

IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY  
I TE KŌTI MATUA O AOTEAROA  
TĀMAKI MAKĀURAU ROHE  
COMMERCIAL PANEL

CIV-2019-404-2049

UNDER

section 284 of the Companies Act 1993, section 66  
of the Trustee Act 1956 and Part 19 of the High  
Court Rules 2016

IN THE MATTER OF

HALIFAX NEW ZEALAND LIMITED (IN  
LIQUIDATION)

BETWEEN

MORGAN JOHN KELLY and PHILIP ALEXANDER  
QUINLAN (in their capacity as liquidators)

First Applicants

HALIFAX NEW ZEALAND LIMITED (IN  
LIQUIDATION)

Second Applicant

MORGAN JOHN KELLY and PHILIP ALEXANDER  
QUINLAN (in their capacity as trustees)

Third Applicants

*(continued on next page)*

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INTERLOCUTORY ORDER

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**AND**

**CHOO BOON LOO**

**First Respondent**

**ELYSIUM BUSINESS SYSTEMS PTY LTD**

**Second Respondent**

**JASON PAUL HINGSTON**

**Third Respondent**

**ATLAS ASSET MANAGEMENT PTY LTD** (as  
trustee for the Atlas Asset Management Trust)

**Fourth Respondent**



**TO** the First to Fourth Respondents, Andrew Phillip and Marlene Whitehead as trustees of the Beeline Trust and Andrew Phillip Whitehead, John Gordon Knight, Fiona McMullin and Chen Wang

**AND TO** the Financial Markets Authority

### INTERLOCUTORY ORDER

1. The interlocutory applications made by:
  - (a) Andrew Phillip Whitehead and Marlene Whitehead (as trustees for the Beeline Trust) and Andrew Phillip Whitehead ("**Whitehead Group**");
  - (b) Fiona McMullin; and
  - (c) Chen Wang,

were determined by the Honourable Justice Venning on 3 April 2020.

2. The determination was made following a hearing held on 3 April 2020. A Leopold SC (Aust), E Holmes and M Kersey appeared for the Applicants, E L Smith appeared for the Whitehead Group, S Munro appeared for Fiona McMullin and Chen Wang, E A J Hyde appeared for Choo Boon Loo, J V Gooley appeared for Elysium Business Systems Pty Limited, C Mitchell appeared for Jason Paul Hingston and J C Caird appeared for Atlas Asset Management Pty Ltd (ACN 607 442 679) as trustee for the Atlas Asset Management Trust. Professor John Knight and Rosalie Bouwmeester appeared in person.

3. The following orders were made:

#### Joinder of Respondents

- (a) Pursuant to rules 4.23(3) and 4.24 of the High Court Rules 2016 ("**Rules**"), Fiona McMullin be added as the fifth Respondent and appointed to represent all clients of Halifax Investment Services Pty Ltd (In Liquidation) ("**Halifax Australia**") and all clients of Halifax New Zealand Limited (In Liquidation) ("**Halifax NZ**") who invested before 1 January 2016 in order to propound the argument that investments made before there was a deficient mixed fund are traceable.
- (b) Pursuant to rule 4.56 of the Rules, Andrew Phillip Whitehead and Marlene Whitehead in their capacity as Trustees of the Beeline Trust and Andrew Phillip Whitehead be added as the sixth and seventh Respondents, noting the Court's intention to manage the proceedings so as to avoid, as far as possible, duplication of costs arising from the joinder of the sixth and seventh respondents, and, in particular, to avoid duplication to the extent that the interests of the sixth and seventh respondents correspond with the interests of a representative respondent.



### **Costs of Fifth, Sixth and Seventh Respondents**

- (c) The representative Respondent appointed pursuant to Order (a) be indemnified in respect of her legal expenses reasonably incurred in so acting, such expenses to be paid out of the Accounts (as that term is defined in paragraph 1(b)(i) of the Originating Application for Directions dated 25 September 2019), as agreed by the Liquidators or taxed.
- (d) In relation to the sixth and seventh Respondents appointed pursuant to Order (b), their reasonable costs and expenses, in:
  - (i) bringing the Interlocutory Application dated 4 February 2020; and
  - (ii) participating in these proceedings,
 be reserved pending resolution of all substantive matters.

### **Costs of Chen Wang**

- (e) An order for costs in the sum of NZ\$12,448.50 in favour of Mr Chen Wang, to be paid out of the Accounts (as that term is defined in paragraph 1(b)(i) of the Originating Application for Directions dated 25 September 2019).

