

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 SAMUEL ROADLEY KINGSTON

On 22 October 2024, I, Samuel Roadley Kingston of Collins Square, Tower 2, 727 Collins Street, Melbourne, Victoria, solicitor, make oath and say as follows:

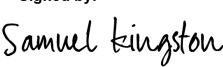
1. I am a partner at the firm of Maddocks, the solicitors for John Ross Lindholm of KPMG in his capacity as the special purpose receiver appointed to Banksia Securities Limited (Receivers and Managers Appointed) (In Liquidation) (**Banksia**).
2. I have the care, conduct and daily management of this proceeding on behalf of Mr Lindholm. I have had the care, conduct and daily management of Mr Lindholm's involvement in the Banksia Proceedings since his appointment as liquidator of Banksia in 24 June 2014.
3. I make this affidavit from my own knowledge save where I state to the contrary. Where I depose to matters on information and belief, I believe them to be true.
4. I am authorised to make this affidavit on behalf of Mr Lindholm.
5. Exhibit "**SRK-1**" is an indexed and paginated bundle containing true copies of the various documents to which I refer in the subsequent paragraphs of this affidavit.

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6. Capitalised terms in this affidavit have the same meaning as in the Affidavit of John Lindholm sworn on 21 October 2024 (**Lindholm Affidavit**).
7. I make this affidavit to provide an estimate of the likely future costs that Mr Lindholm will incur as special purpose receiver of Banksia on the assumptions that:
 - (a) the Court makes the orders sought by Mr Lindholm in this application such that the Remitter and Banksia Proceedings will be at an end, and the special purpose receivership can be finalised; and
 - (b) alternatively, the special purpose receivership is not finalised and Mr Lindholm prosecutes claims against various parties.
8. In making this affidavit, I have based my comments on my experience in litigation during my years of practice as a solicitor. I was admitted to practice in December 2006 and since then I have primarily practiced in commercial litigation, and in particular insolvency disputes. In 2014, I joined Maddocks as a senior associate in the insolvency team and have practiced solely in insolvency related litigation since then. I became a Partner at Maddocks in July 2020. I am a member of the Federal Court of Australia Corporations and Commercial National Practice Area Victorian User Group. I have acted in numerous proceedings in the Federal Court and various state Supreme Courts including large scale corporations and commercial list matters. I have been involved in preparing bills of costs, and reviewing bills of costs prepared by costs consultants. I am required to provide costs estimates for clients and to advise in relation to the concepts of party/party costs, standard costs and indemnity costs.
9. On the basis of my experience and involvement in the Banksia Proceedings, I am confident that I have sufficient knowledge and experience to provide an estimate of

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the costs that will be incurred by Mr Lindholm in finalising the special purpose receivership of Banksia. Any opinion expressed by me in this affidavit is based on my education, training and experience as a solicitor practicing as a commercial litigator and in particular, as an insolvency litigator.

Costs and expenses incurred since receipt of the Remitter Judgment

10. During the period 11 October 2021 (when the Remitter Judgment was handed down) up to 30 September 2024, Mr Lindholm incurred legal costs of \$2,712,016.34 inc GST broken down as follows:

Workstream	Counsels' costs	Solicitors' costs	Other expenses	Total
<i>Remitter Judgment: enforcement issues, settlement discussions, Non-Party Costs Summons and Directions Application</i>	\$1,012,051.12	\$1,293,335.44	\$22,722.48	\$2,328,109.04
<i>Second Elliott Appeal</i>	\$55,495.00	\$81,983.55	\$175.02	\$137,653.57
<i>Remuneration approval process</i>	\$71,500.00	\$77,066.55	\$1,937.75	\$150,091.80
<i>O'Bryan Appeal</i>	\$38,987.21	\$55,358.60	\$1,403.62	\$95,411.21
TOTAL	\$1,178,033.33	\$1,507,744.14	\$26,238.87	\$2,712,016.34


