

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE
NUMBER: BS 10478/11

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**),

a. 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,

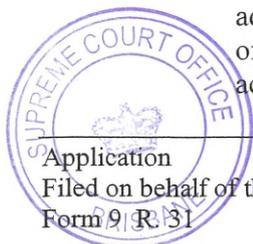
is applying to the Court pursuant to,

b. 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 to conclude the winding up of the EIF and permit the retirement of the Receiver:

A. Resolution of any remaining claim against the EIF by the liquidators of Equititrust Limited

1. Within 30 days of the date of the order of the Court, Blair Pleash (**Mr Pleash**) and Richard Albarran (**Mr Albarran**) (or either, as appropriate) be directed to file and serve any application to this Honourable Court (with all supporting material that Mr Pleash or Mr Albarran intend to rely on) for any order or direction as to:
 - (a) 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 Mr Pleash or Mr 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 (an **Administration Indemnity Claim**);
 - (b) 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 Mr Pleash or Mr 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



Application
Filed on behalf of the court appointed receiver
Form 9 of R 31

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Tel No.: 07 3231 1666
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SZC: 201110996

for their remuneration as liquidators or administrators (a **Recoupment Indemnity Claim**).

2. If Mr Pleash or Mr Albarran do not serve an application for the Administration Indemnity Claim and/or the Recoupment Indemnity Claim in accordance with paragraph 1 the Receiver be permitted to proceed with the finalisation of the receivership and his retirement in the manner set out below.

B. Equalisation payment to the members of the EIF

3. The Receiver be directed to make the Equalisation Payment as defined, explained and proposed in paragraphs 47 to 101 (inclusive) of the affidavit – equalisation payment and finalisation of the EIF of David Whyte sworn 13 August 2021 to members of the EIF.
4. Within 60 days of payment of the Equalisation Payment to members of the EIF, that the Receiver be directed to make the final distribution as explained and proposed in paragraphs 102 to 108 (inclusive) of the affidavit – equalisation payment and finalisation of the EIF of David Whyte sworn 13 August 2021 to members of the EIF.

C. Preparation, audit and service of final accounts of the EIF

5. Within 30 days of payment of the final distribution to members of the EIF, that the Receiver be directed to arrange for:
 - (a) The preparation of final accounts of the EIF;
 - (b) The final accounts of the EIF to be audited by a registered company auditor;
 - (c) The preparation of an auditor's report in respect of the audited final accounts of the EIF; and

as proposed and explained in paragraphs 109 to 111 (inclusive) of the affidavit of David Whyte sworn 13 August 2021.

6. Pursuant to rule 1.8 of Schedule 1A of the *Uniform Civil Procedure Rules 1999* (Qld) and/or rules 116 or 658 of the *Uniform Civil Procedure Rules 1999* (Qld) and/or section 601NF(2) of the Act, and/or the general liberty to apply granted to any person affected by the Order of Justice Applegarth dated 23 November 2011:
 - (a) That notice and service of the audit report of the final accounts of the EIF be effected on the members of the EIF by:
 - (i) placing an advertisement of the audit report and final accounts in *The Australian*, *The Courier-Mail* and the *Gold Coast Bulletin* newspapers;
 - (ii) posting a notice of the audit report and final accounts in a prominent location on the Equititrust Limited website of www.equititrust.com.au;
 - (iii) posting a notice of the audit report and final accounts in a prominent location on the Equititrust Income Fund website of www.equititrustincomefund.com.au; and
 - (iv) sending a notice of the audit report and final accounts to all members of the EIF and the EPCIF at their last known email address or, if no email address is known, their last known postal address.
 - (b) That the form of the advertisement and respective notices be in substantially the same form as the notice set-out in “Annexure A” to this application.

- (c) That service/notice of the audit report and final accounts be deemed effected on each of the members of the EIF five (5) days after those documents are made available in PDF format on the following websites: “www.equitytrust.com.au” and “www.equitytrustincomefund.com.au”.

D. Approval of remuneration

7. That the amount that the Receiver is entitled to claim as remuneration in respect of time spent by him and by any servants or agents of BDO who have performed work in the winding up of the EIF and the receivership of the EIF for the period:
- (a) 1 May 2020 to 30 June 2021 in the amount of \$211,274.25 (inclusive of GST); and
- (b) 1 July 2021 to the end of the receivership be fixed in the amount \$275,000 (inclusive of GST).

E. Retirement of the Receiver

8. Within 60 days of the notice referred to in paragraph 6 above or such further date as ordered by the Court before that time:
- (a) Pursuant to section 1101B(1) and 601NF(2) of the Act, the Receiver be directed to retire as receiver of the property of the EIF;
- (b) The Receiver be discharged under section 601NF of the Act from personal liability as the person responsible for ensuring that the EIF is wound up in accordance with its constitution; and
- (c) The Receiver be directed to provide written notice to the Australian Securities and Investments Commission (ASIC) that the winding up of the EIF has been finalised and the Receiver has retired as receiver of the property of the EIF.

F. Costs

9. That the Applicant’s costs of and incidental to the Application be costs in the winding up of the EIF.
10. Such further or other order as the Court sees fit.

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

on:

31/08/2021

Filed in the Brisbane Registry on: 13 August 2021

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 filed 3 August 2018;
2. Affidavit of David Whyte filed 13 May 2020;
3. Affidavit of David Whyte sworn 13 August 2021;
4. Affidavit of David Whyte sworn 13 August 2021;
5. Affidavit of David Whyte sworn 13 August 2021; and
6. Affidavit of Linda Rickard sworn 24 June 2021.

THE APPLICANT ESTIMATES THE HEARING SHOULD BE ALLOCATED ~~1 day~~ **55 MINS**

Signed: *Baden Lawyers*

Description: Solicitors for the court appointed receiver

Dated: 13 August 2021

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
Suite 4, Level 3
45 Lime Street
King Street Wharf
SYDNEY NSW 2000
Fax: (02) 9056 1735
peterh@hegartylegal.com.au

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

ANNEXURE A**TO THE MEMBERS OF:****EQUITITRUST INCOME FUND ARSN 089 079 854 (“EIF”)**

TAKE NOTICE that, pursuant to orders made by the Supreme Court of Queensland on [date] which provide for the steps to finalise the affairs of the EIF, David Whyte, the court appointed receiver of the EIF, has caused final accounts for the EIF to be prepared and for those accounts to be audited.

Copies of the final accounts and the audit report, and copies of the court documents in respect of these matters, are available on the Equititrust Limited website of “www.equititrust.com.au” and the Equititrust Income Fund website of “www.equititrustincomefund.com.au”.

Pursuant to the orders made by the Supreme Court of Queensland on [x], Mr Whyte will be retiring as receiver, and the affairs of the EIF will be concluded, within 60 days of the date of this notice.

Dated: