

FILED

25 MAY 2015



AMENDED DEFENCE (MN)

(Pursuant to Orders dated 24 April 2015)

COURT DETAILS

Court Supreme Court of New South Wales
Division Common Law
List General (Representative Proceedings)
Registry Sydney
Case number 2014/335469

TITLE OF PROCEEDINGS

First plaintiff **Julian Fewtrell**
Number of plaintiffs **4**
Defendant **Westpac Banking Corporation
(ACN 007 457 141)**

FILING DETAILS

Filed for **Westpac Banking Corporation, Defendant**
Legal representative Peter John Elliot Arthur
Aliens, Solicitors
Legal representative reference 17450
Contact name and telephone Peter John Elliot Arthur
(02) 9230 4728
Contact email: PeterArthur@allens.com.au

HEARING DETAILS

If the proceedings do not already have a listing date, they are to be listed at:

PLEADING AND PARTICULARS

I INTRODUCTION

Plaintiff and Group Members

1. The Defendant (***Westpac***) does not plead to paragraph 1 of the Amended Statement of Claim as it contains no allegations against it.
2. Westpac does not admit paragraph 2 of the Amended Statement of Claim.

St George

3. In answer to paragraph 3 of the Amended Statement of Claim, Westpac:
 - (a) says that St George was a company incorporated under the *Corporations Act 2001 (Cth)* until 1 March 2010;
 - (b) says that at all material times:
 - (i) St George was the employer of the Third Plaintiff;
 - (ii) Asgard Wealth Solutions Ltd (***Asgard***), a wholly owned subsidiary of St George, was the employer of the First, Second and Fourth Plaintiffs; and
 - (c) otherwise does not admit that paragraph.
4. Not used.
5. Not used.
6. In answer to paragraph 6 of the Amended Statement of Claim, Westpac:
 - (a) admits that Paul Fegan was employed as Managing Director and Chief Executive Officer of St George from November 2007 to December 2008 and;
 - (b) otherwise does not admit that paragraph.
- 6A. In answer to paragraph 6A of the Amended Statement of Claim, Westpac repeats paragraph 6 above and otherwise does not admit the paragraph.
7. Westpac admits paragraph 7 of the Amended Statement of Claim.
- 8A. Westpac admits paragraph 8A of the Amended Statement of Claim.
8. In answer to paragraph 8 of the Amended Statement Claim, Westpac:

- (a) says that at all relevant times prior to 17 November 2008, St George was:
 - (i) a corporation included in the official list of ASX Limited;
 - (ii) a listed disclosing entity within the meaning of section 111AL(1) of the Corporations Act;
 - (iii) subject to and bound by the Listing Rules of the ASX; and
- (b) otherwise does not admit that paragraph.

Westpac

- 9. Westpac admits paragraph 9 of the Amended Statement of Claim.
- 10. Westpac admits paragraph 10 of the Amended Statement of Claim.

II ST GEORGE'S EPS TARGET

- 11. In answer to paragraph 11 of the Amended Statement Claim, Westpac:
 - (a) says that St George was obliged to file with the ASX each year, not later than two months after the end of St George's financial year, a Preliminary Final Report (Appendix 4E) in compliance with Listing Rules 4.3A and 4.3B; and
 - (b) otherwise does not admit that paragraph.
- 12. In answer to paragraph 12 of the Amended Statement Claim, Westpac:
 - (a) admits that during the financial year that ended on 30 September 2008, St George from time to time announced to the ASX its EPS growth target for that financial year; and
 - (b) otherwise does not admit that paragraph.

- 13. Westpac admits paragraph 13 of the Amended Statement of Claim.
- 14. Westpac admits paragraph 14 of the Amended Statement of Claim.
- 15. Westpac admits paragraph 15 of the Amended Statement of Claim.

