

## 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 Innes Creighton  
Defendants Australian Executor Trustees Limited  
ACN 007 869 794

### COURT DETAILS

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

### TITLE OF PROCEEDINGS

Plaintiffs John Smith and Rosemary Smith  
Defendants Australian Executor Trustees Limited  
ACN 007 869 794

### FILING DETAILS

Filed for Australia Executor Trustees Limited, Defendant  
Legal representative Brad Woodhouse, Corrs Chambers Westgarth  
Legal representative reference 9116109  
Contact name and telephone Brad Woodhouse, (02) 9210 6859  
Contact email [brad.woodhouse@corrs.com.au](mailto:brad.woodhouse@corrs.com.au)

The Court orders that:

***Case management following the motion of 8 December 2015***

- 1 Not used.
- 2 Not used.
- 3 Documents produced in proceeding 2015/17192 (**Smith Proceeding**) may be used for the purposes of 2015/306222 (**Creighton Proceeding**), and documents produced in the Creighton Proceeding may be used for the purposes of the Smith Proceeding.
- 4 Not used.
- 5 Not used.
- 6 Not used.

***Vacation of previous orders***

- 7 Orders 9-17 and 19 of the orders made in the Smith Proceeding on 21 July 2015 be vacated.
- 8 Order 1 of the Orders of her Honour Justice Gordon dated 3 February 2015 in Federal Court proceeding VID 790 of 2014 be vacated.
- 9 Orders 2, 3, 4, 5, 6, 7, 8, 9 and 10 of the Orders of his Honour Justice Middleton dated 4 September 2015 in Federal Court proceeding VID 790 of 2014 be vacated.
- 9A The subpoena to produce issued at the request of the Plaintiff in the Creighton Proceeding in Federal Court proceeding VID 790 of 2014 on 9 September 2015 directed to the receivers and managers of Provident Capital Limited be relisted in the return of subpoena list on 14 April 2016.

***Pleadings amendments***

- 9B The Plaintiffs in both proceedings (collectively, "**the Plaintiffs**") to serve on all other parties any proposed amended pleading by 12 April 2016.
- 9C The Defendant to inform the Plaintiffs whether it consents to or opposes either Plaintiff having leave to file that amended pleading by 26 April 2016.
- 9D If the Defendant consents to either Plaintiff filing the amended pleading, that Plaintiff be granted leave to file the amended pleading in the form notified to the Defendant by 29 April 2016.
- 9E If the Defendant does not consent to the filing of either or both amended pleadings:
  - (a) The Defendant is to specify the grounds of its opposition by 26 April 2016; and

- (b) Either or both (as the case may be) Plaintiffs are to file and serve a Notice of Motion (with any supporting affidavit) seeking leave to file the amended pleading by 3 May 2016, which is to be returnable before Ball J on 9 May 2016 at 9.30 am.

***Opt Out Notices***

- 10 Not used.  
 11 Not used.  
 12 Not used.  
 13 Not used.  
 14 Not used.  
 15 Not used.

***Lay and expert evidence***

- 16 The Plaintiff in the Creighton Proceeding to serve any lay affidavit evidence on which he intends to rely on or before 5 April 2016.
- 17 The Plaintiffs to serve any lay affidavits in reply to the Defendant's lay evidence on or before 19 April 2016.
- 18 The Plaintiffs to serve any expert reports on which they intend to rely on or before 15 July 2016.
- 19 The Defendants to serve any expert reports on which they intend to rely on or before 28 October 2016.
- 20 The Plaintiffs to serve any expert reports in reply on or before 25 November 2016.
- 20A On or before 9 December 2016 the parties' experts:
- (a) meet and confer with any other expert witness within the same area of expertise, such meeting to be conducted in the absence of the parties, their employees or agents and the parties' legal representatives;
  - (b) cooperate in the prompt delivery to the parties' legal representatives of a joint report identifying:
    - (i) the areas of agreement and disagreement between them; and
    - (ii) where there is a disagreement, a short statement explaining the basis of the disagreement; and
  - (c) the parties and their legal or other representatives shall not direct or instruct an expert witness as to whether to agree or disagree with any other expert witness in the meeting, or as to the basis or terms upon which the expert may agree or

disagree with any other expert or have any communication with the expert during the course of the conclave or the preparation of the joint report.

- 20B Subject to further order, the evidence of the parties' experts shall be adduced in accordance with a protocol for concurrent evidence, to be agreed between the parties or as otherwise ordered.

***Tender Bundle***

- 21 By 1 August 2016, the Plaintiffs are to serve on the Defendant a disc or storage device containing an electronic copy of documents that the Plaintiffs propose to tender at trial together with electronic indexes of those documents (**Plaintiffs' Bundles**). Electronic documents in the Plaintiffs' bundles shall be in multiple page PDF, print enabled, text searchable format, unless the native format of any document does not lend itself to conversion to PDF (such as spreadsheets).
- 22 By 11 November 2016, the Defendant is to serve on the Plaintiffs a disc or storage device containing an electronic copy of documents that the Defendant proposes to tender at trial together with an electronic index of those documents (**Defendant's Bundle**). Electronic documents in the Defendant's bundle shall be in multiple page PDF, print enabled, text searchable format, unless the native format of any document does not lend itself to conversion to PDF (such as spreadsheets).
- 23 By 9 December 2016, the Plaintiffs are to serve, on a disc or storage device, an electronic index and electronic copy of all documents to be tendered by the parties at the trial, including the Plaintiffs' Bundles, the Defendant's Bundle, and any additional documents the Plaintiff wishes to tender in reply to the Defendant's Bundle and evidence (**the Tender Bundle**), such index is to be arranged in chronological order as far as is practicable and to be duly paginated and hyperlinked to the multiple page PDF, print enabled, text searchable format copies of the document (**the Consolidated Index**).
- 24 The electronic indexes to the Plaintiffs' Bundles, the Defendant's Bundle and the Tender Bundle must:
- (a) adequately describe the documents that the Plaintiffs / Defendant propose to rely on at trial;
  - (a) be hyperlinked to multiple page PDF, print enabled, text searchable format copies of the documents, unless the native format of any document does not lend itself to conversion to PDF (such as spreadsheets) in which case they must be hyperlinked to the native format of the document; and
  - (b) contain the following fields:
    - (i) document date or estimated date;

- (ii) unique document identification number;
- (iii) document type;
- (iv) document title;
- (v) author/from; and
- (vi) recipient/to.

***Security***

- 24A The parties in the Creighton proceeding confer in an attempt to reach agreement as to provision of security for costs, and inform the Associate to Ball J of any such agreement by 12 April 2016.
- 24B If agreement cannot be reached in either proceeding, any notice of motion as to security is to be returnable before Ball J on 9 May 2016 at 9.30 am.

***Hearing and other matters***

- 25 Provisionally list the matter for hearing commencing on 30 January 2017 with an estimated hearing length of eight weeks.
- 26 The Smith Proceeding and the Creighton Proceeding be stood over for further directions before Ball J on 9 May 2016 at 9.30 am.
- 27 Liberty to apply on three days' notice.