

OUTCOME DETAILS

**Supreme Court - Civil
at Supreme Court Sydney
on 9 February 2018**

2017/00193375-001 / Summons: TW McConnell Pty Ltd ACN 000 217 890 as trustee for the McConnell Superannuation Fund v SURFSTITCH GROUP LIMITED

1. Orders made in accordance with pars 1 to 13 of the Short Minutes of Order, initialled by Stevenson J, dated today and placed with the papers.

SHORT MINUTES OF ORDER

Costs of the Common Fund Motion Hearing (Plaintiff's Amended Notice of Motion filed 15 December 2017):

1. The plaintiff pay the costs of:

- (a) the first defendant; and
- (b) Nakali Pty Ltd,

of the plaintiff's notice of motion dated 15 September 2017 (as amended on 11 December 2017), to be taxed in default of agreement and payable upon the conclusion of this proceeding.

2. Pursuant to s 440D of the Corporations Act 2001 (Cth), the plaintiff be granted leave to proceed against the first defendant ("SurfStitch") for the limited purpose of enabling SurfStitch by its administrators to provide to the plaintiff the documents listed in Schedule A hereto.

3. On or before 16 February 2018 SurfStitch by its administrators provide to the plaintiff the documents listed in Schedule A hereto.

4. The plaintiff and its legal representative be at liberty to disclose any and all documents obtained pursuant to this order to:

(a) International Litigation Partners No 17 Pte Ltd, The Funder of the plaintiff's action herein, on a confidential basis and solely for the purpose of this proceeding (including, without limitation, considering whether other parties ought be joined as defendants to the proceeding, including but not limited to directors, officers, advisers or auditors of SurfStitch;

(b) any other shareholder of SurfStitch who is or may become a representative party in a class or group action which may be brought against any other parties in this proceeding, including but not limited to directors, officers, advisers or auditors of the first defendant ("Representative Plaintiff"), such disclosure to be solely for the purpose of enabling that shareholder to consider and/or bring any such claims;

(c) any proposed expert witness, expert consultant or service provider (including but not limited to an accountant) retained by the plaintiff for the purposes of this proceeding or retained for the purposes of a potential proceeding as described in (b) hereof.

Pleadings of second defendant (Plaintiff's Notice of Motion filed 19 January 2018):

5. The plaintiff's notice of motion filed 19 January 2018 be dismissed.
6. The second defendant ("Cameron") have leave to file in the Registry an amended commercial list response in the form annexed to these minutes.
7. Order 2 of the orders made on 11 December 2017 be vacated.
8. The plaintiff file and serve any commercial list reply by 23 February 2018.
9. The plaintiff's costs of an incidental to the plaintiff's notice of motion filed 19 January 2018 be cost in the cause.

Other matters:

10. Any further application by the plaintiff for access to documents, and evidence in support of any such application, be filed and served by 9 March 2018 and returnable 23 March 2018 at 9.30am before his Honour Justice Stevenson.
11. Any subpoenas to be issued and served by 9 March 2018.
12. The proceedings be listed for further directions before Justice Stevenson at 9.30am on 23 March 2018.
13. The parties have liberty to apply on 48 hours' notice.

Justice J Stevenson

Signed

Date

SCHEDULE A

Claims means the allegations made by the plaintiff in this proceeding.

Proceeding means New South Wales Supreme Court proceeding with plaintiff TW McConnell Pty Ltd ACN 000 217 890 as trustee for the McConnell Superannuation Fund and first defendant Surf Stitch Group Limited.

SurfStitch means the first defendant, Surf Stitch Group Limited (Administrators Appointed) ACN 602 288 004.

1. Any and all policies of insurance entered into by the first defendant (**SurfStitch**) relating to directors and officers liability that may respond to the loss claimed in this proceeding (**Specific Policies**);
2. All policies of insurance and policy schedules entered into by SurfStitch in which SurfStitch or any of its directors or officers are named as insureds or may have the benefit of insurance that may respond to the loss claimed in this proceeding (**Relevant Policies**);
3. Copies of all notifications of claims or of any facts and circumstances which may give rise to claims given to any brokers or insurers by or on behalf of SurfStitch and/or its directors and officers under any Specific Policy or Relevant Policy;
4. Any correspondence from any insurers or brokers or insurers' lawyers in respect of a notification of the kind referred to in paragraph 3 above;
5. The monthly and quarterly management accounts of SurfStitch for the period 30 January 2015 to 30 June 2016, to the extent that such documents have not already been discovered;
6. Any board papers or documents before the Audit Committee of SurfStitch for the period between 30 January 2015 and 30 June 2016 inclusive;
7. Any communications between the board or the Audit Committee or the company's chief financial officer and SurfStitch's auditors for the period between 30 January 2015 and 30 June 2016 inclusive; and
8. All documents discovered by SurfStitch or SurfStitch Holdings Pty Ltd ACN 601 114 603 in Supreme Court of Queensland Proceedings BS1430/2017, BS1431/17 and BS 4422/2017, to the extent that those documents have not already been discovered.