

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 7/06/2019 11:59:56 AM AEST 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:	NSD906/2019
File Title:	AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v R M CAPITAL PTY LTD ACN 065 412 820 & ANOR
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



A handwritten signature in blue ink, reading 'Warwick Soden'.

Dated: 7/06/2019 3:04:41 PM AEST

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.                      of 2019

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

**IN THE MATTER OF R M CAPITAL PTY LTD (ACN 065 412 820)**

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**  
Plaintiff

**R M CAPITAL PTY LTD (ACN 065 412 820) AND ANOTHER NAMED IN THE  
SCHEDULE**  
Defendants

### **A.            DETAILS OF APPLICATION**

This application is made under s21 of the *Federal Court of Australia Act 1976* (Cth), ss 1317E(1), 1317G(1E) and 1101B(1)(a)(i) of the *Corporations Act 2001* (Cth) (**the Corporations Act**), each as in force with respect to conduct that occurred in the period August 2013 to August 2016, and the inherent or implied jurisdiction of the Court.

The plaintiff seeks declarations of contraventions of the Corporations Act, pecuniary penalty orders, compliance orders and ancillary orders, including costs against the defendants.

On the facts stated in the Concise Statement filed in these proceedings and served with this Originating Process, the plaintiff (ASIC) claims:

### **Against the Second Defendant, The SMSF Club Pty Ltd**

1.        Declarations that the second defendant, The SMSF Club Pty Ltd (**SMSF Club**), accepted conflicted remuneration within the meaning of s963A of the Corporations Act (**Conflicted Remuneration**) and thereby contravened s963G(1) of the Corporations Act on each occasion that SMSF Club received a

Filed on behalf of	Australian Securities and Investment Commission, the Plaintiff		
Prepared by	Susan Donnelly, Litigation Counsel		
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Address for service	Level 5, 100 Market Street, Sydney New South Wales 2000		



Column G Amount, alternatively a Column F Amount, alternatively a Column E Amount, as identified in Schedule 2 to the Concise Statement.

2. In the alternative to paragraph 1, declarations that SMSF Club accepted Conflicted Remuneration and thereby contravened s963G(1) of the Corporations Act on each occasion that SMSF Club received an amount referred to in Column 3 of Schedule 1 to the Concise Statement with respect to a client referred to in Schedule 1 to the Concise Statement.
3. Orders pursuant to s1317G(1E) of the Corporations Act, with respect to conduct that occurred in the period 19 December 2013 to 29 July 2016, that SMSF Club pay to the Commonwealth a pecuniary penalty in respect of each occasion on which SMSF Club is declared to have contravened s963G(1) of the Corporations Act, in such amount as the Court determines to be appropriate.
4. An order pursuant to s1101B(1)(a)(i) of the Corporations Act requiring SMSF Club, within such time as the Court sees fit:
  - (a) to have in place appropriate systems, policies and procedures to ensure that SMSF Club complies with s963G(1) of the Corporations Act; and
  - (b) to provide ASIC with a written report of an independent expert stating whether SMSF Club has complied with the requirements in paragraph 4(a) above.

#### **Against the First Defendant, R M Capital Pty Ltd**

5. Declarations that, with respect to each contravention by SMSF Club referred to in paragraph 1 above, alternatively paragraph 2 above, the first defendant, R M Capital Pty Ltd (**RM Capital**), contravened s963F of the Corporations Act by failing to take reasonable steps to ensure that its representative, SMSF Club, did not accept Conflicted Remuneration.
6. In the alternative to paragraph 5, a declaration that, during the period August 2013 to August 2016, RM Capital contravened s963F of the Corporations Act by failing to take reasonable steps to ensure that its authorised representative, SMSF Club, did not accept Conflicted Remuneration.



7. Orders pursuant to s1317G(1E) of the Corporations Act, as in force with respect to conduct that occurred in the period August 2013 to August 2016, that RM Capital pay to the Commonwealth a pecuniary penalty in respect of each occasion on which it is declared to have contravened s963F of the Corporations Act, in such amount as the Court determines to be appropriate.
8. Orders pursuant to s1101B(1)(a)(i) of the Corporations Act requiring RM Capital, within such time as the Court sees fit:
- (a) to have in place appropriate systems, policies and procedures to ensure that RM Capital's representatives comply with s963G(1) of the Corporations Act; and
  - (b) to provide ASIC with a written report of an independent expert stating whether RM Capital has complied with the requirements in paragraph 8(a) above.

**Against both defendants**

9. Costs.
10. Such further or other orders as the Court considers appropriate.

Date: 7 June 2019

  
*Signature of plaintiff's legal practitioner*

This application will be heard by ..... at the Federal Court of Australia, 184 Phillip Street, Sydney, NSW, 2000 at ..... am/pm on .....

**B. NOTICE TO DEFENDANTS**

TO:

**R M Capital Pty Ltd (ACN 065 412 820)**

Finkelstein Hickmott Pty Ltd Level 2, 140 Colin Street, West Perth Western Australia 6005.

**The SMSF Club Pty Ltd (ACN 162 328 501)**

c/- MWM Advisory Pty Ltd, Level 4, 3027 The Boulevarde, Carrara Queensland 4211.



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: 7 June 2019

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*Registrar*

This originating process is filed by Susan Donnelly for the plaintiff.

### D. SERVICE

The plaintiff's address for service is Level 5, 100 Market Street Sydney New South Wales 2000.

It is intended to serve a copy of this originating process on each defendant and on any person listed below:

**R M Capital Pty Ltd (ACN 065412820)** at Finkelstein Hickmott Pty Ltd, Level 2, 140 Colin Street, West Perth Western Australia 6005.

**The SMSF Club Pty Ltd (ACN 162328501)** at c/- MWM Advisory Pty Ltd, Level 4, 3027 The Boulevard, Carrara Queensland 4211.

**Schedule: Details of Second Defendant**

No.

of 2019

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

**DEFENDANTS**

Second Defendant:                   The SMSF Club Pty Ltd (ACN 162 328 501)  
  c/- MWM Advisory Pty Ltd  
  Level 4, 3027 The Boulevard  
  Carrara Queensland 4211.

Date: 7 June 2019

