



Equity Division Supreme Court New South Wales

Case Name: Australian & Securities Investments Commission v Park Trent Properties Group Pty Ltd (No 4)

Medium Neutral Citation: [2015] NSWSC 1767

Hearing Date(s): On the papers, last written submissions 12 November 2015

Date of Orders: 27 November 2015

Date of Decision: 27 November 2015

Jurisdiction: Equity Division

Before: Sackville AJA

Decision: 1. Declare pursuant to s 1101B(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**) that the defendant (**Park Trent**), throughout the period from March 2010 until the date of the trial, contravened s 911A(1) of the *Corporations Act* in that it carried on the business of providing financial services, namely financial product advice, by making recommendations or statements of opinion intended to influence persons (or which could reasonably be regarded as intended to have such an influence) in making a decision to acquire, vary or dispose of a superannuation interest within the meaning of the *Superannuation Investment (Supervision) Act 1993* (Cth) (**SIS Act**), without holding an Australian Financial Services Licence (**AFSL**) covering the provision of the financial services, and did so by:

- (a) making recommendations and stating opinions to persons attending Seminars conducted or arranged by Park Trent that they should establish their own Self Managed Superannuation Fund (**SMSF**) (of which they would be members) in order to invest in real property, transfer the whole or part of their current superannuation balances to the newly established SMSF and invest in real property through their own SMSF;
- (b) making recommendations and stating opinions of the kind referred to in (a) to persons (**clients**) who

attended home visits or run meetings conducted or arranged by Park Trent, such recommendations and statements of opinion being made by employees or persons contracted to Park Trent or employees or persons contracted to other companies within the Park Trent Group;

(c) making recommendations and stating opinions referred to in (a) by presenting clients who attended run meetings conducted or arranged by Park Trent with Property Investment Analyses (**PIAs**) incorporating projections as to financial returns, prepared on the basis that the clients would establish or use SMSFs to invest in real property; and

(d) facilitating the establishment of SMSFs by clients, the transfer of clients' superannuation accounts or balances to the newly established SMSFs and the completion of the purchase of investment properties through the SMSFs.

2. Order pursuant to s 1101B(1) of the Corporations Act, that Park Trent be permanently restrained, by itself, its servants or agents or otherwise, from the following conduct:

(a) making recommendations or stating opinions to persons attending Seminars or other meetings or presentations conducted or arranged by Park Trent that they should establish their own SMSF in order to invest in real property, transfer the whole or part of their current superannuation accounts or balances to the newly established SMSF or invest in real property through their own SMSF;

(b) making recommendations or stating opinions as to the matters referred to in (a) to persons (**clients**) who attend or participate in home visits, run meetings or other meetings conducted or arranged by Park Trent, whether such recommendations are made or opinions are stated by employees or person contracted to Park Trent or employees or persons contracted to other companies within the Park Trent Group;

(c) making recommendations or stating opinions as to the matters referred to in (a) by presenting or making available to clients, whether at meetings or otherwise, PIAs or other similar documents incorporating projections as to financial returns achievable by investing in real property, when the projections are prepared on the basis that the clients will establish or use an SMSF to invest in real property; or

(d) making recommendations or stating opinions

as to the matters referred to in (a) by facilitating or otherwise assisting in the establishment of an SMSF by clients or the transfer of clients' superannuation accounts or balances to an SMSF, unless and until Park Trent obtains an AFSL within the meaning of s 911A(1) of the Corporations Act.

3. Order that within a period of seven days from the date of these Orders Park Trent post a notice in the form of Schedule A to these Orders on the website www.parktrent.com.au and leave the notice in place for a period of 90 days from the date the notice is posted.

4. Order that Park Trent pay the costs of the Plaintiff (**ASIC**) of the proceedings.

Catchwords: **CORPORATIONS LAW** – contravention of s 911A(1) of the Corporations Act 2001 (Cth) – form of declaration and restraining order

Legislation Cited: Corporations Act 2001 (Cth)
Superannuation Investment (Supervision) Act 1993 (Cth)

Cases Cited:

Category: Principal judgment

Parties: Australian Securities & Investments Commission (Plaintiff)
Park Trent Properties Group Pty Limited (Defendant)

Representation: Counsel:
EA Cheeseman SC / TO Prince / KS Anderson (Plaintiff)
J Hewitt / EW Young (supplementary written submissions) (Defendant)

Solicitors:
Australian Securities & Investments Commission (Plaintiff)
HWL Ebsworth Lawyers (Defendant)

File Number(s): 2014/331307

Publication Restriction: Nil

JUDGMENT

- 1 **SACKVILLE AJA:** The Principal Judgment in this matter was delivered on 15 October 2015.¹ I did not make final orders in the Principal Judgment but invited the parties to make written submissions on the form of a declaration and restraining order proposed in the Judgment.²
- 2 The parties have each provided written submissions. In addressing these submissions, I use the same abbreviations as in the Principal Judgment.
- 3 The declaration proposed in the Principal Judgment (**Proposed Declaration**) is as follows:

“A declaration pursuant to s 1101B(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**) that the defendant (**Park Trent**), throughout the period from March 2010 until the date of the trial, contravened s 911A(1) of the *Corporations Act* in that it carried on the business of providing financial services, namely financial product advice, by making recommendations or statements of opinion intended to influence persons (or which could reasonably be regarded as intended to have such an influence) in making a decision to acquire, vary or dispose of a superannuation interest within the meaning of the *Superannuation Investment (Supervision) Act 1993* (Cth) (**SIS Act**), without holding an Australian Financial Services Licence (**AFSL**) covering the provision of the financial services, and did so by:

- (a) making recommendations and stating opinions to persons attending Seminars conducted or arranged by Park Trent that they should establish their own Self Managed Superannuation Fund (**SMSF**) (of which they would be members) in order to invest in real property, transfer the whole or part of their current superannuation balances to the newly established SMSF and invest in real property through their own SMSF;
- (b) making recommendations and stating opinions of the kind referred to in (a) to persons (**clients**) who attended home visits or run meetings conducted or arranged by Park Trent, such recommendations and statements of opinion being made by employees or persons contracted to Park Trent or employees or persons contracted to other companies within the Park Trent Group;
- (c) making recommendations and stating opinions referred to in (a) by presenting clients who attended run meetings conducted or arranged by Park Trent with Property Investment Analyses (**PIAs**) incorporating

¹ *Australian Securities and Investments Commission v Park Trent Properties Group Pty Ltd (No 3)* [2015] NSWSC 1527 (**Principal Judgment**).

² Principal Judgment at [490], [511], [517].

- projections as to financial returns, prepared on the basis that the clients would establish or use SMSFs to invest in real property; and
- (d) facilitating the establishment of SMSFs by clients, the transfer of clients' superannuation accounts or balances to the newly established SMSFs and the completion of the purchase of investment properties through the SMSFs."

4 The restraining order proposed in the Principal Judgment (**Proposed Restraining Order**) is as follows:

"Pursuant to s 1101B(1) of the *Corporations Act 2001* (Cth), the defendant (**Park Trent**) be permanently restrained, by itself, its servants or agents or otherwise, from the following conduct:

- (a) making recommendations or stating opinions to persons attending Seminars or other meetings or presentations conducted or arranged by Park Trent that they should establish their own Self Managed Superannuation Fund (**SMSF**) in order to invest in real property, transfer the whole or part of their current superannuation accounts or balances to the newly established SMSF or invest in real property through their own SMSF;
- (b) making recommendations or stating opinions as to the matters referred to in (a) to persons (**clients**) who attend or participate in home visits, run meetings or other meetings conducted or arranged by Park Trent, whether such recommendations are made or opinions are stated by employees or person contracted to Park Trent or employees or persons contracted to other companies within the Park Trent Group;
- (c) making recommendations or stating opinions as to the matters referred to in (a) by presenting or making available to clients, whether at meetings or otherwise, Property Investment Analyses (**PIAs**) or other similar documents incorporating projections as to financial returns achievable by investing in real property, when the projections are prepared on the basis that the clients will establish or use an SMSF to invest in real property; or
- (d) facilitating or otherwise assisting in the establishment of an SMSF by clients or the transfer of clients' superannuation accounts or balances to an SMSF."

