

26 July 2017

CIRCULAR TO CREDITORS
OF
EQUITITRUST LIMITED
(RECEIVER APPOINTED) (IN LIQUIDATION)
(RECEIVERS AND MANAGERS APPOINTED)
A.C.N. 061 383 944
("the Company")

I refer to my previous reports and provide an update on the Liquidation of the Company, in particular the Federal Court Examinations.

I refer to my earlier reports in relation to the public examinations of various persons in relation to the Equititrust Premium Fund.

In May 2017, the receivers appointed to the EPF by MS Asia produced further documents to the Federal Court.

On 26 May, 2017, we concluded our first round of examinations of various persons. Counsel for the Liquidators examined Mr Luke McKenzie of Balmain NB Commercial Finance and also Mr Michael Peldan for a second time.

In late May, 2017, after taking further legal advice in relation to the evidence obtained from the examinations conducted to that point, the Liquidators decided that it was worth pursuing their investigations into the circumstances in which the Hong Kong nominee company, MS Asia Debt Acquisition Limited, acquired the debt owed by the EPF to BOS International (Australia) Limited. In particular we decided to proceed with examinations of the following persons:-

1. In Australia, Mr David Tucker, former solicitor and former director of Equititrust;
2. In Hong Kong:-
 - (a) Mr David Kennedy, former COO and former director of Equititrust;
 - (b) Mr Ian Pearson, one of the two nominee directors and shareholders of MS Asia; and
3. In the UK, Mr Tom Croagh, the second of the two nominee directors and shareholders of MS Asia.

On 12 June, 2017, our solicitors appeared in the Federal Court at Brisbane and applied for orders for the production of numerous documents by Mr Tucker. On 14 June 2017, the court made the orders which our solicitors had sought. On 20 June 2017, the summons for examination and the orders for production of documents were served on Mr Tucker and several associated entities.

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On 26 June 2017, Mr Tucker filed an application for orders setting aside the summons and directions to produce documents. In summary, he alleged that the liquidators and their solicitors had obtained the orders against him for improper and collateral purposes. On 4 July, 2017, he amended his application to add his various companies and to seek orders that the orders against them should also be set aside.

The application was heard on 5 July 2017. In the course of arguing the application, Mr Tucker and his companies sought and were granted leave to amend it again, this time to seek to set aside the order of Justice Greenwood made on 20 January 2017 – the original order for his examination.

I am pleased to advise that on 11 July, 2017, Justice Reeves dismissed the parts of Mr Tucker's application that had been argued. He delivered detailed reasons for judgment in which he held, in summary, that none of Mr Tucker's contentions had any substance.

His Honour held that:-

- (a) It is not improper to pursue Mr Tucker's examination to advance the interests of the EPF unit holders (as Mr Tucker had argued);
- (b) It is not an improper purpose to pursue Mr Tucker's examination to identify his ability to satisfy any judgment that may be obtained against him (as Mr Tucker had argued);
- (c) While it would be improper to pursue Mr Tucker's examination as a dress rehearsal for the contemplated proceedings, or as an attempt to gain an unfair forensic advantage, the liquidators are not doing so (as Mr Tucker had argued); and
- (d) Mr Tucker's allegations that two partners of the liquidators' solicitors, Mr Russell and Mr Tiplady, are improperly pursuing his examination for the Mclvor interests and/or for their own personal interests are without foundation. Contrary to Mr Tucker's asserted "concerns", Mr Mclvor has had nothing to do with the matter (save as a potential witness) and our solicitors have no financial interest in the claim, save for their fees under a retainer agreement approved by the Supreme Court of Queensland.

In light of various rumours which have been circulating from various sources, I encourage creditors and investors to read the full text of his Honour's reasons for judgment here:-

<http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2017/2017fca0758>

After these reasons for judgment were delivered on 11 July 2017, Mr Tucker then argued that he and his companies should not be required to produce many of the documents which the court had ordered, on the grounds that it would be oppressive to require him or them to do so. Counsel for the liquidators resisted these arguments. We await the Court's decision.

