



Federal Court of Australia
District Registry: New South Wales
Division: General

No: NSD1812/2017

GREGORY JOHN LENTHALL and another named in the schedule
First Applicant

WESTPAC BANKING CORPORATION ABN 33 007 457 141 and another named in the
schedule
First Respondent

ORDER

JUDGE: JUSTICE LEE

DATE OF ORDER: 29 January 2018

WHERE MADE: Sydney

THE COURT ORDERS THAT:

Security for Costs

1. The parties are to confer prior to 20 February 2018 with a view to agreeing on the appropriate amount of security to be provided by way of the first tranche for security for the respondents' costs and on the form of that security.
2. In the absence of agreement as to the first tranche of security for the respondents' costs, the applicants are to advise the Court in accordance with Order 17(b) below that the issue needs to be determined on 22 February 2018.

Pleadings

3. Leave be granted to the applicants to file and serve an amended statement of claim, with such leave to be exercised by 4.00 pm on 9 February 2018.
4. By 4.00 pm on 9 March 2018, the respondents are to file and serve their defence to the amended statement of claim.
5. By 4.00 pm on 23 March 2018, the applicants are to file and serve any reply.
6. The applicants pay the reasonable costs of the respondents thrown away as a result of the amendments to the statement of claim.



Discovery

7. By 4.00 pm on 15 January 2018, the parties are to attempt to agree to a protocol for providing standard discovery in electronic format in the proceeding.
8. By 4.00 pm on 9 February 2018, the applicants are to give standard discovery in accordance with FCR 20.14.
9. By 4.00 pm on 6 April 2018, the respondents are to give standard discovery in respect of the applicants' claims in accordance with FCR 20.14 (excluding from such discovery any documents which are relevant only to the determination of the amount of equitable compensation, statutory compensation or on the account for profits).

Discovery – Quantum

10. By 4.00 pm on 9 February 2018, the parties are to confer and endeavour to agree on a schedule of documents or information relevant to the determination and/or assessment of the account of profits, with such documents or information to be provided by the respondents at the same time as the respondents provide standard discovery in accordance with Order 9 above.

Notice

11. By 4.00 pm on 2 February 2018, the applicants are to provide to the respondents:
 - (a) a draft common fund order notice and opt out notice for the purposes of ss 33X(1)(a) and 33Y(2) of the *Federal Court of Australia Act 1976* (Cth) (**FCAA**); and
 - (b) a draft of orders with respect to the proposed manner and timing of the application for a common fund order notice and opt out notice for the purposes of s 33Y(3) of the FCAA.
12. By 4.00 pm on 9 February 2018, the respondents are to respond to the draft notice and draft orders referred to in Order 11 above.
13. By 4.00 pm on 16 February 2018, the parties' legal representatives are to confer and attempt to agree on:
 - (a) the form and content of the common fund order notice and opt out notice for the purposes of ss 33X(1)(a) and 33Y(2) of the FCAA; and



- (b) the orders with respect to the proposed manner and timing of the giving of the notice of the common fund order notice and the opt out notice for the purposes of s 33Y(3) of the FCAA.

Questions for Initial Hearing

- 14. By 4.00 pm on 23 February 2018, the applicants are to provide to the respondents a draft of the claims, issues and questions to be determined at the initial hearing of the proceeding.
- 15. By 4.00 pm on 9 March 2018, the respondents are to respond to the draft of the claims, issues and questions provided by the applicants in accordance with Order 14 above.
- 16. By 4.00 pm on 16 March 2018, the parties' legal representatives are to confer and attempt to agree on the claims, issues and questions to be determined at the initial hearing of the proceeding.

Consent orders and Interlocutory Application

- 17. By 4.00 pm on 20 February 2018, the applicants are to:
 - (a) if any of the matters referred to in Orders 2, 10 and 13 above have been agreed by the parties – provide to the Associate to Justice Lee a copy of the parties' proposed consent orders; and
 - (b) if any of the matters referred to in Orders 2, 10 and 13 above have not been agreed by the parties – notify the Associate to Justice Lee of the issues requiring determination on 22 February 2018.

Evidence

- 18. By 4.00 pm on 17 July 2018, the applicants are to file and serve any lay and expert evidence (without annexures or exhibits) upon which they intend to rely excluding any expert evidence relating to an account of profits (to the extent the lay and expert material refers to any document, a cross reference is to be included to the document in the tender bundle filed in accordance with Order 19 below).
- 19. By 4.00 pm on 17 July 2018, the applicants are to file and serve a tender bundle in chief of all documents which the applicants intend to tender (except documents relating to expert evidence on account of profits) at the hearing of the applicants' claim, with such



documents to be limited to those documents or parts of documents to the applicants propose to refer to in submissions.

20. By 4.00 pm on 23 October 2018, the respondents are to file and serve any lay and expert evidence (without annexures or exhibits) on which they intend to rely (excluding any expert evidence relating to an account of profits) and, to the extent the lay and expert material refers to any document, a cross reference is to be included to the document in the tender bundle filed in accordance with Order 21 below.
21. By 4.00 pm on 23 October 2018, the respondents are to file and serve a tender bundle in chief of all documents which the respondents intend to tender (except documents relating to expert evidence on account of profits) at the hearing of the applicants' claims, with such documents to be limited to those documents or parts of documents to the respondents propose to refer to in submissions.
22. By 4.00 pm on 28 November 2018, the applicants are to file and serve any lay and expert evidence in reply upon which they intend to rely (to the extent the lay and expert material in reply refers to any document, a cross reference is to be included to the document in the tender bundle in reply filed in accordance with Order 23 below).
23. By 4.00 pm on 28 November 2018, the applicants are to file and serve a tender bundle in reply of the additional documents upon which the applicants intend to rely at the hearing, with such documents to be limited to those documents or parts of documents to the applicants propose to refer to in submissions.


General

24. The matter be listed for hearing commencing at 10.15 am on 4 March 2019, with a current listing of 3 weeks but being a hearing that will continue, without adjournment, until finalisation of addresses.
25. The proceeding be referred to mediation pursuant to s 53A of the FCAA with such mediation to commence no later than 16 November 2018 and to be conducted by such mediator as agreed by the parties by 21 February 2018, or in default of agreement by that date, by a Registrar of the Court.
26. The matter be listed for a further case management hearing at 10.15 am on 22 February 2018, including for the determination of:



- (a) any matter that cannot be agreed in respect of the matters referred to in Orders 2, 10 and 13 above;
- (b) clarifying the protocol for ongoing communication (being communications not in the ordinary course of business) between the respondents and group members;
- (c) the provision of a list of group members by the respondents to the applicants (and any associated confidentiality orders in respect of the information contained in that list);
- (d) the appropriate form, and timing, of evidence in relation to the applicants' and group members' claims for an account of profits;
- (e) whether or not, and if so when, a process of group members registration needs to occur prior to mediation;
- (f) any orders arising from the content of the standard form letters sent by the respondents to the applicants (and some group members), and any clarification made by way of deed poll to the releases contained in those letters, in the form annexed to the letter from Allens to Shine Lawyers dated 18 December 2017;
- (g) the identity of the mediator, if not agreed in accordance with Order 25 above.

Date that entry is stamped: 29 January 2018


Registrar



Schedule

No: NSD1812/2017

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Second Applicant SHARMILA LENTHALL

Second Respondent WESTPAC LIFE INSURANCE SERVICES LIMITED ABN 31
003 149 157