfth Third Party



**Banksia Securities Limited
(Receivers and Managers
Appointed) (In Liquidation) (Special
Purpose Receivers Appointed)**

Court Report

27 August 2019

PE00996(24326013-1)

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2 Quantum of un-presented payments

2.1 Distribution summary

As noted above, the 7th distribution was paid in respect of the 22,855 debenture holder accounts with 343,109,563.81 being distributed.

Of the 22,855 payments, the distribution comprised of:

- 10,790 debenture holders totalling \$24,625,074.51 were sent their payment by direct deposit
- 11,163 debenture holders totalling \$17,933,459.40 were sent their payment by cheque
- 702 payments to debenture holders were withheld from the distribution totalling \$547,429.88 on the basis that:
 - The debenture holder had a mail return tag on their file with Link Market Services and no bank account details were held for that particular debenture holder and/or
 - Direct deposits to the debenture holders for the previous distribution undertaken in March 2017 were returned.

The proceeds that we have undertaken in relation to these withheld payments is detailed at section 2.4 of this report.

2.2 Un-presented payments from 7th distribution

Detailed below is a summary of the reconciliation statements provided by Link Market Services at the end of each month for the distribution and as at 15 August 2019.

Date	No. of payments presented	Of that amount, % of payments banked	Amount of un-presented payments	% of un-presented payments by value
13 Jun 19 Total Distribution	22,855	100.0%	343,109,563.81	100.0%
19 Jun 19	13,453	59.0%	8,573,827	25.0%
17 Jul 19	4,185	18.3%	4,155,856	12.1%
15 Aug 19	3,965	17.4%	3,945,646	11.5%

We make the following comments:

- At 30 June 2019, approximately two weeks after the 7th distribution 40.4% of payments had been banked by number and 50.1% of payments had been banked by value.
- At 31 July 2019, approximately 7 weeks after the distribution 51.5% of payments had been banked by number and 60.3% of payments had been banked by value.
- At 15 August 2019, approximately 9 weeks after the distribution 62.6% of payments had been banked by number and 80.9% of payments had been banked by value.

This analysis indicates that debenture holders have progressively been presenting their payments over the 2 month period since the distribution.



2.3 15 August 2019 Un-presented payments from 7th distribution

The breakdown of un-presented payments as at 15 August 2019 is tabled below:

		Amount
Un-presented cheques	2,474	1,912,576
Cancelled cheques	19	27,123
OWO/EFT payments	732	567,430
Direct credit repayments	750	1,429,914
TOTAL	3,945	3,915,648

The following table is a summary of the 3,945 total un-presented payments outstanding from the 7th dividend categorized by value:

> \$30,000	1	\$34,166
\$10,000 < \$20,000	49	\$751,339
\$5,000 < \$10,000	112	776,170
\$1,000 < \$5,000	738	1,645,590
\$500 < \$1,000	456	\$33,691
\$100 < \$500	874	\$22,507
\$50 < \$100	347	26,336
\$5 < \$50	614	147,325
< \$5	628	1,140
	3,945	3,915,648

As noted in the above table, those debenture holder accounts with un-presented payments with a value of in excess of \$1,000 amount to 705 accounts with a total amount outstanding of \$3.2 million of the \$3.9 million of un-presented payments.

2.4 Process undertaken for withheld payments

2.4.1 Calling contact numbers listed

Following the 15 June 2019 distribution, staff undertook a process which included obtaining from Link Market Services Limited a listing of the 702 debenture holder accounts that had their seventh distribution withheld due to either a mail problem flag on their account or their failure to provide a distribution instruct bank account details.

This listing included for each debenture holder account the amount withheld from the 7th distribution and also their contact information including address and phone number.

A breakdown of the amount owed in respect of the 702 debenture holder accounts that had their payments withheld is detailed below:

ANNEXURE 2 (2019-12-31)

2

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Given the significant number of debenture holders that are not compliant (on 4 July 2015), we undertook a process to request data matching services from the Registry of Births, Deaths and Marriages (BDM) against a total list of debenture holders with unrepresented payments from the 7th dividend.

Based on the age of many of the debenture holders in the register, we have reason to believe that a number of the debenture holders who are not presenting their payments may be deceased and their estates may not be aware of their entitlement to distributions.

We registered Banksia as a stakeholder to BDM, however given the debenture holder registry does not hold date of birth data, BDM rejected the matching service requested, as date of birth is a mandatory field for BDM to conduct the matching service.

3 Proposed approach

As can be seen by the above analysis, debenture holders appear to be naturally presenting their funds from the 7th dividend. It is expected however that this will slow as time passes.

Over the course of the next few months, the Special Purpose Receivers propose to attempt to contact all debenture holders with unrepresented funds greater than \$1,000. This amounts to 803 accounts with a total amount owing of \$3.2 million in order to either encourage them to present their funds or encourage them to contact Link Market Services in order to have the funds reassessed.

We consider that this proposed approach strikes a balance between spending creditors funds following up debenture holders and not serving the debenture holders at all.

At the conclusion of this process, we would propose that all unrepresented funds be sent to ASIC (claimed trust).

John J. Matthews
Special Purpose Receiver



**Banksia Securities Limited
(Receivers and Managers
Appointed) (In Liquidation) (Special
Purpose Receivers Appointed)**

Court Report

28 December 2019
This report contains 81 pages

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1 Background of distribution

I refer to my previous Court report dated 27 August 2019 in relation to the distribution to debenture holders that was paid in June 2019 (First Court Report). This report should be read in conjunction with the First Court Report.

The Background to the distribution is provided in the First Court Report.

2 Quantum of unrepresented payments

2.1 Distribution summary

As noted in the First Court Report, the 7th distribution was paid to 22,855 debenture holder accounts with \$43,109,503.81 being distributed.

Of the 22,855 Accounts, the distribution comprised of:

- 10,700 debenture holders totalling \$24,676,074.51 were sent their payment by direct deposit.
- 11,163 debenture holders totalling \$17,933,469.40 were sent their payment by cheque.
- 702 payments to debenture holders totalling \$547,429.90 were withheld from the distribution on the basis that:
 - The debenture holder had a mail return tag on their file with Link Market Services and no bank account details were held for that particular debenture holder number.
 - Direct deposits to the debenture holders for the previous distribution undertaken in March 2017 were returned.

2.2 Unrepresented payments from 7th distribution

Detailed below is a summary of the reconciliation statements provided by Link Market Services at the end of each month since the distribution and as at 30 November 2019:

Date as at	No. of unrepresented	% of unrepresented payments by number	\$ amount of unrepresented	% of unrepresented payments by value
13-Jun-19 Total Distribution	22,855	100.00%	43,109,503.81	100.00%
30-Jun-19	0,161	0.70%	2,460,060	5.72%
31-Jul-19	4,163	18.22%	4,190,070	9.72%
15-Aug-19	3,945	17.27%	3,810,548	8.84%
31-Aug-19	3,027	13.25%	3,424,850	7.94%
31-Sep-19	3,380	14.80%	3,030,110	7.03%
31-Oct-19	3,268	14.29%	2,774,101	6.43%
30-Nov-19	3,124	13.67%	2,606,504	6.05%

We make the following comments:

(continued on page 11)

- At 31 August 2019, approximately 2.5 months after the 7th distribution, 83.95% of payments had been banked by number and 82.1% of payments had been banked by value.
- At 30 September 2019, approximately 3.5 months after the 7th distribution, 85% of payments had been banked by number and 82.8% of payments had been banked by value.
- At 31 October 2019, approximately 4.5 months after the 7th distribution, 86.8% of payments had been banked by number and 83.0% of payments had been banked by value.
- At 30 November 2019, approximately 5.5 months after the 7th distribution, 88.2% of payments had been banked by number and 83.5% of payments had been banked by value.

This analysis indicates that debenture holders have progressively been presenting their payments over the 5.5 month period since the distribution.

2.3 30 November 2019 Unpresented payments from 7th distribution

The breakdown of unpresented payments as at 30 November 2019 is tabled below:

Type	No. of accounts	Amount \$
Unpresented cheques	1,944	1,376,954.30
Over-called cheques	7	21,134.56
Withheld payments	564	480,870.86
Direct funds transfers	409	744,433.90
TOTAL	3,124	2,623,393.62

As noted in the First Court Report, withheld payments related to debenture holders who either had a mail return tag on their account, or based on previous distributions had incorrect bank details.

The following table is a summary of the 3,124 total unpresented payments outstanding from the 7th dividend categorised by value:

Outstanding 7 th dividend amount as at 30 November 2019	No. of accounts	Total Value \$
> 20,000	6	186,844
10,000 < 20,000	23	346,100
5,000 < 10,000	94	549,182
1,000 < 5,000	519	1,150,164
500 < 1,000	345	754,115
100 < 500	619	185,790
50 < 100	324	211,991
5 < 50	505	111,271
< 5	692	13,412
	3,124	2,623,524

As noted in the above table, those debenture holders with unpresented payments with a value in excess of \$1,000 account for 62% accounts with a total amount outstanding of \$2.2 million of the \$2.6 million of unpresented payments. This is a significant reduction in unpresented payments since the First Court Report, because as at 15 August 2019 unpresented payments with a value in excess of \$1,000 accounted for 903 accounts with a total amount outstanding of \$3.0 million of the \$3.9 million of unpresented payments at that time.

The above table also confirms that those debenture holders with un-presented payments with a value less than \$1,000 account for 2,487 accounts with a total amount outstanding of \$400,000 of the \$2.6 million of un-presented payments. Although there remains a large number of lower value payments that are un-presented, those amounts also continue to be reduced over time.

2.4 Process undertaken for withheld payments

The process undertaken for withheld payments is provided in the First Court Report. There has been no change to the process undertaken since the Court Report in relation to withheld payments. Subsequent to the First Court Report, the Special Purpose Receivers have undertaken a similar process for all un-presented payments greater than \$1,000 (as opposed to just withheld payments). This is a higher threshold than the \$100 materiality threshold adopted in the First Court Report for withheld payments to minimise the costs involved in undertaking further searches for lower value accounts. This process is still ongoing and the Special Purpose Receivers propose to continue to follow up those parties that have not been contacted in its early 2017.

3 Proposed approach

As can be seen by the above analysis, debenture holders appear to be naturally presenting their funds from the *FF* distribution over time and are being prompted by us where we are able to contact them. As noted in the First Court Report, it is expected that this will slow as time elapses. In view of the passage of time, it is now less likely that many of the lower value payments will be presented, but even these amounts are continuing to be reduced.

Given that debenture holders continue to present their payments and our contact Link Market Services to have them reassessed, over the course of the next three months, the Special Purpose Receivers propose to continue to attempt to contact all debenture holders with un-presented funds greater than \$1,000. The Special Purpose Receivers consider that further searches are justified because of the progress that has been made. We consider that this proposed approach strikes a balance between spending creditors funds following up debenture holders and not contacting the debenture holders at all.

At the conclusion of this process, the Special Purpose Receivers intend to seek further directions in relation to the remaining funds.



IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
GROUP PROCEEDINGS LIST

S CI 2012 07185

BETWEEN:

LAURENCE JOHN BOLITHO & ANOR
(according to the attached Schedule)

Plaintiffs

-and-

JOHN ROSS LINDHOLM IN HIS CAPACITY AS SPECIAL PURPOSE
RECEIVER OF BANKSIA SECURITIES LIMITED (RECEIVERS AND
MANAGERS APPOINTED) (IN LIQUIDATION) & ORS
(according to the attached Schedule)

Defendants

ORDER

JUDGE: The Honourable Justice John Dixon

DATE MADE: 8 April 2021

ORIGINATING PROCESS: Writ dated 23 December 2012

HOW OBTAINED: Interlocutory process filed 10 March 2021

ATTENDANCE: On the papers.

OTHER MATTERS: A. On 1 November 2018, the Court of Appeal, in *Botsman v Bolitho* (2018) 57 VR 68:

(1) approved the \$64 million settlement reached between the first plaintiff, the first defendant and The Trust Company (Nominees) Pty Ltd; and

(2) remitted the approval of the second plaintiff's claims for a litigation funding commission and reimbursement of legal costs to a judge of the Trial Division for hearing and determination (**Remitted Claims**).

B. On 17 May 2019, the Court ordered that the settlement sum be transferred to the first defendant's solicitors and held in an interest bearing trust account (**Maddocks Settlement Account**).

C. On 22 May 2019, the Court ordered, in *Bolitho v Banksia Securities Limited (No 5)* (2019) 60 VR 486, that:

(1) an interim distribution of \$42 million be made



from the Maddocks Settlement Account to debenture holders by the first defendant, in accordance with their existing duties as liquidators; and

- (2) the balance of \$22 million be retained in respect of the Remitted Claims.
- D. On and from 22 May 2019, the Court made various further orders that the legal costs and disbursements of the Contradictor be paid from the Maddocks Settlement Account.
- E. Following the interim distribution, the balance of funds held in the Maddocks Settlement Account was \$22,168,356.
- F. The trial of the remitter commenced on 27 July 2019. At trial, the second plaintiff abandoned the Remitted Claims, save for a substantially reduced amount in legal costs incurred in prosecuting the group proceeding.
- G. As at 10 March 2021:
- (1) the interest rate for the Maddocks Settlement Account was 0.15% per annum;
 - (2) a total of \$207,939.30 had been earned in interest since the account was established;
 - (3) approximately \$5.7 million in costs incurred by the Contradictor had been paid from the Maddocks Settlement Account; and
 - (4) the balance of the Maddocks Settlement Account was \$17,452,492.70.
- H. In an affidavit sworn by the first defendant on 10 March 2021, he deposed that:
- (1) the costs of a further interim distribution would be between approximately \$80,000 and \$90,000;
 - (2) any further interim distribution could be completed within one month of being ordered by the Court;
 - (3) in his opinion, it was reasonable and in the interests of debenture holders to immediately



distribute between \$10 million and \$13 million from funds held in the Maddocks Settlement Account to debenture holders; and

- (4) if a further interim distribution in this amount was made, debenture holders would receive a further 1 to 2 cents in the dollar of outstanding principal owing to them, bringing the total distributions to 90.5 to 91.5 cents in the dollar of outstanding principal.

I. The first defendant submitted that it was appropriate for the Court to approve a further interim distribution of \$13 million from the Maddocks Settlement Account to debenture holders, as:

- (1) the consequence of the second plaintiff abandoning the Remitted Claims is that no substantive claim remains in respect of the funds held in the Maddocks Settlement Account, other than the Contradictor's costs;
- (2) it may be some time until the remitter is concluded and a final distribution can be made to debenture holders, having regard to the prospect of possible appeals and complications in the enforcement of any judgment in favour of debenture holders; and
- (3) having earlier foreshadowed this application in correspondence to the parties to the remitter, no party has objected to the proposed further interim distribution occurring.

J. The first defendant submitted that it was necessary to leave sufficient funds in the Maddocks Settlement Account to provision for future claims on the fund, including further costs of the Contradictor in the remitter (including in any appeal), outstanding costs of the e-trial provider, and costs orders in favour of any defendant.

K. The Court was satisfied, on the basis of the evidence of the first defendant and for the reasons submitted by the first defendant, that it was appropriate that a further interim distribution be ordered.



THE COURT ORDERS THAT:

1. By 31 May 2021, the first defendant (**SPR**) is directed and authorised to distribute \$13 million from the Maddocks Settlement Account (as defined by the order of the Honourable Justice John Dixon made 22 May 2019) to the debenture holders of Banksia Securities Limited (ACN 004 736 458) (receivers and managers appointed) (in liquidation), in accordance with his statutory duties as liquidator (**Further Interim Distribution**).
2. Any costs incurred by the SPR in respect of the Further Interim Distribution (excluding payments made to Link Market Services, which may be deducted from the Maddocks Settlement Account), are costs incurred in the special purpose receivership.
3. By 30 July 2021, the SPR shall file and serve a report concerning the distribution of the Further Interim Distribution, including the status of and steps taken in relation to any unrepresented payments.
4. Within seven days of this order, the SPR shall publish a copy of this order on the website it maintains to provide information to debenture holders about the status of the remitter.

DATE AUTHENTICATED: 8 April 2021




.....
The Honourable Justice John Dixon

SCHEDULE OF PARTIES

S CI 2012 07185

BETWEEN:

LAURENCE JOHN BOLITHO

First Plaintiff

AUSTRALIAN FUNDING PARTNERS PTY LTD

Second Plaintiff

-and-

JOHN ROSS LINDHOLM IN HIS CAPACITY AS SPECIAL PURPOSE
RECEIVER OF BANKSIA SECURITIES LIMITED (RECEIVERS AND
MANAGERS APPOINTED) (IN LIQUIDATION)

First Defendant

NORMAN O'BRYAN SC

Second Defendant

MICHAEL SYMONS

Third Defendant

ANTHONY ZITA AND PORTFOLIO LAW PTY LTD

Fourth Defendant

ALEXANDER CHRISTOPHER ELLIOTT

Fifth Defendant

KATERINA PEIROS, AS THE REPRESENTATIVE OF THE ESTATE
OF PETER TRIMBOS

Sixth Defendant





**Banksia Securities Limited (Special
Purpose Receivers Appointed) (In
Liquidation)**

ACN 004 736 458

**Report to the Supreme
Court of Victoria regarding
the ninth distribution to
debenture holders**

29 July 2021

This report contains 8 pages

[6207696: 30233777_3]

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1 Background of distribution

I refer to my appointment as Liquidator of Banksia Securities Limited (**Banksia**) on 24 June 2014 and subsequently as Special Purpose Receiver (**SPR**) of certain assets of Banksia on 30 September 2015.

Prior to my appointment, Tony McGrath, Matthew Caddy, Robert Kirman and Joseph Hayes of McGrathNicol were appointed as Receivers and Managers of Banksia on 25 October 2012. The Receivers and Managers retired on 9 June 2021.

I write this report in my capacity as SPR.

I have previously produced reports dated 22 August 2019 (**First Interim Report**) and 20 December 2019 (**Second Interim Report**) summarising the results of an interim distribution to debenture holders that was facilitated by Link Market Services on 13 June 2019 (**seventh interim distribution**).

On 11 March 2021, I made an application to the Supreme Court of Victoria (**Court**) to facilitate a further interim distribution to Banksia's debenture holders prior to judgment being handed down with respect to the Trust Co settlement funds. The Honourable Justice Dixon subsequently made orders on 8 April 2021 which authorised an interim distribution to debenture holders of \$13 million from the remaining Trust Co settlement funds, equating to approximately 1.96 cents in the dollar owed to debenture holders.

To round the distribution up to an even two cents in the dollar, the Receivers and Managers agreed to top up the balance to be distributed to debenture holders by an additional \$264,176.79.

On 10 May 2021, an interim distribution of 2 cents in the dollar was paid to Banksia's 22,655 debenture holders by Link Market Services (who provide debenture holder registry services to Banksia). The total value of the distribution was \$13,264,167.79, comprising contributions from:

- Trust Co settlement funds of \$13,000,000; and
- The Receivers and Managers of \$264,167.79

The distribution was the ninth interim distribution paid to debenture holders. Following the ninth interim distribution, debenture holders have received a total return of 91.5 cents for each dollar of principal owed to them as at 25 October 2012.

As part of the orders made by the Honourable Justice Dixon, I am required to report to the Court by 30 July 2021 advising the progress of the distribution, specifically in relation to the number and quantum of unrepresented cheques.

2 Quantum of unrepresented payments from ninth interim distribution

2.1 Ninth interim distribution summary

The ninth interim distribution was paid to Banksia's 22,655 debenture holders on 10 May 2021. The total value of the distribution was \$13,264,167.79. Of the 22,655 payments to debenture holders, the distribution comprised of:

- 10,372 payments totalling \$7,505,726.20 made by direct deposit (i.e. electronic funds transfer);
- 11,128 payments totalling \$5,468,703.89 made by cheque; and
- 1,155 payments totalling \$289,737.70 withheld from the distribution on the basis that:
 - The debenture holder had a mail return flag on their file with Link Market Services and no bank account details were held for that debenture holder; and / or
 - Direct deposits made to the debenture holders in previous distributions had "bounced", i.e. were unable to be successfully processed in prior distributions.

2.2 Withheld and unrepresented payments

As at 15 July 2021, 4,724 payments totalling \$1,359,656 have been withheld or have not been presented from the ninth interim distribution. The current value of unrepresented / withheld payments represents 10.3% of the total value of the ninth interim distribution.

The table below provides a summary of the bank reconciliation statements provided by Link Market Services at the end of each month and as at 15 July 2021.

Outstanding ninth dividend amount	No. of unrepresented / withheld	% of unrepresented / withheld payments by number	\$ amount of unrepresented / withheld payments	% of unrepresented / withheld payments by value
10-May-21 Total Distribution	22,655	100.0%	13,264,168	100.0%
30-May-21	6,448	28.5%	2,235,904	16.9%
30-Jun-21	5,021	22.2%	1,526,268	11.5%
15-Jul-21	4,724	20.9%	1,359,656	10.3%

We make the following comments:

- At 31 May 2021, approximately three weeks after the ninth distribution, 71.5% of payments had been presented by number and 83.1% of payments had been presented by value. 28.5% in number and 16.9% in value had not been presented.
- At 30 June 2021, approximately seven and a half weeks after the ninth distribution, 77.8% of payments had been banked by number and 88.5% of payments had been present by value. 22.2% in number and 11.5% in value had not been presented.
- At 15 July 2021, approximately nine weeks after the ninth distribution, 79.1% of payments had been banked by number and 89.7% of payments had been presented by value. 20.9% in number and 10.3% in value had not been presented.

The above analysis indicates that debenture holders have been progressively presenting their payments over the two-month period since the ninth interim distribution. This is generally consistent with the pattern for prior distributions.

2.3 Breakdown of withheld and unrepresented payments

The breakdown of withheld and unrepresented payments as at 15 July 2021 is summarised below:

Outstanding ninth dividend type as at 15-Jul-21	No. of accounts	Amount \$	%
Unrepresented cheques	3,301	853,495	63%
Withheld payments	1,149	286,428	21%
Direct credit bounce backs	274	219,734	16%
TOTAL	4,724	1,359,656	100%

Most outstanding payments relate to unrepresented cheques, representing 63% of the total value. This is consistent with the previous distributions made to debenture holders, but it is also unsurprising that a significant number of cheques remain unrepresented for the ninth interim distribution as a result of the COVID-19 restrictions (including the closure of many regional bank branches in and around the Kyabram area) which is likely to particularly impact debenture holders as an aging demographic.

As indicated in section 2.1, 1,155 payments totalling \$289,737.70 were withheld from the distribution. Withheld payments relate to debenture holders who either had a mail return flag on their Link Market Services account and / or based on previous distributions had incorrect bank details. Since payment of the ninth distribution, 6 debenture holders have updated their details with Link Market and have subsequently presented their distribution. The number of withheld payments has reduced from 1,155 to 1,149.

A summary of the 4,724 withheld and unrepresented payments categorised by value is summarised below:

Value of ninth distribution amount	No. of accounts	Total Value \$
> \$20,000	1	21,120
\$10,000 < \$20,000	5	63,299
\$5,000 < \$10,000	16	96,951
\$1,000 < \$5,000	322	607,831
\$500 < \$1,000	331	225,749
\$100 < \$500	1,213	281,934
\$50 < \$100	446	31,320
\$5 < \$50	1,310	30,144
< \$5	1,080	1,307
Total	4,724	1,359,656

We make the following comments:

- Those debenture holders with withheld or unrepresented payments with a value in excess of \$1,000 account for 344 accounts with a total value \$789,201.
- Those debenture holders with withheld or unrepresented payments with a value less than \$1,000 account for 4,380 accounts with a total value of \$570,454.
- Although there remains a significant number of withheld or unrepresented payments less than \$1,000, I anticipate that these amounts will continue to reduce over time (consistent with previous distributions).

2.5 Proposed approach for withheld and unrepresented payments from ninth interim distribution

As indicated by the above analysis, and consistent with previous distributions, debenture holders appear to be gradually presenting their payments from the ninth interim distribution. Subject to COVID-19 restrictions easing and making it possible for more cheques to be presented for payment that trend should continue. However, it is expected that this trend will slow as time elapses.

In my view, it is reasonable to undertake enquires to attempt to further reduce the number of withheld and unrepresented payments. As explained in the Second Interim Report I remain of the view that a materiality threshold of \$1,000 is reasonable.

The first step that I intend to take is to attempt to contact debenture holders with withheld or unrepresented payments greater than \$1,000 from all distributions, including the ninth interim distribution, using their last known contact details notified to Link. I expect that there are a number of debenture holders that my staff will be able to contact. If those debenture holders are able to be contacted, my staff will request these debenture holders to:

- present their payments; and / or
- contact Link Market Services to have their details updated and payment reissued.

To the extent that my staff are unable to contact any debenture holder with withheld or unrepresented payments greater than \$1,000 from all distributions, I will cause relevant skip tracing searches to be undertaken in an attempt to obtain updated contact details. The primary aim of those searches would be to identify contact details for debenture holders where their address or circumstances have changed since the eighth interim distribution on 14 July 2020.

Some skip tracing searches will have already been undertaken in relation to a sub-set of these debenture holders when I was facilitating previous distributions. However, in my view further searches are now justified given the positive results previously yielded from similar steps as set out in the First and Second Interim Reports and as debenture holders' details may have changed since skip tracing searches were last conducted in October 2020.

As with previous distributions, my staff will search the following databases to undertake skip tracing:

- White Pages;
- Reverse look up;
- Public record of Victoria Probate look up;
- ASIC;
- ABN look up;
- SFL look up; and
- various social media platforms such as Facebook and LinkedIn.

The proposed approach strikes a balance between the costs of following up unrepresented amounts (that are borne by all debenture holders) and the benefits of ensuring that entitlements are paid to all debenture holders where commercially possible.



3 Total withheld and unrepresented payments

3.1 Summary of distributions paid to date

To date, debenture holders have received a total return of 91.5 cents in the dollar, equating to a total distribution value of \$605,557,256. The steps taken in relation to the seventh interim distribution are set out in the First and Second Interim Reports.

3.2 Withheld and unrepresented payments

As at 15 July 2021, 16,087 payments totalling \$4,761,893 have been withheld or have not been presented from all distributions paid to debenture holders. The current value of unrepresented / withheld payments represents less than 1% of the total value of all distributions.

Distribution	Total distributions			All unrepresented payments as at 15-Jul-21		
	Date	c / \$	\$m (approx.)	No. of accounts	\$000s	% of dist.
1	Dec-12	20.0	132,600,000	470	119,477	0.1%
2	May-13	45.0	298,350,000	408	367,828	0.1%
3	Oct-13	5.0	33,150,000	629	64,952	0.2%
4	Dec-13	8.0	53,040,000	650	110,008	0.2%
5	Apr-14	2.0	13,260,000	929	43,447	0.3%
6	Mar-17	2.0	13,260,000	1,978	290,113	2.2%
7	Jun-19	6.5	42,000,000	2,673	1,959,519	4.7%
8	Jul-20	1.0	6,633,089	3,626	446,892	6.7%
9	May-21	2.0	13,264,168	4,724	1,359,656	10.3%
TOTAL		91.5	605,557,256	16,087	4,761,893	0.8%

A summary of the 16,087 withheld and unrepresented payments categorised by value is summarised below:

Value of distribution amount	No. of accounts	Total Value \$
> \$20,000	13	412,433
\$10,000 < \$20,000	25	328,635
\$5,000 < \$10,000	90	598,413
\$1,000 < \$5,000	940	1,905,635
\$500 < \$1,000	897	623,029
\$100 < \$500	3,038	698,505
\$50 < \$100	1,396	98,297
\$5 < \$50	4,404	90,203
< \$5	5,284	6,743
Total	16,087	4,761,893

We make the following comments:

- Withheld or unrepresented payments with a value in excess of \$1,000 account for 1,068 payments with a total value \$3,245,116. The 1,068 withheld or unrepresented payments are attributable to 736 unique debenture holders.



- Withheld or unrepresented payments with a value less than \$1,000 account for 15,019 payments with a total value \$1,516,777.

3.3 Proposed approach for withheld and unrepresented payments from all distributions

To date, there are 737 unique debenture holders with withheld or unrepresented payments with a value in excess of \$1,000 across all distributions. Of these, there are 344 debenture holders with withheld or unrepresented payments in excess of \$1,000 relating to the ninth interim distribution. These numbers have been improving over time.

As noted above, I intend to undertake the approach as outlined in section 2.4 with respect to contacting debenture holders with withheld or unrepresented payments greater than \$1,000.

