

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 20/08/2020 9:50:30 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:	VID552/2020
File Title:	AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v BT FUNDS MANAGEMENT LIMITED & ANOR
Registry:	VICTORIA 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 that reads 'Sia Lagos'.

Dated: 20/08/2020 11:33:32 AM 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 2020

Federal Court of Australia
District Registry: Victoria
Division: General

IN THE MATTER OF BT FUNDS MANAGEMENT LIMITED (ACN 002 916 458)

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
Plaintiff

BT FUNDS MANAGEMENT LIMITED (ACN 002 916 458) AND ANOTHER NAMED IN THE SCHEDULE
Defendants

A. DETAILS OF APPLICATION

This application is made under sections 19 and 21 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**), sections 12GBA(1), 12GBC(1), 12GJ(1) and 12GLB alternatively 12GLA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) and section 1101B of the *Corporations Act 2001* (Cth) (**Corporations Act**).

The Plaintiff seeks declarations of contraventions of the ASIC Act and the Corporations Act, pecuniary penalty orders, adverse publicity orders and ancillary orders including costs.

In this originating process, terms which are defined in the accompanying Concise Statement dated 20 August 2020 have the same meaning as they do in that document.

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

Declarations

1. A declaration under s 21 of the FCA Act, and or s 1101B of the Corporations Act that, by the Account Statements for superannuation products provided to customers in relation to whom a request had been made to remove a financial adviser from their account and in all the circumstances, on at least 497 occasions during the period September 2014 to August 2017, BT represented to a customer in trade or commerce that:
 - a. no ongoing adviser fee was deducted from the customer's account for the period after the request was made (**No Adviser Fee Representations**),
which representations were each:
 - b. a false or misleading representation as to the price of services, in connection with the supply or possible supply of financial services, in contravention of s 12DB(1)(g) of the ASIC Act; and, or alternatively

Filed on behalf of (name & role of party)	Australian Securities and Investments Commission, the Plaintiff		
Prepared by (name of person/lawyer)	Tom Jarvis, lawyer for the plaintiff		
Law firm (if applicable)	Johnson Winter & Slattery		
Tel	+613 8611 1333	Fax	+613 8611 1300
Email	tom.jarvis@jws.com.au		
Address for service (include state and postcode)	c/- Johnson Winter & Slattery, level 34, 55 Collins Street, Melbourne VIC 3000		
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- c. misleading or deceptive conduct, or conduct that was likely to mislead or deceive in relation to financial services, in contravention of s 12DA(1) of the ASIC Act and s 1041H of the Corporations Act.
2. In the alternative to paragraph 1, a declaration under s 21 of the FCA Act, and or s 1101B of the Corporations Act that, by the Account Statements for superannuation products provided to customers in relation to whom a request had been made to remove a financial adviser from their account and in all the circumstances, on at least 497 occasions during the period September 2014 to August 2017, BT represented to a customer in trade or commerce that:
 - a. the administration fee shown on the Account Statements was an amount charged only for the administration or management of the customer's account for the period after the request was made (**Administration Fee Representations**),
which representations were each:
 - b. a false or misleading representation as to the price of services, in connection with the supply or possible supply of financial services, in contravention of s 12DB(1)(g) of the ASIC Act; and, or alternatively
 - c. misleading or deceptive conduct, or conduct that was likely to mislead or deceive in relation to financial services, in contravention of s 12DA(1) of the ASIC Act and s 1041H of the Corporations Act.
3. A declaration under s 21 of the FCA Act, and or s 1101B of the Corporations Act that, by the Account Statements provided to customers in relation to whom a request had been made to remove a financial adviser from their account and in all the circumstances, on at least 513 occasions during the period September 2014 to August 2017, Asgard represented to a customer in trade or commerce that:
 - a. no ongoing adviser fee was deducted from the customer's account for the period after the request was made (**No Adviser Fee Representations**),
which representations were each:
 - b. a false or misleading representation as to the price of services, in connection with the supply or possible supply of financial services, in contravention of s 12DB(1)(g) of the ASIC Act; and, or alternatively
 - c. misleading or deceptive conduct, or conduct that was likely to mislead or deceive in relation to financial services, in contravention of s 12DA(1) of the ASIC Act and s 1041H of the Corporations Act.
4. In the alternative to paragraph 3, a declaration under s 21 of the FCA Act, and or s 1101B of the Corporations Act that, by the Account Statements provided to customers in relation to whom a request had been made to remove a financial adviser from their account and in all the circumstances, on at least 513 occasions during the period September 2014 to August 2017, Asgard represented to a customer in trade or commerce that:
 - a. the administration fee shown on the Account Statements was an amount charged only for the administration or management of the customer's account for the period after the request was made (**Administration Fee Representations**),



which representations were each:

- b. a false or misleading representation as to the price of services, in connection with the supply or possible supply of financial services, in contravention of s 12DB(1)(g) of the ASIC Act; and, or alternatively
 - c. misleading or deceptive conduct, or conduct that was likely to mislead or deceive in relation to financial services, in contravention of s 12DA(1) of the ASIC Act and s 1041H of the Corporations Act.
5. A declaration under s 21 of the FCA Act, and s 1101B of the Corporations Act that by its conduct in each of:
- a. putting in place ineffective processes and systems to cease charging adviser fees to Affected Customers, in that the administrative steps to do so were processed by a third party provider which did not have access to the necessary systems;
 - b. erroneously applying a coding change to the Affected Products, which caused ongoing adviser fees to continue to be included in accounts but under the description of administration or account management fees, thereby making it difficult for the overcharging to be identified by the Affected Customers;
 - c. having ineffective controls in place to check that ongoing adviser fees were not being charged following a request to remove an adviser from an account, in that controls only reviewed a sample of customers each month and the form of the review did not pick up the errors;
 - d. retaining until no later than December 2017 ongoing adviser fees to which it had no entitlement;
 - e. providing Affected Customers with account information conveying that the ongoing adviser fees were no longer being charged, when in fact amounts for those fees were being deducted from the Affected Customers' accounts,

Asgard breached its obligation to do all things necessary to ensure the financial services covered by its financial services license, being custodial services provided in respect of each Affected Product, were provided efficiently, honestly and fairly, and thereby contravened s 912A(1)(a) of the Corporations Act.

Penalties

6. An order pursuant to s 12GBA(1) of the ASIC Act that, within 30 days of the order, BT and Asgard pay to the Commonwealth of Australia such pecuniary penalties as the Court determines to be appropriate in respect of BT and Asgard's conduct declared to be contraventions of:
- a. s 12DB(1)(g) of the ASIC Act, as arising out of the at least 497 occasions that BT made the No Adviser Fee Representations and as arising out of the at least 513 occasions that Asgard made the No Adviser Fee Representations;
 - b. in the alternative to (a), s 12DB(1)(g) of the ASIC Act, as arising out of the at least 497 occasions that BT made the Administration Fee Representations, and arising out of the at least 513 occasions that Asgard made the No Adviser Fee Representations.



Other orders

- 7. An order pursuant to s 12GLB(1)(a) of the ASIC Act that, within 30 days of the order, BT and Asgard take all reasonable steps to cause to be published, at its own expense, a notice stating that it has been ordered to pay a pecuniary penalty because it has made false or misleading representations, in a manner and form approved by the Court.
- 8. Further or alternatively to 7, an order pursuant to s 12GLA(1)(a) of the ASIC Act that, within 30 days of the order, Asgard take all reasonable steps to cause to be published, at its own expense, a notice stating that it has been found by the Court to have breached its obligation to do all things necessary to ensure the financial services covered by its financial services licence were provided efficiently, honestly and fairly, in a manner and form approved by the Court.
- 9. An order that the Defendants pay the Plaintiff's costs of and incidental to the proceeding.
- 10. Such further or other order as the Court considers appropriate.

Date: 20 August 2020

Johnson Winter & Slattery

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 Tom Jarvis
 Johnson Winter & Slattery
 Lawyer for the Plaintiff

This application will be heard by at the
 Commonwealth Law Courts Building, 305 William Street VIC 3001 at
 *am/*pm on



B. NOTICE TO DEFENDANTS

TO: BT Funds Management Limited

AND TO: Asgard Capital Management Limited

Both of: Two International Towers
200 Barangaroo Avenue, Sydney NSW 2000

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: [date] 2020

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Registrar

This originating process is filed by Johnson Winter & Slattery for the plaintiff.

D. SERVICE

The plaintiff's address for service is:

Johnson Winter & Slattery
Level 34, 55 Collins Street
Melbourne VIC 3000

It is intended to serve a copy of this originating process on each defendant.



Schedule

No.

of 2020

Federal Court of Australia
District Registry: Victoria
Division: General

IN THE MATTER OF BT FUNDS MANAGEMENT LIMITED (ACN 002 916 458)

Defendants

Second Defendant: Asgard Capital Management Limited (ACN 009 279 592)

Date: 20 August 2020