11. The vast majority of the costs incurred relate to work associated with the Remitter Judgment. A detailed summary of the work involved is set out in the Lindholm Affidavit and other affidavits that have been filed in this proceeding sworn by Mr Lindholm on 21 June 2022 and by me on 12 July 2022. In very broad outline, this work has involved:

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- (a) considering the Remitter Judgment, amounting to 685 pages, and taking steps to enforce the Remitter Judgment;
- (b) liaising with the voluntary administrators and liquidators of AFP and the bankruptcy trustees for Mr Symons and Mr O'Bryan relating to the Remitter Judgment and considering their respective reports to creditors;
- (c) prosecuting the Non-party Costs Summons;
- (d) participating in without prejudice negotiations to resolve all claims in relation to the Remitter Judgment and seeking directions in relation to issues with those negotiations (i.e. the Directions Application);
- (e) corresponding with the O'Bryan Entities and Mr O'Bryan's trustee in bankruptcy in relation to an individual settlement and negotiating a deed of settlement to resolve all claims against Mr O'Bryan and the O'Bryan Entities;
- (f) corresponding with Ms Peiros and the LPLC about Mr Trimbos' insurance policy and negotiating a deed of settlement to resolve all claims against the Trimbos Estate;
- (g) corresponding with Mr Symons and Mr Symons' trustee in bankruptcy in relation to an individual settlement and negotiating a deed of settlement to resolve all claims against Mr Symons;
- (h) corresponding with Mr Zita in relation to an individual settlement and negotiating a deed of settlement to resolve all claims against Mr Zita;
- (i) investigating potential claims against the LPLC arising from the Remitter Judgment;

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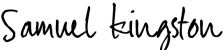
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- (j) investigating the financial positions of the Contributing Parties following the Directions Application;
- (k) taking steps to ensure that the assets of the Elliott Entities are not dissipated;
- (l) corresponding with debenture holders, the Committee and Mr Botsman about the Remitter Judgment, enforcement steps and their general enquiries; and
- (m) settlement approval applications in respect of the settlement agreements entered into with Mr O'Bryan, the O'Bryan Entities and the Trimbos Estate.

12. Due to the level of complexity and sensitivity of issues surrounding the Remitter and Remitter Judgment, it was necessary for counsel to have a high level of involvement. The SPR has been represented by the following barristers during the Remitter and following delivery of the Remitter Judgment:


- (a) Jonathon Redwood SC from the period September 2015 to present. Mr Redwood was originally briefed by the Receivers to appear for Banksia in the Bolitho Group Proceeding and the BSL Proceeding, but in view of his detailed knowledge of the circumstances relating to the Banksia Proceedings was subsequently retained by the SPR. Mr Redwood is the principal barrister responsible for the day-to-day conduct of the Remitter on behalf of the SPR, was involved in the negotiations of the settlements with the Elliott Entities, and advised on the negotiations with Mr Zita and Mr Symons. Mr Redwood also undertook the following activities following delivery of the Remitter Judgment:

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- (i) appearing at the Directions Application and settlement approval applications in respect of the settlement agreements entered into with Mr O'Bryan, the O'Bryan Entities and the Trimbos Estate;
 - (ii) commenting on certain contentious correspondence;
 - (iii) settling written submissions,
 - (iv) attending at case management conferences and directions hearings;
 - (v) overseeing hearing preparation;
 - (vi) settling written advices;
 - (vii) conferring with opposing counsel; and
 - (viii) advising in respect of the settlements.
- (b) Robert Dick SC during the period October 2016 to present. Mr Dick was briefed to appear at the trial of the Remitter at various times with Mr Redwood. Since Mr Redwood's appointment as senior counsel, Mr Dick has had a more limited role only providing advice in respect of complex and contentious issues arising from the Remitter Judgment, with Mr Redwood remaining in control of the day to day management of the matter on behalf of the SPR.
- (c) Mr Redwood and Mr Dick have been assisted by junior counsel, Mitchell Grady. Mr Grady has undertaken the following tasks:
- (i) conducted research on complex legal issues;

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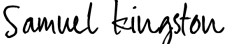
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- (ii) appeared at the Directions Application and settlement approval applications;
- (iii) assisted with the drafting of certain contentious correspondence;
- (iv) drafted written submissions and position papers;
- (v) appeared at case management conferences and directions hearings;
- (vi) assisted with hearing preparation;
- (vii) drafted written advices;
- (viii) generally liaised with the SPR's solicitors in respect of all aspects of the Remitter and the settlements; and
- (ix) advised in respect of the settlements of the Remitter Judgment.