The Proposed Declaration

5 Neither ASIC nor Park Trent makes any submissions as to the form of the Proposed Declaration. A declaration in that form should therefore be made.

The Proposed Restraining Order

Park Trent's submissions

6 Park Trent submits that the Proposed Restraining Order should not be made in the form suggested in the Principal Judgment. It suggests three substantive changes to the Proposed Restraining Orders.

7 First, Park Trent submits that the following words should be added to the Proposed Restraining Order:

“unless and until Park Trent obtains an Australian financial services licence [AFSL] within the meaning of s 911A of the Corporations Act 2001 (Cth), or it otherwise lawfully becomes permitted to make the said recommendations or state the said opinions pursuant to any amended or future legislation”.

8 Park Trent says that the additional words would ensure it is restrained from making recommendations or stating opinions on the specified matters only while it does not hold an AFSL issued under the Corporations Act. Park Trent submits that if it applies for and obtains an AFSL, it will be entitled to make recommendations or state opinions intended to influence decisions in relation to SMSFs, without contravening the Corporations Act. Park Trent also says that the statutory regime governing the conduct of financial services businesses may change so that the conduct found to have contravened s 911A(1) of the Corporations Act will no longer be unlawful. Park Trent argues that the Proposed Restraining Order should be drafted to accommodate both situations.

9 Secondly, Park Trent submits that par (c) of the Proposed Restraining Order should be amended to include additional words as follows:

“making recommendations or stating opinions as to the matters referred to in (a) by presenting or making available to clients, whether at meetings or otherwise, Property Investment Analyses (PIAs) or other similar documents **prepared by Park Trent or its agents, or any other person who does not hold an Australian financial services licence within the meaning of s 911A of the Corporations Act 2001 (Cth) which incorporates** projections as to financial returns achievable by investing in real property, when the projections are prepared on the basis that the clients will establish or use an SMSF to invest in real property.” (Emphasis added.)

- 10 Park Trent contends that a third party holder of an AFSL is entitled to make recommendations or express opinions on matters related to SMSFs and that the Proposed Restraining Order should not prevent Park Trent passing on any such recommendations or opinions. Park Trent submits that if Park Trent simply presents or makes available the recommendations or opinions stated by a duly licensed third party, it will not contravene s 911A(1) of the Corporations Act. It follows, so Park Trent argues, that the Proposed Restraining Order should not extend to such non-contravening conduct. The assumption underlying this submission appears to be that any recommendation or opinion conveyed to the client would be made or expressed solely by the third party and not by Park Trent.
- 11 Thirdly, Park Trent submits that par (d) of the Proposed Restraining Order is unduly broad, in that it prohibits a wide range of conduct and is not limited to “unlicensed representations”. Park Trent illustrates the submission by positing a case where a client asks Park Trent for assistance in filling out a form required by the client’s personal accountant in order to establish an SMSF. In such a case, so it is argued, Park Trent is not making recommendations or expressing opinions about the desirability of establishing an SMSF, but is merely responding to a request for assistance.

Reasoning

- 12 There is no evidence that Park Trent intends to apply for an AFSL or that, if it does apply, it is likely to be granted an AFSL. Nonetheless if Park Trent was to succeed in obtaining an AFSL, the conduct subject to the Proposed Restraining Order would not involve a contravention of s 911A(1) of the Corporations Act. In my view, the language of the Proposed Restraining Order should be modified to cover the possibility that Park Trent might apply for and be granted an AFSL.
- 13 Park Trent has not identified any licence or authorisation, other than an AFSL, that would enable it to conduct a financial services business lawfully. In my opinion, it is not appropriate for the Proposed Restraining Order to

accommodate the possibility that future legislation might remove the current prohibition currently contained in s 911A(1) of the Corporations Act. If the law changes, for example, to repeal the statutory prohibition on carrying on a financial services business without an AFSL, Park Trent can apply to the Court to rescind the Proposed Restraining Order.³