### **Timetabling**

- (f) A list of issues that each respective Respondent proposes to raise (which should be confined to the issues that relate to the category of investor that the relevant Respondent has been joined to represent, or to the issues that the relevant Defendant has been joined to pursue) be filed and served by each Respondent by 1 May 2020.
- (g) Any further evidence of the Applicants be filed and served by 22 June 2020.
- (h) Any evidence of the Respondents, confined to the issues identified in the list of issues filed by the relevant Defendant in accordance with Order 5, be filed and served by 3 August 2020.
- (i) Any evidence in reply by the Applicants be filed and served by 31 August 2020.
- (j) Any agreed Statement of Facts be filed and served by 14 September 2020.
- (k) Applicants' written submissions be filed and served by 28 September 2020.
- (l) Respondents' written submissions, confined to the issues identified in the list of issues filed by the relevant Defendant in accordance with Order 5, be filed and served by 26 October 2020.



- (m) Applicants' written submissions in reply be filed and served by 16 November 2020.
- (n) The parties file and serve lists of authorities 7 days before the hearing.
- (o) The hearing on the originating application dated 25 September 2019 be set down on 30 November 2020, with an estimate of up to two weeks.

### Confidentiality

- (p) The following documents or parts of documents not to be disclosed or made available for inspection by any person other than Venning J, his Honour's personal staff, any officer of the Court authorised by Venning J, the Applicants, their staff and their legal representatives, until further order:
  - (i) pages 2-36, 38-219, 221-806, 808-852, 854-948, 950-1252, 1254-1373, 1375-1376, 1378-1423, 1425-1459, 1461-1521, 1524-1673, 1675-1793, 1795-1802, 1804-1824, 1825-2186, 2188-2244, 2247-2924, 2926-2955, 2957-2994, 2996-3014, 3016-3121, 3123-3299, 3301-3810, 3812-3825, 3827-3885, 3887-3896, 3898-3901, 3903-3976, 3978-3985, 3987-3989 and 3991-4131 of Confidential Exhibit IPS-11 to the affidavit of Ian Phillip Sutherland sworn 25 March 2020;
  - (ii) the "narration" column of page 1 of Confidential Exhibit IPS-11;
  - (iii) the "narration" column of page 37 of Confidential Exhibit IPS-11, except for line reference 25594;
  - (iv) the "narration" column of page 220 of Confidential Exhibit IPS-11, except for a credit of \$5,000 on 22 April 2010 to BSB 302-100 / Account Number 9001247;
  - (v) the "narration" column of page 807 of Confidential Exhibit IPS-11, except for line reference 1397;
  - (vi) the "narration" column of page 853 of Confidential Exhibit IPS-11, except for a credit of \$5,000 on 9 February 2011 to BSB 302-100 / Account Number 9023952;
  - (vii) the "narration" column of page 949 of Confidential Exhibit IPS-11, except for line reference 11767;
  - (viii) the "narration" column of page 1253 of Confidential Exhibit IPS-11, except for line references 40009 and 40032;
  - (ix) the "narration" column of page 1374 of Confidential Exhibit IPS-11, except for line reference 6691;



- (x) the "narration" column of page 1377 of Confidential Exhibit IPS-11, except for line reference 6835;
- (xi) the "narration" column of page 1424 of Confidential Exhibit IPS-11, except for line reference 10077;
- (xii) the "narration" column of page 1460 of Confidential Exhibit IPS-11, except for line reference 12582;
- (xiii) the "narration" column of page 1522 of Confidential Exhibit IPS-11, except for line reference 16847;
- (xiv) the "narration" column of page 1523 of Confidential Exhibit IPS-11, except for line references 16927 and 16928;
- (xv) the "narration" column of page 1674 of Confidential Exhibit IPS-11, except for line reference 27371;
- (xvi) the "narration" column of page 1794 of Confidential Exhibit IPS-11, except for line reference 35634;
- (xvii) the "narration" column of page 1803 of Confidential Exhibit IPS-11, except for line reference 36237;
- (xviii) the "narration" column of page 2187 of Confidential Exhibit IPS-11, except for line reference 24715;
- (xix) the "narration" column of page 2245 of Confidential Exhibit IPS-11, except for line reference 28648;
- (xx) the "narration" column of page 2246 of Confidential Exhibit IPS-11, except for line reference 28742;
- (xxi) the "narration" column of page 2925 of Confidential Exhibit IPS-11, except for line reference 11374;
- (xxii) the "narration" column of page 2956 of Confidential Exhibit IPS-11, except for line reference 14010;
- (xxiii) the "narration" column of page 2995 of Confidential Exhibit IPS-11, except for line reference 17434;
- (xxiv) the "narration" column of page 3015 of Confidential Exhibit IPS-11, except for line reference 19201;
- (xxv) the "narration" column of page 3122 of Confidential Exhibit IPS-11, except for a credit of \$9,900 on 12 February 2016 to BSB 302-100 / Account Number 9023952;
- (xxvi) the "narration" column of page 3300 of Confidential Exhibit IPS-11, except for line references 13560, 13561 and 13592;



- (xxvii) the "narration" column of page 3811 of Confidential Exhibit IPS-11, except for a credit of \$16,000 on 29 October 2018 to BSB 302-100 / Account Number 9023952;
  - (xxviii) the "narrative" column of page 3826 of Confidential Exhibit IPS-11;
  - (xxix) the "narrative" column of page 3886 of Confidential Exhibit IPS-11, except for lines 15 and 16;
  - (xxx) the "narrative" column of page 3897 of Confidential Exhibit IPS-11, except for line 1095;
  - (xxxi) the "narrative" column of page 3902 of Confidential Exhibit IPS-11, except for line 1559;
  - (xxxii) the "narrative" column of page 3977 of Confidential Exhibit IPS-11, except for line 8708;
  - (xxxiii) the "narrative" column of page 3986 of Confidential Exhibit IPS-11, except for line 9513;
  - (xxxiv) the "narrative" column of page 3990 of Confidential Exhibit IPS-11, except for line 9913; and
  - (xxxv) Confidential Annexures IS-1 to IS-6 of the unsworn affidavit of Ian Phillip Sutherland dated 2 April 2020.
- (q) The Applicants are to file redacted copies of Confidential Exhibit IPS-11 with only the pages referred to in Orders 3(p)(ii)-3(p)(xxxiv) by 22 April 2020 at 4.00 pm.
- (r) The orders at paragraphs 3(b)-(c) of the sealed interlocutory order dated 13 November 2019 (being orders of Venning J made by minute dated 2 October 2019) be revoked.
- (s) The following material is not to be disclosed or made available for inspection by any person other than Venning J, his Honour's personal staff, any officer of the Court authorised by the Venning J, the Applicants, their staff and their legal representatives, until further order:
- (i) in the Australian affidavit of Morgan John Kelly affirmed 26 June 2019 ("**AU Kelly Affidavit**"), which is annexed to the affidavit of Morgan John Kelly affirmed 24 September 2019, pages 26-1036 of Confidential Exhibit MJK-1;
  - (ii) in the AU Kelly Affidavit, the "Client numbers" in the table and in paragraph 20 of pages 1053-1067 of Confidential Exhibit MJK-1;
  - (iii) in the AU Kelly Affidavit, the "client codes" in pages 1068-1259 of Confidential Exhibit MJK-1;



- (iv) in the Australian affidavit of Ian Phillip Sutherland sworn 26 June 2019 ("**AU Sutherland Affidavit**"), which is annexed to the affidavit of Ian Phillip Sutherland sworn 24 September 2019, the "Client numbers" in the table and in paragraph 20 of pages 17-31 of Confidential Exhibit IPS-1; and
- (v) in the AU Sutherland Affidavit, the "client codes" in pages 33-224 of Confidential Exhibit IPS-1.
- (t) By 22 April 2020 at 4.00 pm, the Applicants are to provide the Respondents with redacted copies of the following documents:
  - (i) Confidential Exhibit MJK-1, with the material in Order 3(s)(i)-3(s)(iii) above redacted;
  - (ii) Confidential Exhibit IPS-1, with the material in Order 3(s)(iv)-3(s)(v) above redacted; and
  - (iii) Confidential Exhibit IPS-11, as filed in accordance with Order 3(q) above.

#### **Leave to appear**

- (u) The following persons are granted leave to appear in these proceedings under s 27(1)(b)(ii) of the Lawyers and Conveyancers Act 2006, until the matter is revisited by the Court:
  - (i) for the First Respondent, Mr Elliot Hyde;
  - (ii) for the Second Respondent, Mr John Gooley; and
  - (iii) for the Third Respondent, Ms Vanessa Whittaker SC (Aust), Ms Amy Munro and Mr Christopher Mitchell.

#### **Liberty to apply**

- (v) The parties have liberty to apply on one week's notice.

Date:

21 May

2020



(Registrar/Deputy Registrar)

R KUMAR  
DEPUTY REGISTRAR