

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 22/02/2019 11:09:22 AM AEDT and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

### Filing and Hearing Details

|                            |   |
|----------------------------|---|
| Document Lodged:           | Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2              |
| File Number:               | VID146/2019   |
| File Title:                | AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v GETSWIFT LIMITED (ACN 604 611 556) & ORS |
| Registry:                  | VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA  |
| Reason for Listing:        | First Case Management Hearing   |
| Time and date for hearing: | 01/03/2019, 9:30 AM   |
| Place:                     | Please check Daily Court List for details   |



A handwritten signature in blue ink, which appears to read "Warwick Soden".

Dated: 22/02/2019 4:05:06 PM AEDT

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



ORIGINATING PROCESS

No VID of 2019

IN THE FEDERAL COURT OF AUSTRALIA

DISTRICT REGISTRY: VICTORIA

DIVISION: GENERAL

NPA: Commercial and Corporations, Regulator and Consumer Protection

IN THE MATTER OF GETSWIFT LIMITED (ACN 604 611 556)

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

GETSWIFT LIMITED (ACN 604 611 556) AND OTHERS NAMED IN THE SCHEDULE

Defendants

A. DETAILS OF APPLICATION

This application is made under section 21 of the *Federal Court of Australia Act 1976* (Cth) (**Federal Court Act**) and sections 206C(1), 206E(1), 1317E and 1317G(1A) of the *Corporations Act 2001* (Cth) (**Corporations Act**).

The Plaintiff seeks declarations of contraventions of the Corporations Act and the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**), pecuniary penalty orders, disqualification orders and costs.

In this Originating Process, terms which are defined in the Concise Statement dated 22 February 2019 have the same meaning in this document.

On the facts stated in the accompanying Concise Statement, the Plaintiff seeks:

**GetSwift Limited**

1 Declarations:

- (a) pursuant to section 1317E of the Corporations Act, that GetSwift Limited (**GSW**) contravened section 674(2) of the Corporations Act by failing to notify ASX Limited (**ASX**) of the following information (either individually, collectively, or in any combination):
  - (i) on and from 24 February 2017, the information referred to in paragraphs 7 and 8 of the Concise Statement;
  - (ii) between 20 March 2017 and 25 January 2018, the information referred to in paragraph 10 of the Concise Statement;

|   |   |     |              |
|---|---|-----|--------------|
| Filed on behalf of (name & role of party) | Australian Securities and Investments Commission, the Plaintiff |     |              |
| Prepared by (name of person/lawyer)       | Tom Jarvis  |     |              |
| Law firm (if applicable)                  | Johnson Winter & Slattery                                       |     |              |
| Tel                                       | 03 8611 1336  | Fax | 03 9280 3402 |
| Email                                     | tom.jarvis@jws.com.au   |     |              |
| Address for service                       | Level 34, 55 Collins Street, Melbourne, VIC 3000                |     |              |
| (include state and postcode)              | 74946090  |     |              |



- (iii) on and from 4 April 2017, the information referred to in paragraph 15 of the Concise Statement;
- (iv) on and from 28 April 2017, the information referred to in paragraph 15 of the Concise Statement;
- (v) on and from 8 May 2017, the information referred to in paragraph 18 of the Concise Statement;
- (vi) on and from 17 July 2017, the information referred to in paragraph 18 of the Concise Statement;
- (vii) on and from 22 May 2017, the information referred to in paragraph 21 of the Concise Statement;
- (viii) on and from 1 July 2017, the information referred to in paragraph 21 of the Concise Statement;
- (ix) on and from 1 June 2017, the information referred to in paragraph 24 of the Concise Statement;
- (x) on and from 23 August 2017, the information referred to in paragraph 27 of the Concise Statement;
- (xi) on and from 22 September 2017, the information concerning Fantastic Furniture referred to in paragraph 28 of the Concise Statement;
- (xii) on and from 1 November 2017, the information concerning Betta Homes referred to in paragraph 28 of the Concise Statement;
- (xiii) on and from 30 August 2017, the information referred to in paragraph 31 of the Concise Statement;
- (xiv) between 18 August 2017 and 12 September 2017, the information referred to in paragraph 34 of the Concise Statement;
- (xv) on and from 12 September 2017, the information referred to in paragraph 35 of the Concise Statement;
- (xvi) on and from 25 October 2017, the information referred to in paragraph 38 of the Concise Statement;
- (xvii) on and from 9 January 2018, the information referred to in paragraph 38 of the Concise Statement;
- (xviii) on and from 1 December 2017, the information referred to in paragraphs 41 and 42 of the Concise Statement; and
- (xix) on and from 1 December 2017, the information referred to in paragraph 45 of the Concise Statement,

in circumstances where:

- (xx) in each case, GSW was aware of the information;
- (xxi) GSW was, by rule 3.1 of the ASX Listing Rules (**Rule 3.1**), required to notify the information to the ASX;
- (xxii) the information was not generally available; and





(xxiii) a reasonable person would expect the information (either individually or collectively, or in any combination) to have a material effect on the price or value of GSW securities; and

- (b) that the contraventions referred to in subparagraph (a):
- (i) materially prejudiced the interests of acquirers or disposers of GSW securities within the meaning of section 1317G(1A)(c)(i) of the Corporations Act;
  - (ii) further or alternatively, were serious within the meaning of section 1317G(1A)(c)(iii) of the Corporations Act.

2 A declaration pursuant to section 21 of the Federal Court Act that, by:

- (a) making the representations contained in each of the announcements referred to in the Concise Statement;
- (b) making the other representations referred to in the Concise Statement; and
- (c) failing to disclose the information referred to in paragraph 1(a)(i) to (xiii) and (xv) to (xix) above,

GSW, in this jurisdiction, engaged in conduct, in relation to a financial product or a financial service, that is misleading or deceptive or is likely to mislead or deceive, in contravention of section 1041H(1) of the Corporations Act.

3 A declaration pursuant to section 21 of the Federal Court Act that, by:

- (a) making the representations contained in each of the announcements referred to in the Concise Statement;
- (b) making the other representations referred to in the Concise Statement; and
- (c) failing to disclose the information referred to in paragraph 1(a)(i) to (xiii) and (xv) to (xix) above,

GSW, in trade or commerce, engaged in conduct in relation to financial services that is misleading or deceptive or is likely to mislead or deceive, in contravention of section 12DA(1) of the ASIC Act.

4 An order pursuant to section 1317G(1A) of the Corporations Act that GSW pay to the Commonwealth of Australia a pecuniary penalty in such amount as the Court considers appropriate in respect of each of the declared contraventions of section 674(2) of the Corporations Act.

5 An order that GSW pay the Plaintiff's costs.

#### Mr Hunter

6 A declaration:

- (a) pursuant to section 1317E of the Corporations Act, that Bane Hunter (**Hunter**) was involved in each of the contraventions by GSW referred to in paragraph 1 above and thereby contravened section 674(2A) of the Corporations Act on each occasion; and
- (b) that the contraventions referred to in subparagraph (a):



- (i) materially prejudiced the interests of acquirers or disposers of securities within the meaning of section 1317G(1A)(c) of the Corporations Act;
- (ii) further or alternatively, were serious within the meaning of section 1317G(1A)(c)(iii) of the Corporations Act.

7 A declaration:

- (a) pursuant to section 1317E of the Corporations Act, that in and from February 2017, Hunter contravened section 180(1) of the Corporations Act by failing to exercise his powers and discharge his duties to GSW with the degree of care and diligence that a reasonable person would exercise, if they were a director of a corporation in GSW's circumstances and occupied the office held by Hunter and had the same responsibilities within the corporation as Hunter, by failing to ensure that he:
  - (i) took all necessary steps to ensure that any announcement or other document he approved for submission to the ASX was not misleading, or likely to mislead;
  - (ii) took all necessary steps to qualify, withdraw or correct any existing announcement or document submitted to the ASX to ensure such announcements or documents were not misleading;
  - (iii) only announced an agreement when the associated financial benefit to GSW was secure, quantifiable and measurable; and
  - (iv) took all necessary steps to ensure that material information concerning GSW was disclosed to the ASX; and
- (b) that the contraventions referred to in subparagraph (a):
  - (i) materially prejudiced the interests of GSW within the meaning of section 1317G(1)(b)(i) of the Corporations Act;
  - (ii) further or alternatively, were serious within the meaning of section 1317G(1)(b)(iii) of the Corporations Act.

8 A declaration:

- (a) pursuant to section 1317E of the Corporations Act, that in and from February 2017, Hunter contravened section 180(1) of the Corporations Act by causing or permitting GSW to contravene:
  - (i) section 674(2) of the Corporations Act;
  - (ii) further or alternatively section 1041H(1) of the Corporations Act;
  - (iii) further or alternatively, section 12DA(1) of the ASIC Act,thereby exposing GSW to the risk of legal proceedings, including declarations of contravention and civil pecuniary penalties; and
- (b) that the contraventions referred to in subparagraph (a):
  - (i) materially prejudiced the interests of GSW within the meaning of section 1317G(1)(b)(i) of the Corporations Act;





- (ii) further or alternatively, were serious within the meaning of section 1317G(1)(b)(iii) of the Corporations Act.

9 A declaration pursuant to section 21 of the Federal Court Act that, by:

- (a) making the representations contained in each of the announcements referred to in the Concise Statement;
- (b) making the other representations referred to in the Concise Statement; and
- (c) failing to disclose the information referred to in paragraph 1(a)(i) to (xiii) and (xv) to (xix) above,

Hunter, in this jurisdiction, engaged in conduct, in relation to a financial product or a financial service, that is misleading or deceptive or is likely to mislead or deceive, in contravention of section 1041H(1) of the Corporations Act.

10 A declaration pursuant to section 21 of the Federal Court Act that, by:

- (a) making the representations contained in each of the announcements referred to in the Concise Statement;
- (b) making the other representations referred to in the Concise Statement; and
- (c) failing to disclose the information referred to in paragraph 1(a)(i) to (xiii) and (xv) to (xix) above,

Hunter, in trade or commerce, engaged in conduct in relation to financial services that is misleading or deceptive or is likely to mislead or deceive, in contravention of section 12DA(1) of the ASIC Act.

11 An order pursuant to section 1317G(1A) of the Corporations Act that Hunter pay to the Commonwealth of Australia a pecuniary penalty in such amount as the Court considers appropriate in respect of each of the declared contraventions of section 674(2A) of the Corporations Act.

12 An order pursuant to section 1317G(1A) of the Corporations Act that Hunter pay to the Commonwealth of Australia a pecuniary penalty in such amount as the Court considers appropriate in respect of each of the declared contraventions of section 180(1) of the Corporations Act.

13 An order pursuant to section 206C(1) and/or section 206E(1) of the Corporations Act disqualifying Hunter from managing corporations for a period to be determined by the Court.

14 An order that Hunter pay the Plaintiff's costs.

**Mr Macdonald**

15 A declaration:

- (a) pursuant to section 1317E of the Corporations Act, that Joel Richard Stuart Macdonald (**Macdonald**) was involved in each of the contraventions by GSW referred to in paragraph 1 above and thereby contravened section 674(2A) of the Corporations Act on each occasion; and
- (b) that the contraventions referred to in subparagraph (a):

- (i) materially prejudiced the interests of acquirers or disposers of GSW securities within the meaning of section 1317G(1A)(c) of the Corporations Act;
- (ii) further or alternatively, were serious within the meaning of section 1317G(1A)(c)(iii) of the Corporations Act.

16 A declaration:

- (a) pursuant to section 1317E of the Corporations Act, that in and from February 2017, Macdonald contravened section 180(1) of the Corporations Act by failing to exercise his powers and discharge his duties to GSW with the degree of care and diligence that a reasonable person would exercise, if they were a director of a corporation in GSW's circumstances and occupied the office held by Macdonald, and had the same responsibilities within the corporation as Macdonald, by failing to ensure that he:
  - (i) took all necessary steps to ensure that any announcement or other document he approved for submission to the ASX was not misleading, or likely to mislead;
  - (ii) took all necessary steps to qualify, withdraw or correct any existing announcement or document submitted to the ASX to ensure such announcements or documents were not misleading;
  - (iii) only announced an agreement when the associated financial benefit to GSW was secure, quantifiable and measurable; and
  - (iv) took all necessary steps to ensure that material information concerning GSW was disclosed to the ASX; and
- (b) that the contraventions referred to in subparagraph (a):
  - (i) materially prejudiced the interests of GSW within the meaning of section 1317G(1)(b)(i) of the Corporations Act;
  - (ii) further or alternatively, were serious within the meaning of section 1317G(1)(b)(iii) of the Corporations Act.