- 14 Paragraph (c) of the Proposed Restraining Order restrains Park Trent from making recommendations or stating opinions by presenting or making available to clients PIAs or similar documents incorporating projections as to financial returns achievable by investing in real property through an SMSF. If Park Trent makes recommendations or states opinions as to the matters identified in par (a) of the Proposed Restraining Order by presenting or making available PIAs to clients, it is immaterial who prepares the PIAs. Even if the PIAs are prepared by a third party holding an AFSL, Park Trent itself is making the relevant recommendations or stating the relevant opinions. In short, Park Trent does not avoid the need to obtain an AFSL to conduct its business simply by ensuring that the PIAs, which have been integral to Park Trent's marketing program, are prepared by a third party who holds an AFSL.⁴
- 15 Paragraph (c) of the Proposed Restraining Order in its present form does not prevent Park Trent from doing no more than referring a client to the holder of an AFSL for advice as to whether the client should set up or use an SMSF in order to invest in real property. A referral **without more** would not involve Park Trent in making a recommendation or stating an opinion as to whether the client should establish an SMSF or use an SMSF to purchase an investment property. Nor does the Proposed Restraining Order prevent Park Trent from merely acting as a conduit to communicate a recommendation made or opinion stated by the holder of an AFSL in connection with the establishment or use of an SMSF, **provided Park Trent's actions do not involve making recommendations or stating opinions as to the matters identified in par (a) of the Proposed Restraining Order.**

³ Corporations Act, s 1101B(11).

⁴ See Primary Judgment at [466]: "The very point of the PIAs is to convince clients that investment in property through an SMSF is a sound strategy and is very likely to produce high returns over the medium term."

- 16 It is well to point out, as the Principal Judgment makes clear, that Park Trent's conduct over a long period has gone well beyond simply referring clients to a licensed adviser or merely acting as a conduit for advice prepared by a licensed adviser. I have found, for example, that Park Trent's presentation of a PIA to a client, who can afford to purchase an investment property only by using his or her existing superannuation balance, effectively incorporates recommendations as to the merits of setting up an SMSF to purchase the property.⁵ Unless Park Trent very substantially modifies its business practices, it is difficult to see how it can continue to present or make available PIAs to a client relating to the use or establishment of an SMSF to purchase real property without contravening both s 911A(1) of the Corporations Act and the Proposed Restraining Order.
- 17 In my view no change should be made to par (c) of the Proposed Restraining Order.
- 18 I think that there is some force in Park Trent's contention that par (d) of the Proposed Restraining Order potentially could apply in situations where Park Trent is not carrying on a financial services business. The form of a restraining order made pursuant to s 1101B(1) of the Corporations Act should reflect the contravening conduct and should not extend beyond that conduct. The difficulty identified by Park Trent can be overcome by inserting into par (d) the same introductory words as appear in pars (b) and (c) of the Proposed Restraining Order, namely:

“making recommendations or stating opinions as to the matters referred to in (a) by ...”.

⁵ Principal Judgment at [387].

The Notification Orders

The orders sought by ASIC

19 ASIC submits that an order should be made in terms of Prayer 3 of the Originating Process filed on 10 November 2014. Prayer 3 seeks an order pursuant to s 1101B(1) of the Corporations Act that Park Trent:

- (a) Send a notice, in a form to be approved by the Court, of any final relief granted in this proceeding, to all current or former clients of [Park Trent] in relation to which [ParkTrent] has:
 - (i) provided, or arranged the provision of, assistance in establishing a self-managed superannuation fund (SMSF); or
 - (ii) sold, or arranged the sale of, a property which has been purchased using an SMSF; or
 - (iii) provided, or arranged for the provision of, assistance in transferring funds into an SMSF;
- (b) Post a notice, in a form to be approved by the Court, of any final relief in this proceeding, on the website www.parktrent.com.au for a period of 90 days from the date of this order, with a hyperlink to the notice referred to in paragraph (a) of this order; and
- (c) Within 7 days of the making of this order, file with the Court an affidavit to be sworn or affirmed by [Park Trent's] director, Mr Ronald Cross, confirming that [Park Trent] has complied with paragraphs (a) and (b) of this order, including an explanation of the steps taken in order to comply, and the names and addresses of all persons to whom it has sent a notice in compliance with paragraph (a) above" (**Notification Orders**).