At the conclusion of the special purpose receivership, or earlier if appropriate depending on the conduct of the receivership, I intend to seek further directions with respect to any remaining withheld and unrepresented payments

John Lindholm
Special Purpose Receiver



MUFG Pension & Market Services

Date prepared 3/09/2024

Banksia Securities Limited (Receivers and Managers Appointed) (In Liquidation)**KPMG****Fee Estimate for Skip Trace and Allied Services**

Skip Trace and Allied Services	Rate	Units	Amount (\$)
1. Project Management (Liaison with stakeholders) - assuming 1 hour/wk. over a 8 weeks skip and trace service. Timesheet will be kept to show actual hours and charged accordingly.	\$348.00	8	\$2,784.00
2. Skip trace to be conducted on Debenture holders with total outstanding funds >\$3,000 (estimated total locked value of \$303,389 for 88 debentureholders) . This includes the following activities per holder: Social Media search, Property Search, Search of the National rental database register, ABN Lookup and Electoral searches. Phone calls are made to former neighbours, colleagues and family members to try to confirm contact information. A PDF report detailing exactly what searches were carried out and how individuals are located is provided on completion of the skip trace. Any additional mailing as a result of the skip trace activities is not included and will be additional. The client acknowledges that skip traces' success rates are random, not guaranteed and may be lower than expectation. Please note that the skip trace fees are required as progress payment for items completed as this is an out of pocket disbursement for MUFG.	\$320.00	88	\$28,160.00
3. Mailing of Personalised letter, Proof of ID form, Change of Address Form and Request for Direct Credit Form inserted into window faced envelopes. Note: Once skip trace is completed and debenture holder is located, Client may wish to mail out a personalised Change of Address Form and Request for Direct Credit Form. Please note that when documents are received then our Operations team will update the Banksia register and the associated costs will appear on the client's monthly maintenance invoice.	\$4.49	88	\$395.12
4. Domestic Postage (overseas postage to be charged based on usage and reflected in final invoice) - presently assumed as all domestic	\$1.50	88	\$132.00
5. Bank Reconciliation/Unpresented Cheque Reports (per report)	\$250.00	1	\$250.00
6. EDC payment through regular sweep/month - no cheque payments, only EDC payments - 3 months allowed and then rolling over monthly, if required.	\$500.00	3	\$1,500.00
Special notes: 1. Campaign duration likely to be 2-3 months; and 2. Skip trace activity may not locate all the proposed holders. The success rates of skip tracing varies depending on a number of things. The individuals name, how common it is, how many family members they have, if they are still in the country, how many contact details are provided to us and how recent they are, whether the person holds or owns any assets or registered businesses. With all skip tracing services, the more details you are able to provide, the more successful the outcome will be.			
Total - Skip Trace & Allied Services			\$33,221.12
Subtotal ex GST			\$33,221.12
GST			\$3,322.11
TOTAL inc GST			\$36,543.23

NOTES

Definition - "Client" means the company's agent, lawyer firm, insolvency practitioner firm and their responsible operators and agents.

a) The above estimate is based on the information available to us to date. **It is an estimate, not a quotation and is subject to change.** The client acknowledges and accepts that the estimate may, and probably will, change when more information is made available to MUFG. Any additional activities including adhoc reports, preparation of documentation, verifications, recalculations, modifications to live samples, processing, maintenance of the register, project management, travel, additional personnel, engagement of suppliers, same Day Processing or Late Lodgement for mailings, other services and out of pocket expenses etc. (including those incurred due to delays by the client) will be charged. The client acknowledges that subject to the variations and additional services, the final invoice may vary from the estimate.

b) Service cancellation – The client acknowledges that if they cancel the Service (signed Agreement/ endorsed Fee estimate) before MUFG has commenced its full provisioning to the client, then MUFG reserves the right to charge the client any reasonable costs we have incurred in preparing to provide the Service for the client. If the client cancels the Service during the Committed Term, then the client must pay to MUFG the Cancellation Fees as reasonably calculated by MUFG for the work performed thus far and any out of pocket expenses and third party supplier's fees.

c) The service delivery is subject to MUFG's receipt of a written endorsement of the fee Estimate. The Estimate is valid for **30 days** from issue date unless otherwise advised. Should an endorsed service be cancelled, then charges may be applicable.

d) This final invoice may increase or decrease from the estimate provided as per the services utilised. Any additional items used above will be billed in a separate invoice as agreed with the client.

e) The standard service times for the Contact and Email Centre Services are from 08:30 to 17:30 each working day (Sydney Time). 24-48 hours notice is required for set-up of a matter's dedicated phone line or email address before 'go live'. Contact and Email Reports (if required) are to be charged based on usage.

f) Client agrees to provide the mailing and email blast lists and all the necessary inserts, reports and documentation for the mailing by at least 2 business day prior to lodgement date. Client is responsible for ensuring that the email addresses provided are suitable for transmission and do not include black listed servers or unsuitable ISPs. None compliance on this will result in service failures. MUFG security will not permit the transmission to suspicious sites or put MUFG data at risk. Client agrees to review and approve the samples in a timely manner to meet lodgement timing. Additionally, late lodgement and overtime fees may apply if time frames are not met.

g) If the above estimate refers to the maintenance of data, Client will review and finalise the necessary business rules established by MUFG, provide reports and data in a timely manner. It is assumed that the data to be clean and not requiring any additional manipulation for MUFG purposes. Maintenance of records in some cases is subject to a separate master agreement covering maintenance of records, transactions and will include relevant Service Level Agreements (SLAs) and business rules.

h) Client acknowledges that MUFG may use software such as "Sharefile" to send images, zipped files, register list and other project information. Sharefile content typically expire after a week and the client will ensure that the material is downloaded before expiration. Retransmission of expired information again may incur additional costs which MUFG is at liberty to charge.

i) MUFG reserves the right to request funds in advance for this services for this project and to cover its out of pocket expenses and payment any risks. MUFG at its own discretion may cease the services if it believes that the client may default on the payment for the full services.

TERMS & CONDITIONS**KPMG****3/09/2024**

1) This fee summary is provided as an estimate only based upon the number of units specified above. It is subject to MUFG reviewing the full scope of the Services and the content of related documentation. Client acknowledges that if the above requirements are altered, then additional fees will be applicable which will be communicated by MUFG in the course of the Services.

2) The Administrators/Receivers & Managers/Liquidators agree to pay this fee obligation in authorising MUFG to perform these services (as the client may be required to do so under the Corporations Act) and that the Administrators/Receivers & Managers/Liquidators we will ensure that MUFG accounts and fees are settled in full regardless of the outcome of their appointment for the insolvency matter.

3) These terms are valid for this service delivery.

3.1) It is anticipated that the services delivery is for 6-12 months;

3.2) If this Agreement is not utilised or remains dormant for 6 months, then it is no longer valid and is automatically terminated unless otherwise advised by the client;

3.3) Once the 12 months is expired, then a new agreement has to be prepared and endorsed by both parties;

3.4) This Agreement can be terminated by either party and is subject to a 30 days' notice.

4) The fees and our invoices are payable within 14 days of presentation of invoice. MUFG reserves the right and client accepts that MUFG may invoice and charge the client for expenses incurred prior to any cancellation of the services by the client.



MUFG Pension & Market Services

Date prepared 3/09/2024

Banksia Securities Limited (Receivers and Managers Appointed) (In Liquidation)

5) Our bank details are, Account Name: Link Administration Services Pty Limited, Bank: Commonwealth Bank of Australia, Swift code: CTBAAU2S, Branch: Town Hall, Sydney, NSW, 2000, BSB: 062 028, Account Number: 12075476. Please notify Accounts Receivable on the day of the payment via email at receivables@linkgroup.com.

6) MUFG reserves the right to issue additional or vary existing invoice/s to the Client if the actual units exceed the estimates given or overtime fees apply for work outside of business hours. MUFG also reserves the right to issue invoice/s for component/s in the estimate that have been completed at any point in time. Such invoices are payable within 14 days from the date of the invoice. The Client must also on demand pay or reimburse MUFG for all disbursements which are expected to be incurred or payable by MUFG in relation to providing the Services.

7) If the Client does not pay our invoices, fees and disbursements owed to MUFG within 14 days of receipt of an invoice from MUFG, then MUFG may at its discretion apply a late interest fee of 10% per annum on overdue amounts and suspend the provision of the remaining services.

8) The parties agree that the costs of the services under this agreement have been calculated exclusive of goods and services tax which is or may be levied and become payable in connection with the supply of goods and services under A New Tax System (Goods and Services Tax) Act 1999 and any other legislation (GST). If the whole or part of any payment under or in connection with this agreement is consideration for a taxable supply for which the payee is liable to GST, the payer must pay to the payee an additional amount equal to the amount referable to GST and the payee will provide a tax invoice to the payer.

9) The Client acknowledges that MUFG may in its discretion appoint and use the services of external service providers to assist MUFG in performing the services. The Client consents to such appointments and authorises MUFG to act as the Client's agent in appointing any external service providers. MUFG will not be responsible to the Client for the services provided by any external service provider and such persons are not MUFG's agents or delegates.

10) If MUFG fails to provide the services as detailed above then, the Client must provide MUFG with a written instruction to take remedial action. To the extent permitted by law, all implied warranties with respect to the provision of the services are excluded. To the extent that such implied warranties cannot be excluded, the extent of MUFG's liability shall be limited to re supplying the services to the Client. In no event is MUFG liable to the Client or any other person for indirect, special or consequential damages.

11) Client acknowledges that MUFG is reliant on the integrity of the data provided. The Client must use its best endeavours to supply MUFG with accurate and complete information to enable MUFG to perform the services. MUFG is not liable for any claim, damage, cost, expense, loss, liability, or demand arising from that reliance. The Client acknowledges that they are the rightful owners of any data provided to MUFG and that MUFG may use this data in the provisioning of the services herein and the associated reports. Should the Client not be the rightful owner then the Client is obligated to make MUFG aware of this fact and provide the applied restrictions and also consent from the rightful owner in a timely manner.

12) The Client represents and warrants that the person/s providing instructions to MUFG on behalf of the Client are the authorised representative/s of the Client and are authorised to act and sign on behalf of the Client, all notices, communications, instructions, confirmations and other documents required to enable MUFG to carry out the services. MUFG is entitled to rely on the authenticity of the signatures and instructions given or purported to be given by the Client's authorised representative/s and MUFG is not liable for any claim, damage, cost, expense, loss, liability, or demand arising from that reliance.

13) This agreement is governed by and must be construed in accordance with the laws of New South Wales. The parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of New South Wales.

14) These deliverables, terms and conditions are deemed to have been read, understood and accepted by the Client when this agreement is signed on behalf of the Client or when MUFG receives instructions (email format) from the Client's representatives to commence the work (whichever is the first to occur).

15) All information (Contact Centre Scripts, Business Rules, Forms, Process Flows etc.) provided to the client in regards to this matter is to be treated as 'Commercial-In-Confidence'. It is imperative that the client not disclose or discuss this material with anyone who is not employed by the Client firm (either during the term of this agreement or after its termination). In the event that this quote is not agreed to, or upon termination of this signed agreement, the Client agrees to: (a) Not use any of the material and deliver or return to MUFG Insolvency Solutions all copies of materials, documents, digitized or hardcopy including all disks, records, lists, data, drawings, print-outs, notes and written information, whether furnished by MUFG Insolvency Solutions or prepared by an external third party in the course of providing the Services, that contain any confidential or commercial-in-confidence information (the "Confidential Materials"); or (b) to destroy such confidential materials and to provide evidence of destruction to MUFG Insolvency Solutions.

16) All Holder and related confidential information provided by the client in regards to this matter will be treated by MUFG as 'Commercial-In-Confidence'. MUFG confirms that we will not disclose or discuss the confidential information provided with anyone who is not employed by MUFG Group (either during the term of the agreement or after its termination) unless for the purpose of providing to a third party for the purposes of performing services as mentioned in (9). All Holder information held will be subject to the MUFG Privacy Policy which incorporates the Privacy Amendment (Enhancing Privacy Protection) Act 2012. This Privacy Policy is available on request.

17) Document and Data Retention Policy effective from 1 October 2018

- all hard copy documents will be destroyed after three months from imaging/scanning;
- all digital Holder records that contain personal information will be de-identified by permanently masking the record ten years after last contact;
- for Clients that are no longer administered by MUFG, all Holder data will be destroyed within one year of job termination unless MUFG is otherwise required by law to retain such information;

18) In performing the Services, MUFG may in its discretion delegate or sub-contract to any Affiliate, agent, sub-contractor, whether located in Australia or otherwise (including MUFG's offices in India, the United Kingdom and Ireland), for reasons of expertise or otherwise. Unless otherwise agreed in writing between Client, MUFG and any such delegate or sub-contractor, any fees and expenses payable to any delegate or sub-contractor will be borne by MUFG, and MUFG will remain liable to Client for the performance of any subcontracted functions.

RATES

Consulting Rates are detailed below for your information:

Consultant	HOURLY RATE (Ex GST)
Executive/Head of Business	\$450.00
Senior Manager or Data Architect	\$348.00
Manager/Project Manager	\$264.00
Assistant Manager/Project Officer	\$204.00
Other/Registry Officer	\$168.00
IT Consultant	\$240.00
Web Team Consultant	\$265.00
Travel Time	\$120.00

** Overtime rates are at 1.5 times above normal rates after hours during the week at 2 times normal rates at the weekends. Four hours call out blocks may be applicable for third party and operational personnel.

Following to be completed by the practitioner (Or client's authorised person providing instructions to MUFG):

Accepted by the Client:

Name of Client:


KPMG

Name of project/appointment:

Banksia Securities Limited (Receivers and Managers Appointed)

Fee Estimate for Skip Trace and Allied Services

Signature of authorised person: (MUFG reserves the right to request for the Administrator/Liquidator's signature)


.....
John Lindholm

Name of authorised person (Please Print):

Special Purpose Receiver & Liquidator

Position held (Please Print):

06-Sep-2024

Insert Date:

...../...../ 2024

From: Chris Hayes <c_m_hayes@bigpond.com>
Date: 15 October 2024 at 12:05:42 PM AEDT
To: Don & Liz <donandlizmckenzie@bigpond.com>, "Lindholm, John" <johnlindholm@kpmg.com.au>
Cc: ramsden1@inet.net.au, bandhlloyd@bigpond.com
Subject: [EXTERNAL] RE: Banksia Securities Ltd -- distribution of unclaimed funds.

CAUTION: This Email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.

Looks good to me
Chris

From: Don & Liz [mailto:donandlizmckenzie@bigpond.com]
Sent: Tuesday, 15 October 2024 10:49 AM
To: 'Lindholm, John'
Cc: ramsden1@inet.net.au; 'Chris Hayes'; bandhlloyd@bigpond.com
Subject: Banksia Securities Ltd -- distribution of unclaimed funds.

John,
As discussed attached submission for unclaimed money. In regard the proposal you mentioned for a contribution to any hospital under the distribution proposal, I would point out that all public health services & public hospitals in Victoria lost their charitable status in 2003 as a result of changes to Australia's income tax legislation.
I would sincerely hope and trust that none of the Banksia funds would be considered for distribution to anything other than a registered not for profit charitable organisation.
Thanks again for your advice and information.
Regards,
Don.

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by a scheme approved under Professional Standards Legislation.

SUBMISSION TO

MR JOHN LINDHOLM

SPECIAL PURPOSE RECEIVER

BANKSIA SECURITIES LIMITED

For

Consideration by the Court for the distribution of the Unclaimed Funds in the
finalisation of Banksia Securities Ltd to a Registered Charitable Organisation

By

Mr Doug Crow and Mr Don McKenzie
Members of the Special Receivers Committee of Debenture Holders

Endorsed by following Committee Members

Mr Chris Hayes OAM

Mr Bruce Lloyd AM.

October 2024

Introduction

That the unclaimed funds be provided to a Kyabram and district not-for-profit registered charity for the development of a community health facility.

The background and reasons for this proposal are as follows:

- The Banksia Securities Limited group was founded and based in Kyabram.
- The Kyabram head office employed some 48 personnel at the time of its collapse which had significant impact to our town of approx. 6000 residents.
- Banksia also had a network of branches across regional Victoria and southern New South Wales, including Bendigo, Echuca, Shepparton, Tatura and Deniliquin, in relatively close proximity to Kyabram. There were also other offices located in Warrnambool and Ballarat.
- Banksia collapsed in October 2012 owing some 16,000 account holders – mainly rural investors from the Goulburn Valley region – approx \$663 million.
- Most of these account holders regarded Banksia as their local bank that supported them and local community organisations with job opportunities and financial support. They were not investors chasing higher interest rates etc.
- When Banksia collapsed, the Goulburn Valley community in particular, became extremely active in making efforts to try and save Banksia and/or ensure Banksia account holders received the maximum possible return.
- Account holders from Kyabram, Nathalia, Tatura, Stanhope, Dookie, Merrigum, Mooroopna, Wendouree, Undera, Kialla, Shepparton, Echuca, Cooma, Numurkah, Kotupna, Avenel, Bendigo and Croydon, contributed some \$40,000 to assist a local Kyabram Committee to take every action possible to get the best possible return of their accounts. (The Committee consisted of four business representatives from the Kyabram community – Doug Crow, Peter Hann, Peter Nelson and Don McKenzie).
- This Kyabram based committee set about seeking some exceptional legal advice and assistance was an initiative that brought about the replacement of the appointed Receivers – McGrath Nicol and the appointment of Ferrier Hodgson as Special Receiver (now KPMG) following a merger of their businesses.
- This changeover was brought about because McGrath Nicol would not take action against the most culpable party in the Banksia collapse (The Trust Company – the Trustee of the Banksia Group operations) because of a Conflict of Interest. The Trust Company appointed McGrath Nicol as Receivers.

- This initial action by the Kyabram Committee was significant in the resultant \$64 million insurance payout from The Trust Company insurers – which was the most vital recovery from the whole debacle.
- In regard to the community \$40,000 fighting fund, Kyabram's Warramunda Village Ltd contributed \$5000 towards this effort. Warramunda is a community owned and operated not-for-profit organisation and a major employer (289 employees). For over 60 years they have been offering care and support services to the communities of North Central Victoria as well as 50 independent living units and an 82 resident aged care facility. They also provide in-home assistance to 140 clients. Warramunda was one of Banksia's largest depositors at the time of its collapse with some \$3 million in their accounts.

The Project

- To construct a much needed Hydrotherapy Pool facility for Warramunda and Kyabram & District Health Service.
- The building will be on community land adjacent to Warramunda and the Kyabram & District Health Service.
- The project will be used by residents of Warramunda, patients of the Kyabram & District Health Service and wider population for rehabilitation, fitness needs and learn to swim programs.
- It is proposed that physiotherapists and exercise physiologists will be available to tailor personalised programs.
- The pool is to be some 10m x 15m and feature fully tiled facilities, depth ranges from .9m to 1.15m and have a disability access ramp and lift facilities.
- A child care facility would be included within the overall plan and is considered necessary for the above services to attract staff.

Conclusion

The project requires a significant financial boost if it is to be achieved and the unclaimed funds opportunity would be a major benefit in bringing about an exceptional community project.

Should the Court see fit to accept this proposition the Kyabram Community Bendigo Bank has indicated it would be in a position to make a substantial contribution to ensure the project is delivered. The Community Bank was established when Banksia

failed and has now grown its business to be in a position to support community projects.

We present this proposal for the Courts consideration as the best possible use of the unclaimed funds from a fairness and regional community perspective. Banksia was a regional financial enterprise and this proposal will ensure the development of a regional health facility that will service residents from a vast area.

We commend and urge your favourable consideration to our registered regional not-for-profit charity – Warramunda Village Ltd (ABN 782 058 945 66) that will enable them to expand the services it provides to a broad based regional community.

From: Susan Pitman <susanpitman@ymail.com>
Date: 15 October 2024 at 12:04:48 PM AEDT
To: Email <Ramsden1@iinet.net.au>
Subject: Re: Unclaimed Banksia Debenture Holder Funds

Hi Doug,

I agree that it makes sense to allocate the Unclaimed Monies to a worthy charity and particularly so when that charity lost money in Banksia.
I wish the following below, be added to your Submission to Justice Black and be worded along the following Lines.

That the sum of \$150,000.00 be paid to Mr. Chris Botsman, preferably from the interest earned in the Unclaimed Monies Account, and the balance of monies held in the Unclaimed Monies Account after the finalization of the Receivership be paid to Warramunda Village Ltd.

Signed. Keith N. Pitman,

Ballarat & District
Committee Member,
Banksia Action Group &
Committee of Inspection

If the other Committee Members agree please forward the completed Submission for me to sign.
With assistance from my wife I think I can sign electronically

Regards,
Keith

On 14 Oct 2024, at 7:39 pm, Email <Ramsden1@inet.net.au> wrote:

Keith ,
Please find attached a copy of the submission I mentioned earlier today that is requesting consideration for distribution of the above unclaimed funds for a designated Community Health project that will significantly benefit the Kyabram regional area .

I am pleased you agree that such a submission used for local benefit warrants merit against “ losing “ such contributory support to any organisation where it may be swallowed up in bureaucratic red tape ..

If satisfied after perusal of the submission I would appreciate acknowledgement of your support so we may include with the affidavits to be forwarded to Justice Black .

Please contact me should you desire further information ,

Kind regards,
Doug

Sent from my iPad

Begin forwarded message:

From: Don & Liz
<donandlizmckenzie@bigpond.com>
>
Date: 14 October 2024 at 6:06:38 PM AEDT
To: ramsdn1@inet.net.au
Subject: Submission

Good evening Doug

Final copy we hope.!!! Did make a few changes.

Don

<Scan_20241014 (2).pdf>

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ACC 0305

Date	Payee	Receipt	Reconciled	Payment	Balance (AUD)
28-Apr-23	National Australia Bank Limited	21	TRUE		7,961
31-May-23	National Australia Bank Limited	27	TRUE		7,988
30-Jun-23	National Australia Bank Limited	26	TRUE		8,014
31-Jul-23	National Australia Bank Limited	27	TRUE		8,041
31-Aug-23	National Australia Bank Limited	27	TRUE		8,068
29-Sep-23	National Australia Bank Limited	25	TRUE		8,093
31-Oct-23	National Australia Bank Limited	27	TRUE		8,120
30-Nov-23	National Australia Bank Limited	27	TRUE		8,147
29-Dec-23	National Australia Bank Limited	26	TRUE		8,173
31-Jan-24	National Australia Bank Limited	30	TRUE		8,203
29-Feb-24	National Australia Bank Limited	26	TRUE		8,229
28-Mar-24	National Australia Bank Limited	26	TRUE		8,255
30-Apr-24	National Australia Bank Limited	30	TRUE		8,285
31-May-24	National Australia Bank Limited	28	TRUE		8,313
28-Jun-24	National Australia Bank Limited	26	TRUE		8,339
31-Jul-24	National Australia Bank Limited	31	TRUE		8,370
30-Aug-24	National Australia Bank Limited	28	TRUE		8,398
30-Sep-24	National Australia Bank Limited	29	TRUE		8,426

ACC 4265

Date	Payee	Receipt	Reconciled	Payment	Balance (AUD)
11-Apr-23	MADDOCKS		TRUE	144,757	2,979,281
11-Apr-23	Link Market Services		TRUE	9,309	2,969,971
26-Apr-23	KPMG		TRUE	9,820	2,960,152
28-Apr-23	National Australia Bank Limited	8,135	TRUE		2,968,287
5-May-23	Link Market Services		TRUE	9,582	2,958,704
5-May-23	Maddocks		TRUE	69,386	2,889,318
26-May-23	KPMG		TRUE	12,533	2,876,784
30-May-23	Link Market Services		TRUE	34,790	2,841,995
31-May-23	National Australia Bank Limited	9,741	TRUE		2,851,736
20-Jun-23	Maddocks		TRUE	63,901	2,787,835
30-Jun-23	National Australia Bank Limited	9,169	TRUE		2,797,004
31-Jul-23	National Australia Bank Limited	9,502	TRUE		2,806,506
8-Aug-23	Link Market Services		TRUE	34,399	2,772,107
8-Aug-23	Maddocks		TRUE	187,364	2,584,743
31-Aug-23	National Australia Bank Limited	8,975	TRUE		2,593,718
31-Aug-23	Maddocks		TRUE	27,763	2,565,955
29-Sep-23	National Australia Bank Limited	7,902	TRUE		2,573,857
2-Oct-23	Link Market Services		TRUE	11,651	2,562,206
2-Oct-23	Maddocks		TRUE	23,178	2,539,028
23-Oct-23	MADDOCKS		TRUE	56,032	2,482,997
31-Oct-23	National Australia Bank Limited	8,423	TRUE		2,491,420
2-Nov-23	Link Market Services		TRUE	10,818	2,480,601
2-Nov-23	Link Market Services		TRUE	9,978	2,470,623
15-Nov-23	MADDOCKS		TRUE	84,193	2,386,430
30-Nov-23	National Australia Bank Limited	7,953	TRUE		2,394,383
1-Dec-23	KPMG		TRUE	21,982	2,372,400
1-Dec-23	Link Market Services		TRUE	9,445	2,362,956
1-Dec-23	MADDOCKS		TRUE	52,250	2,310,706
13-Dec-23	MADDOCKS		TRUE	47,634	2,263,072
29-Dec-23	National Australia Bank Limited	7,360	TRUE		2,270,432
29-Jan-24	National Australia Bank Limited	8,298	TRUE		2,278,730
29-Jan-24	Link Market Services		TRUE	9,219	2,269,511
29-Jan-24	MADDOCKS		TRUE	62,542	2,206,969
23-Feb-24	Link Market Services		TRUE	9,763	2,197,205
23-Feb-24	MADDOCKS		TRUE	43,898	2,153,308
27-Feb-24	Link Market Services		TRUE	9,698	2,143,609
29-Feb-24	National Australia Bank Limited	7,064	TRUE		2,150,673
25-Mar-24	KPMG		TRUE	21,882	2,128,791
27-Mar-24	Link Market Services		TRUE	8,872	2,119,919
27-Mar-24	MADDOCKS		TRUE	157,483	1,962,436
28-Mar-24	National Australia Bank Limited	6,656	TRUE		1,969,092
10-Apr-24	MADDOCKS		TRUE	38,892	1,930,200
30-Apr-24	National Australia Bank Limited	7,124	TRUE		1,937,324
8-May-24	Link Market Services		TRUE	9,225	1,928,099
8-May-24	MADDOCKS		TRUE	72,896	1,855,203
31-May-24	National Australia Bank Limited	6,454	TRUE		1,861,657
31-May-24	Grant Thornton		TRUE	117,288	1,744,370
14-Jun-24	Link Market Services		TRUE	9,529	1,734,841
14-Jun-24	MADDOCKS		TRUE	69,572	1,665,269
28-Jun-24	National Australia Bank Limited	5,297	TRUE		1,670,566
2-Jul-24	Link Market Services		TRUE	9,056	1,661,510
16-Jul-24	Grant Thornton		TRUE	30,947	1,630,563
16-Jul-24	MADDOCKS		TRUE	24,831	1,605,731
31-Jul-24	National Australia Bank Limited	5,995	TRUE		1,611,726
30-Aug-24	National Australia Bank Limited	5,365	TRUE		1,617,091
5-Sep-24	MADDOCKS		TRUE	98,211	1,518,880
12-Sep-24	Ashurst Australia		TRUE	97,516	1,421,364
12-Sep-24	Link Market Services		TRUE	8,868	1,412,496
30-Sep-24	National Australia Bank Limited	5,089	TRUE		1,417,586
16-Oct-24	MADDOCKS		TRUE	27,885	1,389,701
16-Oct-24	Link Market Services		TRUE	8,855	1,380,846
16-Oct-24	Ashurst Australia		TRUE	44,548	1,336,298



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9 May 2023

Circular to Debenture Holders

Dear Sir/Madam

**Banksia Securities Limited
(Receivers and Managers Appointed) (In Liquidation) (Special Purposes Receivers Appointed)
ACN 004 736 458 (Banksia)**

I refer to my appointment as liquidator of Banksia on 24 June 2014 and subsequently as Special Purpose Receiver of certain assets of Banksia on 30 September 2015. I write this letter to you in my capacity as Special Purpose Receiver (**SPR**).

The purpose of this circular is to give an update on the special purpose receivership and to give notice of an application filed in the Supreme Court of Victoria seeking approval for me to settle all claims against Mr Norman O'Bryan (a Bankrupt) and entities to which he and his family are related, Noysue Pty Ltd and Noysy Pty Ltd (**O'Bryan Entities**). The settlement approval application is listed for hearing on 16 June 2023. Details about the settlement and how you can express your views on the settlement are set out below.

Copies of this circular and documents identified below are available on the Banksia Securities webpage <https://kpmg.com/au/en/home/creditors/banksia-securities-limited.html> (**Banksia Webpage**).

1. Background

As outlined in the circular dated 22 June 2022, on 11 October 2021 Justice Dixon ordered, amongst other things, that the Defendants pay the following amounts to me on behalf of debenture holders:

- Compensation of approximately \$11.7m (**Compensation Component**); and
- The following costs on an indemnity basis:
 - My costs of the Botsman Appeal and the Remitter; and
 - The Contradictor's costs of the Remitter,

(Costs Component)

The Costs Component has not been taxed (the Court process for fixing the amount recoverable), but the costs total \$10.6m. On a taxation, I expect to recover between 80% - 90% of the total amount of the costs actually incurred. Overall, it is reasonable to assume that up to approximately \$9.8m would be recoverable.

To date, 91.5 cents in the dollar has been distributed to debenture holders. I anticipate that there will be at least one further distribution and will confirm the likely amount and timing of a further distribution once any further realisations are known.