13. Mr Lindholm has also incurred costs in responding to the Second Elliott Appeal and the O'Bryan Appeal. The Second Elliott Appeal and the O'Bryan Appeal have been resolved.

14. In my affidavit dated 10 December 2020, I estimated that Mr Lindholm's future costs of the Remitter, any steps to enforce a favourable judgment in the Remitter (which was expected but not confirmed at that time) and other steps to finalise the special purpose receivership would be in the order of \$2,186,500 plus GST (\$2,405,150 inc GST). At that time the Remitter trial was part heard and it was not possible to foresee precisely how the matter would proceed. The estimate did not account for the following workstreams that have proved necessary:

- (a) protracted negotiations for the resolution of the Remitter Judgment, appeals and the Directions Application;

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- (b) the significant time involved in the Non-party Costs Summons, particularly as a result of the Elliott Entities' non-compliance with Court orders and the O'Bryan Entities seeking to relitigate issues determined in the Remitter Judgment;
- (c) potential further claims against the Elliott Entities and LPLC;
- (d) a potential taxation of the costs of the Remitter;
- (e) multiple settlement approval hearings in the absence of a global settlement of all claims; and
- (f) extensive dealings with the Committee, Mr Botsman and other debenture holders, particularly in responding to Mr Botsman's ongoing allegations against Mr Lindholm.

Estimated further costs

15. If the Court makes the orders sought by Mr Lindholm in this application, the Remitter and Banksia Proceedings will be at an end, and the special purpose receivership can be finalised in 2024.
16. Based on my familiarity with the Remitter and my experience in commercial litigation I consider that Mr Lindholm's future costs will be approximately \$202,500 plus GST. A table setting out my assessment of Mr Lindholm's likely future costs and the steps involved is found at page 2 of exhibit "SRK-1".
17. If the Court does not make the orders sought by Mr Lindholm in this application, the future steps in the special purpose receivership will depend on the Court's reasons for judgment, any directions made and Mr Lindholm's instructions. It is difficult to accurately estimate the likely costs involved due to the numerous variables. However,

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in my experience Mr Lindholm is likely to incur costs in relation to steps such as the following:

- (a) taking steps to have the Costs Component fixed or assessed;
- (b) applying to bankrupt and/or wind-up the remaining Contraveners and Non-parties;
- (c) conducting public examinations of the Elliott Entities, other persons and entities which they are associated such as Mrs Pina Elliott and the LPLC about potential further claims;
- (d) prosecuting potential further claims, potentially including against the Elliott Entities, the LPLC and other persons or entities associated with the Elliott Entities;
- (e) steps to finalise the special purpose receivership.

18. An estimate of the legal costs involved in those steps is found at pages 3 to 4 of exhibit “**SRK-1**”. In summary, if all those steps are taken, Mr Lindholm’s costs could be in the order of \$2.6m plus GST. Mr Lindholm’s costs may be less than this depending on some of the assumptions noted in the table and factors such as whether further settlements are reached.

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.

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SWORN

Melbourne

Signature of deponent

Signed by:
Samuel Kingston

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 saw the face of the deponent.
- 2 I have known the deponent for at least 12 months.

Signature of witness

Signed by:
Jane Carmel

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
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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 "**SRK-1**" now produced and shown to Samuel Roadley Kingston at the time of swearing his affidavit on 22 October 2024.