20 Schedule A to ASIC's submissions sets out a form of notice containing 11 paragraphs. The proposed letter contains the terms of the declaration and restraining order made by the Court. It also includes the following paragraphs:

Why you have received this notice

1. You have been sent this notice because:
 - (a) you have been identified from the records of Park Trent as either a former or current client of Park Trent;
 - (b) you may have received advice from Park Trent regarding investing in property via a self-managed superannuation fund (**SMSF**); and
 - (c) you may wish to consider obtaining independent advice from a licensed financial advisor regarding your SMSF and/or your financial circumstances more generally.

.....

Advice regarding your financial circumstances and SMSFs

7. You may wish to consider obtaining financial advice and/or legal advice about financial decisions you have made regarding your superannuation as a result of your dealings with Park Trent.
8. Deciding what to do with your superannuation is one of the most important financial decisions you will make. Obtaining financial advice from a licensed financial adviser can help you:
 - Set and achieve your financial goals;
 - Make the most of your money;
 - Get any government assistance you're entitled to;
 - Feel more in control of your finances and your life;
 - Avoid expensive mistakes;
 - Protect your assets.
9. For your reference, enclosed with this letter is a document published by ASIC entitled Financial advice and you. The document sets out
 - (a) what kind of financial advice may be useful to you;
 - (b) the best place to get financial advice; and
 - (c) how to get the most from your conversations with a financial adviser.

21 Schedule B to ASIC's submissions sets out the form of notice that it says that Park Trent should be required to place on its website, as follows:⁶

"IMPORTANT NOTICE regarding breach of section 911A of the Corporations Act 2001 by Park Trent Properties [sic] Group Pty Ltd carrying on an unlicensed financial services business

1. Following an investigation that it carried out into Park Trent Properties Group Pty Ltd (**Park Trent**), the Australian Securities & Investments Commission (**ASIC**) commenced proceedings against Park Trent in the Supreme Court of New South Wales No 331307 of 2014 (the **Proceedings**). The proceedings were heard in June 2015 and reasons for judgment were delivered on 15 October 2015: *Australian Securities and Investments Commission v Park Trent Properties Group Pty Ltd (No 3)* [2015] NSWSC 78.
3. On 15 October 2015, Sackville AJA held that throughout the period from March 2010 to the date of trial Park Trent breached s 911A of the Corporations Act by carrying on an unlicensed financial services business. A person carrying on a financial services business involving giving financial product advice is required to hold an Australian Financial Services Licence (**AFSL**) or be an authorised representative of a holder of an AFSL.

⁶ The numbering of paragraphs is as in Schedule B to ASIC's submissions.

4. Park Trent does not presently hold and has never held an AFSL and is not presently, and has never been, an authorised representative of an AFSL holder.
5. The Court made the following declaration:
[Insert final form of declaration]
6. The Court also made the following orders:
Injunction
[Insert final form of declaration [sic]]
7. On [insert date order was made], Park Trent Properties Group Pty Ltd (**Park Trent**) was ordered by the Supreme Court of New South Wales to write to its current and former clients, and to place this notice on its website.
8. For more information, a copy of the letter sent to Park Trent's current and former clients is available here [insert hyperlink to notice in the form of Schedule A]".

Submissions

- 22 ASIC submits that the Notification Orders should be made because they provide a means of ameliorating the impact of Park Trent's contravening conduct, which has taken place over a lengthy period. Specifically, so ASIC argues, a notice given to former and current clients of Park Trent would alert them to the desirability of obtaining appropriate advice concerning the establishment or use of an SMSF to invest in real estate.
- 23 ASIC contends that the Notification Orders would not present significant logistical problems for Park Trent, since it has maintained a comprehensive database recording details of clients who have set up SMSFs or have purchased properties through existing SMSFs. ASIC says that clients of Park Trent who receive timely advice from a licensed adviser may have an opportunity of mitigating any losses flowing from the transactions arranged by Park Trent or to avoid future losses.
- 24 Park Trent submits that the Notification Orders proposed by ASIC are:

"unnecessary and designed more to punitively humiliate Park Trent and damage its goodwill ... than [to] achieve any practical benefit".

