

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE
NUMBER: BS 10478 OF 2011

IN THE MATTER OF EQUITITRUST LIMITED ACN 061 383 944

Applicant: EQUITITRUST LIMITED ACN 061 383 944

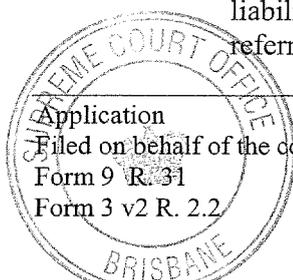
AND

Respondents: THE MEMBERS OF THE EQUITITRUST INCOME FUND ARSN 089 079 854 AND THE MEMBERS OF THE EQUITITRUST PRIORITY CLASS INCOME FUND ARSN 089 079 729

APPLICATION

TAKE NOTICE that Mr David Whyte (the **Receiver**), the receiver of the property of the Equititrust Income Fund ARSN 089 079 854 (**EIF**) and the person appointed pursuant to section 601NF(1) of the *Corporations Act 2001* (Cth) (**Act**) to take responsibility for ensuring that the EIF is wound up in accordance with its constitution, is applying to the Court, pursuant to paragraph 7 of the Order of Justice Applegarth dated 21 November 2011 and pursuant to paragraph 10 of the Order of Justice Applegarth dated 23 November 2011 and further, or in the alternative, pursuant to sections 424 and 1101B(11) of the Act or the Court's inherent jurisdiction, for the following orders:

1. That Blair Pleash and Richard Albarran (the **Liquidators**), the liquidators of Equititrust Limited ACN 061 383 944 (In Liquidation) (**EL**), be directed to:
 - (a) ascertain the debts payable by, and claims against, EL in accordance with the Act;
 - (b) adjudicate upon those debts and claims in accordance with the provisions of the Act;
 - (c) identify whether EL has a claim for indemnity from the property of the EIF in respect of any, or any part of any, debt payable by or claim against EL which is admitted by the Liquidators in the winding up of EL (each such claim for indemnity referred to as a "**Creditor Indemnity Claim**");
 - (d) identify whether EL has a claim for indemnity from the property of the EIF in respect of any, or any part of any, expense or liability incurred by Blair Pleash or Richard Albarran in acting as administrators or liquidators of EL (whether incurred in their own name or in the name of EL) insofar as the expense or liability was or is incurred in connection with EL acting as responsible entity for the EIF (each such claim for indemnity referred to as an "**Administration Indemnity Claim**");
 - (e) identify whether EL has a claim for indemnity from the property of the EIF in respect of any, or any part of any, other expense or liability incurred or paid by EL in its capacity as responsible entity of the EIF or by Blair Pleash or Richard Albarran in acting as administrators or liquidators of EL (whether incurred in their own name or in the name of EL) insofar as the expense or liability was or is incurred in connection with EL acting as responsible entity for the EIF including any claim the liquidators maintain for their remuneration as liquidators or administrators (being an expense or liability to which paragraphs (c) and (d) do not apply) (each such claim for indemnity referred to as a "**Recoupment Indemnity Claim**");



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2. Within sixty days of the date of the order, the Liquidators notify the Receiver in writing of any Administration Indemnity Claim and any Recoupment Indemnity Claim identified by the Liquidators.
3. Within 14 days after:
 - (a) any debt or claim is admitted by the Liquidators in the winding up of EL and, in respect of such debt or claim, a Creditor Indemnity Claim is identified by the Liquidators;
 - (b) any Administration Indemnity Claim (being one to which paragraph (2) does not apply) is identified by the Liquidators;
 - (c) any Recoupment Indemnity Claim (being one to which paragraph 2 does not apply) is identified by the Liquidators,the Liquidators must notify the Receiver in writing of any such claim.
4. When notifying the Receiver of a claim in accordance with paragraphs 2 and 3 (each such claim for indemnity referred to as an “**Eligible Claim**”), the Liquidators must:
 - (a) provide the Receiver with:
 - (i) (if the Eligible Claim is a Creditor Indemnity Claim) a copy of the relevant proof of debt and supporting documentation relating to the Eligible Claim; and
 - (ii) such other information the Liquidators consider relevant to EL’s claim for indemnity from the property of the EIF;
 - (b) within 14 days of receipt of a request from the Receiver pursuant to paragraph 5(a) below for further information in respect of an Eligible Claim, provide such reasonably requested further information to the Receiver.
5. The Receiver is directed to:
 - (a) within 14 days of receipt of an Eligible Claim, request any further material or information he reasonably considers necessary to assess the Eligible Claim;
 - (b) within 30 days of receipt of an Eligible Claim or of the information requested in accordance with 5(a) above (whichever is the later):
 - (i) accept the Eligible Claim as one for which EL has a right to be indemnified from the scheme property of the EIF; or
 - (ii) reject the Eligible Claim; or
 - (iii) accept part of it and reject part of it;and give to the Liquidators written notice of his determination; and
 - (c) if the Receiver rejects an Eligible Claim, whether in whole or in part, provide the Liquidators with written reasons for his decision when, or within 7 days after, giving notice of his determination.
6. Within 28 days of receiving notification from the Receiver of the reasons for rejecting, in whole or in part, any Eligible Claim (“**Rejected Claim**”), the Liquidators:

- (a) may make an application to this Honourable Court for directions as to whether or not the Eligible Claim is or is not one for which EL has a right of indemnity out of the scheme property of the EIF; or
- (b) must notify the relevant creditor for any Rejected Claim of:
 - (i) the Receiver's decision;
 - (ii) any reasons provided by the Receiver for that decision;
 - (iii) any material provided pursuant to paragraphs 3, 4 or 5 hereof;
 - (iv) whether they intend to make an application for directions in respect of the Rejected Claim pursuant to paragraph 6(a) hereof;

7. The Receiver have liberty to apply to the Court for directions in respect of any question arising in connection with his consideration or payment of an Eligible Claim or these orders.

8. Costs.

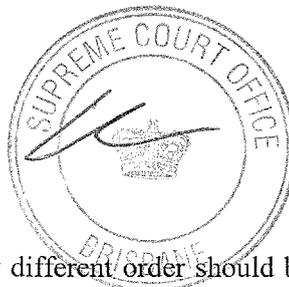
This application will be heard by the Supreme Court at Brisbane.

on:

30/08/2018

Filed in the Brisbane Registry on: 3 August 2018

Registrar:



If you wish to oppose this application or to argue that any different order should be made, you must appear before the Court in person or by your lawyer and you shall be heard. If you do not appear at the hearing the orders sought may be made without further notice to you.

On the determination of this application the applicant intends to rely on the following affidavits:

- 1. Affidavit of David Whyte sworn 2 August 2018.

THE APPLICANT ESTIMATES THE HEARING SHOULD BE ALLOCATED 60 Minutes.

Signed:

Adams

Description: Solicitors for the court appointed receiver

Dated: 3 August 2018

This application is to be served on:

Blair Pleash and Richard Albarran, liquidators of Equititrust Limited (In Liquidation) (Receivers and Managers Appointed)

c/- Hegarty Legal

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And

The Members of the Equititrust Income Fund ARSN 089 079 854

And

The Members of the Equititrust Priority Class Income Fund ARSN 089 079 729