Signature of deponent	<p>Signed by:</p>  <p>EA2A1B1531E3466...</p>
Signature of witness	<p>Signed by:</p>  <p>0AAA05334BA747F...</p>
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

<p>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)</p>
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Exhibit "SRK-1"
Bundle of documents referred to in the affidavit of
Samuel Roadley Kingston made on 22 October 2024

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No.	Document	Page
1	Low Cost Estimate	2
2	High Cost Estimate	3 - 4



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Special Purpose Receiver's costs if settlements approved				
Activity	Counselors' costs	Solicitors' costs	Other expenses	Total
Circular to debenture holders about the SPR's settlement approval application and final distribution to debenture holders	\$3,000	\$2,000	\$20,000	\$25,000.00
Application to discharge appointment and for directions to finalise special purpose receivership (assuming no opposition)	\$40,000	\$20,000	\$5,000	\$65,000.00
Circular to debenture holders about finalisation of special purpose receivership	\$3,000	\$2,000	\$20,000	\$25,000.00
Conferences with the legal team and Special Purpose Receiver	\$20,000	\$10,000	\$0	\$30,000.00
General correspondence with the parties' solicitors, counsel and the court	\$15,000	\$10,000	\$0	\$25,000.00
Miscellaneous expenses in addition to those outlined above 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	\$0	\$0	\$10,000	\$10,000.00
Contingency/ general care and consideration on account of other attendances, research and supervision (approximately 10% of total estimate)	\$0	\$22,500	\$0	\$22,500.00
Total (excluding GST)	\$81,000.00	\$66,500.00	\$55,000.00	\$202,500.00



Maddocks

Special Purpose Receiver's costs of enforcing the Remitter Judgment and pursuing further claims					
Activity	Counsels' costs	Solicitors' costs	Other expenses	Total	
Costs of enforcing the Remitter Judgment against judgment debtors (Alexander Elliott, Mr Anthony Zita and Portfolio Law Pty Ltd) by issuing bankruptcy notices and statutory demands (assuming proceedings are not opposed)	\$5,000	\$25,000	\$20,000	\$50,000.00	
Costs of a contested taxation of the Costs Component of the Remitter Judgment (assuming that evidence is required from the Contradictor's solicitors and a costs assessor)	\$100,000	\$75,000	\$300,000	\$475,000.00	
Costs of enforcement steps to recover the Costs Component once taxed from the Elliott Entities	\$60,000	\$40,000	\$25,000	\$125,000.00	
Seeking directions in relation to potential further claims	\$50,000	\$25,000	\$7,500	\$82,500.00	
Public examinations in relation to the potential further claims	\$30,000	\$15,000	\$10,000	\$55,000.00	
Circular to debenture holders about potential further claims	\$3,000	\$2,000	\$20,000	\$25,000.00	
Prosecuting potential further claims	\$500,000	\$350,000	\$50,000	\$900,000.00	
Appeals	\$150,000	\$100,000	\$15,000	\$265,000.00	
Further applications to the New South Wales Supreme Court for remuneration approvals	\$50,000	\$25,000	\$7,500	\$82,500.00	



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Special Purpose Receiver's costs of enforcing the Remitter Judgment and pursuing further claims					
Activity	Counsels' costs	Solicitors' costs	Other expenses	Total	
Costs for application to discharge appointment and for directions to finalise special purpose receivership (assuming no opposition)	\$40,000	\$20,000	\$5,000	\$65,000.00	
Circular to debenture holders about the application to discharge appointment	\$3,000	\$2,000	\$20,000	\$25,000.00	
Conferences with the legal team and Special Purpose Receiver	\$45,000	\$25,000	\$0	\$70,000.00	
General correspondence with the parties' solicitors, counsel and the court	\$100,000	\$50,000	\$0	\$150,000.00	
Miscellaneous expenses in addition to those outlined above 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	\$0	\$0	\$20,000	\$20,000.00	
Contingency/ general care and consideration on account of other attendances, research and supervision (approximately 10% of total estimate)	\$115,000	\$75,000	\$0	\$190,000.00	
Total (excluding GST)	\$1,251,000.00	\$829,000.00	\$500,000.00	\$2,580,000.00	