25 Park Trent states that the Principal Judgment has had “a salutary effect” upon it. Park Trent’s written submissions record what is said to be its contrition coupled with its desire to continue to operate its business in a manner that complies with the law. Even so, it warns that clients may sustain financial loss if they are prompted to terminate their real estate investments prematurely, thereby depriving themselves of the opportunity realise the benefits of their investments. Park Trent further contends that the Notification Orders will do little to ameliorate the effect of any recommendations made or opinions expressed by Park Trent in the past.

Reasoning

26 Although ASIC’s Originating Process sought the Notification Orders, its final written submissions at the trial did not address whether any such orders should be made. The last paragraph of ASIC’s final written submissions noted that it might be appropriate to allow the parties to make further brief submissions on the form of any orders. However, ASIC did not foreshadow that it would ask for relief in the form of Prayer 3 of the Originating Process until it filed written submissions in response to the directions given in the Principal Judgment.

27 In my view, there is likely to be little utility and some dangers in requiring Park Trent to send a letter to its clients as proposed by ASIC. I have not formed this view because I think the letter might cause clients (as Park Trent somewhat optimistically suggests) to forfeit gains from inevitable increases in the value of real estate. I have two quite different concerns.

28 The first concern is that a letter indicating that clients or former clients of Park Trent would be well advised to seek legal or financial advice is bound to cause anxiety if not alarm to some recipients. This is particularly likely where the letter, in effect, has the imprimatur of the Supreme Court of New South Wales. Unless there is a clear advantage to be gained, the Court in my opinion should be cautious before requiring a letter to be sent to an entire

class of people, most of whom would have no knowledge of the legal proceedings.

- 29 The second and related concern is that ASIC did not adduce any evidence as to the practical benefit of sending the proposed letter. It is therefore not clear what a letter in this form is likely to achieve. For example, most of Park Trent's clients agreed to purchase a property from a vendor unrelated to Park Trent and, in due course, completed the purchase. ASIC's submissions do not explain what the benefits to the client of obtaining legal advice (at his or her expense) might be. Similarly, it is not clear why an entire class of investors, whose circumstances vary considerably, should be sent a letter advising them to consider obtaining financial advice. It is no doubt true that many relatively unsophisticated investors might benefit from independent financial advice. It is also true that some clients of Park Trent have been exposed to the risk of significant financial loss by following the recommendations made to them by Park Trent. Nonetheless, the evidence does not satisfy me that a substantial proportion of Park Trent's clients or former clients are likely to improve their current position by being encouraged to seek general financial advice at their own expense.
- 30 For these reasons I do not think that Park Trent should be ordered to send a letter to clients and former clients as proposed by ASIC.
- 31 In my opinion, however, an order should be made requiring Park Trent to place a notice on its website informing clients and potential clients (and others who visit the website) that the Court has found Park Trent contravened the Corporations Act and has made a declaration and orders against it. An order requiring publication of a notice on its website appropriately recognises the seriousness of Park Trent's contravention and the public interest in bringing Park Trent's conduct to the attention of the community, including current or potential clients of Park Trent. The public interest extends to providing clients and potential clients with the means of ascertaining the constraints under which Park Trent must operate pursuant to the orders made by the Court.

32 There is nothing to support Park Trent's submissions that an order requiring publication of a notice on its website is designed to punish or humiliate it, without achieving any practical effect. The publication of a notice advances the public interest in the ways I have identified.

33 Accordingly, I intend to direct Park Trent to post a notice on its website substantially in the form prepared by Park Trent, but with the references to a client letter removed. As it will be for ASIC to verify that the notice has been posted on Park Trent's website, I do not think it is necessary to require an affidavit of compliance to be filed.

