

IN THE MATTER OF SURFSTITCH GROUP LIMITED (SUBJECT TO DEED OF COMPANY ARRANGMENT) ACN 602 288 004 AND ANOTHER

JOHN RICHARD PARK AND JOSEPH RONALD HANSELL IN THEIR CAPACITIES AS JOINT AND SEVERAL DEED ADMINISTRATORS OF SURFSTITCH GROUP LIMITED (SUBJECT TO DEED OF COMPANY ARRANGEMENT) ACN 602 288 004 AND ANOTHER

Plaintiffs

INTERLOCUTORY PROCESS

A. DETAILS OF INTERLOCUTORY PROCESS

This interlocutory process is made pursuant to section 90-15 of the IPS.

On the facts stated in the supporting affidavit of Joseph Ronald Hansell dated 5 May 2020, the Plaintiffs, in their capacities as joint and several deed administrators of the DOCAs, apply for the following relief:

Justification Order

- 1 A direction pursuant to section 90-15 of the IPS that the Plaintiffs are justified in entering into and performing, and causing the Companies to enter into and perform, the Settlement Agreement.

Non-Publication Order

- 2 Pursuant to section 7 of the *Court Suppression and Non Publication Orders Act 2010* (NSW), on the grounds that the order is necessary to prevent prejudice to the proper administration of justice, paragraphs 27 to 30 and 39 to 43 and pages 465 to 491 of Exhibit JRH-3 of the affidavit of Joseph Ronald Hansell dated 5 May 2020 be confidential and prohibited from being disclosed to any person unless the Court otherwise orders or as required by law.

Costs and other orders

- 3 A direction that the Deed Administrators' costs of and incidental to this interlocutory process be costs and expenses of the administration of the Companies.

- 4 The Court notes that in accordance with the order 11 of the orders of Justice Hammerschlag on 4 October 2019 in the respective Class Actions, this interlocutory process is to be heard concurrently with the respective applications brought by the representative plaintiffs in the Class Actions for orders including in relation to section 173 of the *Civil Procedure Act 2005* (NSW).
- 5 The parties have liberty to apply on 3 days' notice.
- 6 Any other order that the Court considers fit.

Definitions

- 7 The following definitions apply in this interlocutory process:
- (a) **Act** means the *Corporations Act 2001* (Cth).
 - (b) **Class Actions** means the following New South Wales Supreme Court Proceedings:
 - (i) *TW McConnell Pty Ltd ACN 000 217 890 as trustee for McConnell Superannuation Fund v SurfStitch Group Limited (Subject to Deed of Company Arrangement) and Justin Peter Cameron - 2017/193375*; and
 - (ii) *Nakali Pty Limited v SurfStitch Group Limited (Subject to Deed of Company Arrangement) - 2017/347082*.
 - (c) **Companies** means SurfStitch Group Limited (Subject to Deed of Company Arrangement) ACN 602 288 004 and SurfStitch Holdings Pty Limited (subject to deed of company arrangement) ACN 601 114 603.
 - (d) **DOCAs** means the deed of company arrangement dated 18 April 2018 between SGL, the Deed Administrators and Ezibuy Holdings Limited NZBN 9429033569444 and the deed of company arrangement dated 18 April 2018 between SHPL, the Deed Administrators, Ezibuy Holdings Limited NZBN 9429033569444 Alecon Retail Bidco Pty Ltd ACN 625 288 324 and Alecon Retail Holdco Pty Ltd ACN 625 287 738
 - (e) **IPS** means *Insolvency Practice Schedule (Corporations)* set out in Schedule 2 of the Act.
 - (f) **Settlement Agreement** means the settlement agreement dated on or around 24 September 2019 between the Deed Administrators, SGL, SHPL, the representative plaintiffs in the Class Actions, Justin Peter Cameron, Chubb Insurance Australia Pty Limited ACN 001 642 020, International Litigation Partners No 17 Pte Ltd and Vannin Capital Operations Limited, as exhibited to the affidavit of Joseph Ronald Hansell dated 5 May 2020.

Date: 6 May 2020



Timothy Michael Klineberg
King & Wood Mallesons
Solicitors for the Plaintiffs

This application will be heard by Justice Ball at the Supreme Court, Law Courts Building, Queens Square Sydney 10am on 22 May 2020.

B. NOTICE TO RESPONDENT(S)

THERE ARE NO RESPONDENTS TO THIS APPLICATION

C. APPLICATION FOR WINDING UP ON GROUNDS OF INSOLVENCY

NOT APPLICABLE

D FILING

Date of filing:

This interlocutory process is filed by Timothy Michael Klineberg of King & Wood Mallesons, solicitor for the Plaintiffs.

E SERVICE

The Plaintiffs' address for service is

Tim Klineberg
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Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
(ref: TMK/GGR)

It is not intended to serve a copy of this interlocutory process on any person