III CONTRACTUAL TERMS

Employment Contract

- 16. In answer to paragraph 16 of the Amended Statement of Claim, Westpac:
 - (a) refers to paragraph 3(b) above;

- (b) admits that on a date before 18 June 2008, the Third Plaintiff entered into an agreement under which the Third Plaintiff was employed by St George;
- (c) ~~denies~~ admits that on a date before 18 June 2008, the First, Second and Fourth Plaintiffs entered into an agreement under which the First, Second and Fourth Plaintiffs were employed by St-George-at-the-relevant-time Asgard; and
- (d) otherwise does not admit that paragraph.

Express terms

- 17. In answer to paragraph 17 of the Amended Statement of Claim, Westpac:
 - (a) ~~refers to paragraph 3(b) and says that there was no employment contract between St-George and each of the First, Second and Fourth Plaintiffs~~ above;
 - (b) admits paragraph 17(a) in relation to the Third-Plaintiffs; and
 - (c) otherwise denies that paragraph.
- 18. In answer to paragraph 18 of the Amended Statement of Claim, Westpac:
 - (a) says a letter was sent to the Plaintiffs on 18 June 2008 regarding a one-off incentive scheme payment which contained a number of conditions;
 - (b) refers to the letter described in sub-paragraph (a) for its full terms and effect; and
 - (c) otherwise denies that paragraph.
- 18A. In answer to paragraph 18A of the Amended Statement of Claim, Westpac repeats paragraph 18 above and otherwise denies that paragraph.
- 19. In answer to paragraph 19 of the Amended Statement of Claim, Westpac:
 - (a) says that as at 18 June 2008, St George's EPS Target for the financial year ended 30 September 2008 as announced to the ASX was for a range of between 8 and 10 per cent;
 - (b) otherwise denies that paragraph.
- 20. Westpac does not admit paragraph 20 of the Amended Statement of Claim.
- 21. Westpac does not admit paragraph 21 of the Amended Statement of Claim.

IV ACCRUAL OF THE RETENTION INCENTIVE

First Retention Incentive Condition satisfied

22. In answer to paragraph 22 of the Amended Statement of Claim, Westpac:
- (a) admits that on 29 October 2008, St George announced to the ASX its EPS for the financial year that ended on 30 September 2008, being 237 cents; and
 - (b) otherwise does not admit that paragraph.
23. Westpac admits paragraph 23 of the Amended Statement of Claim.
24. In answer to paragraph 24 of the Amended Statement of Claim, Westpac:
- (a) says that St George's EPS for the 2008 Financial Year was within the range of 8 to 10 per cent announced to the ASX on or around 6 May 2008; and
 - (b) otherwise does not admit the paragraph.
25. Westpac admits paragraph 25 of the Amended Statement of Claim.
26. Westpac does not admit paragraph 26 of the Amended Statement of Claim.

Alternatively, Defendant estopped from denying the Revised 2008 EPS Target satisfies the First Retention Incentive Condition

27. In answer to paragraph 27 of the Amended Statement of Claim, Westpac:
- (a) admits that after 18 June 2008, St George did not announce to the ASX any variation to the EPS Target of a range of 8 to 10 per cent as announced to the ASX on or around 6 May 2008;
 - (b) admits that on or around 12 August 2008, St George announced to the ASX that it was on track to meet its EPS Target of 8 to 10 per cent in the financial year ending 30 September 2008;
 - (c) admits that on or around 12 August 2008, Mr Fegan sent an email to all St George staff which stated that St George was on track to meet its EPS Target of 8 to 10 percent in the financial year ending 30 September 2008; and
 - (d) otherwise does not admit that paragraph.
28. In answer to paragraph 28 of the Amended Statement of Claim, Westpac:
- (a) denies that St George conducted its affairs with the Plaintiffs on the basis that the EPS Target of 8 to 10 per cent as announced to the ASX on or around 6

May 2008 was the EPS Target for the purposes of the conditions contained in the letter sent to the Plaintiffs on 18 June 2008; and

(b) otherwise does not admit that paragraph.

29. In answer to paragraph 29 of the Amended Statement of Claim, Westpac:

(a) refers to paragraph 28 above; and

(b) otherwise does not admit that paragraph.