Costs

34 Park Trent does not dispute that in view of the findings made in the Principal Judgment an order should be made that Park Trent pay ASIC's costs of the proceedings.

Final Declaration and Orders

35 For the reasons I have given, the following declaration and orders should be made:

1. Declare pursuant to s 1101B(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**) that the defendant (**Park Trent**), throughout the period from March 2010 until the date of the trial, contravened s 911A(1) of the Corporations Act in that it carried on the business of providing financial services, namely financial product advice, by making recommendations or statements of opinion intended to influence persons (or which could reasonably be regarded as intended to have such an influence) in making a decision to acquire, vary or dispose of a superannuation interest within the meaning of the *Superannuation Investment (Supervision) Act 1993* (Cth) (**SIS Act**), without holding an Australian Financial Services Licence (**AFSL**) covering the provision of the financial services, and did so by:

- (a) making recommendations and stating opinions to persons attending Seminars conducted or arranged by Park Trent that they should establish their own Self Managed Superannuation Fund (**SMSF**) (of which they would be members) in order to invest in real property, transfer the whole or part of their current superannuation balances to the newly established SMSF and invest in real property through their own SMSF;
 - (b) making recommendations and stating opinions of the kind referred to in (a) to persons (**clients**) who attended home visits or run meetings conducted or arranged by Park Trent, such recommendations and statements of opinion being made by employees or persons contracted to Park Trent or employees or persons contracted to other companies within the Park Trent Group;
 - (c) making recommendations and stating opinions referred to in (a) by presenting clients who attended run meetings conducted or arranged by Park Trent with Property Investment Analyses (**PIAs**) incorporating projections as to financial returns, prepared on the basis that the clients would establish or use SMSFs to invest in real property; and
 - (d) facilitating the establishment of SMSFs by clients, the transfer of clients' superannuation accounts or balances to the newly established SMSFs and the completion of the purchase of investment properties through the SMSFs.
2. Order pursuant to s 1101B(1) of the Corporations Act, that Park Trent be permanently restrained, by itself, its servants or agents or otherwise, from the following conduct:
- (a) making recommendations or stating opinions to persons attending Seminars or other meetings or presentations conducted or arranged by Park Trent that they should establish their own SMSF in order to invest in real property, transfer the

whole or part of their current superannuation accounts or balances to the newly established SMSF or invest in real property through their own SMSF;

- (b) making recommendations or stating opinions as to the matters referred to in (a) to persons (**clients**) who attend or participate in home visits, run meetings or other meetings conducted or arranged by Park Trent, whether such recommendations are made or opinions are stated by employees or person contracted to Park Trent or employees or persons contracted to other companies within the Park Trent Group;
- (c) making recommendations or stating opinions as to the matters referred to in (a) by presenting or making available to clients, whether at meetings or otherwise, PIAs or other similar documents incorporating projections as to financial returns achievable by investing in real property, when the projections are prepared on the basis that the clients will establish or use an SMSF to invest in real property; or
- (d) making recommendations or stating opinions as to the matters referred to in (a) by facilitating or otherwise assisting in the establishment of an SMSF by clients or the transfer of clients' superannuation accounts or balances to an SMSF;

unless and until Park Trent obtains an AFSL within the meaning of s 911A(1) of the Corporations Act.

3. Order that within a period of seven days from the date of these Orders Park Trent post a notice in the form of Schedule A to these Orders on the website www.parktrent.com.au and leave the notice in place for a period of 90 days from the date the notice is posted.
4. Order that Park Trent pay the costs of the Plaintiff (**ASIC**) of the proceedings.