Recoveries to date

To date, I have received the following amounts in partial satisfaction of the Compensation Component:

Source	Amounts Paid to SPR
Legal Practitioners' Liability Committee (LPLC) on account of Mr O'Bryan's insurance policy	\$1,558,191.39
LPLC on account of Mr Symons' insurance policy	\$1,454,547.54
Portfolio Law	\$375,683.30
LPLC on account of Portfolio Law's insurance policy	\$464,828.83
Total	\$3,853,251.06

Taking into account the realisations to date and interest, the Compensation Component as at 9 May 2023 is \$9,257,670.41. As such, the maximum amount that remains to be paid under the Remitter Judgment is approximately \$19m.

My solicitors and I currently hold the following funds:

- \$4,551,262.20 held by Maddocks as the balance of the funds from the Trust Co Settlement and the amounts received from and on behalf of Portfolio Law; and
- \$2,969,971.41 as the 'SPR Litigation Fund', being the account from which I am funded by the orders of Justice Black

2. Settlement proposals

At various times, proposals to resolve all outstanding claims relating to the Banksia proceedings have been made. At this stage, no global settlement has been reached. In his judgment in *In the matter of Banksia Securities Ltd (recs and mgrs. apptd) (in liq)* [2022] NSWSC 1106, Justice Black acknowledged that, while it was finely balanced, my decision to reject one such global settlement proposal was logical and reached for good reason. Justice Black's judgment is available on the Banksia Webpage.

3. Settlement approval application— entities associated with the O'Bryan family

I have agreed to settle all claims against Mr O'Bryan and the O'Bryan Entities for \$1.25m. The settlement with Mr O'Bryan and the O'Bryan Entities is subject to certain conditions, including Court approval. The proposed settlement will resolve the following as they relate to Mr O'Bryan and the O'Bryan Entities:

- the Remitter Judgment;
- any outstanding costs orders; and
- the summons seeking orders that the O'Bryan Entities and entities associated with the Elliott family (**Elliott Entities**) pay the Costs Component of the Remitter Judgment (**Non-Party Costs Summons**).

My assessment is that the proposed settlement with Mr O'Bryan and the O'Bryan Entities will result in debenture holders receiving a greater return from Mr O'Bryan and the O'Bryan Entities than continuing to pursue enforcement steps against them. More specifically:

- Mr O'Bryan is bankrupt and all claims must be made via his trustee in bankruptcy. Based on the report dated 26 November 2021 issued to creditors by the bankruptcy trustee, a substantial dividend from Mr O'Bryan's bankrupt estate is unlikely.
- I do not currently have judgment against the O'Bryan Entities in the Non-Party Costs Summons. If those claims failed, I would be required to pay the O'Bryan Entities' costs of the application (which are likely to be material). The O'Bryan Entities have vigorously opposed the Non-Party Costs Summons to date,

including by seeking to have Justice Dixon recuse himself from hearing the application. Justice Dixon's judgment is available on the Banksia Webpage.

- Regardless of the outcome of the Non-Party Costs Summons, I have received financial disclosure from the O'Bryan Entities confirming that they do not have any significant assets. Real property and ASIC searches also confirm that neither O'Bryan Entity has any identifiable assets that could be used to meet any judgment.

Accordingly, even if the Non-Party Costs Summons is successful as against the O'Bryan Entities, it is likely that there will be a negligible further return to debenture holders. In other words, the proposed settlement amount of \$1.25m exceeds any return to debenture holders that would result from the continued prosecution of those parties.

Completing a settlement with the O'Bryan Entities will also enable me to continue to progress and focus on claims against the Elliott Entities as discussed below.

4. Update on enforcement steps

I continue to take steps to enforce the Remitter Judgment against the other parties to attempt to maximise the return to debenture holders. A summary of the recent key events is set out below:

- On 1 March 2023, Justice Dixon ordered that the Elliott Entities pay the Costs Component on an indemnity basis. Justice Dixon has not yet published his reasons for judgment for making orders against the Elliott Entities. If the settlement with the O'Bryan Entities is approved, Justice Dixon will be able to release his reasons, and I suspect that those reasons will assist me in pursuing additional enforcement actions against the Elliott Entities.
- I have identified that the Elliott Entities have significant cash assets and real estate holdings. The amount of those assets is likely to exceed the value of the amount currently owing under the Remitter Judgment.
- One of the Defendants, Alex Elliot, commenced an appeal seeking to set aside the Remitter Judgment. Alex Elliot has abandoned his appeal and I am now entitled to the costs of the appeal on an indemnity basis.
- While the payments noted in Section 1 above have been received on behalf of Mr Zita and Portfolio Law, no settlement has been reached with them. If a settlement with Portfolio Law and Mr Zita cannot be reached further enforcement steps will be taken.
- Following Mr Trimbos' death, an amount of \$1,413,197.13 remains in his insurance policy with the LPLC. I am currently in discussions with the LPLC and the executor of Mr Trimbos' estate to receive this amount in part payment of the Compensation Component.

Since delivery of the Remitter Judgment on 11 October 2021, I have incurred approximately \$1.48 million (including GST) in legal costs in undertaking the above steps set out above.

I will provide a further update to debenture holders as enforcement steps continue.

5. Notice to debenture holders

The hearing seeking Court approval of the settlement with Mr O'Bryan and the O'Bryan Entities is scheduled for 16 June 2023. Copies of all non-confidential material filed in support of the approval application will be available on the Banksia Webpage.

If you would like to express any view on the settlement with Mr O'Bryan and the O'Bryan Entities which you would like communicated to the Court, please contact Claudia Bishop by:

- Telephone: (02) 9202 2346;
- Email: cbishop4@kpmg.com.au; or
- Post: GPO Box 2291U, Melbourne, VIC 3001

I am required to file any further evidence and submissions by 26 May 2023. As such, I ask that any comments on the settlement be sent to KPMG by no later than 5pm on 25 May 2023.

Should any debenture holder wish to be heard in respect of the application, you are requested to provide notice to the following email address: cldgroupproceedings@supcourt.vic.gov.au. Ms Bishop can assist any debenture holders having any difficulty providing notice to the Court.

6. Queries about previous distributions

Should you have any queries in relation to previous distributions, please contact Link Market Services on (02) 8767 1029 or email at banksia@linkmarketservices.com.au. Please also contact Link Market Services to notify of any change of address or circumstances.

Should you know of any debenture holder who has changed address, please bring this letter to their attention.

Yours faithfully

Banksia Securities Limited



John Lindholm

Special Purpose Receiver



Issued: 18 July 2022 11:01 AM

JUDGMENT/ORDER

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Corporations List
Registry	Supreme Court Sydney
Case number	2015/00252832

TITLE OF PROCEEDINGS

First Applicant	John Ross Lindholm
-----------------	--------------------

First

DATE OF JUDGMENT/ORDER

Date made or given	13 July 2022
Date entered	15 July 2022

TERMS OF JUDGMENT/ORDER

VERDICT, ORDER OR DIRECTION:

Hearing of Interlocutory Process filed 27 June 2022.

Ex tempore judgment delivered on suppression and non-publication orders.

Black J makes the following order:

1. Until 13 July 2023, or the business day immediately following that day, and subject to any further order of the Court made on two business days' notice to the SPR, pursuant to s7(b) of the Court Suppression and Non-Publication Orders Act 2010 (NSW) upon the ground of s8(1)(a) of that Act, publication or other disclosure of (1) confidential exhibit JRL-6 to Mr Lindholm's affidavit (Confidential Exhibit A2 in this application) and (2) Exhibit SRK-3 to Mr Kingston's affidavit (Confidential Exhibit A4 in this application) be prohibited, and that the documents be placed in a sealed envelope marked that access not be permitted without leave of a judge of the Court, on application made with two business days' notice to the special purpose receivers. This order applies throughout the Commonwealth of Australia.

Ex tempore judgment delivered on remuneration application.

Black J makes the following order:

1. That the remuneration of the Special Purpose Receiver for the period 1 May 2021 to 28 February 2022 be approved and fixed in the sum of \$126,097.90 plus GST.

SEAL AND SIGNATURE



Signature Chris D'Aeth
Capacity Principal Registrar
Date 18 July 2022

If this document was issued by means of the Electronic Case Management System (ECM), pursuant to Part 3 of the Uniform Civil Procedure Rules (UCPR), this document is taken to have been signed if the person's name is printed where his or her signature would otherwise appear.

FURTHER DETAILS ABOUT Applicant(s)

First Applicant
Name John Ross Lindholm
Address
Telephone
Fax
E-mail
Client reference

Legal representative

Name Samuel Kingston
Practicing certificate number P0038947
Address Collins Square Level 25
727 Collins Street
DOCKLANDS VIC 3008

DX address
Telephone 03 9258 3555
Fax 03 9258 3666
Email sam.kingston@maddocks.com.au
Electronic service address sam.kingston@maddocks.com.au

FURTHER DETAILS ABOUT (s)



29 May 2023

To the Committee of Debenture Holders

**Banksia Securities Limited
(In Liquidation) (Special Purpose Receiver Appointed)
ACN 004 736 458 (the Company)**

I refer to my appointment as Special Purpose Receiver of the Company.

I would like to take this opportunity to call a meeting of the Committee of Debenture Holders to provide a general update on the Special Purpose Receivership and seek the Committee's approval in relation to my remuneration incurred. It is proposed that this meeting be held on 31 May 2023 at 3:00pm.

As you are aware, the Special Purpose Receiver is permitted to draw all remuneration in respect of the Banksia Proceedings and any other matters reasonably incidental or related to the conduct of the Banksia Proceedings. The Special Purpose Receiver must seek approval from the Supreme Court of New South Wales for the remuneration drawn and has undertaken to repay any amounts on account of remuneration that the Court determines to be unreasonable. Before making such an application, the Special Purpose Receiver shall first submit his remuneration for approval by the Committee.

A summary of the remuneration being sought is summarised for your ease of reference below:

Period	Amount \$ (ex GST)
Current remuneration approval sought:	
1 March 2022 to 30 April 2023 (14 months)	102,762.00
Total current remuneration approval sought	102,762.00

By way of summary, the primary work for which remuneration is claimed arises from the Remitter Judgment. The tasks undertaken have largely comprised:

- Convening various meetings with the Committee of Debenture Holders to discuss the Remitter Judgment enforcement steps and settlement offers received from the contraveners;
- Taking steps to enforce the Remitter judgment by, amongst other things:
 - Considering and analysing several confidential without prejudice settlement offers received from the contraveners;
 - Participating in various discussions with the legal advisors of the contraveners regarding the confidential without prejudice settlement offers leading to terms of settlement being agreed with the O'Bryan Entities;
 - Preparing, reviewing and finalising supporting material for an interlocutory application seeking a direction that the Special Purpose Receiver is justified in not accepting a global settlement offer from the contraveners;

- Preparing, reviewing and finalising supporting material for an interlocutory application seeking approval for a settlement reached with the O'Bryan Entities;
 - Further considering and analysing the prospects of various possible recovery actions against the contraveners, such as the continued prosecution of the third-party costs summons, with Maddocks and Counsel (the details of which are subject to legal professional privilege);
 - Recovering a further \$840,512.13 from or on behalf of Portfolio Law towards the Compensation Component of the Remitter Judgement; and
 - Progressing the third-party costs summons against various Mr O'Bryan and Mr Elliot related entities.
- Convening various meetings with the Committee of Debenture Holders, preparing regular updates and holding several telephone discussions relevant to enforcement of the Remitter judgment and ongoing settlement negotiations;
 - Together with Maddocks, attending to tasks relevant to Alex Elliot's appeal which has now been abandoned;
 - Contacting debenture holders about unrepresented payments from past distributions; and
 - Attending to ad-hoc requests from both the Committee of Debenture Holders and debenture holders more generally relevant to the Remitter judgment.

Since August 2021, we have attempted to contact approximately 700 individual debenture holders which has resulted in 1,338 outstanding payments totalling \$630,794 being presented. The current value of unrepresented and withheld payments is \$4,131,099 from total distributions of \$605,557,256 representing 0.68% of the total value of all distributions.

The Special Purpose Receiver does not waive legal professional privilege in relation to any of the communications referred to in this letter or the remuneration report and those documents must be treated as confidential.

Finally, the Committee of Debenture Holders is reminded that all correspondence and discussions are confidential and should not be shared with any other party.

Please contact me on (03) 8667 5719 or Claudia Bishop of this office on (02) 9202 2346 if you have any queries.

Dated this 29th day of May 2023



John Lindholm
Special Purpose Receiver



Notice of meeting of members of the Committee of Debenture Holders

Banksia Securities Limited (In Liquidation) (Special Purpose Receiver Appointed) ACN 004 736 458 (the Company)

NOTICE IS GIVEN that a meeting of the members of the Committee of Debenture Holders will be held via conference call on 31 May 2023 at 3:00pm.

Agenda

- 1 General discussion in relation to the current status of the Special Purpose Receivership.
- 2 Consider the remuneration of the Special Purpose Receiver detailed in the Remuneration Approval report dated 29 May 2023 for the period 1 March 2022 to 30 April 2023, in accordance with a Court order dated 29 February 2016.
- 3 Any other business that the members of the Committee of Debenture Holders wish to raise.

Resolution 1:

"That the remuneration of the Special Purpose Receiver, as set out in the Remuneration Approval Request dated 29 May 2023 for the period 1 March 2022 to 30 April 2023, be fixed in the amount of \$102,762.00, plus any applicable GST, and may be paid."

Teleconference facilities will be circulated prior to the meeting.

Dated this 29th day of May 2023

Jonn Lindnoim
Special Purpose Receiver

*Schedule 2 to the Corporations Act 2001, Section 70-50
Insolvency Practice Rules (Corporations) 2016, Section 70-45*

**Banksia Securities Limited
(In Liquidation) (Special Purpose Receiver Appointed)
ACN 004 736 458 (the Company)**

1 Summary

I am asking the Committee of Debenture Holders to approve remuneration of \$102,762.00 (ex GST). Details of remuneration sought can be found in section 3 of this report

Please review the contents of the report, which sets out the resolutions to be approved by Committee Members.

To date, remuneration of \$1,836,141 has been approved by the Court and paid in the Special Purpose Receivership of the Company as outlined below:

Period	Amount \$ (ex GST)
Past remuneration approved:	
6 October 2015 to 30 September 2016 of the Special Purpose Receivership	273,621
1 October 2016 to 31 March 2017 of the Special Purpose Receivership	123,961
1 April 2017 to 30 September 2017 of the Special Purpose Receivership	158,547
1 October 2017 to 31 March 2018 of the Special Purpose Receivership	261,688
1 April 2018 to 31 August 2018 of the Special Purpose Receivership	126,164
1 September 2018 to 31 March 2019 of the Special Purpose Receivership	172,419
1 April 2019 to 30 September 2019 of the Special Purpose Receivership	142,854
1 October 2019 to 31 May 2020 of the Special Purpose Receivership	155,677
1 June 2020 to 30 October 2020 of the Special Purpose Receivership	184,998
1 November 2020 to 30 April 2021 of the Special Purpose Receivership	110,114
1 May 2021 to 28 February 2022 of the Special Purpose Receivership	126,098
Total past remuneration approved	1,836,141
Current remuneration approval sought:	
Resolution 1: 1 March 2022 to 30 April 2023	102,762
Total current remuneration approval sought	102,762

2 Declaration

I, John Ross Lindholm of KPMG, have undertaken an assessment of this remuneration claim for my appointment as Special Purpose Receiver of the Company in accordance with the law and applicable professional standards. I am satisfied that the remuneration claimed is necessary and proper.

I have reviewed the work in progress report for the Special Purpose Receivership to ensure that remuneration is only being claimed for necessary and proper work performed and no adjustment was necessary.

3 Remuneration sought

The remuneration I am asking the Committee of Debenture Holders to approve is as follows:

For	Period	Amount \$ (ex GST)	Rates to apply	When will it be drawn
Work already completed	01/03/2022 to 30/04/2023	102,762.00	Please refer to the initial circular to debenture holders	Already drawn
Total remuneration to be approved		102,762.00		

Details of the work already completed are included at **Schedule A**.

Schedule B includes a breakdown of time spent by staff members on each major task for work we have already completed.

Actual resolutions to be put to the meeting are set out at **Schedule D** for your information.

4 Previous remuneration approvals

The following remuneration approvals have previously been provided by the Committee of Debenture Holders and the Court:

Period	Approved by	Amount approved \$ (ex GST)	Amount paid \$ (ex GST)
6 October 2015 to 30 September 2016	Committee & Court	273,621	273,621
1 October 2016 to 31 March 2017	Committee & Court	123,961	123,961
1 April 2017 to 30 September 2017	Committee & Court	158,547	158,547
1 October 2017 to 31 March 2018	Committee & Court	261,688	261,688
1 April 2018 to 31 August 2018	Committee & Court	126,164	126,164
1 September 2018 to 31 March 2019	Committee & Court	172,419	172,419
1 April 2019 to 30 September 2019	Committee & Court	142,854	142,854
1 October 2019 to 31 May 2020	Committee & Court	155,677	155,677
1 June 2020 to 30 October 2020	Committee & Court	184,998	184,998
1 November 2020 to 30 April 2021	Committee & Court	110,114	110,114
1 May 2021 to 28 February 2022	Committee & Court	126,098	126,098
Total		1,836,141	1,836,141

I am now seeking approval of a further \$102,762.00 in remuneration which will bring total remuneration claimed in the Special Purpose Receivership to \$1,938,903.

5 Disbursements sought

The Special Purpose Receiver is entitled to immediately pay costs and expenses incurred. Creditor and Court approval is only required for the Special Purpose Receiver's remuneration. In the interests of transparency, the costs and expenses paid by the Special Purpose Receiver is set out below:

Period	Amount (ex GST) \$
Current Disbursements paid	
1 March 2022 to 30 April 2023	26.55
Past disbursements paid:	
6 October 2015 to 30 September 2016	1,082.43
1 October 2016 to 31 March 2017	1,753.90
1 April 2017 to 30 September 2017	3,480.14
1 October 2017 to 31 March 2018	799.48
1 April 2018 to 31 August 2018	360.77
1 September 2018 to 31 March 2019	102.22
1 April 2019 to 30 September 2019	1,381.50
1 May 2021 to 28 February 2022	47.13
Total past disbursements paid	9,007.57

Details of the disbursements incurred are included at **Schedule C**.

6 Likely impact on dividends

My remuneration and disbursements are priority expenses that rank ahead of any distribution to creditors. My remuneration sought relates to work necessary and properly performed in accordance with my statutory obligations.

7 Report on progress of the liquidation

This Remuneration Approval Request must be read in conjunction with the report to Committee of Debenture Holders dated 29 May 2023 which outlines the progress of the Special Purpose Receivership.

8 Summary of receipts and payments

A summary of receipts and payments for the period 6 October 2015 to 25 May 2023 is set out at **Schedule E** to this Remuneration Approval Request.

9 Approval of remuneration and internal disbursements

For information about how approval of the resolutions for remuneration and internal disbursements will be sought, refer to Section 3 of the report to Committee of Debenture Holders dated 29 May 2023.

10 Questions

If you require further information in relation to the information in this report, please contact Claudia Bishop of this office on (02) 9202 2346.

You can also access information which may assist you on the following websites:



- ARITA at www.arita.com.au/creditors
- ASIC at www.asic.gov.au (search for INFO 85)

Dated this 29th day of May 2023

A handwritten signature in blue ink, appearing to read 'John Ross Lindholm', is positioned above the printed name.

John Ross Lindholm
Special Purpose Receiver

Attachments:

- Schedule A – Details of work already completed
- Schedule B – Time spent by staff on each major task already completed
- Schedule C – Disbursements
- Schedule D – Resolutions
- Schedule E – Summary of receipts and payments



Schedule A – Details of work

The below table contains more detailed descriptions of the tasks performed within each task area by the Special Purpose Receiver and their staff, which is referred to in Part 3 and supports Resolution 1 set out in **Schedule D**.

		Tasks
Period	Work already done	
	1 March 2022 to 30 April 2023	
Amount (ex GST)	\$102,762.00	
Task Area	Creditors	
General Description	75.60 hours \$ 32,819.50	
		<ul style="list-style-type: none"> – Correspondence with various debenture holders in relation to status of litigation and settlement. – Various telephone calls with debenture holders regarding updating details with Link Market Services database. – Review of databook of unrepresented payments. – Issuing emails to debenture holders regarding their unrepresented cheques. – Telephone calls with debenture holders regarding their unrepresented cheques. – Attendance to Link Market Services queries regarding debenture holder details. – Review of debenture holder transfer forms provided by Link Market Services. – Attend to ad-hoc debenture holder queries. – Issuing remuneration request reports to the Committee. – Issuing remuneration request reports to Committee of Debenture holders. – Prepare, review and finalise affidavit with respect to remuneration approval.
	Debtenture holder enquiries	<ul style="list-style-type: none"> – Review, amend and finalise updates to committee of debenture holders. – Review, amend and finalise remuneration approval requests. – Preparation for and attendance at debenture holder committee meetings. – Prepare, review and finalise file notes of debenture holder committee meetings. – Correspondence with Committee members regarding settlement discussions and appeals. – Responding to Committee members' queries and questions immediately following meetings. – Responding to any queries from Committee members. – Convening various meetings with the Committee of Debenture Holders.
	Debtenture holder reports	
	Committee of debenture holders	
Investigation		109.30 hours \$ 60,474.50
	Litigation/Recoveries	<ul style="list-style-type: none"> – Engaged in ongoing settlement negotiations with a representative of the contraveners. – Review asset and liability statement from Mr Elliot, Mr Trimboos and Mr Zita. – Consideration and analysis of estimated outcome under various enforcement scenarios. – Conference call with Maddocks regarding settlement options. – Update Committee regarding steps taken to enforce judgment. – Various discussions with Maddocks regarding correspondence with contraveners. – Review letters to the LPLC and GHB. – Review / discussions with Maddocks regarding Settlement deed. – Consider letters from GHB regarding Settlement deed and settlement offers.



Tasks	
Work already done	
	<ul style="list-style-type: none"> - Discussions with Maddocks regarding Judgement recovery avenues. - Update Committee of Debenture holders on steps taken to enforce judgment. - Consider counter proposal letter to GHB. - Discussions with Maddocks regarding Alex Elliot appeal issues. - Progressed third party costs summons against various Mr O'Bryan and Mr Elliot related entities. - Discussions with Maddocks regarding advice on enforcement steps. - Discussions with Maddocks regarding Alex Elliot appeal abandonment - Discussions with Maddocks regarding Alex Elliot appeal timetabling orders. - Prepare and execute affidavit of John Lindholm and submissions prepared by Counsel. - Review and consider affidavits filed by the O'Bryan entities in the Non-Party Costs Summons. - Review and consider Mr Zita's affidavit filed with VCAT. - Review and consider orders and Judgment of Justice Black. - Review material prepared by Maddocks relevant to non-party costs summons. - Attend O'Bryan non-party costs summons hearing. - Consider letters from GHB regarding Alex Elliot appeal and Decoland assets. - Consider correspondence received from KWM regarding Trimbos Insurance position. - Review and swear affidavit for Directions hearing. - Observe direction hearings and subsequent discussions with Maddocks. - Draft report to Committee regarding O'Bryan settlement. - Review and execute O'Bryan Deed. - Review and consider draft affidavits for the O'Bryan approval application. - Review and consider correspondence from GHB regarding Elliot contribution.
Administration	32.40 hours \$ 9,468.00
	<ul style="list-style-type: none"> - Administration reviews. - Filing of documents. - File reviews. - Updating checklists. - Requesting bank statements. - Bank account reconciliations. - Preparation and processing of receipts and payments. - Correspondence with bank regarding specific transfers. - Preparing and lodging ASIC forms. - Correspondence with ASIC regarding statutory forms. - Preparing BASs. - Discussions regarding status / strategy of receivership.
	Document maintenance, file review, checklist
	Bank account administration
	ASIC forms and lodgements
	ATO and other statutory reporting
	Planning / Review



Schedule B: Time spent by staff on each major task already completed

The below table sets out time charged to each major task area performed by the Special Purpose Receiver and their staff for the period 1 March 2022 to 30 April 2023, which is the basis of the Resolution 1 claim referred to in **Schedule D**. Please refer to **Schedule A** for further details with respect to the tasks performed.

Employee	Position	Rate (ex GST) \$/Hour	Total		Phase					
			Hrs	\$	Creditors		Investigation		Administration	
			Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$
Lindholm John	Partner	625	87.80	54,875.00	14.50	9,062.50	73.30	45,812.50	-	-
Mazzone David	Associate Director	540	6.70	3,618.00	4.70	2,538.00	2.00	1,080.00	-	-
Muscari Philip	Manager	400	85.90	34,360.00	41.50	16,600.00	33.80	13,520.00	10.60	4,240.00
Bishop Claudia	Analyst	310	27.50	8,525.00	14.20	4,402.00	0.20	62.00	13.10	4,061.00
Tang Michelle	Analyst	310	0.20	62.00	-	-	-	-	0.20	62.00
Varma Devika	Analyst	310	0.70	217.00	0.70	217.00	-	-	-	-
Brandt Lisa	Accounts	130	0.40	52.00	-	-	-	-	0.40	52.00
Choi Sue	Accounts	130	4.50	585.00	-	-	-	-	4.50	585.00
Khin Zin Thaya	Accounts	130	2.60	338.00	-	-	-	-	2.60	338.00
Mullett Emily	Accounts	130	1.00	130.00	-	-	-	-	1.00	130.00
Total (excluding GST)			217.30	102,762.00	75.60	32,819.50	109.30	60,474.50	32.40	9,468.00
GST				10,276.20		3,281.95		6,047.45		946.80
Total (including GST)				113,038.20		36,101.45		66,521.95		10,414.80
Average Hourly Rate				472.90		434.12		553.29		292.22



Schedule C – Disbursements

Disbursements already incurred (approve actual amount)	
Period	1 March 2022 to 30 April 2023
Amount (ex GST)	\$
Disbursement type	Basis
Postage	At cost
	26.55

ASIC Industry Funding Levy

The ASIC Industry Funding Levy for appointments and notifiable events will generally only be charged at the prescribed rates advised by ASIC each year. However, because there is a delay in ASIC providing actual rates for each financial year, rates are charged at the most recently available ASIC estimated rate or, if an estimate for the current financial year has not yet been issued by ASIC, it will be charged at the actual rate for the previous financial year.

Schedule D – Resolutions

Remuneration

Resolution 1 – for work already completed:

"That the remuneration of the Special Purpose Receiver, as set out in the Remuneration Approval Request dated 29 May 2023, for the period from 1 March 2022 to 30 April 2023 be fixed in the amount of \$ 102,762.00, plus any applicable GST, and may be paid."

Schedule E – summary of receipts and payments

A summary of receipts and payments for the period from 6 October 2015 to 26 May 2023 is outlined below:

Receipts and payments	\$
Receipts	
Refund BAS Interest	1,347
Funding from R&M	17,464,168
Court Order Settlement funds	63,025,905
GST Control: GST Inputs (Outputs)	960,279
Insurance Income	1,007,961
Interest Income	157,162
Investment Income	147,619
Recoveries in respect to Remittal Judgement	3,012,739
Refund of Transcript Costs	20,455
Settlement funds - Insurance House	5,500,000
Transfer from R&M	1,584,225
Total receipts	92,881,860
Payments	
Expense claim	(1,831)
Legal disbursements	(8,852,149)
Legal Fees	(7,809,494)
Link Market Services	(692,184)
Document Storage	(745)
Appointee Disbursements	(10,311)
Appointee Fees	(2,146,465)
Distribution to Debenture Holders	(67,578,313)
Ernst & Young payment	(15,389)
McGrathNicol legal fees	(628,397)
McGrathNicol: BSL R&M Legal disbursements	(57,923)
McGrathNicol: BSL R&M Legal Fees (Ashurst)	(960,341)
Bolitho Legal - Insurance House	(76,000)
GST Control	(1,100,534)
Payment to LJ & LJ Bolitho	(75,000)
Total payments	(90,005,076)
Net receipts / (payments)	2,876,784



7 December 2023

To the Committee of Debenture Holders

**Banksia Securities Limited
(In Liquidation) (Special Purpose Receiver Appointed)
ACN 004 736 458 (the Company)**

I refer to my appointment as Special Purpose Receiver of the Company.

I would like to take this opportunity to call a meeting of the Committee of Debenture Holders to provide a general update on the Special Purpose Receivership and seek the Committee's approval in relation to my remuneration incurred. It is proposed that this meeting be held on 8 December 2023 at 9:00am.

As you are aware, the Special Purpose Receiver is permitted to draw all remuneration in respect of the Banksia Proceedings and any other matters reasonably incidental or related to the conduct of the Banksia Proceedings in accordance with the Orders made by the Supreme Court of New South Wales on 29 February 2016.

The Special Purpose Receiver must seek approval from the Supreme Court of New South Wales for the remuneration drawn and has undertaken to repay any amounts on account of remuneration that the Court determines to be unreasonable. Before making such an application, the Special Purpose Receiver shall first submit his remuneration for approval by the Committee.