However, Mr Tucker's examination will proceed and numerous documents will be produced. He and his companies are presently required to produce various documents on 8 August, 2017. On that date, any claims by Mr Tucker or associated parties for privilege will be heard in the Federal Court of Australia at Brisbane.

His examination is set down for three days – 19, 20 and 21 September, 2017 – also in the Federal Court of Australia at Brisbane.

Please accept this advice as notice of those examinations as required by Section 596E of the Act.

Now that these matters have been aired in open court, I am able to advise of the outcome of the examinations to date. In summary, we have established that:-

1. In July 2102, MS Asia acquired the debt owed by Equititrust to BOSI.
2. The debt was about \$6.5 million;¹
3. MS Asia paid \$2 million.
4. Mr Tucker arranged for his company, Tuckerloan Pty Ltd, to contribute one third of the price (\$666,667);
5. Another former director, and former CFO, Mr David Kennedy, contributed the balance (\$1,333,333).²
6. MS Asia's receivers, Messrs Peldan and Cook of Worrells, have collected about \$16.5million.³
7. MS Asia's gross profit from the transaction is, therefore, about \$14.5 million.

Given this evidence, the liquidators are investigating proceedings against several parties:-

1. Mr Tucker;
2. Tuckerloan Pty Ltd;
3. Mr Kennedy;
4. MS Asia Debt Acquisition Limited; and
5. Tucker & Cowen.

The claims under investigation are, in short, that Mr Tucker and Mr Kennedy may have misused information acquired by virtue of their position as directors to derive a profit for themselves or another person (MS Asia). We are also considering a claim that Tuckerloan, MS Asia and Tucker & Cowen knowingly participated in the misuse of this information.

It is expected that the further examinations mentioned above will shed further light on the facts relating to these potential claims.

One issue which the liquidators are investigating is the identity of the ultimate beneficial shareholders in MS Asia (or the beneficiaries of any trust of its assets). It is now clear that Mr Tucker and Mr Kennedy funded MS Asia in its acquisition of the BOSI Debt. Consequently, it may be that they are its shareholders – not a "syndicate of Hong Kong investors", as some have been asserting for some time.

Another issue which the liquidators are investigating is the true amount of the debt owed to BOSI (acquired by MS Asia). BOSI's last bank statement to Equititrust put the debt at \$6,513,431.00 on 29 June, 2012. MS Asia then recalculated the debt and has claimed that it was in fact much higher - \$11,358,767.55. If MS Asia was not entitled to this higher sum, there may be an overpayment claim as well.

¹ Eighth affidavit of S C Russell; paragraph 14(c), page 46 of ex SCR-8

² Eighth affidavit of S C Russell; paragraph 9, pages 20 - 44 of ex SCR-8

³ Eighth affidavit of S C Russell; paragraphs 13, 14 (d), pages 48 - 52 of ex SCR-8

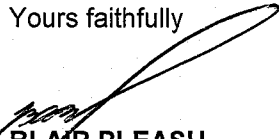
Ultimately however the profit is calculated on the amount paid by MS Asia to acquire the debt and not what the debt actually was. Accordingly the question of the true amount of the debt will not affect the claim against the former directors and their associates as the profit appears to be substantial, irrespective of the amount of the debt owed by Equititrust to BOSI or MS Asia.

The objective of the current investigation and examinations remains to uncover the truth in relation to transactions which have affected the Equititrust Premium Fund. If there is a substantial claim against the former directors, it may yield a substantial benefit to the Creditors of and Investors in the Equititrust Premium Fund.

We will continue to keep creditors and investors informed of major developments.

Should you have any queries with respect to this correspondence please contact Jovan Singh of this office.

Yours faithfully



BLAIR PLEASH
LIQUIDATOR