30. Westpac denies paragraph 30 of the Amended Statement of Claim.

Second Retention Incentive Condition satisfied

31. In answer to paragraph 31 of the Amended Statement of Claim, Westpac:

(a) refers to paragraph 3(b) above; and

(b) admits that the Third-Plaintiffs remained employed by St George or Asgard on 13 November 2008; and

~~(b)~~(c) does not otherwise admit that paragraph.

32. In answer to paragraph 32 of the Amended Statement of Claim, Westpac refers to paragraph 31 above.

Third Retention Incentive Condition satisfied

33. Westpac does not admit paragraph 33 of the Amended Statement of Claim.

34. Westpac does not admit paragraph 34 of the Amended Statement of Claim.

V ENTITLEMENT TO BE PAID AND NON-PAYMENT OF THE RETENTION INCENTIVE

35. Westpac does not admit paragraph 35 of the Amended Statement of Claim.

36. In answer to paragraph 36 of the Amended Statement of Claim, Westpac:

(a) admits that St George has not paid the Retention Incentive to the Plaintiffs; and

(b) otherwise does not admit that paragraph.

37. Westpac does not admit paragraph 37 of the Amended Statement of Claim.

38. Westpac does not admit paragraph 38 of the Amended Statement of Claim.

39. Westpac does not admit paragraph 39 of the Amended Statement of Claim.

40. In answer to paragraph 40 of the Amended Statement of Claim, Westpac:
- (a) admits that on and from 1 March 2010 Westpac became the successor in law in respect of all the assets and liabilities of St George;
 - (b) says that the Retention Incentive Term was not a term of any employment contract between St George (or Asgard) and any of the Plaintiffs;
 - (c) says that the Second Plaintiff has released Westpac from any liability for the Retention Incentive;

Particulars

On or around 20 June 2011, the Second Plaintiff entered into a deed of release with Asgard under which the Second Plaintiff agreed to release Westpac from all claims and liabilities of any nature arising out of, or related in any way, directly or indirectly, to the Second Plaintiffs employment with Asgard.

- (d) otherwise does not admit that paragraph.

41. In further answer to the whole of the Amended Statement of Claim by the Second Plaintiff, Westpac says that the Deed of Release between Asgard and the Second Plaintiff dated 20 June 2011 (the ***Younger Deed***) is a bar to the proceedings by the Second Plaintiff.

Particulars

Clauses 2 and 3 of the Younger Deed.

VI COMMON QUESTIONS OF LAW OR FACT

42. Westpac admits that the matters pleaded in paragraph 41 of the Amended Statement of Claim are questions of law or fact common to the claims of the Plaintiffs and the Group Members.

SIGNATURE OF LEGAL REPRESENTATIVE

I certify under section 347 of the Legal Profession Act 2004 that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the defence to the claim for damages in these proceedings has reasonable prospects of success.

Signature



Capacity

Solicitor for the Defendant

Date of signature

16 April 25 May 2015

AFFIDAVIT VERIFYING

Name: Ganesh Chandrasekkar
 Address: Level 7, 275 Kent Street, Sydney NSW 2000
 Occupation: General Manager, Human Resources
 Date: 22 May 2015

I affirm:

1. I am an officer of Westpac Banking Corporation and am authorised to verify this defence on its behalf.
2. I believe that the allegations of fact contained in the defence are true.
3. I believe that the allegations of fact that are denied in the defence are untrue.
4. After reasonable inquiry, I do not know whether or not the allegations of fact that are not admitted in the defence are true.

AFFIRMED at
 New South Wales

Signature of deponent



Signature of witness



Name of witness

EILEEN TURNER

Address of witness

Level 5
 275 Kent Street, Sydney NSW 2000

Capacity of witness


Solicitor

CERTIFICATE UNDER SECTION 34(1)(C) OF OATHS ACT 1900

I, Leigh Turner, a Solicitor, certify the following matters concerning the making of this affidavit by the person who made it:

1. I saw the face of the person.
2. I have known the person for at least 12 months.

Signature of authorised
witness



Date: 22 May 2015