A summary of the remuneration being sought is summarised for your ease of reference below:

Period	Amount \$ (ex GST)
Current remuneration approval sought:	
1 May 2023 to 30 November 2023 (6 months)	39,877.00
Total current remuneration approval sought	39,877.00

By way of summary, the primary work for which remuneration is claimed arises from the Remitter Judgment. The tasks undertaken have largely comprised:

- Convening various meetings with the Committee of Debenture Holders to discuss the Remitter Judgment enforcement steps and settlement offers received from the contraveners;
- Taking steps to enforce the Remitter judgment by, amongst other things:
 - Considering and analysing several confidential without prejudice settlement offers received from the contraveners;
 - Participating in various discussions with the legal advisors of the contraveners regarding the confidential without prejudice settlement offers leading to terms of settlement being agreed with the O'Bryan Entities;

- Further considering and analysing the prospects of various possible recovery actions against the contraveners, such as the continued prosecution of the third-party costs summons, with Maddocks and Counsel (the details of which are subject to legal professional privilege); and
- Progressing the third-party costs summons against various Mr O'Bryan and Mr Elliot related entities.
- Convening various meetings with the Committee of Debenture Holders, preparing regular updates and holding several telephone discussions relevant to enforcement of the Remitter judgment and ongoing settlement negotiations;
- Together with Maddocks, attending to tasks relevant to Alex Elliot's appeal which has since been abandoned;
- Contacting debenture holders about unrepresented payments from past distributions; and
- Attending to ad-hoc requests from both the Committee of Debenture Holders and debenture holders more generally relevant to the Remitter judgment.

Since August 2021, we have attempted to contact approximately 700 individual debenture holders which has resulted in 1,338 outstanding payments totalling \$630,794 being presented. The current value of unrepresented and withheld payments is \$4,131,099 from total distributions of \$605,557,256 representing 0.68% of the total value of all distributions.

The Special Purpose Receiver does not waive legal professional privilege in relation to any of the communications referred to in this letter or the remuneration report and those documents must be treated as confidential.

Finally, the Committee of Debenture Holders is reminded that all correspondence and discussions are confidential and should not be shared with any other party.

Please contact me on (03) 8667 5719 or Hannah McConalogue of this office on (03) 9288 6461 if you have any queries.

Dated this 7th day of December 2023



John Lindholm
Special Purpose Receiver



Notice of meeting of members of the Committee of Debenture Holders

Banksia Securities Limited (In Liquidation) (Special Purpose Receiver Appointed) ACN 004 736 458 (the Company)

NOTICE IS GIVEN that a meeting of the members of the Committee of Debenture Holders will be held via conference call on 8 December 2023 at 9:00am.

Agenda

- 1 General discussion in relation to the current status of the Special Purpose Receivership.
- 2 Consider the remuneration of the Special Purpose Receiver detailed in the Remuneration Approval report dated 7 December 2023 for the period 1 May 2023 to 30 November 2023, in accordance with a Court order dated 29 February 2016.
- 3 Any other business that the members of the Committee of Debenture Holders wish to raise.

Resolution 1:

"That the remuneration of the Special Purpose Receiver, as set out in the Remuneration Approval Request dated 7 December 2023 for the period 1 May 2023 to 30 November 2023, be fixed in the amount of \$39,877.00, plus any applicable GST, and may be paid."

Teleconference facilities will be circulated prior to the meeting.

Dated this 7th day of December 2023.

John Lindholm
Special Purpose Receiver

*Schedule 2 to the Corporations Act 2001, Section 70-50
Insolvency Practice Rules (Corporations) 2016, Section 70-45*

**Banksia Securities Limited
(In Liquidation) (Special Purpose Receiver Appointed)
ACN 004 736 458 (the Company)**

1 Summary

I am asking the Committee of Debenture Holders to approve remuneration of \$39,877.00 (ex GST). Details of remuneration sought can be found in section 3 of this report

Please review the contents of the report, which sets out the resolutions to be approved by Committee Members.

To date, remuneration of \$1,836,141 has been approved by the Court and paid in the Special Purpose Receivership of the Company as outlined below:

Period	Amount \$ (ex GST)
Past remuneration approved:	
6 October 2015 to 30 September 2016 of the Special Purpose Receivership	273,621
1 October 2016 to 31 March 2017 of the Special Purpose Receivership	123,961
1 April 2017 to 30 September 2017 of the Special Purpose Receivership	158,547
1 October 2017 to 31 March 2018 of the Special Purpose Receivership	261,688
1 April 2018 to 31 August 2018 of the Special Purpose Receivership	126,164
1 September 2018 to 31 March 2019 of the Special Purpose Receivership	172,419
1 April 2019 to 30 September 2019 of the Special Purpose Receivership	142,854
1 October 2019 to 31 May 2020 of the Special Purpose Receivership	155,677
1 June 2020 to 30 October 2020 of the Special Purpose Receivership	184,998
1 November 2020 to 30 April 2021 of the Special Purpose Receivership	110,114
1 May 2021 to 28 February 2022 of the Special Purpose Receivership	126,098
1 March 2022 to 30 April 2023 of the Special Purpose Receivership	102,762
Total past remuneration approved	1,938,903
Current remuneration approval sought:	
Resolution 1: 1 May 2023 to 30 November 2023	39,877
Total current remuneration approval sought	39,877

2 Declaration

I, John Ross Lindholm of KPMG, have undertaken an assessment of this remuneration claim for my appointment as Special Purpose Receiver of the Company in accordance with the law and applicable professional standards. I am satisfied that the remuneration claimed is necessary and proper.

I have reviewed the work in progress report for the Special Purpose Receivership to ensure that remuneration is only being claimed for necessary and proper work performed and no adjustment was necessary.

3 Remuneration sought

The remuneration I am asking the Committee of Debenture Holders to approve is as follows:

For	Period	Amount \$ (ex GST)	Rates to apply	When will it be drawn
Work already completed	01/05/2023 to 30/11/2023	39,877.00	Please refer to the initial circular to debenture holders	To be drawn in Dec-23
Total remuneration to be approved		39,877.00		

Details of the work already completed are included at **Schedule A**.

Schedule B includes a breakdown of time spent by staff members on each major task for work we have already completed.

Actual resolutions to be put to the meeting are set out at **Schedule D** for your information.

4 Previous remuneration approvals

The following remuneration approvals have previously been provided by the Committee of Debenture Holders and the Court:

Period	Approved by	Amount approved \$ (ex GST)	Amount paid \$ (ex GST)
6 October 2015 to 30 September 2016	Committee & Court	273,621	273,621
1 October 2016 to 31 March 2017	Committee & Court	123,961	123,961
1 April 2017 to 30 September 2017	Committee & Court	158,547	158,547
1 October 2017 to 31 March 2018	Committee & Court	261,688	261,688
1 April 2018 to 31 August 2018	Committee & Court	126,164	126,164
1 September 2018 to 31 March 2019	Committee & Court	172,419	172,419
1 April 2019 to 30 September 2019	Committee & Court	142,854	142,854
1 October 2019 to 31 May 2020	Committee & Court	155,677	155,677
1 June 2020 to 30 October 2020	Committee & Court	184,998	184,998
1 November 2020 to 30 April 2021	Committee & Court	110,114	110,114
1 May 2021 to 28 February 2022	Committee & Court	126,098	126,098

Period	Approved by	Amount approved \$ (ex GST)	Amount paid \$ (ex GST)
1 March 2022 to 30 April 2023	Committee & Court	102,762	102,762
Total		1,938,903	1,938,903

I am now seeking approval of a further \$39,877.00 in remuneration which will bring total remuneration claimed in the Special Purpose Receivership to \$1,978,780.

5 Disbursements sought

In accordance with the Orders made on 29 February 2016, the Special Purpose Receiver is entitled to immediately pay costs and expenses from the SPR Litigation Fund. Creditor and Court approval is only required for the Special Purpose Receiver's remuneration. In the interests of transparency, the costs and expenses paid by the Special Purpose Receiver is set out below:

Period	Amount (ex GST) \$
Current Disbursements paid	
1 May 2023 to 30 November 2023	0.00
Past disbursements paid:	
6 October 2015 to 30 September 2016	1,082.43
1 October 2016 to 31 March 2017	1,753.90
1 April 2017 to 30 September 2017	3,480.14
1 October 2017 to 31 March 2018	799.48
1 April 2018 to 31 August 2018	360.77
1 September 2018 to 31 March 2019	102.22
1 April 2019 to 30 September 2019	1,381.50
1 May 2021 to 28 February 2022	47.13
1 March 2022 to 30 April 2023	26.55
Total past disbursements paid	9,060.67

Details of the disbursements incurred are included at **Schedule C**.

6 Likely impact on dividends

My remuneration and disbursements are priority expenses that rank ahead of any distribution to creditors. My remuneration sought relates to work necessary and properly performed in accordance with my statutory obligations.

7 Report on progress of the liquidation

This Remuneration Approval Request must be read in conjunction with the report to Committee of Debenture Holders dated 2 June 2023 which outlines the progress of the Special Purpose Receivership.

8 Summary of receipts and payments

A summary of receipts and payments for the period 6 October 2015 to 4 December 2023 is set out at **Schedule E** to this Remuneration Approval Request.

9 Approval of remuneration and internal disbursements

For information about how approval of the resolutions for remuneration and internal disbursements will be sought, refer to the above.

10 Questions

If you require further information in relation to the information in this report, please contact Hannah McConalogue of this office on (03) 9288 6461.

You can also access information which may assist you on the following websites:

- ARITA at www.arita.com.au/creditors
- ASIC at www.asic.gov.au (search for INFO 85)

Dated this 7th day of December 2023



John Ross Lindholm
Special Purpose Receiver

Attachments:

- Schedule A – Details of work already completed
- Schedule B – Time spent by staff on each major task already completed
- Schedule C – Disbursements
- Schedule D – Resolutions
- Schedule E – Summary of receipts and payments



Schedule A – Details of work

The below table contains more detailed descriptions of the tasks performed within each task area by the Special Purpose Receiver and their staff, which is referred to in Part 3 and supports Resolution 1 set out in **Schedule D**.

		Tasks
		Work already done
Period		1 May 2023 to 30 November 2023
Amount (ex GST)		\$ 39,877.00
Task Area	General Description	
Creditors		24.90 hours \$ 8,601.00
	Debenture holder enquiries	<ul style="list-style-type: none"> – Correspondence with various debenture holders in relation to status of litigation and settlement. – Various telephone calls with debenture holders regarding updating details with Link Market Services database. – Attendance to Link Market Services queries regarding debenture holder details. – Review of debenture holder transfer forms provided by Link Market Services. – Attend to ad-hoc debenture holder queries.
	Debenture holder reports	<ul style="list-style-type: none"> – Issuing remuneration request reports to Committee of Debenture holders. – Prepare, review and finalise affidavit with respect to remuneration approval. – Prepare, review and issue circulars to debenture holders in relation to various settlement applications. – Review, amend and finalise updates to committee of debenture holders.
	Committee of debenture holders	<ul style="list-style-type: none"> – Review, amend and finalise remuneration approval requests. – Preparation for and attendance at debenture holder committee meetings. – Prepare, review and finalise file notes of debenture holder committee meetings. – Correspondence with Committee members regarding settlement discussions and appeals. – Responding to any queries from Committee members. – Convening various meetings with the Committee of Debenture Holders.
Investigation		40.30 hours \$ 24,184.00
	Litigation/Recoveries	<ul style="list-style-type: none"> – Update Committee regarding steps taken to enforce judgment. – Various discussions with Maddocks regarding correspondence with contraveners. – Review / discussions with Maddocks regarding Settlement deed. – Discussions with Maddocks regarding Judgement recovery avenues. – Discussions with Maddocks regarding Alex Elliot appeal issues. – Progressed third party costs summons against various Mr O'Bryan and Mr Elliot related entities. – Discussions with Maddocks regarding advice on enforcement steps. – Review Counsel submissions ahead of direction hearings. – Review admissibility application material prepared by Maddocks. – Review and consider correspondence from GHB and KWM. – Observe direction hearings and subsequent discussions with Maddocks.



		Tasks Work already done
Administration		19.30 hours \$ 7,092.00 – Administration reviews. – Filing of documents. – File reviews. – Updating checklists. – Requesting bank statements. – Bank account reconciliations. – Preparation and processing of receipts and payments. – Correspondence with bank regarding specific transfers. – Preparing and lodging ASIC forms. – Correspondence with ASIC regarding statutory forms. – Preparing BASs. – Discussions regarding status / strategy of receivership.
	Document maintenance, file review, checklist	
	Bank account administration	
	ASIC forms and lodgements	
	ATO and other statutory reporting	
	Planning / Review	



Schedule B: Time spent by staff on each major task already completed

The below table sets out time charged to each major task area performed by the Special Purpose Receiver and their staff for the period 1 May 2023 to 30 November 2023, which is the basis of the Resolution 1 claim referred to in **Schedule D**. Please refer to **Schedule A** for further details with respect to the tasks performed.

Employee	Position	Rate (ex GST) \$/Hour	Total		Phase					
			Hrs	\$	Creditors		Investigation		Administration	
					Hrs	\$	Hrs	\$	Hrs	\$
Lindholm John	Partner	625	36.40	22,750.00	-	-	36.40	22,750.00	-	-
Burrows Alexander	Associate Director	540	3.10	1,674.00	-	-	-	-	3.10	1,674.00
Muscari Philip	Manager	400	7.80	3,120.00	5.20	2,080.00	1.70	680.00	0.90	360.00
Bishop Claudia	Executive	400	26.40	8,967.00	18.00	5,949.00	2.20	754.00	6.20	2,264.00
Mcconalogue Hannah	Executive	400	5.70	2,280.00	-	-	-	-	5.70	2,280.00
Varna Devika	Analyst	310	1.70	572.00	1.70	572.00	-	-	-	-
Papatheodorou Jacob	Analyst	310	0.40	124.00	-	-	-	-	0.40	124.00
Delaguiado Astra	Accounts	130	0.20	26.00	-	-	-	-	0.20	26.00
Khin Zin Thaya	Accounts	130	2.80	364.00	-	-	-	-	2.80	364.00
Total (excluding GST)			84.50	39,877.00	24.90	8,601.00	40.30	24,184.00	19.30	7,092.00
GST				3,987.70		860.10		2,418.40		709.20
Total (including GST)				43,864.70		9,461.10		26,602.40		7,801.20
Average Hourly Rate				471.92		345.42		600.10		367.46



Schedule C – Disbursements

No disbursements were incurred during the period 1 May 2023 to 30 November 2023.

ASIC Industry Funding Levy

The ASIC Industry Funding Levy for appointments and notifiable events will generally only be charged at the prescribed rates advised by ASIC each year. However, because there is a delay in ASIC providing actual rates for each financial year, rates are charged at the most recently available ASIC estimated rate or, if an estimate for the current financial year has not yet been issued by ASIC, it will be charged at the actual rate for the previous financial year.

Schedule D – Resolutions

Remuneration

Resolution 1 – for work already completed:

"That the remuneration of the Special Purpose Receiver, as set out in the Remuneration Approval Request dated 7 December 2023, for the period from 1 May 2023 to 30 November 2023 be fixed in the amount of \$39,877.00, plus any applicable GST, and may be paid."

Schedule E – summary of receipts and payments

A summary of receipts and payments for the period from 6 October 2015 to 7 December 2023 is outlined below:

Receipts and payments	\$
Receipts	
Refund BAS Interest	1,347
Funding from R&M	17,464,168
Court Order Settlement funds	63,025,905
GST Control: GST Inputs (Outputs)	960,279
Insurance Income	1,007,961
Interest Income	210,874
Investment Income	147,619
Recoveries in respect to Remittal Judgement	3,012,739
Refund of Transcript Costs	20,455
Settlement funds - Insurance House	5,500,000
Transfer from R&M	1,584,225
Total receipts	92,935,572
Payments	
Expense claim	(1,831)
Legal disbursements	(9,101,712)
Legal Fees	(8,054,612)
Link Market Services	(803,264)
Document Storage	(745)
Appointee Disbursements	(10,311)
Appointee Fees	(2,168,447)
Distribution to Debenture Holders	(67,578,313)
Ernst & Young payment	(15,389)
McGrathNicol legal fees	(628,397)
McGrathNicol: BSL R&M Legal disbursements	(57,923)
McGrathNicol: BSL R&M Legal Fees (Ashurst)	(960,341)
Bolitho Legal - Insurance House	(76,000)
GST Control	(1,100,534)
Payment to LJ & LJ Bolitho	(75,000)
Total payments	(90,632,819)
Net receipts / (payments)	2,302,753



27 August 2024

To the Committee of Debenture Holders

**Banksia Securities Limited
(In Liquidation) (Special Purpose Receiver Appointed)
ACN 004 736 458 (the Company)**

I refer to my appointment as Special Purpose Receiver of the Company.

I would like to take this opportunity to call a meeting of the Committee of Debenture Holders to provide a general update on the Special Purpose Receivership and seek the Committee's approval in relation to my remuneration incurred. It is proposed that this meeting be held on 29 August 2023 at 10:00am.

As you are aware, the Special Purpose Receiver is permitted to draw all remuneration in respect of the Banksia Proceedings and any other matters reasonably incidental or related to the conduct of the Banksia Proceedings in accordance with the Orders made by the Supreme Court of New South Wales on 29 February 2016.

The Special Purpose Receiver must seek approval from the Supreme Court of New South Wales for the remuneration drawn and has undertaken to repay any amounts on account of remuneration that the Court determines to be unreasonable. Before making such an application, the Special Purpose Receiver shall first submit his remuneration for approval by the Committee.

A summary of the remuneration being sought is summarised for your ease of reference below:

Period	Amount \$ (ex GST)
Current remuneration approval sought:	
1 December 2023 to 31 July 2024 (8 months)	55,898.50
Total current remuneration approval sought	55,898.50

By way of summary, the primary work for which remuneration is claimed arises from the Remitter Judgment. The tasks undertaken have largely comprised:

- Taking steps to settle the claims arising from the Remitter Judgment by, amongst other things:
 - Considering and analysing several confidential without prejudice settlement offers received from the contraveners;
 - Participating in discussions with the SPR's legal advisors regarding the confidential without prejudice settlement offers and giving instructions on acceptable terms of settlement, leading to conditional settlement deeds being agreed and executed; and
 - Considering reports prepared by Grant Thornton regarding the financial position of the Elliot Entities.
- Convening various meetings with the Committee of Debenture Holders, preparing updates and holding several telephone discussions relevant to enforcement of the Remitter Judgment and ongoing settlement



negotiations;

- Attending the Court of Appeal in respect to the O'Bryan Appeal;
- Contacting debenture holders and liaising with Link Market Services about unrepresented payments from past distributions; and
- Attending to ad-hoc requests from both the Committee of Debenture Holders and debenture holders more generally relevant to the Remitter Judgment.

The Special Purpose Receiver does not waive legal professional privilege in relation to any of the communications referred to in this letter or the remuneration report and those documents must be treated as confidential.

Finally, the Committee of Debenture Holders is reminded that all correspondence and discussions are confidential and should not be shared with any other party.

Please contact me on (03) 8667 5719 or Hannah McConalogue of this office on (03) 9288 6461 if you have any queries.

Dated this 27th day of August 2024

A handwritten signature in black ink, appearing to read 'John Lindholm', is positioned above the printed name and title.

John Lindholm
Special Purpose Receiver



Notice of meeting of members of the Committee of Debenture Holders

**Banksia Securities Limited
(In Liquidation) (Special Purpose Receiver Appointed)
ACN 004 736 458 (the Company)**

NOTICE IS GIVEN that a meeting of the members of the Committee of Debenture Holders will be held via conference call on 29 August 2024 at 10:00am.

Agenda

- 1 General discussion in relation to the current status of the Special Purpose Receivership.
- 2 Consider the remuneration of the Special Purpose Receiver detailed in the Remuneration Approval report dated 13 August 2024 for the period 1 December 2023 to 31 July 2024, in accordance with a Court order dated 29 February 2016.
- 3 Any other business that the members of the Committee of Debenture Holders wish to raise.

Resolution 1:

"That the remuneration of the Special Purpose Receiver, as set out in the Remuneration Approval Request dated 13 August 2024 for the period 1 December 2023 to 31 July 2024, be fixed in the amount of \$55,898.50, plus any applicable GST, and may be paid."

Teleconference facilities will be circulated prior to the meeting.

Dated this 27th day of August 2024.

John Lindholm
Special Purpose Receiver

*Schedule 2 to the Corporations Act 2001, Section 70-50
Insolvency Practice Rules (Corporations) 2016, Section 70-45*

**Banksia Securities Limited
(In Liquidation) (Special Purpose Receiver Appointed)
ACN 004 736 458 (the Company)**

1 Summary

I am asking the Committee of Debenture Holders to approve remuneration of \$55,898.50 (ex GST). Details of remuneration sought can be found in section 3 of this report.

Please review the contents of the report, which sets out the resolutions to be approved by Committee Members.

To date, remuneration of \$1,836,141 has been approved by the Court and paid in the Special Purpose Receivership of the Company as outlined below:

Period	Amount \$ (ex GST)
Past remuneration approved:	
6 October 2015 to 30 September 2016 of the Special Purpose Receivership	273,621
1 October 2016 to 31 March 2017 of the Special Purpose Receivership	123,961
1 April 2017 to 30 September 2017 of the Special Purpose Receivership	158,547
1 October 2017 to 31 March 2018 of the Special Purpose Receivership	261,688
1 April 2018 to 31 August 2018 of the Special Purpose Receivership	126,164
1 September 2018 to 31 March 2019 of the Special Purpose Receivership	172,419
1 April 2019 to 30 September 2019 of the Special Purpose Receivership	142,854
1 October 2019 to 31 May 2020 of the Special Purpose Receivership	155,677
1 June 2020 to 30 October 2020 of the Special Purpose Receivership	184,998
1 November 2020 to 30 April 2021 of the Special Purpose Receivership	110,114
1 May 2021 to 28 February 2022 of the Special Purpose Receivership	126,098
1 March 2022 to 30 April 2023 of the Special Purpose Receivership (to be approved by the Court)	102,762
1 May 2023 to 30 November 2023 of the Special Purpose Receivership (to be approved by the Court)	39,877
Total past remuneration approved	1,978,780
Current remuneration approval sought:	
Resolution 1: 1 December 2023 to 31 July 2024 (to be approved by the Court)	55,899
Total current remuneration approval sought	55,899

2 Declaration

I, John Ross Lindholm of KPMG, have undertaken an assessment of this remuneration claim for my appointment as Special Purpose Receiver of the Company in accordance with the law and applicable professional standards. I am satisfied that the remuneration claimed is necessary and proper.

I have reviewed the work in progress report for the Special Purpose Receivership to ensure that remuneration is only being claimed for necessary and proper work performed and no adjustment was necessary.

3 Remuneration sought

The remuneration I am asking the Committee of Debenture Holders to approve is as follows:

For	Period	Amount \$ (ex GST)	Rates to apply	When will it be drawn
Work already completed	01/12/2023 to 31/07/2024	55,898.50	Please refer to the initial circular to debenture holders	To be drawn in Aug-24
Total remuneration to be approved		55,898.50		

Details of the work already completed are included at **Schedule A**.

Schedule B includes a breakdown of time spent by staff members on each major task for work we have already completed.

Actual resolutions to be put to the meeting are set out at **Schedule D** for your information.

4 Previous remuneration approvals

The following remuneration approvals have previously been provided by the Committee of Debenture Holders and the Court:

Period	Approved by	Amount approved \$ (ex GST)	Amount paid \$ (ex GST)
6 October 2015 to 30 September 2016	Committee & Court	273,621	273,621
1 October 2016 to 31 March 2017	Committee & Court	123,961	123,961
1 April 2017 to 30 September 2017	Committee & Court	158,547	158,547
1 October 2017 to 31 March 2018	Committee & Court	261,688	261,688
1 April 2018 to 31 August 2018	Committee & Court	126,164	126,164
1 September 2018 to 31 March 2019	Committee & Court	172,419	172,419
1 April 2019 to 30 September 2019	Committee & Court	142,854	142,854
1 October 2019 to 31 May 2020	Committee & Court	155,677	155,677
1 June 2020 to 30 October 2020	Committee & Court	184,998	184,998

Period	Approved by	Amount approved \$ (ex GST)	Amount paid \$ (ex GST)
1 November 2020 to 30 April 2021	Committee & Court	110,114	110,114
1 May 2021 to 28 February 2022	Committee & Court	126,098	126,098
1 March 2022 to 30 April 2023	Committee	102,762	102,762
1 May 2023 to 30 November 2023	Committee	39,877	39,877
Total		1,978,780	1,978,780

I am now seeking approval of a further \$55,898.50 in remuneration which will bring total remuneration claimed in the Special Purpose Receivership to \$2,034,678.50.

5 Disbursements sought

In accordance with the Orders made on 29 February 2016, the Special Purpose Receiver is entitled to immediately pay costs and expenses from the SPR Litigation Fund. Creditor and Court approval is only required for the Special Purpose Receiver's remuneration. In the interests of transparency, the costs and expenses paid by the Special Purpose Receiver is set out below:

Period	Amount (ex GST) \$
Current Disbursements paid	
1 May 2023 to 31 July 2024 2024	0.00
Past disbursements paid:	
6 October 2015 to 30 September 2016	1,082.43
1 October 2016 to 31 March 2017	1,753.90
1 April 2017 to 30 September 2017	3,480.14
1 October 2017 to 31 March 2018	799.48
1 April 2018 to 31 August 2018	360.77
1 September 2018 to 31 March 2019	102.22
1 April 2019 to 30 September 2019	1,381.50
1 May 2021 to 28 February 2022	47.13
1 March 2022 to 30 April 2023	26.55
Total past disbursements paid	9,060.67

Details of the disbursements incurred are included at **Schedule C**.

6 Likely impact on dividends

My remuneration and disbursements are priority expenses that rank ahead of any distribution to creditors. My remuneration sought relates to work necessary and properly performed in accordance with my statutory obligations.

7 Summary of receipts and payments

A summary of receipts and payments for the period 6 October 2015 to 31 July 2024 is set out at **Schedule E** to this Remuneration Approval Request.

8 Approval of remuneration and internal disbursements

For information about how approval of the resolutions for remuneration and internal disbursements will be sought, refer to the above.

9 Questions

If you require further information in relation to the information in this report, please contact Hannah McConalogue of this office on (03) 9288 6461.

You can also access information which may assist you on the following websites:

- ARITA at www.arita.com.au/creditors
- ASIC at www.asic.gov.au (search for INFO 85)

Dated this 27th day of August 2024



John Ross Lindholm
Special Purpose Receiver

Attachments:

- Schedule A – Details of work already completed
- Schedule B – Time spent by staff on each major task already completed
- Schedule C – Disbursements
- Schedule D – Resolutions
- Schedule E – Summary of receipts and payments



Schedule A – Details of work

The below table contains more detailed descriptions of the tasks performed within each task area by the Special Purpose Receiver and their staff, which is referred to in Part 3 and supports Resolution 1 set out in **Schedule D**.

		Tasks
		Work already done
Period		1 December 2023 to 31 July 2024
Amount (ex GST)		\$ 54,872.50
Task Area	General Description	
Creditors		31.4 hours \$ 15,496.00 <ul style="list-style-type: none"> – Correspondence with various debenture holders in relation to status of litigation and settlement. – Various telephone calls with debenture holders regarding updating details with Link Market Services database. – Attendance to Link Market Services queries regarding unclaimed debenture holder distributions. – Review of debenture holder transfer forms provided by Link Market Services. – Attend to ad-hoc debenture holder queries. – Issuing remuneration request reports to Committee of Debenture holders. – Prepare, review and finalise affidavit with respect to remuneration approval. – Review, amend and finalise updates to Committee of Debenture holders. – Preparation for and attendance at debenture holder Committee meetings. – Prepare, review and finalise file notes of debenture holder Committee meetings. – Correspondence with Committee members regarding settlement discussions and appeals. – Responding to Committee members' queries and questions immediately following meetings. – Responding to any queries from Committee members. – Convening various meetings with the Committee of Debenture Holders.
	Debtenture holder enquiries	
	Debtenture holder reports	
	Committee of debtenture holders	
Investigation		48.5 hours \$ 29,156.50 <ul style="list-style-type: none"> – Update Committee regarding steps taken to enforce judgment. – Various discussions with Maddocks regarding correspondence with contraveners. – Review / discussions with Maddocks regarding settlement deeds. – Discussions with Maddocks regarding judgement recovery avenues. – Discussions with Maddocks regarding Alex Elliot appeal issues. – Progressed third party costs summons against various Mr O'Bryan and Mr Elliot related entities. – Discussions with Maddocks regarding advice on enforcement steps. – Review Counsel submissions ahead of hearings. – Review O'Bryan appeal application material prepared by Maddocks. – Review reports prepared by Grant Thornton regarding Mr Elliot investigation. – Observe hearings and subsequent discussions with Maddocks.
	Litigation/Recoveries	



		Tasks Work already done
Administration	27.7 hours \$ 11,246.00	
	Document maintenance, file review, checklist	<ul style="list-style-type: none"> - Administration reviews. - Filing of documents. - File reviews. - Updating checklists.
	Bank account administration	<ul style="list-style-type: none"> - Requesting bank statements. - Bank account reconciliations. - Preparation and processing of receipts and payments. - Correspondence with bank regarding specific transfers.
	ASIC forms and lodgements	<ul style="list-style-type: none"> - Preparing and lodging ASIC forms. - Correspondence with ASIC regarding statutory forms. - Remuneration reporting.
	ATO and other statutory reporting	<ul style="list-style-type: none"> - Preparing BASs.
	Planning / Review	<ul style="list-style-type: none"> - Discussions regarding status / strategy of receivership.



