

## SHORT MINUTES OF ORDER

### COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
Registry	Sydney
Case number	2015/306222

### TITLE OF PROCEEDINGS

Plaintiffs	<b>Innes Creighton</b>
Defendants	<b>Australian Executor Trustees Limited ACN 007 869 573</b>

### COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
Registry	Sydney
Case number	2015/171592

### TITLE OF PROCEEDINGS

Plaintiffs	<b>John Smith and Rosemary Smith</b>
Defendants	<b>Australian Executor Trustees Limited ACN 007 869 573</b>

### FILING DETAILS

Filed for	<b>Innes Creighton, Plaintiff (2015/306222)</b>
Legal representative	Tim Finney, Slater & Gordon Limited
Contact name and telephone	Tim Finney, (03) 9949 8758
Contact email	tim.finney@slatertgordon.com.au

The Court orders that:

### **Amendments to Statements of Claim**

#### ***Smith proceeding***

- 1 The Plaintiff in proceeding 2015/171592 (**Smiths**) is granted leave to file the Second Further Amended Statement of Claim in the form attached to the email from Meridian Lawyers to Corrs Chambers Westgarth and Slater & Gordon dated 9 December 2016 (**Smith 2FASOC**).
- 2 The Smiths are to file and serve the Smith 2FASOC on or before 23 December 2016.
- 3 The Defendant (**AET**) is to file and serve its Defence to the Smith 2FASOC on or before 24 February 2017.
- 4 The Smiths are to file and serve any Reply to AET's Defence to the Smith 2FASOC on or before 17 March 2017.

#### **Creighton proceeding**

- 5 The Plaintiff in proceeding 2015/306222 (**Creighton**) is granted leave to file the Second Further Amended Statement of Claim in the form attached to the email from Slater & Gordon to Corrs Chambers Westgarth dated 14 December 2016 (**Creighton 2FASOC**).
- 5A Creighton is to serve the supplementary report of Andrew Malarkey by 16 December 2016.
- 6 Creighton is to file and serve the Creighton 2FASOC on or before 23 December 2016.
- 7 AET is to file and serve any Defence to the Creighton 2FASOC on or before 24 February 2017.

#### **Timetable**

- 8 The time for AET to comply with order 19 made on 4 April 2016 (regarding the service of expert reports on which it intends to rely) be extended to on or before 14 April 2017.
- 9 The time for the Smiths and Creighton (collectively, the Plaintiffs) to comply with order 20 made on 4 April 2016 (regarding the service of expert reports in reply) be extended to on or before 12 May 2017.

10 The time for the Plaintiffs' and AET's experts to comply with order 20A made on 4 April 2016 (regarding conferral and preparation of a joint report) be extended to on or before 16 June 2017.

11 The time for the Plaintiffs to comply with order 21 made on 4 April 2016 (regarding service of the Plaintiffs' tender bundle) be extended to on or before

17 February 2017  
~~20 December 2016~~  
~~4 March 2017~~

12 The time for AET to comply with order 22 made on 4 April 2016 (regarding service of the Defendant's tender bundle) be extended to on or before ~~14 April 2017~~ 26 May 2017

13 The time for the Plaintiffs to comply with order 23 made on 4 April 2016 (regarding service of a joint tender bundle) be extended to on or before ~~30 April 2017~~ 9 June 2017

#### Opt Out

14 By ~~3 February 2017~~ 3 March 2017, the Plaintiffs shall:

- a) Endeavour to agree:
  - i. a form of notice (**Smith opt out notice**) proposed to be given to persons who are group members of both proceeding 2015/171592 (**Smith proceeding**) and proceeding 2015/306222 (**Creighton proceeding**) for the purpose of section 162 of the *Civil Procedure Act 2005 (Act)*;
  - ii. a form of notice (**Creighton opt out notice**) proposed to be given to persons who are group members of the Creighton proceeding only for the purpose of section 162 of the Act;
- b) Serve on each other notices (**further notice**) proposed to be given to persons who are group members of both the Smith proceeding and the Creighton proceeding with the Smith opt out notice, that each Plaintiff(s) which will seek approval of the Court in respect of pursuant to section 175 of the Act;
- c) Correspond as to any suggestions, omissions and deficiencies as to each other's further notice with the aim of reducing disputation as to the terms of each further notice;

- d) Endeavour to agree a draft form of order (**form of order**) as to the proposed manner and timing of the giving of:
- i. the Smith opt out notice, the Creighton opt out notice and the further notices;
  - ii. the selection, appointment and costs of an independent lawyer (**independent lawyer**) for the purpose of assisting persons who are group members of both the Smith proceeding and the Creighton proceeding in making an election as to which proceeding (if any) of which that group member wishes to remain part; and
- e) Endeavour to agree on the identity of the independent lawyer or provide each other a short list (**short list**) of three candidates for appointment as the independent lawyer.

10 March 10 March 2017

15 By ~~6 February 2017~~, the Plaintiffs in the proceeding shall inform the Defendant of the outcome of order 14 and serve on the Defendant the Smith opt out notice (or versions contended for by each Plaintiff as the case may be), the Creighton opt out notice and the further notices.

24 March 2017

16 By ~~10 February 2017~~, the Defendant shall indicate its position as to the Smith opt out notice, the Creighton opt out notice, the further notices, the form of order, and the identity of the independent expert (or the names on the short list as the case may be).

~~17 The costs of the independent lawyer, and the costs of or related to the Plaintiffs appointment of and dealings with the independent lawyer, are not recoverable by the Plaintiffs against AET or against any other party in this proceeding.~~

### **Second and Third Cross-Claims**

18 Pursuant to rule 9.1 of the Uniform Civil Procedure Rules 2005 (NSW) (**UCPR**), AET is granted leave to file the following Cross-Claims on or before 23 December 2016:

- a) the Second Cross-Claims annexed and marked "A" to the Notices of Motion filed by AET on 21 November 2016;
- b) the Third Cross-Claims attached to the email from Corrs Chambers Westgarth to the associate to Justice Ball (and copied to the solicitors for the other parties) on 29 November 2016.
- c) the cross-claims be made returnably at 9.15 am on 3 February 2017

**Hearing and other matters**

19 Vacate the provisional listing of the hearing commencing on 8 May 2017.

20 The proceedings be listed for further directions on ~~2017~~. <sup>at 9.15am</sup> 3 February 2017

21 Liberty to apply on two days' notice.

22 The Notice of Motion filed by ABT  
on 21 November 2016 in so far as  
it seeks relief sought in Paragraph  
3, be dismissed with no order as to costs