



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD1812/2017

GREGORY JOHN LENTHALL and another named in the schedule
Applicants

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

JUSTKAPITAL LITIGATION PTY LIMITED
Intervener

ORDER

JUDGE: JUSTICE LEE

DATE OF ORDER: 28 April 2021

WHERE MADE: Sydney

THE COURT ORDERS THAT:

Settlement approval application

- 1 By 4.00pm on 12 May 2021, the applicants are to file and serve an interlocutory application or proposed minute of order seeking orders approving the proposed settlement of the proceeding pursuant to s 33V of the *Federal Court of Australia Act 1976 (FCA Act)* and any consequential orders (**Settlement Approval Application**).
- 2 The Settlement Approval Application be listed for hearing before Lee J on 16 July 2021 at 10.15 am (**Settlement Approval Hearing**).

Timing and mode of distribution of Settlement Notice

- 3 On or before 12 May 2021:
 - (a) the applicants are to provide to the Court an agreed form of notice to



group members in respect of the Settlement Approval Application (**Settlement Notice**), and a proposed minute of order for the Court to approve the same and the mode of its distribution pursuant to ss 33X and 33Y(2) of the FCA Act; and

- (b) should the applicants and the respondents be unable to reach agreement as to the form of the Settlement Notice, the parties are to provide to the Court a brief outline of written submissions as to the form and content of the Settlement Notice and the mode of its distribution, including an indication as to whether the applicants or respondents consider it necessary for there to be a short oral hearing in relation to the Settlement Notice, at a date to be fixed by the Court but no later than 14 May 2021.

4 Pursuant to ss 33X(4)-(5) and 33Y(3) of the FCA Act, following its approval by the Court, the Settlement Notice is to be distributed to group members by no later than 21 May 2021, in accordance with:

- (a) a process to be agreed between the parties; or
- (b) to the extent that an agreement is unable to be reached, by a process determined by the Court, to be heard at any hearing contemplated by order 3(b) or another date to be fixed by the Court;

5 Any group member who wishes to be heard in respect of the Settlement Approval Application (including any objection to settlement approval) following receipt of the Settlement Notice must, by no later than 4.00 pm on 2 July 2021 provide to the Court at nswdr@fedcourt.gov.au:

- (a) an outline of their grounds for supporting or opposing the Settlement Approval Application and any other document relied upon; and
- (b) an indication as to whether or not they seek to supplement their written material with oral submissions at the Settlement Approval Hearing.



- 6 The solicitors for the applicants will provide to the Court at nswdr@fedcourt.gov.au (copied to the respondent) any non-privileged communications from group members which ought to have been provided to the Court pursuant to Order 5.
- 7 The parties have leave to inspect the court file and take copies of any objections filed directly with the Court pursuant to Order 5.

Timetable for the Settlement Approval Application

- 8 Save for any affidavit or written submissions in respect of which confidentiality orders will be sought, on or before 6 July 2021, the applicant file and serve (including on each group member who has indicated they wish to be heard at the Settlement Approval Hearing in accordance with Order 5(b)) any affidavit(s) and written submissions on which it proposes to rely in support of the Settlement Approval Application.
- 9 Subject to any further order, the applicants have leave to file any affidavit or annexure or part thereof, in respect of which it seeks confidentiality orders, by email to the Associate of Lee J marked in the subject line with the word “confidential” and is excused from any requirement to electronically file, or serve any such affidavit or annexure or any part thereof on any party in that form, but shall instead electronically file and serve that affidavit or annexure in redacted form, such evidence to be filed and served in this manner on the date referred to in Order 10.
- 10 The respondent be granted leave to file and serve any affidavit material and any outline of submissions in relation to the Settlement Approval Application by 4.00pm on 9 July 2021.

Costs reference

- 11 Pursuant to s 54A of the FCA Act, Roland Matters is appointed as a referee (**Referee**) to inquire and report to the Court, in relation to the reasonableness of the legal costs proposed to be charged to the applicants and group members (the legal costs being the professional fees rendered by Shine



Lawyers to the date of the Deed of Settlement) (**Costs Reference**).

12 The Costs Reference will commence forthwith and:

- (a) the Referee is to consider and implement the Costs Reference without undue formality or delay so as to enable a just, efficient and cost-effective resolution of the reference. This may include enquiries by telephone and direct communication, without intervention of lawyers, with any person who the Referee believes may have relevant information. The Referee may seek submissions from the applicants' solicitors and shall take such submissions into account;
- (b) to facilitate the just, efficient and cost-effective resolution of the reference the Referee is to make such directions as the Referee considers appropriate as to the conduct of the reference, including for the attendance of any person, the production of documents and records relevant to legal costs, and/or the provisions of any submissions;
- (c) the Referee shall submit the report arising from the Costs Reference to the Court and to the applicants on or before 5.00 pm on 25 June 2021 or such further date as the Court may determine;
- (d) the applicants' solicitors shall forthwith and without delay deliver to the Referee a copy of this order and immediately make available all information and records which the Referee believes are relevant to the reference;
- (e) the Referee and parties shall have liberty to seek directions with respect to any matter arising in the Costs Reference upon 24 hours' notice, or such other notice ordered by the Court;
- (f) the costs of and incidental to the appointment of the referee (and the Referee's reasonable costs) shall be paid by the applicants in the first instance or on their behalf, but otherwise shall be costs in the proceeding;
- (g) in forming a view as to the reasonableness of the legal costs proposed



to be charged to the applicants and group members, for the purposes of the Costs Reference, the Referee is to have regard to all matters that are considered relevant but is to have regard to whether or not the conduct of the representatives for the applicants has facilitated the applicants acting consistently with the overarching purpose pursuant to s 37N of the FCA Act and whether work has been allocated in such a way as to ensure that it be done in the most economical and efficient way possible: see *CJMcG Pty Ltd as Trustee for the CJMcG Superannuation Fund v Boral Limited (No 2)* [2021] FCA 350 (at [57]–[61]); and

(h) the Referee’s costs in this proceeding are fixed at no more than \$15,000 (inclusive of GST) subject to further order.

13 The question of whether there ought be a further reference pursuant to s 54A of the FCA Act in relation to:

- (a) the costs claimed by the applicants in relation to the period from the date of the execution of the Deed of Settlement to the date of the Settlement Approval Hearing (**Approval Costs**); and/or
- (b) the estimated costs of administering the settlement (if it is approved) (**Administration Costs**),

be reserved to the Settlement Approval Hearing.

Costs

14 All of the applicants’ costs arising from these orders will be dealt with by the Court as part of the applicants’ costs of the proceeding and shall be deducted from the Settlement Sum prior to any distribution of the Settlement Sum to group members if the settlement is approved by the Court.

Other

15 The parties have liberty to apply on two days’ notice to the Court.

THE COURT NOTES THAT:



16 It will provide a copy of any communication received by the Court pursuant to Order 5 above to the parties by 5 July 2021.

Date that entry is stamped: 30 April 2021

Sia Lagos
Registrar



Schedule

No: NSD1812/2017

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

Second Applicant	SHARMILA LENTHALL
Third Applicant	SHANE THOMAS LYE
Fourth Applicant	KYLIE LEE LYE
Second Respondent	WESTPAC LIFE INSURANCE SERVICES LIMITED ABN 31 003 149 157