Schedule B: Time spent by staff on each major task already completed

The below table sets out time charged to each major task area performed by the Special Purpose Receiver and their staff for the period 1 December 2023 to 31 July 2024, which is the basis of the Resolution 1 claim referred to in **Schedule D**. Please refer to **Schedule A** for further details with respect to the tasks performed.

Employee	Position	Rate (ex GST) \$/Hour	Total		Phase							
			Hrs	\$	Creditors		Investigation		Administration			
			Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$
Lindholm John	Special Advisor	625	36.70	22,937.50	0.80	500.00	34.90	21,812.50	1.00	625.00		
Burrows Alexander	Associate Director	540	40.90	22,086.00	20.20	10,908.00	13.60	7,344.00	7.10	3,834.00		
Foley Hamish	Executive	400	3.90	1,560.00	-	-	-	-	3.90	1,560.00		
Mcconalogue Hannah	Executive	400	21.00	8,400.00	9.60	3,840.00	-	-	11.40	4,560.00		
Cerutti Jack	Analyst	310	0.80	248.00	0.80	248.00	-	-	-	-		
Dickmann Eleanor	Analyst	310	0.60	186.00	-	-	-	-	0.60	186.00		
Brandt Lisa	Accounts	130	0.60	78.00	-	-	-	-	0.60	78.00		
Khin Zin Thaya	Accounts	130	3.10	403.00	-	-	-	-	3.10	403.00		
Total (excluding GST)			107.60	55,898.50	31.40	15,496.00	48.50	29,156.50	27.70	11,246.00		
GST				5,589.85		1,549.60		2,915.65		1,124.60		
Total (including GST)				61,488.35		17,045.60		32,072.15		12,370.60		
Average Hourly Rate				519.50		493.50		601.16		405.99		



Schedule C – Disbursements

No disbursements were incurred during the period 1 December 2023 to 31 July 2024.

ASIC Industry Funding Levy

The ASIC Industry Funding Levy for appointments and notifiable events will generally only be charged at the prescribed rates advised by ASIC each year. However, because there is a delay in ASIC providing actual rates for each financial year, rates are charged at the most recently available ASIC estimated rate or, if an estimate for the current financial year has not yet been issued by ASIC, it will be charged at the actual rate for the previous financial year.

Schedule D – Resolutions

Remuneration

Resolution 1 – for work already completed:

"That the remuneration of the Special Purpose Receiver, as set out in the Remuneration Approval Request dated 13 August 2024, for the period from 1 December 2023 to 31 July 2024 be fixed in the amount of \$55,898.50, plus any applicable GST, and may be paid."

Schedule E – summary of receipts and payments

A summary of receipts and payments for the period from 6 October 2015 to 31 July 2024 is outlined below:

Receipts and payments	\$
Receipts	
Refund BAS Interest	1,347
Funding from R&M	17,464,168
Court Order Settlement funds	63,025,905
GST Control: GST Inputs (Outputs)	960,279
Insurance Income	1,007,961
Interest Income	273,075
Investment Income	147,619
Recoveries in respect to Remittal Judgement	3,012,739
Refund of Transcript Costs	20,455
Settlement funds - Insurance House	5,500,000
Transfer from R&M	1,584,225
Total receipts	92,997,773
Payments	
Expense claim	(1,831)
Legal disbursements	(9,310,672)
Legal Fees	(8,363,819)
Link Market Services	(882,299)
Consultant Fees	(148,235)
Document Storage	(745)
Appointee Disbursements	(9,891)
Appointee Fees	(2,176,656)
Distribution to Debenture Holders	(67,578,313)
Ernst & Young payment	(15,389)
McGrathNicol legal fees	(628,397)
McGrathNicol: BSL R&M Legal disbursements	(57,923)
McGrathNicol: BSL R&M Legal Fees (Ashurst)	(960,341)
Bolitho Legal - Insurance House	(76,000)
GST Control	(1,100,534)
Payment to LJ & LJ Bolitho	(75,000)
Total payments	(91,386,047)
Net receipts / (payments)	1,611,726



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 Melbourne VIC 3001
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 Phone +61 3 9288 5555

Tax Invoice

Banksia Securities Limited
 (Receivers and
 Managers appointed) (In Liquidation
 ATTN: Mr David Mazzone
 727 Collins St
 DOCKLANDS VIC 3008

Date : 23 June 2022
 Contact : Philip Muscari
 Telephone : +61 3 8663 8779
 Invoice number : 821454969
 Entity number : 9101
 Client code : 835270
 Payment due date : 07 July 2022
 Total payable : AUD 12,283.15
 Client Reference No :

PROFESSIONAL SERVICES RENDERED

Professional fees for the period from 1 March 2022 to 31 March 2022.

Fees		11,166.50
Total GST payable		1,116.65
Total Payable	AUD	<u>12,283.15</u>



Member firm of
 KPMG International

This account is payable within
 14 calendar days

Kindly note: no receipt will be
 forwarded unless requested

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Please send your payment with either this remittance slip or the attached Remittance Advice and Payment Options to,
 KPMG Accounts receivable, PO Box 2291U Melbourne VIC 3001 Australia

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	23 June 2022
Client payment code	835270	Payment due date	07 July 2022
Invoice number	821454969	Total payable	AUD 12,283.15
Entity number	9101	Contact	Philip Muscari



Remittance Advice and Payment Options

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	23 June 2022
Client payment code	835270	Payment due date	07 July 2022
Invoice number	821454969	Total payable	AUD 12,283.15
Entity number	9101	Contact	Philip Muscari +61 3 8663 8779


Direct Deposit

Payment for invoice can be made by transferring funds to:

Bank name	Westpac Banking Corporation
Address	260 Queen Street, Brisbane QLD 4000, Australia
Account name	KPMG Australia
Swift code	WPACAU2S
BSB no	034 002
Account no	493 529
Reference / description	821454969

We prefer invoices to be paid individually. We would appreciate receipt of this remittance advice to assist in correct allocation. Select one of the following methods to advise us of your deposit.

Fax	Attention: Accounts Receivable
Fax number:	1300 369 317
Email	nataccountsrc@kpmg.com.au
Mail	Attention: Accounts Receivable
Mail to:	PO Box 2291U Melbourne VIC 3001 Australia

	Biller Code: <input type="text" value="203562"/>
	Ref: <input type="text" value="8352700"/>
Telephone & Internet Banking - BPAY®	
Contact your bank or financial institution to make this payment from your cheque, savings, debit, credit card or transaction account. More info: www.bpay.com.au	

Credit Card

To make a payment by credit card, visit www.kpmg.com/au/onlinepayment. We accept Visa, Mastercard and American Express.

Invoice Number	821454969
Client Code	835270

Payment Plan

Our invoices are to be paid in full by the due date. If you want to arrange a payment plan, you can enter into an arrangement with QuickFee to pay by monthly instalments over a maximum term of 12 months. Terms and conditions apply. For more information or to arrange a quote, please get in touch with your KPMG contact.



Banksia Securities (Special Purpose Receivers)

WIP transaction - 1 March 2022 to 31 March 2022

Work date	Employee	Phase	Narrative	Hours	Rate	\$
01.03.2022	Choi Sue	Administration	Process the payment requisition and EFT payment for Maddocks.	0.2	130	26.00
01.03.2022	Lindholm John	Investigation	Conference call with Rob Dick and Maddocks.	0.9	625	562.50
01.03.2022	Muscari Philip	Administration	Arrange payment of Maddocks invoice.	0.3	400	120.00
02.03.2022	Choi Sue	Administration	Prepare bank reconciliation for the period of February 2022.	0.1	130	13.00
02.03.2022	Mazzone David	Creditors	Review and amend remuneration report and update to debenture holder committee.	1.5	540	810.00
02.03.2022	Muscari Philip	Administration	Discussion with D Mazzone regarding remuneration report and settlement scenarios.	0.3	400	120.00
02.03.2022	Muscari Philip	Creditors	Prepare remuneration report.	2.0	400	800.00
02.03.2022	Muscari Philip	Investigation	Prepare outlines of settlement scenarios.	0.8	400	320.00
03.03.2022	Muscari Philip	Creditors	Amend update to debenture holders and send to J Lindholm for review.	0.3	400	120.00
08.03.2022	Lindholm John	Creditors	Respond to Committee queries - Keith Pitman.	0.3	625	187.50
08.03.2022	Muscari Philip	Investigation	Update summary of un-presented cheques as at 28 February 2022.	0.4	400	160.00
09.03.2022	Lindholm John	Investigation	Phone call with Robbie Kaye regarding proposal issues.	0.5	625	312.50
09.03.2022	Mazzone David	Creditors	Draft update to committee, discuss with J Lindholm. Respond to various queries from committee members.	1.0	540	540.00
09.03.2022	Muscari Philip	Creditors	Update remuneration report, prepare WIPs and invoices for December 2021, January 2022 and February 2022.	1.6	400	640.00
10.03.2022	Lindholm John	Investigation	Debenture Committee meeting and preparation calls (x2) with Maddocks.	1.2	625	750.00
10.03.2022	Mazzone David	Creditors	Attendance at debenture holder committee meeting.	0.7	540	378.00
10.03.2022	Mazzone David	Creditors	Review and amend updated remuneration report.	1.0	540	540.00
10.03.2022	Mazzone David	Investigation	Review and update financial analysis regarding various outcomes of enforcement of remitter judgment (i.e. settlement, enforce, etc).	1.0	540	540.00
10.03.2022	Muscari Philip	Creditors	Prepare for and attend debenture holders COI meeting.	1.0	400	400.00
10.03.2022	Muscari Philip	Creditors	Update remuneration report.	0.6	400	240.00
11.03.2022	Lindholm John	Investigation	Consider and review matrix for settlement and contribution issues.	0.6	625	375.00
11.03.2022	Muscari Philip	Creditors	Further updates to remuneration report and send to J Lindholm for review.	0.5	400	200.00
15.03.2022	Lindholm John	Investigation	Phone call with Robert Kaye. Review personal position papers for Trimbos, Elliott and Zita.	0.7	625	437.50
16.03.2022	Mazzone David	Investigation	Review asset and liability statement from A Elliot, Trimbos and Zita. Update estimated outcome statement.	1.0	540	540.00
17.03.2022	Lindholm John	Investigation	Review Maddocks advice and timetable extension request.	0.4	625	250.00
18.03.2022	Lindholm John	Investigation	Review Maddocks analysis of asset statements and comment.	0.6	625	375.00
21.03.2022	Lindholm John	Investigation	Phone call with Robert Kaye regarding asset position issues.	0.3	625	187.50
23.03.2022	Muscari Philip	Administration	Arrange payment of Link invoice.	0.2	400	80.00
23.03.2022	Muscari Philip	Creditors	Correspondence to Mark Can Der Eynden regarding future distributions.	0.2	400	80.00
24.03.2022	Choi Sue	Administration	Process the payment requisition and EFT payment for Link market Services.	0.2	130	26.00
28.03.2022	Choi Sue	Administration	Process the payment requisition and EFT payment for KPMG.	0.2	130	26.00
28.03.2022	Lindholm John	Investigation	Review draft remuneration report.	0.4	625	250.00
28.03.2022	Mazzone David	Creditors	Respond to debenture holder queries.	0.3	540	162.00
28.03.2022	Muscari Philip	Creditors	Final read of remuneration report. Send report to M Gashi (Maddocks) for consideration.	0.4	400	160.00
29.03.2022	Muscari Philip	Administration	Compile invoices supporting remuneration request and send to Maddocks.	0.2	400	80.00
30.03.2022	Lindholm John	Investigation	Conference call with Robert Kaye regarding settlement discussion.	0.4	625	250.00
31.03.2022	Mazzone David	Creditors	Respond to debenture holder queries.	0.2	540	108.00
Total for March 2022				22.5		11,166.50



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Tax Invoice

Banksia Securities Limited
 (Receivers and
 Managers appointed) (In Liquidation
 ATTN: Mr David Mazzone
 727 Collins St
 DOCKLANDS VIC 3008

Date : 23 June 2022
 Contact : Philip Muscari
 Telephone : +61 3 8663 8779
 Invoice number : 821454973
 Entity number : 9101
 Client code : 835270
 Payment due date : 07 July 2022
 Total payable : AUD 6,102.25
 Client Reference No :

PROFESSIONAL SERVICES RENDERED

Professional fees for the period from 1 April 2022 to 30 April 2022.

Fees		5,547.50
Total GST payable		554.75
Total Payable	AUD	<u>6,102.25</u>



Member firm of
 KPMG International

This account is payable within
 14 calendar days

Kindly note: no receipt will be
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Please send your payment with either this remittance slip or the attached Remittance Advice and Payment Options to,
 KPMG Accounts receivable, PO Box 2291U Melbourne VIC 3001 Australia

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	23 June 2022
Client payment code	835270	Payment due date	07 July 2022
Invoice number	821454973	Total payable	AUD 6,102.25
Entity number	9101	Contact	Philip Muscari



Remittance Advice and Payment Options

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	23 June 2022
Client payment code	835270	Payment due date	07 July 2022
Invoice number	821454973	Total payable	AUD 6,102.25
Entity number	9101	Contact	Philip Muscari +61 3 8663 8779


Direct Deposit

Payment for invoice can be made by transferring funds to:

Bank name	Westpac Banking Corporation
Address	260 Queen Street, Brisbane QLD 4000, Australia
Account name	KPMG Australia
Swift code	WPACAU2S
BSB no	034 002
Account no	493 529
Reference / description	821454973

We prefer invoices to be paid individually. We would appreciate receipt of this remittance advice to assist in correct allocation. Select one of the following methods to advise us of your deposit.

Fax	Attention: Accounts Receivable
Fax number:	1300 369 317
Email	nataccountsrcc@kpmg.com.au
Mail	Attention: Accounts Receivable
Mail to:	PO Box 2291U Melbourne VIC 3001 Australia

	Biller Code: <input type="text" value="203562"/>
	Ref: <input type="text" value="8352700"/>
Telephone & Internet Banking - BPAY®	
Contact your bank or financial institution to make this payment from your cheque, savings, debit, credit card or transaction account. More info: www.bpay.com.au	

Credit Card

To make a payment by credit card, visit www.kpmg.com/au/onlinepayment. We accept Visa, Mastercard and American Express.

Invoice Number	821454973
Client Code	835270

Payment Plan

Our invoices are to be paid in full by the due date. If you want to arrange a payment plan, you can enter into an arrangement with QuickFee to pay by monthly instalments over a maximum term of 12 months. Terms and conditions apply. For more information or to arrange a quote, please get in touch with your KPMG contact.



Banksia Securities (Special Purpose Receivers)

WIP transaction - 1 April 2022 to 30 April 2022

Work date	Employee	Phase	Narrative	Hours	Rate	\$
04.04.2022	Choi Sue	Administration	Prepare bank reconciliation for the period 31 March 2022.	0.1	130	13.00
04.04.2022	Choi Sue	Administration	Process the payment requisition and EFT payment for Maddocks.	0.2	130	26.00
04.04.2022	Lindholm John	Investigation	Phone call with Robert Kaye regarding settlement issues.	0.3	625	187.50
04.04.2022	Lindholm John	Investigation	Phone call with Sam Kingston (Maddocks) regarding settlement issues.	0.3	625	187.50
04.04.2022	Muscari Philip	Administration	Arrange payment of Maddocks invoice.	0.2	400	80.00
04.04.2022	Muscari Philip	Investigation	Review and consider Maddocks analysis on potential recoveries.	0.3	400	120.00
05.04.2022	Muscari Philip	Investigation	Review and consider letter from Mr Botsman regarding settlement offer.	0.2	400	80.00
07.04.2022	Lindholm John	Investigation	Phone call with Doug Crowe.	0.3	625	187.50
12.04.2022	Muscari Philip	Administration	Update reconciliation of unrepresented cheques to 31 March 2022.	0.3	400	120.00
13.04.2022	Muscari Philip	Creditors	Correspondence with Robert McDonald York regarding recovering previous distributions.	0.2	400	80.00
13.04.2022	Muscari Philip	Creditors	Email correspondence with Rod Clancy providing an update on status of matter.	0.2	400	80.00
14.04.2022	Lindholm John	Investigation	Review remuneration report to Committee.	0.8	625	500.00
14.04.2022	Muscari Philip	Creditors	Finalise remuneration report including receipts and payments.	1.5	400	600.00
19.04.2022	Lindholm John	Investigation	Conference call Robert Kaye regarding settlement proposal issues.	0.4	625	250.00
21.04.2022	Lindholm John	Investigation	Review unrepresented cheque schedules and program for follow up.	0.7	625	437.50
22.04.2022	Lindholm John	Investigation	Phone call Robert Kaye regarding settlement issues and dates for Directions.	0.3	625	187.50
22.04.2022	Lindholm John	Investigation	Review draft orders.	0.6	625	375.00
26.04.2022	Lindholm John	Investigation	Review content for Committee meeting.	0.6	625	375.00
27.04.2022	Muscari Philip	Creditors	Discussion with J Lindholm regarding upcoming committee meeting.	0.2	400	80.00
27.04.2022	Muscari Philip	Investigation	Review and consider proposed orders regarding Elliot proceeding	0.1	400	40.00
28.04.2022	Choi Sue	Administration	Process the payment requisition and EFT payment for Link Market Services.	0.2	130	26.00
28.04.2022	Muscari Philip	Administration	Arrange payment of Link invoice.	0.2	400	80.00
28.04.2022	Muscari Philip	Creditors	Prepare minutes for upcoming committee meeting.	0.3	400	120.00
29.04.2022	Lindholm John	Creditors	Chair Committee of Debenture holders meeting.	0.6	625	375.00
29.04.2022	Lindholm John	Creditors	Prepare for Committee meeting.	0.5	625	312.50
29.04.2022	Lindholm John	Investigation	Phone call with Sam Kingston (Maddocks).	0.3	625	187.50
29.04.2022	Muscari Philip	Creditors	Email to Andrew Ryan confirming that Link Market Services maintain the debenture holder registry.	0.1	400	40.00
29.04.2022	Muscari Philip	Creditors	Prepare for and attend committee of debenture holders meeting.	1.0	400	400.00
Total for April 2022				11.0		5,547.50



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 Melbourne VIC 3001
 Australia

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 Phone +61 3 9288 5555

Tax Invoice

Banksia Securities Limited
 (Receivers and
 Managers appointed) (In Liquidation
 ATTN: Mr David Mazzone
 727 Collins St
 DOCKLANDS VIC 3008

Date : 23 June 2022
 Contact : Philip Muscari
 Telephone : +61 3 8663 8779
 Invoice number : 821454977
 Entity number : 9101
 Client code : 835270
 Payment due date : 07 July 2022
 Total payable : AUD 8,911.65
 Client Reference No :

PROFESSIONAL SERVICES RENDERED

Professional fees for the period from 1 May 2022 to 31 May 2022.

Fees		8,101.50
Total GST payable		810.15
Total Payable	AUD	<u>8,911.65</u>



Member firm of
 KPMG International

This account is payable within
 14 calendar days

Kindly note: no receipt will be
 forwarded unless requested

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Please send your payment with either this remittance slip or the attached Remittance Advice and Payment Options to,
 KPMG Accounts receivable, PO Box 2291U Melbourne VIC 3001 Australia

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	23 June 2022
Client payment code	835270	Payment due date	07 July 2022
Invoice number	821454977	Total payable	AUD 8,911.65
Entity number	9101	Contact	Philip Muscari



Remittance Advice and Payment Options

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	23 June 2022
Client payment code	835270	Payment due date	07 July 2022
Invoice number	821454977	Total payable	AUD 8,911.65
Entity number	9101	Contact	Philip Muscari +61 3 8663 8779


Direct Deposit

Payment for invoice can be made by transferring funds to:

Bank name	Westpac Banking Corporation
Address	260 Queen Street, Brisbane QLD 4000, Australia
Account name	KPMG Australia
Swift code	WPACAU2S
BSB no	034 002
Account no	493 529
Reference / description	821454977

We prefer invoices to be paid individually. We would appreciate receipt of this remittance advice to assist in correct allocation. Select one of the following methods to advise us of your deposit.

Fax	Attention: Accounts Receivable
Fax number:	1300 369 317
Email	nataccountsrc@kpmg.com.au
Mail	Attention: Accounts Receivable
Mail to:	PO Box 2291U Melbourne VIC 3001 Australia

	Biller Code: <input type="text" value="203562"/>
	Ref: <input type="text" value="8352700"/>
Telephone & Internet Banking - BPAY®	
Contact your bank or financial institution to make this payment from your cheque, savings, debit, credit card or transaction account. More info: www.bpay.com.au	

Credit Card

To make a payment by credit card, visit www.kpmg.com/au/onlinepayment. We accept Visa, Mastercard and American Express.

Invoice Number	821454977
Client Code	835270

Payment Plan

Our invoices are to be paid in full by the due date. If you want to arrange a payment plan, you can enter into an arrangement with QuickFee to pay by monthly instalments over a maximum term of 12 months. Terms and conditions apply. For more information or to arrange a quote, please get in touch with your KPMG contact.



Banksia Securities (Special Purpose Receivers)

WIP transaction - 1 May 2022 to 31 May 2022

Work date	Employee	Phase	Narrative	Hours	Charge rate	\$
01.05.2022	Muscari Philip	Administration	Review and consider letter to LPLC regarding request to be provided information on insurance position of defendants.	0.2	400	80.00
02.05.2022	Bishop Claudia	Dividend	Actioning request for Estate of Barbara Martha Everitt.	0.5	310	155.00
02.05.2022	Lindholm John	Investigation	Review Maddocks legal summary for Committee.	0.3	625	187.50
03.05.2022	Choi Sue	Administration	Prepare bank reconciliation for the period April 2022.	0.1	130	13.00
03.05.2022	Lindholm John	Investigation	Conference call with Maddocks regarding process for any settlement application.	0.7	625	437.50
03.05.2022	Muscari Philip	Administration	Meeting with Maddocks and J Lindholm regarding next steps following previous weeks committee meeting.	0.3	400	120.00
03.05.2022	Muscari Philip	Creditors	Circulate email to committee regarding legal fees incurred since Remitter Judgment was received.	0.1	400	40.00
03.05.2022	Muscari Philip	Creditors	Final review of file note regarding committee meeting held on 29 April 2022 and send to J Lindholm.	0.3	400	120.00
03.05.2022	Muscari Philip	Investigation	Review and consider Maddocks draft letter to GHB.	0.2	400	80.00
03.05.2022	Muscari Philip	Trade On	Arrange payment of Maddocks invoice.	0.2	400	80.00
04.05.2022	Muscari Philip	Administration	Consider request for Grant Thornton regarding audit of Banksia trust account. Email to J Lindholm regarding the same.	0.3	400	120.00
04.05.2022	Muscari Philip	Creditors	Prepare file note regarding committee of debenture holders meeting on 29 April 2022.	1.4	400	560.00
05.05.2022	Lindholm John	Investigation	Conference call with Phil Muscari regarding debenture communication circular.	0.3	625	187.50
05.05.2022	Muscari Philip	Administration	Call with M Gashi (Maddocks) regarding trust account audit requirements.	0.1	400	40.00
05.05.2022	Muscari Philip	Creditors	Finalise file note regarding meeting of debenture holders on 29 April 2022.	0.8	400	320.00
06.05.2022	Muscari Philip	Administration	Complete trust account audit confirmation.	0.1	400	40.00
09.05.2022	Lindholm John	Investigation	Review settlement options and non-defendant merit issues.	0.5	625	312.50
09.05.2022	Muscari Philip	Administration	Update reconciliation of un-presented cheques from previous distributions to 30 April 2022.	0.3	400	120.00
17.05.2022	Lindholm John	Investigation	Review Maddocks advice and John Price proposal document. Discuss with Maddocks.	1.2	625	750.00
19.05.2022	Muscari Philip	Investigation	Review and consider letter to GHB regarding settlement offer. Review and consider settlement offer.	0.3	400	120.00
20.05.2022	Lindholm John	Investigation	Phone call with Robert Kaye regarding proposal issues.	0.4	625	250.00
23.05.2022	Lindholm John	Investigation	Review Maddocks advice and draft letters to Garland Hawthorn Brahe and LLPC.	0.6	625	375.00
24.05.2022	Lindholm John	Investigation	Review GHB response and discuss with Sam Kingston.	0.4	625	250.00
24.05.2022	Muscari Philip	Trade On	Review payment to Link Market Services for monthly insolvency fees.	0.2	400	80.00
25.05.2022	Lindholm John	Investigation	Conference call with Sam Kingston regarding Defendants proposal and Counsel issues.	0.4	625	250.00
25.05.2022	Muscari Philip	Investigation	Review and consider letter prepared by Maddocks to GBH regarding response to Notice of Contentions. Review and consider letter prepared by Maddocks to KWM regarding insurance.	0.2	400	80.00
26.05.2022	Choi Sue	Administration	Process the payment requisition and EFT payment for Link Market Services.	0.2	130	26.00
26.05.2022	Muscari Philip	Trade On	Review Link Market Services payment.	0.1	400	40.00
30.05.2022	Lindholm John	Creditors	Review circular to committee; Review enforcement scenarios and high/low outcomes.	1.7	625	1,062.50
30.05.2022	Muscari Philip	Creditors	Discussion with J Lindholm regarding circular to committee regarding revised settlement offer.	0.2	400	80.00
30.05.2022	Muscari Philip	Creditors	Draft memo to Committee of Debenture Holders regarding revised settlement offer.	1.5	400	600.00
31.05.2022	Lindholm John	Investigation	Review draft affidavit for remuneration application; Review Counsel's draft submissions.	1.8	625	1,125.00
Total for May 2022				15.9		8,101.50



Tower Two, Collins Square
 727 Collins Street
 Melbourne VIC 3008
 Australia
 ABN 51 194 660 183

PO Box 2291U
 Melbourne VIC 3001
 Australia

Fax +61 3 9288 6666
 Phone +61 3 9288 5555

Copy of Tax Invoice

Banksia Securities Limited
 (Receivers and
 Managers appointed) (In Liquidation
 ATTN: Mr David Mazzone
 727 Collins St
 DOCKLANDS VIC 3008

Date : 18 July 2022
 Contact : Philip Muscari
 Telephone : +61 3 8663 8779
 Invoice number : 821461515
 Entity number : 9101
 Client code : 835270
 Payment due date : 01 August 2022
 Total payable : AUD 13,193.79
 Client Reference No :

PROFESSIONAL SERVICES RENDERED

Professional fees and costs for the period from 1 June 2022 to 30 June 2022.

Fees		11,985.50
Total expenses subject to GST		8.85
Total GST payable		1,199.44
Total Payable	AUD	<u>13,193.79</u>



Member firm of
 KPMG International

This account is payable within
 14 calendar days

Kindly note: no receipt will be
 forwarded unless requested

Liability limited by a scheme approved under Professional Standards Legislation

Please send your payment with either this remittance slip or the attached Remittance Advice and Payment Options to,
 KPMG Accounts receivable, PO Box 2291U Melbourne VIC 3001 Australia

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	18 July 2022
Client payment code	835270	Payment due date	01 August 2022
Invoice number	821461515	Total payable	AUD 13,193.79
Entity number	9101	Contact	Philip Muscari



Remittance Advice and Payment Options

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	18 July 2022
Client payment code	835270	Payment due date	01 August 2022
Invoice number	821461515	Total payable	AUD 13,193.79
Entity number	9101	Contact	Philip Muscari +61 3 8663 8779

Direct Deposit

Payment for invoice can be made by transferring funds to:

Bank name	Westpac Banking Corporation
Address	260 Queen Street, Brisbane QLD 4000, Australia
Account name	KPMG Australia
Swift code	WPACAU2S
BSB no	034 002
Account no	493 529
Reference / description	821461515

We prefer invoices to be paid individually. We would appreciate receipt of this remittance advice to assist in correct allocation. Select one of the following methods to advise us of your deposit.

Fax	Attention: Accounts Receivable
Fax number:	1300 369 317
Email	nataccountsrec@kpmg.com.au
Mail	Attention: Accounts Receivable
Mail to:	PO Box 2291U Melbourne VIC 3001 Australia

	Billers Code: <input type="text" value="203562"/>
	Ref: <input type="text" value="8352700"/>
Telephone & Internet Banking - BPAY[®]	
Contact your bank or financial institution to make this payment from your cheque, savings, debit, credit card or transaction account. More info: www.bpay.com.au	

Credit Card

To make a payment by credit card, visit www.kpmg.com/au/onlinepayment. We accept Visa, Mastercard and American Express.

Invoice Number	821461515
Client Code	835270

Payment Plan

Our invoices are to be paid in full by the due date. If you want to arrange a payment plan, you can enter into an arrangement with QuickFee to pay by monthly instalments over a maximum term of 12 months. Terms and conditions apply. For more information or to arrange a quote, please get in touch with your KPMG contact.