17 A declaration:

- (a) pursuant to section 1317E of the Corporations Act, that in and from February 2017, Macdonald contravened section 180(1) of the Corporations Act by causing or permitting GSW to contravene:
  - (i) section 674(2) of the Corporations Act;
  - (ii) further or alternatively, section 1041H(1) of the Corporations Act;
  - (iii) further or alternatively, section 12DA(1) of the ASIC Act,thereby exposing GSW to the risk of legal proceedings, including declarations of contravention and civil pecuniary penalties; and
- (b) that the contraventions referred to in subparagraph (a):
  - (i) materially prejudiced the interests of GSW within the meaning of section 1317G(1)(b)(i) of the Corporations Act;





- (ii) further or alternatively, were serious within the meaning of section 1317G(1)(b)(iii) of the Corporations Act.

18 A declaration pursuant to section 21 of the Federal Court Act that, by:

- (a) making the representations contained in each of the announcements referred to in the Concise Statement;
- (b) making the other representations referred to in the Concise Statement; and
- (c) failing to disclose the information referred to in paragraph 1(a)(i) to (xiii) and (xv) to (xix) above,

Macdonald, in this jurisdiction, engaged in conduct, in relation to a financial product or a financial service, that is misleading or deceptive or is likely to mislead or deceive, in contravention of section 1041H(1) of the Corporations Act.

19 A declaration pursuant to section 21 of the Federal Court Act that, by:

- (a) making the representations contained in each of the announcements referred to in the Concise Statement;
- (b) making the other representations referred to in the Concise Statement; and
- (c) failing to disclose the information referred to in paragraph 1(a)(i) to (xiii) and (xv) to (xix) above,

Macdonald, in trade or commerce, engaged in conduct in relation to financial services that is misleading or deceptive or is likely to mislead or deceive, in contravention of section 12DA(1) of the ASIC Act.

20 An order pursuant to section 1317G(1A) of the Corporations Act that Macdonald pay to the Commonwealth of Australia a pecuniary penalty in such amount as the Court considers appropriate in respect of each of the declared contraventions of section 674(2A) of the Corporations Act.

21 An order pursuant to section 1317G(1A) of the Corporations Act that Macdonald pay to the Commonwealth of Australia a pecuniary penalty in such amount as the Court considers appropriate in respect of each of the declared contraventions of section 180(1) of the Corporations Act.

22 An order pursuant to section 206C(1) and/or section 206E(1) of the Corporations Act disqualifying Macdonald from managing corporations for a period to be determined by the Court.

23 An order that Macdonald pay the Plaintiff's costs.

24 Such further or other orders as the Court considers appropriate.

Date: 22 February 2019

*Johnson Winter & Slatery*

*Signature of Plaintiff's legal practitioner*

This application will be heard by ..... at Owen Dixon  
Commonwealth Law Courts Building 305 William Street Melbourne VIC 3000 at ..... \*am/\*pm  
on .....





**B. NOTICE TO DEFENDANT(S) (IF ANY)**

**TO: GetSwift Limited (ACN 604 611 556)**

C/O The CFO Solution  
Level 3, 62 Lygon Street  
CARLTON VIC 3053

**AND Bane Hunter**

330 Ovington Avenue  
Brooklyn, New York 11209, United States

**AND Joel Richard Stuart Macdonald**

Unit 301, 45 Claremont Street  
SOUTH YARRA VIC 3141

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the Plaintiff.

*Note* Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

**C. FILING**

Date of filing: 22 February 2019

*Registrar*

This Originating Process is filed by Johnson Winter & Slattery, solicitors for the Plaintiff.

**D. SERVICE**

The Plaintiff's address for service is Level 34, 55 Collins Street, Melbourne, VIC 3000.  
It is intended to serve a copy of this Originating Process on each Defendant and on any person listed below:

[None]

**SCHEDULE**



**No VID**

**of 2019**

**IN THE FEDERAL COURT OF AUSTRALIA**

**DISTRICT REGISTRY: VICTORIA**

**DIVISION: GENERAL**

**NPA: Commercial and Corporations, Regulator and Consumer Protection**

|                  |   |
|------------------|---|
| Plaintiff        | <b>AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION</b> |
| First Defendant  | <b>GETSWIFT LIMITED (ACN 604 611 556)</b>               |
| Second Defendant | <b>BANE HUNTER</b>                                      |
| Third Defendant  | <b>JOEL RICHARD STUART MACDONALD</b>                    |