SCHEDULE A

IMPORTANT NOTICE CONCERNING A BREACH OF THE CORPORATIONS ACT 2001 (CTH) BY PARK TRENT PROPERTIES GROUP PTY LTD

1. Following an investigation that it carried out into Park Trent Properties Group Pty Ltd (**Park Trent**), the Australian Securities & Investments Commission (**ASIC**) commenced proceedings against Park Trent in the Supreme Court of New South Wales No 331307 of 2014 (the **Proceedings**). The proceedings were heard in June 2015 and reasons for judgment were delivered on 15 October 2015: *Australian Securities & Investments Commission v Park Trent Properties Group Pty Ltd (No 3)* [2015] NSWSC 78.
2. On 15 October 2015, the Supreme Court found that throughout the period from March 2010 to the date of trial Park Trent breached s 911A of the Corporations Act by carrying on a financial services business without an Australian Financial Services Licence (**AFSL**).
3. Park Trent does not presently hold and has never held an AFSL and is not presently, and has never been, an authorised representative of an AFSL holder.
4. The Supreme Court made the following declaration:

Declare pursuant to s 1101B(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**) that the defendant (**Park Trent**), throughout the period from March 2010 until the date of the trial, contravened s 911A(1) of the Corporations Act in that it carried on the business of providing financial services, namely financial product advice, by making recommendations or statements of opinion intended to influence persons (or which could reasonably be regarded as intended to have such an influence) in making a decision to acquire, vary or dispose of a superannuation interest within the meaning of the *Superannuation*

Investment (Supervision) Act 1993 (Cth) (**SIS Act**), without holding an Australian Financial Services Licence (**AFSL**) covering the provision of the financial services, and did so by:

- (a) making recommendations and stating opinions to persons attending Seminars conducted or arranged by Park Trent that they should establish their own Self Managed Superannuation Fund (**SMSF**) (of which they would be members) in order to invest in real property, transfer the whole or part of their current superannuation balances to the newly established SMSF and invest in real property through their own SMSF;
- (b) making recommendations and stating opinions of the kind referred to in (a) to persons (**clients**) who attended home visits or run meetings conducted or arranged by Park Trent, such recommendations and statements of opinion being made by employees or persons contracted to Park Trent or employees or persons contracted to other companies within the Park Trent Group;
- (c) making recommendations and stating opinions referred to in (a) by presenting clients who attended run meetings conducted or arranged by Park Trent with Property Investment Analyses (**PIAs**) incorporating projections as to financial returns, prepared on the basis that the clients would establish or use SMSFs to invest in real property; and
- (d) facilitating the establishment of SMSFs by clients, the transfer of clients' superannuation accounts or balances to the newly established SMSFs and the completion of the purchase of investment properties through the SMSFs.

5. The Court also made the following restraining order:

Order pursuant to s 1101B(1) of the Corporations Act, that Park Trent be permanently restrained, by itself, its servants or agents or otherwise, from the following conduct:

- (a) making recommendations or stating opinions to persons attending Seminars or other meetings or presentations conducted or arranged by Park Trent that they should establish their own SMSF in order to invest in real property, transfer the whole or part of their current superannuation accounts or balances to the newly established SMSF or invest in real property through their own SMSF;
- (b) making recommendations or stating opinions as to the matters referred to in (a) to persons (**clients**) who attend or participate in home visits, run meetings or on other meetings conducted or arranged by Park Trent, whether such recommendations are made or opinions are stated by employees or person contracted to Park Trent or employees or persons contracted to other companies within the Park Trent Group;
- (c) making recommendations or stating opinions as to the matters referred to in (a) by presenting or making available to clients, whether at meetings or otherwise, PIAs or other similar documents incorporating projections as to financial returns achievable by investing in real property, when the projections are prepared on the basis that the clients will establish or use an SMSF to invest in real property; or
- (d) making recommendations or stating opinions as to the matters referred to in (a) by facilitating or otherwise assisting in the establishment of an SMSF by clients or the transfer of clients' superannuation accounts or balances to an SMSF,

unless and until Park Trent obtains an AFSL within the meaning of s 911A(1) of the Corporations Act.

6. The Supreme Court directed Park Trent to place this notice on its website and to retain the notice on the website for a period of 90 days from the date of posting.

I certify that the preceding ³⁵ paragraphs are a true copy of the reasons for judgment herein of the Honourable Acting Justice Sackville.

Date: 27 November 2015

Associate: 