Tower Two, Collins Square
 727 Collins Street
 Melbourne VIC 3008
 Australia
 ABN 51 194 660 183

PO Box 2291U
 Melbourne VIC 3001
 Australia

Fax +61 3 9288 6666
 Phone +61 3 9288 5555

Tax Invoice

Banksia Securities Limited
 (Receivers and
 Managers appointed) (In Liquidation
 ATTN: Mr David Mazzone
 727 Collins St
 DOCKLANDS VIC 3008

Date : 01 August 2022
 Contact : Philip Muscari
 Telephone : +61 3 8663 8779
 Invoice number : 821464673
 Entity number : 9101
 Client code : 835270
 Payment due date : 15 August 2022
 Total payable : AUD 9,432.17
 Client Reference No :

PROFESSIONAL SERVICES RENDERED

Professional fees and costs for the period from 1 July 2022 to 31 July 2022.

Fees		8,557.00
Total expenses subject to GST		17.70
Total GST payable		857.47
Total Payable	AUD	9,432.17



Member firm of
 KPMG International

This account is payable within
 14 calendar days

Kindly note: no receipt will be
 forwarded unless requested

Liability limited by a scheme approved under Professional Standards Legislation

Please send your payment with either this remittance slip or the attached Remittance Advice and Payment Options to,
 KPMG Accounts receivable, PO Box 2291U Melbourne VIC 3001 Australia

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	01 August 2022
Client payment code	835270	Payment due date	15 August 2022
Invoice number	821464673	Total payable	AUD 9,432.17
Entity number	9101	Contact	Philip Muscari



Remittance Advice and Payment Options

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	01 August 2022
Client payment code	835270	Payment due date	15 August 2022
Invoice number	821464673	Total payable	AUD 9,432.17
Entity number	9101	Contact	Philip Muscari +61 3 8663 8779


Direct Deposit

Payment for invoice can be made by transferring funds to:

Bank name	Westpac Banking Corporation
Address	260 Queen Street, Brisbane QLD 4000, Australia
Account name	KPMG Australia
Swift code	WPACAU2S
BSB no	034 002
Account no	493 529
Reference / description	821464673

We prefer invoices to be paid individually. We would appreciate receipt of this remittance advice to assist in correct allocation. Select one of the following methods to advise us of your deposit.

Fax Fax number:	Attention: Accounts Receivable 1300 369 317
Email	nataccountsrcc@kpmg.com.au
Mail Mail to:	Attention: Accounts Receivable PO Box 2291U Melbourne VIC 3001 Australia

	Biller Code: <input type="text" value="203562"/>
	Ref: <input type="text" value="8352700"/>
Telephone & Internet Banking - BPAY® Contact your bank or financial institution to make this payment from your cheque, savings, debit, credit card or transaction account. More info: www.bpay.com.au	

Credit Card

To make a payment by credit card, visit www.kpmg.com/au/onlinepayment. We accept Visa, Mastercard and American Express.

Invoice Number	821464673
Client Code	835270

Payment Plan

Our invoices are to be paid in full by the due date. If you want to arrange a payment plan, you can enter into an arrangement with QuickFee to pay by monthly instalments over a maximum term of 12 months. Terms and conditions apply. For more information or to arrange a quote, please get in touch with your KPMG contact.



Banksia Securities (Special Purpose Receivers)

WIP transaction - 1 July 2022 to 31 July 2022

Work date	Employee	Phase	Narrative	Hours	Charge rate	\$
01.07.2022	Lindholm John	Investigation	Phone call with Sam Kingston regarding strategy and steps for approval application.	0.4	625	250.00
05.07.2022	Bishop Claudia	Trade On	Correspondence with Link Market Services regarding updated EFT details.	0.2	310	62.00
05.07.2022	Choi Sue	Administration	Prepare bank reconciliation for the period 30 June 2022.	0.1	130	13.00
05.07.2022	Choi Sue	Administration	Process the payment requisition and EFT payment for Maddocks.	0.2	130	26.00
05.07.2022	Muscari Philip	Administration	Review and approve payment to Maddocks.	0.2	400	80.00
06.07.2022	Muscari Philip	Administration	Arrange execution and posting of Banksia transfer deed.	0.2	400	80.00
06.07.2022	Muscari Philip	Creditors	Email correspondence to Glenda Rogerson regarding updating contact details with Link Market Services.	0.2	400	80.00
06.07.2022	Muscari Philip	Investigation	Review and consider letter regarding proposed amended timetable for Alex Elliot appeal.	0.2	400	80.00
07.07.2022	Choi Sue	Administration	Update the reporting user details in Insol.	0.1	130	13.00
07.07.2022	Lindholm John	Investigation	Review Botsman letter. Phone call with Sam Kingston regarding application issues.	0.4	625	250.00
11.07.2022	Muscari Philip	Investigation	Call with M Gashi (Maddocks) regarding minutes from the 7 June 2022 meeting of the Committee.	0.2	400	80.00
11.07.2022	Muscari Philip	Investigation	Consider letter from GHB regarding Alex Elliot appeal and proposed draft response from Maddocks.	0.2	400	80.00
12.07.2022	Lindholm John	Investigation	Phone call with Sam Kingston regarding Botsman reply and Counsel.	0.4	625	250.00
12.07.2022	Muscari Philip	Administration	Review and approve payment to Link Market Services.	0.2	400	80.00
12.07.2022	Muscari Philip	Creditors	Prepare file note of minutes from 7 June 2022 Committee meeting.	0.9	400	360.00
13.07.2022	Bishop Claudia	Trade On	Preparing payment to Link.	0.2	310	62.00
13.07.2022	Brandt Lisa	Administration	Process Batch Supplier Payment Requisition and EFT.	0.2	130	26.00
13.07.2022	Lindholm John	Investigation	Review Maddocks advice and reply letters to Botsman.	0.3	625	187.50
13.07.2022	Muscari Philip	Investigation	Review and consider material filed for remuneration application hearing.	0.4	400	160.00
14.07.2022	Bishop Claudia	Trade On	Signing and mailing of debenture holder deeds.	0.4	310	124.00
15.07.2022	Bishop Claudia	Trade On	Call with debenture holder regarding address update.	0.2	310	62.00
15.07.2022	Lindholm John	Investigation	Review Justice Black transcript and Maddocks comments.	0.6	625	375.00
15.07.2022	Muscari Philip	Creditors	Finalise file note regarding 7 June 2022 committee meeting.	0.2	400	80.00
15.07.2022	Muscari Philip	Investigation	Call with M Gashi regarding the draft letter to Mr Chris Botsman.	0.2	400	80.00
22.07.2022	Bishop Claudia	Trade On	Preparing payment of KPMG fees.	0.2	310	62.00
22.07.2022	Choi Sue	Administration	Process the payment requisition and EFT payment for KPMG.	0.2	130	26.00
22.07.2022	Lindholm John	Investigation	Review draft affidavit for Directions.	1.2	625	750.00
22.07.2022	Muscari Philip	Administration	Review and approve payment voucher for June 2022 KPMG fees.	0.2	400	80.00
25.07.2022	Lindholm John	Investigation	Review and mark up Affidavit for Directions hearing.	2.1	625	1,312.50
26.07.2022	Lindholm John	Investigation	Review details of interlocutory process.	0.4	625	250.00
27.07.2022	Bishop Claudia	Trade On	Preparing payment voucher.	0.2	310	62.00
27.07.2022	Brandt Lisa	Non Chargeable	Email Philip Muscari - Bank Balance as at 26 July 2022.	0.1	130	13.00
27.07.2022	Lindholm John	Investigation	Meeting with Maddocks to swear affidavit.	0.5	625	312.50
27.07.2022	Lindholm John	Investigation	Review draft Affidavit for Directions hearing and edit.	1.2	625	750.00
27.07.2022	Muscari Philip	Administration	Call with M Gashi (Maddocks) regarding J Lindholm's affidavit.	0.1	400	40.00
27.07.2022	Muscari Philip	Investigation	Review and consider draft interlocutory process regarding settlement directions.	0.3	400	120.00
27.07.2022	Muscari Philip	Investigation	Review and consider orders made by the Court of Appeal in relation to Alex Elliot's appeal.	0.2	400	80.00
27.07.2022	Muscari Philip	Investigation	Review John Lindholm's confidential affidavit regarding settlement directions.	1.1	400	440.00



Banksia Securities (Special Purpose Receivers)

WIP transaction - 1 July 2022 to 31 July 2022

Work date	Employee	Phase	Narrative	Hours	Charge rate	\$
28.07.2022	Mullett Emily	Administration	EFT payment.	0.2	130	26.00
28.07.2022	Muscari Philip	Administration	Review and approve payment to Link Market Services for June2022 Insolvency Fees.	0.1	400	40.00
28.07.2022	Muscari Philip	Investigation	Review submissions issued to Justice Black regarding proposed settlement orders.	0.2	400	80.00
29.07.2022	Lindholm John	Investigation	Conference call with Sam Kingston regarding Directions hearing update.	0.4	625	250.00
29.07.2022	Lindholm John	Investigation	Dial in to Directions hearing.	0.2	625	125.00
29.07.2022	Lindholm John	Investigation	Dial in to Directions hearing.	0.4	625	250.00
29.07.2022	Lindholm John	Investigation	Review draft letters to Committee, ASIC and Mr Botsman.	0.3	625	187.50
29.07.2022	Muscari Philip	Investigation	Attend directions hearing for the application regarding settlement before Black J.	0.4	400	160.00
29.07.2022	Muscari Philip	Investigation	Review and consider documents drafted by Maddocks following directions hearing on 29 July 2022. Call with M Gashi (Maddocks) regarding the same.	0.5	400	200.00
Total for July 2022				17.5		8,557.00



Tower Two, Collins Square
 727 Collins Street
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 ABN 51 194 660 183

PO Box 2291U
 Melbourne VIC 3001
 Australia

Fax +61 3 9288 6666
 Phone +61 3 9288 5555

Tax Invoice

Banksia Securities Limited
 (Receivers and
 Managers appointed) (In Liquidation)
 727 Collins St
 DOCKLANDS VIC 3008

Date : 07 September 2022
 Contact : Philip Muscari
 Telephone : +61 3 8663 8779
 Invoice number : 821473991
 Entity number : 9101
 Client code : 835270
 Payment due date : 21 September 2022
 Total payable : AUD 10,966.45
 Client Reference No :

PROFESSIONAL SERVICES RENDERED

Professional fees for the period from 1 August 2022 to 31 August 2022.

Fees		9,969.50
Total GST payable		996.95
Total Payable	AUD	<u>10,966.45</u>



Member firm of
 KPMG International

This account is payable within
 14 calendar days

Kindly note: no receipt will be
 forwarded unless requested

Liability limited by a scheme approved under Professional Standards Legislation

Please send your payment with either this remittance slip or the attached Remittance Advice and Payment Options to,
 KPMG Accounts receivable, PO Box 2291U Melbourne VIC 3001 Australia

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	07 September 2022
Client payment code	835270	Payment due date	21 September 2022
Invoice number	821473991	Total payable	AUD 10,966.45
Entity number	9101	Contact	Philip Muscari



Remittance Advice and Payment Options

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	07 September 2022
Client payment code	835270	Payment due date	21 September 2022
Invoice number	821473991	Total payable	AUD 10,966.45
Entity number	9101	Contact	Philip Muscari +61 3 8663 8779


Direct Deposit

Payment for invoice can be made by transferring funds to:

Bank name	Westpac Banking Corporation
Address	260 Queen Street, Brisbane QLD 4000, Australia
Account name	KPMG Australia
Swift code	WPACAU2S
BSB no	034 002
Account no	493 529
Reference / description	821473991

We prefer invoices to be paid individually. We would appreciate receipt of this remittance advice to assist in correct allocation. Select one of the following methods to advise us of your deposit.

Fax	Attention: Accounts Receivable
Fax number:	1300 369 317
Email	nataccountsrcc@kpmg.com.au
Mail	Attention: Accounts Receivable
Mail to:	PO Box 2291U Melbourne VIC 3001 Australia

	Biller Code: <input type="text" value="203562"/>
	Ref: <input type="text" value="8352700"/>

Telephone & Internet Banking - BPAY®
Contact your bank or financial institution to make this payment from your cheque, savings, debit, credit card or transaction account. More info: www.bpay.com.au

Credit Card

To make a payment by credit card, visit www.kpmg.com/au/onlinepayment. We accept Visa, Mastercard and American Express.

Invoice Number	821473991
Client Code	835270

Payment Plan

Our invoices are to be paid in full by the due date. If you want to arrange a payment plan, you can enter into an arrangement with QuickFee to pay by monthly instalments over a maximum term of 12 months. Terms and conditions apply. For more information or to arrange a quote, please get in touch with your KPMG contact.



Banksia Securities (Special Purpose Receivers)

WIP transaction - 1 August 2022 to 31 August 2022

Work date	Employee	Phase	Narrative	Hours	Charge rate	\$
01.08.2022	Muscari Philip	Creditors	Correspondence with Committee members regarding proposed meeting on 4 August 2022.	0.2	400	80.00
01.08.2022	Muscari Philip	Creditors	Email correspondence to K Pitman responding to his questions on the confidentiality undertaking.	0.3	400	120.00
03.08.2022	Choi Sue	Administration	Prepare bank reconciliation for July 2022.	0.1	130	13.00
03.08.2022	Lindholm John	Creditors	Review and prepare for Committee Meeting.	0.7	625	437.50
03.08.2022	Lindholm John	Investigation	Phone call with Keith Pitman.	0.4	625	250.00
04.08.2022	Lindholm John	Creditors	Chair Committee meeting.	0.8	625	500.00
04.08.2022	Lindholm John	Creditors	Prepare for Committee meeting.	0.6	625	375.00
04.08.2022	Muscari Philip	Creditors	Attend Committee Meeting.	0.7	400	280.00
05.08.2022	Lindholm John	Investigation	Meeting with Maddocks on Teams to review and swear Affidavit.	0.3	625	187.50
05.08.2022	Lindholm John	Investigation	Review and finalise Affidavit.	1.2	625	750.00
05.08.2022	Mullett Emily	Administration	EFT payment.	0.2	130	26.00
05.08.2022	Muscari Philip	Administration	Review and approve payment batch prepared by C Bishop.	0.1	400	40.00
05.08.2022	Muscari Philip	Creditors	Email to Committee members describing taxation of costs.	0.1	400	40.00
05.08.2022	Muscari Philip	Investigation	Review and consider draft affidavit of John Lindholm regarding communications with Committee.	0.5	400	200.00
08.08.2022	Lindholm John	Creditors	Phone call with Doug Crowe regarding Directions queries.	0.3	625	187.50
09.08.2022	Lindholm John	Investigation	Conference call with Sam Kingston regarding Directions Affidavit and materials required.	0.4	625	250.00
10.08.2022	Lindholm John	Investigation	Review Counsel's draft submissions for Directions.	1.1	625	687.50
10.08.2022	Lindholm John	Investigation	Review draft Affidavit, Phone call with Sam Kingston to discuss amendments.	0.6	625	375.00
11.08.2022	Lindholm John	Investigation	Finalise and swear Affidavit.	0.4	625	250.00
11.08.2022	Muscari Philip	Investigation	Review and consider draft affidavit of John Lindholm and draft submissions prepared by Counsel ahead of hearing on 12 August 2022.	0.9	400	360.00
11.08.2022	Muscari Philip	Investigation	Review and consider statement of assets and liabilities from Alex Elliot.	0.1	400	40.00
12.08.2022	Lindholm John	Investigation	Attend Directions hearing by phone.	2.5	625	1,562.50
12.08.2022	Lindholm John	Investigation	Conference call with Sam Kingston regarding suppression issues and directions.	0.6	625	375.00
15.08.2022	Muscari Philip	Creditors	Email to Epsom Football Club regarding updating contact details.	0.1	400	40.00
16.08.2022	Muscari Philip	Investigation	Review and consider information received from LPLC regarding Mr O'Bryan's position.	0.1	400	40.00
18.08.2022	Muscari Philip	Creditors	Email correspondence to Link Market Services regarding request from debenture holders to update banking details.	0.1	400	40.00
22.08.2022	Bishop Claudia	Creditors	Correspondence with debenture holder regarding unrepresented cheques.	0.2	310	62.00
22.08.2022	Bishop Claudia	Creditors	Correspondence with State Trustees regarding updating debenture holder details.	0.2	310	62.00
23.08.2022	Bishop Claudia	Creditors	Correspondence with debenture holder regarding unrepresented cheques.	0.1	310	31.00
23.08.2022	Bishop Claudia	Creditors	Telephone correspondence regarding dividends and deceased estate.	0.2	310	62.00
23.08.2022	Muscari Philip	Administration	Review and approve Link Market Services payment for July 2022.	0.1	400	40.00
23.08.2022	Muscari Philip	Creditors	Consider request from debenture holder to update banking details, Email correspondence to Link Market Services regarding the same.	0.2	400	80.00
23.08.2022	Muscari Philip	Investigation	Review and consider affidavits filed by the O'Bryan entities in the Non-Party Costs Summons.	0.3	400	120.00
23.08.2022	Muscari Philip	Investigation	Review and consider Justice Black's judgment dated 18 August 2022 regarding settlement proposal.	0.9	400	360.00
23.08.2022	Muscari Philip	Investigation	Review and consider sworn asset and liability statement from Mr Zita.	0.1	400	40.00



Banksia Securities (Special Purpose Receivers)

WIP transaction - 1 August 2022 to 31 August 2022

Work date	Employee	Phase	Narrative	Hours	Charge rate	\$
24.08.2022	Choi Sue	Administration	Process the payment requisition and EFT payment for Link Market Services.	0.2	130	26.00
26.08.2022	Muscari Philip	Investigation	Review and consider orders and judgment of Justice Black dated 12 August 2022.	0.1	400	40.00
26.08.2022	Muscari Philip	Investigation	Review and consider short schedule of proposed redactions made to orders made by Justice Black.	0.1	400	40.00
29.08.2022	Lindholm John	Investigation	Review Judgement and redaction issues.	1.7	625	1,062.50
31.08.2022	Lindholm John	Investigation	Phone call with Don McKenzie regarding Judgement and next steps.	0.3	625	187.50
31.08.2022	Lindholm John	Investigation	Review Maddocks advice. Review draft emails to Mr Botsman and GHB.	0.4	625	250.00
Total for August 2022				18.5		9,969.50



Tower Two, Collins Square
 727 Collins Street
 Melbourne VIC 3008
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 ABN 51 194 660 183

PO Box 2291U
 Melbourne VIC 3001
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 Phone +61 3 9288 5555

Tax Invoice

Banksia Securities Limited
 (Receivers and
 Managers appointed) (In Liquidation
 ATTN: Mr David Mazzone
 727 Collins St
 DOCKLANDS VIC 3008

Date : 03 October 2022
 Contact : Philip Muscari
 Telephone : +61 3 8663 8779
 Invoice number : 821480053
 Entity number : 9101
 Client code : 835270
 Payment due date : 17 October 2022
 Total payable : AUD 6,403.65
 Client Reference No :

PROFESSIONAL SERVICES RENDERED

Professional fees for the period from 1 September 2022 to 30 September 2022.

Fees		5,821.50
Total GST payable		582.15
Total Payable	AUD	<u>6,403.65</u>



Member firm of
 KPMG International

This account is payable within
 14 calendar days

Kindly note: no receipt will be
 forwarded unless requested

Liability limited by a scheme approved under Professional Standards Legislation

Please send your payment with either this remittance slip or the attached Remittance Advice and Payment Options to,
 KPMG Accounts receivable, PO Box 2291U Melbourne VIC 3001 Australia

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	03 October 2022
Client payment code	835270	Payment due date	17 October 2022
Invoice number	821480053	Total payable	AUD 6,403.65
Entity number	9101	Contact	Philip Muscari

Remittance Advice and Payment Options

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	03 October 2022
Client payment code	835270	Payment due date	17 October 2022
Invoice number	821480053	Total payable	AUD 6,403.65
Entity number	9101	Contact	Philip Muscari +61 3 8663 8779


Direct Deposit

Payment for invoice can be made by transferring funds to:

Bank name	Westpac Banking Corporation
Address	260 Queen Street, Brisbane QLD 4000, Australia
Account name	KPMG Australia
Swift code	WPACAU2S
BSB no	034 002
Account no	493 529
Reference / description	821480053

We prefer invoices to be paid individually. We would appreciate receipt of this remittance advice to assist in correct allocation. Select one of the following methods to advise us of your deposit.

Fax	Attention: Accounts Receivable
Fax number:	1300 369 317
Email	nataccountsrec@kpmg.com.au
Mail	Attention: Accounts Receivable
Mail to:	PO Box 2291U Melbourne VIC 3001 Australia



Billor Code:	<input type="text" value="203562"/>
Ref:	<input type="text" value="8352700"/>

Telephone & Internet Banking - BPAY[®]
 Contact your bank or financial institution to make this payment from your cheque, savings, debit, credit card or transaction account. More info: www.bpay.com.au

Credit Card

To make a payment by credit card, visit www.kpmg.com/au/onlinepayment. We accept Visa, Mastercard and American Express.

Invoice Number	821480053
Client Code	835270

Payment Plan

Our invoices are to be paid in full by the due date. If you want to arrange a payment plan, you can enter into an arrangement with QuickFee to pay by monthly instalments over a maximum term of 12 months. Terms and conditions apply. For more information or to arrange a quote, please get in touch with your KPMG contact.



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 ABN 51 194 660 183

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 Melbourne VIC 3001
 Australia

Fax +61 3 9288 6666
 Phone +61 3 9288 5555

Tax Invoice

Banksia Securities Limited
 (Receivers and
 Managers appointed) (In Liquidation
 ATTN: Mr David Mazzone
 727 Collins St
 DOCKLANDS VIC 3008

Date : 14 November 2022
 Contact : Philip Muscari
 Telephone : +61 3 8663 8779
 Invoice number : 821489724
 Entity number : 9101
 Client code : 835270
 Payment due date : 28 November 2022
 Total payable : AUD 6,669.85
 Client Reference No :

PROFESSIONAL SERVICES RENDERED

Professional fees and costs for the period from 1 October 2022 to 31 October 2022

Fees		6,063.50
Total GST payable		606.35
Total Payable	AUD	<u>6,669.85</u>



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 KPMG International

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 14 calendar days

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 KPMG Accounts receivable, PO Box 2291U Melbourne VIC 3001 Australia

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	14 November 2022
Client payment code	835270	Payment due date	28 November 2022
Invoice number	821489724	Total payable	AUD 6,669.85
Entity number	9101	Contact	Philip Muscari



Remittance Advice and Payment Options

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	14 November 2022
Client payment code	835270	Payment due date	28 November 2022
Invoice number	821489724	Total payable	AUD 6,669.85
Entity number	9101	Contact	Philip Muscari +61 3 8663 8779

Direct Deposit

Payment for invoice can be made by transferring funds to:

Bank name	Westpac Banking Corporation
Address	260 Queen Street, Brisbane QLD 4000, Australia
Account name	KPMG Australia
Swift code	WPACAU2S
BSB no	034 002
Account no	493 529
Reference / description	821489724

We prefer invoices to be paid individually. We would appreciate receipt of this remittance advice to assist in correct allocation. Select one of the following methods to advise us of your deposit.

Fax Fax number:	Attention: Accounts Receivable 1300 369 317
Email	nataccountsrec@kpmg.com.au
Mail Mail to:	Attention: Accounts Receivable PO Box 2291U Melbourne VIC 3001 Australia

	Biller Code: <input type="text" value="203562"/>
	Ref: <input type="text" value="8352700"/>
Telephone & Internet Banking - BPAY[®]	
Contact your bank or financial institution to make this payment from your cheque, savings, debit, credit card or transaction account. More info: www.bpay.com.au	

Credit Card

To make a payment by credit card, visit www.kpmg.com/au/onlinepayment. We accept Visa, Mastercard and American Express.

Invoice Number	821489724
Client Code	835270

Payment Plan

Our invoices are to be paid in full by the due date. If you want to arrange a payment plan, you can enter into an arrangement with QuickFee to pay by monthly instalments over a maximum term of 12 months. Terms and conditions apply. For more information or to arrange a quote, please get in touch with your KPMG contact.



Banksia Securities (Special Purpose Receivers)

WIP transaction - 1 October 2022 to 31 October 2022

Work date	Employee	Phase	Narrative	Hours	Charge rate	\$
04.10.2022	Bishop Claudia	Administration	Processing September 2022 KPMG bill and Maddocks September fees.	0.4	310.00	124.00
04.10.2022	Bishop Claudia	Administration	Updating 1 March to 31 August 2022 remuneration report.	0.3	310.00	93.00
04.10.2022	Choi Sue	Administration	Process the batch payment requisition and EFT(ABA) payment for KPMG and Maddocks.	0.3	130.00	39.00
04.10.2022	Muscari Philip	Administration	Review and approve payments of KPMG and Maddocks fees.	0.2	400.00	80.00
04.10.2022	Muscari Philip	Creditors	Review remuneration report for the period from 1 March 2022 to 31 August 2022.	1.4	400.00	560.00
04.10.2022	Muscari Philip	Investigation	Review and consider letter to GHB regarding grounds of appeal response.	0.1	400.00	40.00
06.10.2022	Muscari Philip	Creditors	Review remuneration report for the period from 1 March 2022 to 31 August 2022.	0.7	400.00	280.00
10.10.2022	Bishop Claudia	Administration	Reviewing ATO private ruling 5 Dec 2018 regarding BAS obligations. Drafting summary regarding the same.	2.4	310.00	744.00
10.10.2022	Choi Sue	Administration	Prepare bank reconciliation for the account for September 2022.	0.1	130.00	13.00
10.10.2022	Lindholm John	Investigation	Review counter offer dated 7 October 2022. Refer to Maddocks.	0.4	625.00	250.00
10.10.2022	Muscari Philip	Administration	Email to M Gashi (Maddocks) providing the draft remuneration report for the period from 1 March 2022 to 31 August 2022.	0.1	400.00	40.00
10.10.2022	Muscari Philip	Creditors	Telephone call and subsequent email to Barbara Harris regarding update on receivership.	0.2	400.00	80.00
11.10.2022	Bishop Claudia	Administration	Completing share registry reconciliation.	0.4	310.00	124.00
11.10.2022	Bishop Claudia	Administration	Preparing 5602 lodgement.	0.4	310.00	124.00
11.10.2022	Bishop Claudia	Administration	Preparing BAS data.	0.4	310.00	124.00
11.10.2022	Choi Sue	Administration	Prepare bank reconciliation for the account as at 5 October 2022.	0.1	130.00	13.00
11.10.2022	Muscari Philip	Administration	Call with M Gashi (Maddocks) regarding remuneration report and updated settlement offer.	0.1	400.00	40.00
11.10.2022	Muscari Philip	Administration	Consider email from C Bishop regarding ATO private ruling. Email correspondence to J Lindholm regarding the same.	0.2	400.00	80.00
11.10.2022	Muscari Philip	Investigation	Review and consider amended settlement offer received from the Contraveners.	0.1	400.00	40.00
11.10.2022	Muscari Philip	Investigation	Review and consider letter to GHB regarding revised settlement offer received from the Contraveners.	0.3	400.00	120.00
13.10.2022	Bishop Claudia	Administration	Preparing 5602 lodgement.	0.3	310.00	93.00
13.10.2022	Bishop Claudia	Administration	Preparing BAS data.	0.7	310.00	217.00
13.10.2022	Lindholm John	Investigation	Review draft supplementary notice of contentions.	0.6	625.00	375.00
13.10.2022	Muscari Philip	Creditors	Email correspondence to I McMullan (debenture holder) regarding process to transfer debentures.	0.1	400.00	40.00
13.10.2022	Muscari Philip	Investigation	Review and consider draft further contentions notice prepared by counsel.	0.2	400.00	80.00
14.10.2022	Bishop Claudia	Administration	Finalising BAS lodgements from 1-10-2018 to 30-09-2022 and preparing file note.	1.6	310.00	496.00
14.10.2022	Lindholm John	Investigation	Review Maddocks advice regarding settlement offer and draft statements of position.	0.4	625.00	250.00
14.10.2022	Muscari Philip	Administration	Review and approve outstanding BASs for receivership appointment.	0.1	400.00	40.00
20.10.2022	Muscari Philip	Creditors	Call with debenture holder providing an update on the status of Special Purpose Receivership.	0.1	400.00	40.00
21.10.2022	Lindholm John	Investigation	Review GHB request and Maddocks advice regarding appeal timetable issue.	0.4	625.00	250.00
26.10.2022	Lindholm John	Investigation	Review draft remuneration report and attachments.	0.9	625.00	562.50
26.10.2022	Muscari Philip	Creditors	Review and consider draft material for upcoming remuneration application.	0.8	400.00	320.00
26.10.2022	Muscari Philip	Investigation	Review correspondence received regarding Alex Elliot appeal and proposed response drafted by Maddocks.	0.2	400.00	80.00
26.10.2022	Muscari Philip	Investigation	Review timetabling orders received for Alex Elliot appeal.	0.1	400.00	40.00
28.10.2022	Bishop Claudia	Administration	Preparing payment voucher for Maddocks and Link Market Services invoices.	0.3	310.00	93.00
31.10.2022	Choi Sue	Administration	Process the batch payment requisition and EFT (ABA) payment for the batch.	0.3	130.00	39.00
31.10.2022	Muscari Philip	Administration	Review payments to Maddocks and Link Market Services.	0.1	400.00	40.00
Total for October 2022				15.8		6,063.50



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 Phone +61 3 9288 5555

Tax Invoice

Banksia Securities Limited
 (Receivers and
 Managers appointed) (In Liquidation
 ATTN: Mr John Lindholm
 727 Collins St
 DOCKLANDS VIC 3008

Date : 14 December 2022
 Contact : Philip Muscari
 Telephone : +61 3 8663 8779
 Invoice number : 821497702
 Entity number : 9101
 Client code : 835270
 Payment due date : 28 December 2022
 Total payable : AUD 4,695.90
 Client Reference No :

PROFESSIONAL SERVICES RENDERED

Professional fees for the period from 1 November 2022 to 30 November 2022.

Fees		4,269.00
Total GST payable		426.90
Total Payable	AUD	<u>4,695.90</u>



Member firm of
 KPMG International

This account is payable within
 14 calendar days

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Please send your payment with either this remittance slip or the attached Remittance Advice and Payment Options to,
 KPMG Accounts receivable, PO Box 2291U Melbourne VIC 3001 Australia

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	14 December 2022
Client payment code	835270	Payment due date	28 December 2022
Invoice number	821497702	Total payable	AUD 4,695.90
Entity number	9101	Contact	Philip Muscari



Remittance Advice and Payment Options

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	14 December 2022
Client payment code	835270	Payment due date	28 December 2022
Invoice number	821497702	Total payable	AUD 4,695.90
Entity number	9101	Contact	Philip Muscari +61 3 8663 8779

Direct Deposit

Payment for invoice can be made by transferring funds to:

Bank name	Westpac Banking Corporation
Address	260 Queen Street, Brisbane QLD 4000, Australia
Account name	KPMG Australia
Swift code	WPACAU2S
BSB no	034 002
Account no	493 529
Reference / description	821497702

We prefer invoices to be paid individually. We would appreciate receipt of this remittance advice to assist in correct allocation. Select one of the following methods to advise us of your deposit.

Fax Fax number:	Attention: Accounts Receivable 1300 369 317
Email	nataccountsrec@kpmg.com.au
Mail Mail to:	Attention: Accounts Receivable PO Box 2291U Melbourne VIC 3001 Australia

	Billers Code: <input type="text" value="203562"/>
	Ref: <input type="text" value="8352700"/>
Telephone & Internet Banking - BPAY[®]	
Contact your bank or financial institution to make this payment from your cheque, savings, debit, credit card or transaction account. More info: www.bpay.com.au	

Credit Card

To make a payment by credit card, visit www.kpmg.com/au/onlinepayment. We accept Visa, Mastercard and American Express.

Invoice Number	821497702
Client Code	835270

Payment Plan

Our invoices are to be paid in full by the due date. If you want to arrange a payment plan, you can enter into an arrangement with QuickFee to pay by monthly instalments over a maximum term of 12 months. Terms and conditions apply. For more information or to arrange a quote, please get in touch with your KPMG contact.



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 ABN 51 194 660 183

PO Box 2291U
 Melbourne VIC 3001
 Australia

Fax +61 3 9288 6666
 Phone +61 3 9288 5555

Tax Invoice

Banksia Securities Limited
 (Receivers and
 Managers appointed) (In Liquidation
 ATTN: Mr John Lindholm
 727 Collins St
 DOCKLANDS VIC 3008

Date : 17 February 2023
 Contact : Philip Muscari
 Telephone : +61 3 8663 8779
 Invoice number : 821509915
 Entity number : 9101
 Client code : 835270
 Payment due date : 03 March 2023
 Total payable : AUD 4,090.90
 Client Reference No :

PROFESSIONAL SERVICES RENDERED

Professional fees for the period from 1 December 2022 to 31 December 2022

Fees		3,719.00
Total GST payable		371.90
Total Payable	AUD	<u>4,090.90</u>



Member firm of
 KPMG International

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 14 calendar days

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 KPMG Accounts receivable, PO Box 2291U Melbourne VIC 3001 Australia

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	17 February 2023
Client payment code	835270	Payment due date	03 March 2023
Invoice number	821509915	Total payable	AUD 4,090.90
Entity number	9101	Contact	Philip Muscari



Remittance Advice and Payment Options

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	17 February 2023
Client payment code	835270	Payment due date	03 March 2023
Invoice number	821509915	Total payable	AUD 4,090.90
Entity number	9101	Contact	Philip Muscari +61 3 8663 8779

Direct Deposit

Payment for invoice can be made by transferring funds to:

Bank name	Westpac Banking Corporation
Address	260 Queen Street, Brisbane QLD 4000, Australia
Account name	KPMG Australia
Swift code	WPACAU2S
BSB no	034 002
Account no	493 529
Reference / description	821509915

We prefer invoices to be paid individually. We would appreciate receipt of this remittance advice to assist in correct allocation. Select one of the following methods to advise us of your deposit.

Fax Fax number:	Attention: Accounts Receivable 1300 369 317
Email	nataccountsrec@kpmg.com.au
Mail Mail to:	Attention: Accounts Receivable PO Box 2291U Melbourne VIC 3001 Australia

	Biller Code: <input type="text" value="203562"/>
	Ref: <input type="text" value="8352700"/>
Telephone & Internet Banking - BPAY[®]	
Contact your bank or financial institution to make this payment from your cheque, savings, debit, credit card or transaction account. More info: www.bpay.com.au	

Credit Card

To make a payment by credit card, visit www.kpmg.com/au/onlinepayment. We accept Visa, Mastercard and American Express.

Invoice Number	821509915
Client Code	835270

Payment Plan

Our invoices are to be paid in full by the due date. If you want to arrange a payment plan, you can enter into an arrangement with QuickFee to pay by monthly instalments over a maximum term of 12 months. Terms and conditions apply. For more information or to arrange a quote, please get in touch with your KPMG contact.



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 Melbourne VIC 3001
 Australia

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 Phone +61 3 9288 5555

Tax Invoice

Banksia Securities Limited
 (Receivers and
 Managers appointed) (In Liquidation
 ATTN: Mr John Lindholm
 727 Collins St
 DOCKLANDS VIC 3008

Date : 20 February 2023
 Contact : Philip Muscari
 Telephone : +61 3 8663 8779
 Invoice number : 821510356
 Entity number : 9101
 Client code : 835270
 Payment due date : 06 March 2023
 Total payable : AUD 2,388.65
 Client Reference No :

PROFESSIONAL SERVICES RENDERED

Professional fees for the period from 1 January 2023 to 31 January 2023.

Fees		2,171.50
Total GST payable		217.15
Total Payable	AUD	<u>2,388.65</u>



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 KPMG Accounts receivable, PO Box 2291U Melbourne VIC 3001 Australia

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	20 February 2023
Client payment code	835270	Payment due date	06 March 2023
Invoice number	821510356	Total payable	AUD 2,388.65
Entity number	9101	Contact	Philip Muscari



Remittance Advice and Payment Options

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	20 February 2023
Client payment code	835270	Payment due date	06 March 2023
Invoice number	821510356	Total payable	AUD 2,388.65
Entity number	9101	Contact	Philip Muscari +61 3 8663 8779

Direct Deposit

Payment for invoice can be made by transferring funds to:

Bank name	Westpac Banking Corporation
Address	260 Queen Street, Brisbane QLD 4000, Australia
Account name	KPMG Australia
Swift code	WPACAU2S
BSB no	034 002
Account no	493 529
Reference / description	821510356

We prefer invoices to be paid individually. We would appreciate receipt of this remittance advice to assist in correct allocation. Select one of the following methods to advise us of your deposit.

Fax Fax number:	Attention: Accounts Receivable 1300 369 317
Email	nataccountsrec@kpmg.com.au
Mail Mail to:	Attention: Accounts Receivable PO Box 2291U Melbourne VIC 3001 Australia

	Biller Code: <input type="text" value="203562"/>
	Ref: <input type="text" value="8352700"/>
Telephone & Internet Banking - BPAY[®]	
Contact your bank or financial institution to make this payment from your cheque, savings, debit, credit card or transaction account. More info: www.bpay.com.au	

Credit Card

To make a payment by credit card, visit www.kpmg.com/au/onlinepayment. We accept Visa, Mastercard and American Express.

Invoice Number	821510356
Client Code	835270

Payment Plan

Our invoices are to be paid in full by the due date. If you want to arrange a payment plan, you can enter into an arrangement with QuickFee to pay by monthly instalments over a maximum term of 12 months. Terms and conditions apply. For more information or to arrange a quote, please get in touch with your KPMG contact.



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Tax Invoice

Banksia Securities Limited
 (Receivers and
 Managers appointed) (In Liquidation
 ATTN: Mr John Lindholm
 727 Collins St
 DOCKLANDS VIC 3008

Date : 14 March 2023
 Contact : Philip Muscari
 Telephone : +61 3 8663 8779
 Invoice number : 821516213
 Entity number : 9101
 Client code : 835270
 Payment due date : 28 March 2023
 Total payable : AUD 5,575.90
 Client Reference No :

PROFESSIONAL SERVICES RENDERED

Professional fees and costs for the period from 1 February 2023 to 28 February 2023

Fees		5,069.00
Total GST payable		506.90
Total Payable	AUD	<u>5,575.90</u>



Member firm of
 KPMG International

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 14 calendar days

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 KPMG Accounts receivable, PO Box 2291U Melbourne VIC 3001 Australia

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	14 March 2023
Client payment code	835270	Payment due date	28 March 2023
Invoice number	821516213	Total payable	AUD 5,575.90
Entity number	9101	Contact	Philip Muscari



Remittance Advice and Payment Options

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	14 March 2023
Client payment code	835270	Payment due date	28 March 2023
Invoice number	821516213	Total payable	AUD 5,575.90
Entity number	9101	Contact	Philip Muscari +61 3 8663 8779

Direct Deposit

Payment for invoice can be made by transferring funds to:

Bank name	Westpac Banking Corporation
Address	260 Queen Street, Brisbane QLD 4000, Australia
Account name	KPMG Australia
Swift code	WPACAU2S
BSB no	034 002
Account no	493 529
Reference / description	821516213

We prefer invoices to be paid individually. We would appreciate receipt of this remittance advice to assist in correct allocation. Select one of the following methods to advise us of your deposit.

Fax Fax number:	Attention: Accounts Receivable 1300 369 317
Email	nataccountsrec@kpmg.com.au
Mail Mail to:	Attention: Accounts Receivable PO Box 2291U Melbourne VIC 3001 Australia

	Billers Code: <input type="text" value="203562"/>
	Ref: <input type="text" value="8352700"/>
Telephone & Internet Banking - BPAY[®]	
Contact your bank or financial institution to make this payment from your cheque, savings, debit, credit card or transaction account. More info: www.bpay.com.au	

Credit Card

To make a payment by credit card, visit www.kpmg.com/au/onlinepayment. We accept Visa, Mastercard and American Express.

Invoice Number	821516213
Client Code	835270

Payment Plan

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 Phone +61 3 9288 5555

Copy of Tax Invoice

Banksia Securities Limited
 (Receivers and
 Managers appointed) (In Liquidation
 ATTN: Mr John Lindholm
 727 Collins St
 DOCKLANDS VIC 3008

Date : 19 April 2023
 Contact : Philip Muscari
 Telephone :
 Invoice number : 821524262
 Entity number : 9101
 Client code : 835270
 Payment due date : 03 May 2023
 Total payable : AUD 9,819.70
 Client Reference No :

PROFESSIONAL SERVICES RENDERED

Professional fees and costs for the period from 1 March 2023 to 31 March 2023

Fees		8,927.00
Total GST payable		892.70
Total Payable	AUD	<u>9,819.70</u>



Member firm of
 KPMG International

This account is payable within
 14 calendar days

Kindly note: no receipt will be
 forwarded unless requested

Liability limited by a scheme approved under Professional Standards Legislation

Please send your payment with either this remittance slip or the attached Remittance Advice and Payment Options to,
 KPMG Accounts receivable, PO Box 2291U Melbourne VIC 3001 Australia

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	19 April 2023
Client payment code	835270	Payment due date	03 May 2023
Invoice number	821524262	Total payable	AUD 9,819.70
Entity number	9101	Contact	Philip Muscari



Remittance Advice and Payment Options

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	19 April 2023
Client payment code	835270	Payment due date	03 May 2023
Invoice number	821524262	Total payable	AUD 9,819.70
Entity number	9101	Contact	Philip Muscari


Direct Deposit

Payment for invoice can be made by transferring funds to:

Bank name	National Australia Bank Limited
Address	330 Collins Street, Melbourne VIC 3000, Australia
Account name	KPMG
Swift code	NATAAU3303M
BSB no	083 004
Account no	255727180
Reference / description	821524262

We prefer invoices to be paid individually. We would appreciate receipt of this remittance advice to assist in correct allocation. Select one of the following methods to advise us of your deposit.

Fax	Attention: Accounts Receivable
Fax number:	1300 369 317
Email	nataccountsrec@kpmg.com.au
Mail	Attention: Accounts Receivable
Mail to:	PO Box 2291U Melbourne VIC 3001 Australia

	Biller Code: <input type="text" value="203562"/>
	Ref: <input type="text" value="8352700"/>

Telephone & Internet Banking - BPAY[®]
 Contact your bank or financial institution to make this payment from your cheque, savings, debit, credit card or transaction account. More info: www.bpay.com.au

Credit Card

To make a payment by credit card, visit www.kpmg.com/au/onlinepayment. We accept Visa, Mastercard and American Express.

Invoice Number	821524262
Client Code	835270

Payment Plan

Our invoices are to be paid in full by the due date. If you want to arrange a payment plan, you can enter into an arrangement with QuickFee to pay by monthly instalments over a maximum term of 12 months. Terms and conditions apply. For more information or to arrange a quote, please get in touch with your KPMG contact.



Tower Two, Collins Square
 727 Collins Street
 Melbourne VIC 3008
 Australia
 ABN 51 194 660 183

PO Box 2291U
 Melbourne VIC 3001
 Australia

Fax +61 3 9288 6666
 Phone +61 3 9288 5555

Copy of Tax Invoice

Banksia Securities Limited
 (Receivers and
 Managers appointed) (In Liquidation
 ATTN: Mr John Lindholm
 727 Collins St
 DOCKLANDS VIC 3008

Date : 25 May 2023
 Contact : Philip Muscari
 Telephone :
 Invoice number : 821533342
 Entity number : 9101
 Client code : 835270
 Payment due date : 08 June 2023
 Total payable : AUD 12,533.40
 Client Reference No :

PROFESSIONAL SERVICES RENDERED

Professional fees and costs for the period from 1 April 2023 to 30 April 2023

Fees		11,394.00
Total GST payable		1,139.40
Total Payable	AUD	<u>12,533.40</u>



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 KPMG International

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 KPMG Accounts receivable, PO Box 2291U Melbourne VIC 3001 Australia

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	25 May 2023
Client payment code	835270	Payment due date	08 June 2023
Invoice number	821533342	Total payable	AUD 12,533.40
Entity number	9101	Contact	Philip Muscari



Remittance Advice and Payment Options

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	25 May 2023
Client payment code	835270	Payment due date	08 June 2023
Invoice number	821533342	Total payable	AUD 12,533.40
Entity number	9101	Contact	Philip Muscari


Direct Deposit

Payment for invoice can be made by transferring funds to:

Bank name	National Australia Bank Limited
Address	330 Collins Street, Melbourne VIC 3000, Australia
Account name	KPMG
Swift code	NATAAU3303M
BSB no	083 004
Account no	255727180
Reference / description	821533342

We prefer invoices to be paid individually. We would appreciate receipt of this remittance advice to assist in correct allocation. Select one of the following methods to advise us of your deposit.

Fax	Attention: Accounts Receivable
Fax number:	1300 369 317
Email	nataccountsrec@kpmg.com.au
Mail	Attention: Accounts Receivable
Mail to:	PO Box 2291U Melbourne VIC 3001 Australia

	Biller Code: <input type="text" value="203562"/>
	Ref: <input type="text" value="8352700"/>
Telephone & Internet Banking - BPAY[®]	
Contact your bank or financial institution to make this payment from your cheque, savings, debit, credit card or transaction account. More info: www.bpay.com.au	

Credit Card

To make a payment by credit card, visit www.kpmg.com/au/onlinepayment. We accept Visa, Mastercard and American Express.

Invoice Number	821533342
Client Code	835270

Payment Plan

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 Melbourne VIC 3001
 Australia

Fax +61 3 9288 6666
 Phone +61 3 9288 5555

Copy of Tax Invoice

Banksia Securities Limited
 (Receivers and
 Managers appointed) (In Liquidation
 ATTN: Mr John Lindholm
 727 Collins St
 DOCKLANDS VIC 3008

Date : 25 September 2023
 Contact : Alexander
 Burrows
 Telephone : +61 3 8663 8491
 Invoice number : 821564313
 Entity number : 9101
 Client code : 835270
 Payment due date : 09 October 2023
 Total payable : AUD 12,925.55
 Client Reference No :

PROFESSIONAL SERVICES RENDERED

Professional fees and costs for the period from 1 May 2023 to 31 May 2023.

Fees		11,750.50
Total GST payable		1,175.05
Total Payable	AUD	<u>12,925.55</u>



Member firm of
 KPMG International

This account is payable within
 14 calendar days

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 forwarded unless requested

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 KPMG Accounts receivable, PO Box 2291U Melbourne VIC 3001 Australia

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	25 September 2023
Client payment code	835270	Payment due date	09 October 2023
Invoice number	821564313	Total payable	AUD 12,925.55
Entity number	9101	Contact	Alexander Burrows



Remittance Advice and Payment Options

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	25 September 2023
Client payment code	835270	Payment due date	09 October 2023
Invoice number	821564313	Total payable	AUD 12,925.55
Entity number	9101	Contact	Alexander Burrows +61 3 8663 8491


Direct Deposit

Payment for invoice can be made by transferring funds to:

Bank name	National Australia Bank Limited
Address	330 Collins Street, Melbourne VIC 3000, Australia
Account name	KPMG
Swift code	NATAAU3303M
BSB no	083 004
Account no	255727180
Reference / description	821564313

We prefer invoices to be paid individually. We would appreciate receipt of this remittance advice to assist in correct allocation. Select one of the following methods to advise us of your deposit.

Fax	Attention: Accounts Receivable
Fax number:	1300 369 317
Email	nataccountsrec@kpmg.com.au
Mail	Attention: Accounts Receivable
Mail to:	PO Box 2291U Melbourne VIC 3001 Australia

	Biller Code: <input type="text" value="203562"/>
	Ref: <input type="text" value="8352700"/>

Telephone & Internet Banking - BPAY[®]
 Contact your bank or financial institution to make this payment from your cheque, savings, debit, credit card or transaction account. More info: www.bpay.com.au

Credit Card

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Invoice Number	821564313
Client Code	835270

Payment Plan

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PO Box 2291U
 Melbourne VIC 3001
 Australia

Fax +61 3 9288 6666
 Phone +61 3 9288 5555

Copy of Tax Invoice

Banksia Securities Limited
 (Receivers and
 Managers appointed) (In Liquidation
 ATTN: Mr John Lindholm
 727 Collins St
 DOCKLANDS VIC 3008

Date : 25 September 2023
 Contact : Alexander
 Burrows
 Telephone : +61 3 8663 8491
 Invoice number : 821564314
 Entity number : 9101
 Client code : 835270
 Payment due date : 09 October 2023
 Total payable : AUD 9,056.85
 Client Reference No :

PROFESSIONAL SERVICES RENDERED

Professional fees and costs for the period 1 June 2023 to 30 June 2023.

Fees		8,233.50
Total GST payable		823.35
Total Payable	AUD	<u>9,056.85</u>



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 KPMG International

This account is payable within
 14 calendar days

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Please send your payment with either this remittance slip or the attached Remittance Advice and Payment Options to,
 KPMG Accounts receivable, PO Box 2291U Melbourne VIC 3001 Australia

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	25 September 2023
Client payment code	835270	Payment due date	09 October 2023
Invoice number	821564314	Total payable	AUD 9,056.85
Entity number	9101	Contact	Alexander Burrows



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Copy of Tax Invoice

Banksia Securities Limited
 (Receivers and
 Managers appointed) (In Liquidation
 ATTN: Mr John Lindholm
 727 Collins St
 DOCKLANDS VIC 3008

Date : 25 January 2024
 Contact : Alexander
 Burrows
 Telephone : +61 3 8663 8491
 Invoice number : 821590307
 Entity number : 9101
 Client code : 835270
 Payment due date : 08 February 2024
 Total payable : AUD 2,439.80
 Client Reference No :

PROFESSIONAL SERVICES RENDERED

Professional fees and costs for the period from 1 July 2023 to 31 July 2023.

Fees		2,218.00
Total GST payable		221.80
Total Payable	AUD	<u>2,439.80</u>



Member firm of
 KPMG International

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 14 calendar days

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Please send your payment with either this remittance slip or the attached Remittance Advice and Payment Options to,
 KPMG Accounts receivable, PO Box 2291U Melbourne VIC 3001 Australia

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	25 January 2024
Client payment code	835270	Payment due date	08 February 2024
Invoice number	821590307	Total payable	AUD 2,439.80
Entity number	9101	Contact	Alexander Burrows



Remittance Advice and Payment Options

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	25 January 2024
Client payment code	835270	Payment due date	08 February 2024
Invoice number	821590307	Total payable	AUD 2,439.80
Entity number	9101	Contact	Alexander Burrows +61 3 8663 8491


Direct Deposit

Payment for invoice can be made by transferring funds to:

Bank name	National Australia Bank Limited
Address	330 Collins Street, Melbourne VIC 3000, Australia
Account name	KPMG
Swift code	NATAAU3303M
BSB no	083 004
Account no	255727180
Reference / description	821590307

We prefer invoices to be paid individually. We would appreciate receipt of this remittance advice to assist in correct allocation. Select one of the following methods to advise us of your deposit.

Fax Fax number:	Attention: Accounts Receivable 1300 369 317
Email	nataccountsrec@kpmg.com.au
Mail Mail to:	Attention: Accounts Receivable PO Box 2291U Melbourne VIC 3001 Australia

	Biller Code: <input type="text" value="203562"/>
	Ref: <input type="text" value="8352700"/>

Telephone & Internet Banking - BPAY[®]
Contact your bank or financial institution to make this payment from your cheque, savings, debit, credit card or transaction account. More info: www.bpay.com.au

Credit Card

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Invoice Number	821590307
Client Code	835270

Payment Plan

Our invoices are to be paid in full by the due date. If you want to arrange a payment plan, you can enter into an arrangement with QuickFee to pay by monthly instalments over a maximum term of 12 months. Terms and conditions apply. For more information or to arrange a quote, please get in touch with your KPMG contact.



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 Phone +61 3 9288 5555

Copy of Tax Invoice

Banksia Securities Limited
 (Receivers and
 Managers appointed) (In Liquidation
 ATTN: Mr John Lindholm
 727 Collins St
 DOCKLANDS VIC 3008

Date : 25 January 2024
 Contact : Alexander
 Burrows
 Telephone : +61 3 8663 8491
 Invoice number : 821590305
 Entity number : 9101
 Client code : 835270
 Payment due date : 08 February 2024
 Total payable : AUD 5,161.75
 Client Reference No :

PROFESSIONAL SERVICES RENDERED

Professional fees and costs for the period from 1 August 2023 to 31 August 2023.

Fees		4,692.50
Total GST payable		469.25
Total Payable	AUD	<u>5,161.75</u>



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 KPMG International

This account is payable within
 14 calendar days

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 forwarded unless requested

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Please send your payment with either this remittance slip or the attached Remittance Advice and Payment Options to,
 KPMG Accounts receivable, PO Box 2291U Melbourne VIC 3001 Australia

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	25 January 2024
Client payment code	835270	Payment due date	08 February 2024
Invoice number	821590305	Total payable	AUD 5,161.75
Entity number	9101	Contact	Alexander Burrows



Remittance Advice and Payment Options

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	25 January 2024
Client payment code	835270	Payment due date	08 February 2024
Invoice number	821590305	Total payable	AUD 5,161.75
Entity number	9101	Contact	Alexander Burrows +61 3 8663 8491


Direct Deposit

Payment for invoice can be made by transferring funds to:

Bank name	National Australia Bank Limited
Address	330 Collins Street, Melbourne VIC 3000, Australia
Account name	KPMG
Swift code	NATAAU3303M
BSB no	083 004
Account no	255727180
Reference / description	821590305

We prefer invoices to be paid individually. We would appreciate receipt of this remittance advice to assist in correct allocation. Select one of the following methods to advise us of your deposit.

Fax Fax number:	Attention: Accounts Receivable 1300 369 317
Email	nataccountsrec@kpmg.com.au
Mail Mail to:	Attention: Accounts Receivable PO Box 2291U Melbourne VIC 3001 Australia

	Biller Code: <input type="text" value="203562"/>
	Ref: <input type="text" value="8352700"/>

Telephone & Internet Banking - BPAY[®]
Contact your bank or financial institution to make this payment from your cheque, savings, debit, credit card or transaction account. More info: www.bpay.com.au

Credit Card

To make a payment by credit card, visit www.kpmg.com/au/onlinepayment. We accept Visa, Mastercard and American Express.

Invoice Number	821590305
Client Code	835270

Payment Plan

Our invoices are to be paid in full by the due date. If you want to arrange a payment plan, you can enter into an arrangement with QuickFee to pay by monthly instalments over a maximum term of 12 months. Terms and conditions apply. For more information or to arrange a quote, please get in touch with your KPMG contact.



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 ABN 51 194 660 183

PO Box 2291U
 Melbourne VIC 3001
 Australia

Fax +61 3 9288 6666
 Phone +61 3 9288 5555

Copy of Tax Invoice

Banksia Securities Limited
 (Receivers and
 Managers appointed) (In Liquidation
 ATTN: Mr John Lindholm
 727 Collins St
 DOCKLANDS VIC 3008

Date : 25 January 2024
 Contact : Alexander
 Burrows
 Telephone : +61 3 8663 8491
 Invoice number : 821590310
 Entity number : 9101
 Client code : 835270
 Payment due date : 08 February 2024
 Total payable : AUD 2,729.65
 Client Reference No :

PROFESSIONAL SERVICES RENDERED

Professional fees and costs for the period from 1 September 2023 to 30 September 2023.

Fees		2,481.50
Total GST payable		248.15
Total Payable	AUD	<u>2,729.65</u>



Member firm of
 KPMG International

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 14 calendar days

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 KPMG Accounts receivable, PO Box 2291U Melbourne VIC 3001 Australia

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	25 January 2024
Client payment code	835270	Payment due date	08 February 2024
Invoice number	821590310	Total payable	AUD 2,729.65
Entity number	9101	Contact	Alexander Burrows



Remittance Advice and Payment Options

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	25 January 2024
Client payment code	835270	Payment due date	08 February 2024
Invoice number	821590310	Total payable	AUD 2,729.65
Entity number	9101	Contact	Alexander Burrows +61 3 8663 8491


Direct Deposit

Payment for invoice can be made by transferring funds to:

Bank name	National Australia Bank Limited
Address	330 Collins Street, Melbourne VIC 3000, Australia
Account name	KPMG
Swift code	NATAAU3303M
BSB no	083 004
Account no	255727180
Reference / description	821590310

We prefer invoices to be paid individually. We would appreciate receipt of this remittance advice to assist in correct allocation. Select one of the following methods to advise us of your deposit.

Fax	Attention: Accounts Receivable
Fax number:	1300 369 317
Email	nataccountsrec@kpmg.com.au
Mail	Attention: Accounts Receivable
Mail to:	PO Box 2291U Melbourne VIC 3001 Australia

	Biller Code: <input type="text" value="203562"/>
	Ref: <input type="text" value="8352700"/>

Telephone & Internet Banking - BPAY[®]
Contact your bank or financial institution to make this payment from your cheque, savings, debit, credit card or transaction account. More info: www.bpay.com.au

Credit Card

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Invoice Number	821590310
Client Code	835270

Payment Plan

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 ABN 51 194 660 183

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 Melbourne VIC 3001
 Australia

Fax +61 3 9288 6666
 Phone +61 3 9288 5555

Copy of Tax Invoice

Banksia Securities Limited
 (Receivers and
 Managers appointed) (In Liquidation
 ATTN: Mr John Lindholm
 727 Collins St
 DOCKLANDS VIC 3008

Date : 25 January 2024
 Contact : Alexander
 Burrows
 Telephone : +61 3 8663 8491
 Invoice number : 821590308
 Entity number : 9101
 Client code : 835270
 Payment due date : 08 February 2024
 Total payable : AUD 1,724.25
 Client Reference No :

PROFESSIONAL SERVICES RENDERED

Professional fees and costs for the period from 1 October 2023 to 31 October 2023.

Fees		1,567.50
Total GST payable		156.75
Total Payable	AUD	<u>1,724.25</u>



Member firm of
 KPMG International

This account is payable within
 14 calendar days

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 forwarded unless requested

Liability limited by a scheme approved under Professional Standards Legislation

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 KPMG Accounts receivable, PO Box 2291U Melbourne VIC 3001 Australia

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	25 January 2024
Client payment code	835270	Payment due date	08 February 2024
Invoice number	821590308	Total payable	AUD 1,724.25
Entity number	9101	Contact	Alexander Burrows



Remittance Advice and Payment Options

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	25 January 2024
Client payment code	835270	Payment due date	08 February 2024
Invoice number	821590308	Total payable	AUD 1,724.25
Entity number	9101	Contact	Alexander Burrows +61 3 8663 8491


Direct Deposit

Payment for invoice can be made by transferring funds to:

Bank name	National Australia Bank Limited
Address	330 Collins Street, Melbourne VIC 3000, Australia
Account name	KPMG
Swift code	NATAAU3303M
BSB no	083 004
Account no	255727180
Reference / description	821590308

We prefer invoices to be paid individually. We would appreciate receipt of this remittance advice to assist in correct allocation. Select one of the following methods to advise us of your deposit.

Fax Fax number:	Attention: Accounts Receivable 1300 369 317
Email	nataccountsrec@kpmg.com.au
Mail Mail to:	Attention: Accounts Receivable PO Box 2291U Melbourne VIC 3001 Australia

	Biller Code: <input type="text" value="203562"/>
	Ref: <input type="text" value="8352700"/>

Telephone & Internet Banking - BPAY[®]
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Credit Card

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Invoice Number	821590308
Client Code	835270

Payment Plan

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 Melbourne VIC 3001
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Fax +61 3 9288 6666
 Phone +61 3 9288 5555

Copy of Tax Invoice

Banksia Securities Limited
 (Receivers and
 Managers appointed) (In Liquidation
 ATTN: Mr John Lindholm
 727 Collins St
 DOCKLANDS VIC 3008

Date : 25 January 2024
 Contact : Alexander
 Burrows
 Telephone : +61 3 8663 8491
 Invoice number : 821590309
 Entity number : 9101
 Client code : 835270
 Payment due date : 08 February 2024
 Total payable : AUD 9,826.85
 Client Reference No :

PROFESSIONAL SERVICES RENDERED

Professional fees and costs for the period from 1 November 2023 to 30 November 2023.

Fees		8,933.50
Total GST payable		893.35
Total Payable	AUD	<u>9,826.85</u>



Member firm of
 KPMG International

This account is payable within
 14 calendar days

Kindly note: no receipt will be
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Liability limited by a scheme approved under Professional Standards Legislation

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 KPMG Accounts receivable, PO Box 2291U Melbourne VIC 3001 Australia

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	25 January 2024
Client payment code	835270	Payment due date	08 February 2024
Invoice number	821590309	Total payable	AUD 9,826.85
Entity number	9101	Contact	Alexander Burrows



Remittance Advice and Payment Options

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	25 January 2024
Client payment code	835270	Payment due date	08 February 2024
Invoice number	821590309	Total payable	AUD 9,826.85
Entity number	9101	Contact	Alexander Burrows +61 3 8663 8491


Direct Deposit

Payment for invoice can be made by transferring funds to:

Bank name	National Australia Bank Limited
Address	330 Collins Street, Melbourne VIC 3000, Australia
Account name	KPMG
Swift code	NATAAU3303M
BSB no	083 004
Account no	255727180
Reference / description	821590309

We prefer invoices to be paid individually. We would appreciate receipt of this remittance advice to assist in correct allocation. Select one of the following methods to advise us of your deposit.

Fax Fax number:	Attention: Accounts Receivable 1300 369 317
Email	nataccountsrec@kpmg.com.au
Mail Mail to:	Attention: Accounts Receivable PO Box 2291U Melbourne VIC 3001 Australia

	Biller Code: <input type="text" value="203562"/>
	Ref: <input type="text" value="8352700"/>

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Credit Card

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Invoice Number	821590309
Client Code	835270

Payment Plan

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 Melbourne VIC 3001
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Fax +61 3 9288 6666
 Phone +61 3 9288 5555

Tax Invoice

Banksia Securities Limited
 (Receivers and
 Managers appointed) (In Liquidation
 ATTN: Mr John Lindholm
 727 Collins St
 DOCKLANDS VIC 3008

Date : 09 September 2024
 Contact : Alexander
 Burrows
 Telephone : +61 3 8663 8491
 Invoice number : 821646363
 Entity number : 9101
 Client code : 835270
 Payment due date : 23 September 2024
 Total payable : AUD 12,713.25
 Client Reference No :

PROFESSIONAL SERVICES RENDERED
 Professional fees for the period 1 December 2023 to 31 December 2023.

Fees		11,557.50
Total GST payable		1,155.75
Total Payable	AUD	<u>12,713.25</u>



Member firm of
 KPMG International

This account is payable within
 14 calendar days

Kindly note: no receipt will be
 forwarded unless requested

Liability limited by a scheme approved under Professional Standards Legislation

Please send your payment with either this remittance slip or the attached Remittance Advice and Payment Options to,
 KPMG Accounts receivable, PO Box 2291U Melbourne VIC 3001 Australia

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	09 September 2024
Client payment code	835270	Payment due date	23 September 2024
Invoice number	821646363	Total payable	AUD 12,713.25
Entity number	9101	Contact	Alexander Burrows



Remittance Advice and Payment Options

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	09 September 2024
Client payment code	835270	Payment due date	23 September 2024
Invoice number	821646363	Total payable	AUD 12,713.25
Entity number	9101	Contact	Alexander Burrows +61 3 8663 8491


Direct Deposit

Payment for invoice can be made by transferring funds to:

Bank name	National Australia Bank Limited
Address	330 Collins Street, Melbourne VIC 3000, Australia
Account name	KPMG
Swift code	NATAAU3303M
BSB no	083 004
Account no	255727180
Reference / description	821646363

We prefer invoices to be paid individually. We would appreciate receipt of this remittance advice to assist in correct allocation. Select one of the following methods to advise us of your deposit.

Fax	Attention: Accounts Receivable
Fax number:	1300 369 317
Email	nataccountsrec@kpmg.com.au
Mail	Attention: Accounts Receivable
Mail to:	PO Box 2291U Melbourne VIC 3001 Australia

	Biller Code: <input type="text" value="203562"/>
	Ref: <input type="text" value="8352700"/>

Telephone & Internet Banking - BPAY[®]
Contact your bank or financial institution to make this payment from your cheque, savings, debit, credit card or transaction account. More info: www.bpay.com.au

Credit Card

To make a payment by credit card, visit www.kpmg.com/au/onlinepayment. We accept Visa, Mastercard and American Express.

Invoice Number	821646363
Client Code	835270

Payment Plan

Our invoices are to be paid in full by the due date. If you want to arrange a payment plan, you can enter into an arrangement with QuickFee to pay by monthly instalments over a maximum term of 12 months. Terms and conditions apply. For more information or to arrange a quote, please get in touch with your KPMG contact.



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 727 Collins Street
 Melbourne VIC 3008
 Australia
 ABN 51 194 660 183

PO Box 2291U
 Melbourne VIC 3001
 Australia

Fax +61 3 9288 6666
 Phone +61 3 9288 5555

Tax Invoice

Banksia Securities Limited
 (Receivers and
 Managers appointed) (In Liquidation
 ATTN: Mr John Lindholm
 727 Collins St
 DOCKLANDS VIC 3008

Date : 09 September 2024
 Contact : Alexander
 Burrows
 Telephone : +61 3 8663 8491
 Invoice number : 821646366
 Entity number : 9101
 Client code : 835270
 Payment due date : 23 September 2024
 Total payable : AUD 1,284.80
 Client Reference No :

PROFESSIONAL SERVICES RENDERED

Professional fees for the period from 1 January 2024 to 31 January 2024.

Fees		1,168.00
Total GST payable		116.80
Total Payable	AUD	<u>1,284.80</u>



Member firm of
 KPMG International

This account is payable within
 14 calendar days

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 KPMG Accounts receivable, PO Box 2291U Melbourne VIC 3001 Australia

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	09 September 2024
Client payment code	835270	Payment due date	23 September 2024
Invoice number	821646366	Total payable	AUD 1,284.80
Entity number	9101	Contact	Alexander Burrows



Remittance Advice and Payment Options

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	09 September 2024
Client payment code	835270	Payment due date	23 September 2024
Invoice number	821646366	Total payable	AUD 1,284.80
Entity number	9101	Contact	Alexander Burrows +61 3 8663 8491


Direct Deposit

Payment for invoice can be made by transferring funds to:

Bank name	National Australia Bank Limited
Address	330 Collins Street, Melbourne VIC 3000, Australia
Account name	KPMG
Swift code	NATAAU3303M
BSB no	083 004
Account no	255727180
Reference / description	821646366

We prefer invoices to be paid individually. We would appreciate receipt of this remittance advice to assist in correct allocation. Select one of the following methods to advise us of your deposit.

Fax	Attention: Accounts Receivable
Fax number:	1300 369 317
Email	nataccountsrec@kpmg.com.au
Mail	Attention: Accounts Receivable
Mail to:	PO Box 2291U Melbourne VIC 3001 Australia

	Billers Code: <input type="text" value="203562"/>
	Ref: <input type="text" value="8352700"/>

Telephone & Internet Banking - BPAY[®]
 Contact your bank or financial institution to make this payment from your cheque, savings, debit, credit card or transaction account. More info: www.bpay.com.au

Credit Card

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Invoice Number	821646366
Client Code	835270

Payment Plan

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Tax Invoice

Banksia Securities Limited
 (Receivers and
 Managers appointed) (In Liquidation
 ATTN: Mr John Lindholm
 727 Collins St
 DOCKLANDS VIC 3008

Date : 09 September 2024
 Contact : Alexander
 Burrows
 Telephone : +61 3 8663 8491
 Invoice number : 821646367
 Entity number : 9101
 Client code : 835270
 Payment due date : 23 September 2024
 Total payable : AUD 16,936.15
 Client Reference No :

PROFESSIONAL SERVICES RENDERED

Professional fees for the period 1 February 2024 to 29 February 2024.

Fees		15,396.50
Total GST payable		1,539.65
Total Payable	AUD	<u>16,936.15</u>



Member firm of
 KPMG International

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 14 calendar days

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Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	09 September 2024
Client payment code	835270	Payment due date	23 September 2024
Invoice number	821646367	Total payable	AUD 16,936.15
Entity number	9101	Contact	Alexander Burrows



Remittance Advice and Payment Options

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	09 September 2024
Client payment code	835270	Payment due date	23 September 2024
Invoice number	821646367	Total payable	AUD 16,936.15
Entity number	9101	Contact	Alexander Burrows +61 3 8663 8491


Direct Deposit

Payment for invoice can be made by transferring funds to:

Bank name	National Australia Bank Limited
Address	330 Collins Street, Melbourne VIC 3000, Australia
Account name	KPMG
Swift code	NATAAU3303M
BSB no	083 004
Account no	255727180
Reference / description	821646367

We prefer invoices to be paid individually. We would appreciate receipt of this remittance advice to assist in correct allocation. Select one of the following methods to advise us of your deposit.

Fax Fax number:	Attention: Accounts Receivable 1300 369 317
Email	nataccountsrec@kpmg.com.au
Mail Mail to:	Attention: Accounts Receivable PO Box 2291U Melbourne VIC 3001 Australia

	Biller Code: <input type="text" value="203562"/>
	Ref: <input type="text" value="8352700"/>
Telephone & Internet Banking - BPAY[®]	
Contact your bank or financial institution to make this payment from your cheque, savings, debit, credit card or transaction account. More info: www.bpay.com.au	

Credit Card

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Invoice Number	821646367
Client Code	835270

Payment Plan

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 Phone +61 3 9288 5555

Tax Invoice

Banksia Securities Limited
 (Receivers and
 Managers appointed) (In Liquidation
 ATTN: Mr John Lindholm
 727 Collins St
 DOCKLANDS VIC 3008

Date : 09 September 2024
 Contact : Alexander
 Burrows
 Telephone : +61 3 8663 8491
 Invoice number : 821646368
 Entity number : 9101
 Client code : 835270
 Payment due date : 23 September 2024
 Total payable : AUD 11,547.25
 Client Reference No :

PROFESSIONAL SERVICES RENDERED

Professional fees for the period from 1 March 2024 to 31 March 2024.

Fees		10,497.50
Total GST payable		1,049.75
Total Payable	AUD	<u>11,547.25</u>



Member firm of
 KPMG International

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 14 calendar days

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 KPMG Accounts receivable, PO Box 2291U Melbourne VIC 3001 Australia

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	09 September 2024
Client payment code	835270	Payment due date	23 September 2024
Invoice number	821646368	Total payable	AUD 11,547.25
Entity number	9101	Contact	Alexander Burrows



Remittance Advice and Payment Options

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	09 September 2024
Client payment code	835270	Payment due date	23 September 2024
Invoice number	821646368	Total payable	AUD 11,547.25
Entity number	9101	Contact	Alexander Burrows +61 3 8663 8491


Direct Deposit

Payment for invoice can be made by transferring funds to:

Bank name	National Australia Bank Limited
Address	330 Collins Street, Melbourne VIC 3000, Australia
Account name	KPMG
Swift code	NATAAU3303M
BSB no	083 004
Account no	255727180
Reference / description	821646368

We prefer invoices to be paid individually. We would appreciate receipt of this remittance advice to assist in correct allocation. Select one of the following methods to advise us of your deposit.

Fax	Attention: Accounts Receivable
Fax number:	1300 369 317
Email	nataccountsrec@kpmg.com.au
Mail	Attention: Accounts Receivable
Mail to:	PO Box 2291U Melbourne VIC 3001 Australia



Biller Code:	203562
Ref:	8352700

Telephone & Internet Banking - BPAY[®]
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Credit Card

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Invoice Number	821646368
Client Code	835270

Payment Plan

Our invoices are to be paid in full by the due date. If you want to arrange a payment plan, you can enter into an arrangement with QuickFee to pay by monthly instalments over a maximum term of 12 months. Terms and conditions apply. For more information or to arrange a quote, please get in touch with your KPMG contact.



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Tax Invoice

Banksia Securities Limited
 (Receivers and
 Managers appointed) (In Liquidation
 ATTN: Mr John Lindholm
 727 Collins St
 DOCKLANDS VIC 3008

Date : 09 September 2024
 Contact : Alexander
 Burrows
 Telephone : +61 3 8663 8491
 Invoice number : 821646369
 Entity number : 9101
 Client code : 835270
 Payment due date : 23 September 2024
 Total payable : AUD 6,452.60
 Client Reference No :

PROFESSIONAL SERVICES RENDERED

Professional fees for the period from 1 April 2024 to 30 April 2024.

Fees		5,866.00
Total GST payable		586.60
Total Payable	AUD	<u>6,452.60</u>



Member firm of
 KPMG International

This account is payable within
 14 calendar days

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 KPMG Accounts receivable, PO Box 2291U Melbourne VIC 3001 Australia

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	09 September 2024
Client payment code	835270	Payment due date	23 September 2024
Invoice number	821646369	Total payable	AUD 6,452.60
Entity number	9101	Contact	Alexander Burrows



Remittance Advice and Payment Options

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	09 September 2024
Client payment code	835270	Payment due date	23 September 2024
Invoice number	821646369	Total payable	AUD 6,452.60
Entity number	9101	Contact	Alexander Burrows +61 3 8663 8491


Direct Deposit

Payment for invoice can be made by transferring funds to:

Bank name	National Australia Bank Limited
Address	330 Collins Street, Melbourne VIC 3000, Australia
Account name	KPMG
Swift code	NATAAU3303M
BSB no	083 004
Account no	255727180
Reference / description	821646369

We prefer invoices to be paid individually. We would appreciate receipt of this remittance advice to assist in correct allocation. Select one of the following methods to advise us of your deposit.

Fax Fax number:	Attention: Accounts Receivable 1300 369 317
Email	nataccountsrec@kpmg.com.au
Mail Mail to:	Attention: Accounts Receivable PO Box 2291U Melbourne VIC 3001 Australia



Biller Code:	203562
Ref:	8352700

Telephone & Internet Banking - BPAY[®]
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Credit Card

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Invoice Number	821646369
Client Code	835270

Payment Plan

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Fax +61 3 9288 6666
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Tax Invoice

Banksia Securities Limited
 (Receivers and
 Managers appointed) (In Liquidation
 ATTN: Mr John Lindholm
 727 Collins St
 DOCKLANDS VIC 3008

Date : 09 September 2024
 Contact : Alexander
 Burrows
 Telephone : +61 3 8663 8491
 Invoice number : 821646370
 Entity number : 9101
 Client code : 835270
 Payment due date : 23 September 2024
 Total payable : AUD 6,799.65
 Client Reference No :

PROFESSIONAL SERVICES RENDERED
 Professional fees for the period 1 May 2024 to 31 May 2024.

Fees		6,181.50
Total GST payable		618.15
Total Payable	AUD	<u>6,799.65</u>



Member firm of
 KPMG International

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 14 calendar days

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 KPMG Accounts receivable, PO Box 2291U Melbourne VIC 3001 Australia

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	09 September 2024
Client payment code	835270	Payment due date	23 September 2024
Invoice number	821646370	Total payable	AUD 6,799.65
Entity number	9101	Contact	Alexander Burrows



Remittance Advice and Payment Options

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	09 September 2024
Client payment code	835270	Payment due date	23 September 2024
Invoice number	821646370	Total payable	AUD 6,799.65
Entity number	9101	Contact	Alexander Burrows +61 3 8663 8491


Direct Deposit

Payment for invoice can be made by transferring funds to:

Bank name	National Australia Bank Limited
Address	330 Collins Street, Melbourne VIC 3000, Australia
Account name	KPMG
Swift code	NATAAU3303M
BSB no	083 004
Account no	255727180
Reference / description	821646370

We prefer invoices to be paid individually. We would appreciate receipt of this remittance advice to assist in correct allocation. Select one of the following methods to advise us of your deposit.

Fax Fax number:	Attention: Accounts Receivable 1300 369 317
Email	nataccountsrec@kpmg.com.au
Mail Mail to:	Attention: Accounts Receivable PO Box 2291U Melbourne VIC 3001 Australia

	Biller Code: <input type="text" value="203562"/>
	Ref: <input type="text" value="8352700"/>

Telephone & Internet Banking - BPAY[®]
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Credit Card

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Invoice Number	821646370
Client Code	835270

Payment Plan

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Tax Invoice

Banksia Securities Limited
 (Receivers and
 Managers appointed) (In Liquidation
 ATTN: Mr John Lindholm
 727 Collins St
 DOCKLANDS VIC 3008

Date : 09 September 2024
 Contact : Alexander
 Burrows
 Telephone : +61 3 8663 8491
 Invoice number : 821646372
 Entity number : 9101
 Client code : 835270
 Payment due date : 23 September 2024
 Total payable : AUD 4,312.55
 Client Reference No :

PROFESSIONAL SERVICES RENDERED

Professional fees for the period from 1 June 2024 to 30 June 2024.

Fees		3,920.50
Total GST payable		392.05
Total Payable	AUD	<u>4,312.55</u>



Member firm of
 KPMG International

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Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	09 September 2024
Client payment code	835270	Payment due date	23 September 2024
Invoice number	821646372	Total payable	AUD 4,312.55
Entity number	9101	Contact	Alexander Burrows



Remittance Advice and Payment Options

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	09 September 2024
Client payment code	835270	Payment due date	23 September 2024
Invoice number	821646372	Total payable	AUD 4,312.55
Entity number	9101	Contact	Alexander Burrows +61 3 8663 8491


Direct Deposit

Payment for invoice can be made by transferring funds to:

Bank name	National Australia Bank Limited
Address	330 Collins Street, Melbourne VIC 3000, Australia
Account name	KPMG
Swift code	NATAAU3303M
BSB no	083 004
Account no	255727180
Reference / description	821646372

We prefer invoices to be paid individually. We would appreciate receipt of this remittance advice to assist in correct allocation. Select one of the following methods to advise us of your deposit.

Fax	Attention: Accounts Receivable
Fax number:	1300 369 317
Email	nataccountsrec@kpmg.com.au
Mail	Attention: Accounts Receivable
Mail to:	PO Box 2291U Melbourne VIC 3001 Australia

	Biller Code: <input type="text" value="203562"/>
	Ref: <input type="text" value="8352700"/>
Telephone & Internet Banking - BPAY[®]	
Contact your bank or financial institution to make this payment from your cheque, savings, debit, credit card or transaction account. More info: www.bpay.com.au	

Credit Card

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Invoice Number	821646372
Client Code	835270

Payment Plan

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Tax Invoice

Banksia Securities Limited
 (Receivers and
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 ATTN: Mr John Lindholm
 727 Collins St
 DOCKLANDS VIC 3008

Date : 09 September 2024
 Contact : Alexander
 Burrows
 Telephone : +61 3 8663 8491
 Invoice number : 821646373
 Entity number : 9101
 Client code : 835270
 Payment due date : 23 September 2024
 Total payable : AUD 1,442.10
 Client Reference No :

PROFESSIONAL SERVICES RENDERED

Professional fees for the period from 1 July 2024 to 31 July 2024.

Fees		1,311.00
Total GST payable		131.10
Total Payable	AUD	<u>1,442.10</u>



Member firm of
 KPMG International

This account is payable within
 14 calendar days

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 KPMG Accounts receivable, PO Box 2291U Melbourne VIC 3001 Australia

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	09 September 2024
Client payment code	835270	Payment due date	23 September 2024
Invoice number	821646373	Total payable	AUD 1,442.10
Entity number	9101	Contact	Alexander Burrows



Remittance Advice and Payment Options

Please quote Client payment code and Invoice number with payment

Client name	Banksia Securities Limited	Date	09 September 2024
Client payment code	835270	Payment due date	23 September 2024
Invoice number	821646373	Total payable	AUD 1,442.10
Entity number	9101	Contact	Alexander Burrows +61 3 8663 8491


Direct Deposit

Payment for invoice can be made by transferring funds to:

Bank name	National Australia Bank Limited
Address	330 Collins Street, Melbourne VIC 3000, Australia
Account name	KPMG
Swift code	NATAAU3303M
BSB no	083 004
Account no	255727180
Reference / description	821646373

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Email	nataccountsrec@kpmg.com.au
Mail Mail to:	Attention: Accounts Receivable PO Box 2291U Melbourne VIC 3001 Australia

	Biller Code: <input type="text" value="203562"/>
	Ref: <input type="text" value="8352700"/>

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Credit Card

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Invoice Number	821646373
Client Code	835270

Payment Plan

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FORM 46A



Rule 46.04(1)

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL COURT
GROUP PROCEEDINGS LIST**

Case: S CI 2012 07185

Filed on: 02/06/2023 02:33 PM

S CI 2012 07185

B E T W E E N

LAURENCE JOHN BOLITHO

Plaintiff

-and-

JOHN ROSS LINDHOLM

**in his capacity as several special purpose receiver
of Banksia Securities Limited (receivers and managers appointed)
(in liquidation) and others in accordance with the schedule**

Defendants

AMENDED SUMMONS

Filed pursuant to the orders of Justice John Dixon dated 30 May 2023

Date of document: 2 June 2023

Filed on behalf of: The First Defendant

Prepared by:

Maddocks Lawyers

727 Collins St

DOCKLANDS VIC 3008

Solicitor's Code: 230

DX: 259

Tel: (03) 9258 3555

Fax: (03) 9258 3666

Ref: DCN:STK: 6207696

Attention: Sam Kingston

Email: sam.kingston@maddocks.com.au

To:

Noysue Pty Ltd C/- Hope & Co Lawyers, Level 4, 91 William Street, Melbourne VIC 3000

and

Noysy Pty Ltd C/- Hope & Co Lawyers, Level 4, 91 William Street, Melbourne VIC 3000

and

Norman John O'Bryan C/- Hope & Co Lawyers, Level 4, 91 Williams Street, Melbourne VIC 3000

and

Katerina Peiros C/- Hartwell Legal, Suite 8, 1 Milton Parade, Malvern VIC 3144

You are summoned to attend before the Court on the hearing of an application by the First Defendant for the following orders:

Settlement with the O'Bryan Entities

1. Pursuant to s 283HB of the *Corporations Act 2001* (Cth) (**Corporations Act**), the SPR has the power to settle all claims against Mr Norman O'Bryan, Noysue Pty Ltd (**Noysue**) and Noysy Pty Ltd (**Noysy**) (together the **O'Bryan Entities**) on the terms set out in the binding and conditional deed of settlement dated 27 March 2023 (**O'Bryan Settlement Deed**).
2. Pursuant to s 283HB of the *Corporations Act*, the SPR is justified in causing Banksia Securities Limited (in liq) (~~rec & mgrs apptd~~) to settle its claims made against the O'Bryan Entities on the terms set out in the O'Bryan Settlement Deed.
3. Pursuant to s 33V(1) of the *Supreme Court Act 1986* (Vic) (**Act**), the SPR's claims against the O'Bryan Entities be dismissed.
4. Pursuant to ss 33V(2) and 33ZF of the Act, the settlement sum of \$1.25 million payable by the O'Bryan Entities is to be distributed to all debenture-holders of Banksia pari passu in accordance with the settlement distribution scheme approved by the Honourable Justice Dixon on 22 May 2019.
5. Such further or other orders as the Court deems fit.

Settlement with the Sixth Defendant

6. Pursuant to s 283HB of the Corporations Act, the SPR has the power to settle all claims against Ms Katerina Peiros as the representative of the estate of Peter Trimbos (**Sixth Defendant**) on the terms set out in the binding and conditional deed of settlement dated 24 May 2023 (**Trimbos Settlement Deed**).
7. Pursuant to s 283HB of the Corporations Act, the SPR is justified in causing Banksia Securities Limited (in liq) to compromise its claims made against the Sixth Defendant, including its rights to enforce the Remitter Judgment, on the terms set out in the Trimbos Settlement Deed.
8. Such further or other orders as the Court deems fit.

The application will be heard by the Honourable Justice Dixon at the Supreme Court, 210 William street, Melbourne on 16 June 2023 at 10:30 am or so soon afterwards as the business of the Court allows.

FILED 2 June 2023

This summons was filed by Maddocks Lawyers of Collins Square, Tower 2, Level 25, 727 Collins Street, Melbourne VIC 3008, solicitor for the First Defendant

From: [Muscari, Philip](#)
To: [Susan Pitman](#); c.m.hayes@bigpond.com; donandlizmckenzie@bigpond.com; goodidea@anson.com.au; bandhloyd@bigpond.com; ramsdn1@inet.net.au; [Lindholm, John](#); [Sam Kingston](#); [Mathew Gashi](#); [Bishop, Claudia](#)
Subject: Banksia Securities Limited - Committee Meeting - 31 May 2023
Attachments: [29052023 - Banksia Special Purpose Liquidation - KPMG rem report - 1 March 2022 to 30 April 2023.doc.pdf](#)
[20230529 - Memo to Debenture Holder Committee.pdf](#)

Dear Committee members,

Please find below the teleconference details for the upcoming meeting of the Committee of Debenture Holders.

We have also find attached the following documents for your review and consideration prior to the meeting:

- * Remuneration report for the period from 1 March 2022 to 30 April 2023; and
- * Memo to the Committee of Debenture Holders dated 29 May 2023.

Please contact me should you have any issues joining the meeting.

Kind regards,

Phil

Microsoft Teams meeting

Join on your computer, mobile app or room device

Click here to join the meeting <https://teams.microsoft.com/l/meetup-join/19%3ameeting_M2FiZDZkZWYtZDZlMy00Zjl2LTgzZDItYjZjNWE4YWUxYWUx%40thread.v2/0?context=%7b%22Tid%22%3a%22deff24bb-2089-4400-8c8e-f71e680378b2%22%2c%22Oid%22%3a%22187b81c3-e1cc-48a1-9d53-f5457b286766%22%7d>

Meeting ID: 330 800 299 027
Passcode: W6ThSh

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Find a local number <<https://dialin.teams.microsoft.com/acb16c8e-2279-44e6-ae8a-242d612bfe17?id=153416368>> | Reset PIN <<https://dialin.teams.microsoft.com/usp/pstnconferencing>>

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From: [Burrows, Alexander](#)
To: [Susan Pitman](#); [bandhlloyd@bigpond.com](#); [goodidea@anson.com.au](#); [ramsdn1@inet.net.au](#); [donandlzmckenzie@bigpond.com](#); [c_m_hayes@bigpond.com](#)
Cc: [Lindholm, John](#); [Sam Kingston](#); [Mathew Gashi](#); [Mcconalogue, Hannah](#)
Subject: RE: Banksia Teleconference - question responses
Date: Thursday, 7 December 2023 11:56:23 AM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image003.jpg](#)
[image004.jpg](#)
[image005.jpg](#)
[external.png](#)
[finance_warning.png](#)
[07122023 - Banksia Special Purpose Liquidation - KPMG rem report - 1 May 2023 to 30 November 2023.do.pdf](#)



Hi all

Further to the below and in reference to the additional fee approval request, please find our remuneration report attached.

Should you have any questions in the lead up to tomorrow's meeting please let me know.

Kind regards

Alexander Burrows

Associate Director
Turnaround and Restructuring

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