

NOTICE OF FILING

Details of Filing

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File Title:	AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v MATTHIAS MICHAEL BEKIER & ORS
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

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 date of the filing of the document is determined pursuant to the Court's Rules.



Concise Statement

No. of 2022

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

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

MATTHIAS MICHAEL BEKIER (and others named in the Schedule)

Defendants

A. INTRODUCTION

1. This proceeding concerns contraventions of statutory duties of care and diligence by members of the executive team, and Board, of The Star Entertainment Group Ltd (**Star**). The contraventions principally arise from Star’s dealings with, and in respect of, junkets and its principal banker, National Australia Bank Ltd (**NAB**). A junket is an arrangement between a casino and a junket operator to facilitate a period of gambling by a group of players.
2. The contraventions by the executive team occurred in circumstances where they were aware of situations that created, or increased, risks that the entities within the Star group which held casino licences, may be unable to comply with their suitability obligations under the regulatory frameworks for casinos in NSW and Qld (**Suitability Obligations**) and/or with statutory anti-money laundering obligations (**AML/CTF Obligations**). The members of the executive team failed to take actions to mitigate those risks, such as: (a) terminating Star’s business association with the Suncity junket and affiliated individuals; or (b) preventing misleading correspondence being sent to NAB. They failed to adequately inform the Board of information about these situations of which they were, or ought to have been, aware.
3. The contraventions by the directors of Star occurred in circumstances where they knew, or ought to have known, that junkets presented risks to the integrity of Star’s casinos, because they were vulnerable to money laundering and exploitation by criminal influences. In 2017 and 2018, certain non-executive directors, and the former CEO of Star, failed to discharge their statutory duties of care and diligence, on a number of occasions, when approving increases in Star’s exposure to the funders of junkets, without receiving any information as to the probity of those funders. Separately, having received information that reinforced the need for Star to assess the probity of those funders comprehensively, they then took no steps to insist on such assessments occurring. In 2018 and 2019, the directors failed to discharge their statutory duties of care and diligence on occasions when, having been provided with inadequate or incomplete information by Star’s management concerning Star’s

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relationship with Suncity, they failed to direct Star's management to suspend or terminate all of the Star group's business associations with Suncity unless and until management provided the Board with information that demonstrated that maintaining that relationship would not threaten Star's casino licence-holding entities' ability to remain suitable persons to hold those licences.

B. THE IMPORTANT FACTS GIVING RISE TO THE CLAIM

The Star Entertainment Group Ltd, its related companies, and the defendants

4. Star was, at all material times, a publicly listed company that conducted a business providing gaming, entertainment, and hospitality services. That included operating, through companies of which it was the ultimate holding company, casinos known as The Star Sydney, The Star Gold Coast and Treasury Brisbane.
5. The defendants in this proceeding are:
 - (a) the former director and CEO (**Mr Bekier**), the former Chief Legal and Risk Officer (**Ms Martin**), the former CFO (**Mr Theodore**) and the former Chief Casino Officer (**Mr Hawkins**) of Star;
 - (b) a number of current and former non-executive directors of Star, being **Mr O'Neill AO**, **Mr Sheppard**, **Ms Lahey AM**, **Mr Bradley AO**, **Ms Pitkin AO**, **Mr Heap** and **Mr Todorcevski**.

Star's relationship with junkets

6. In the financial years ending 30 June 2015 to 30 June 2019, a substantial proportion (between around 23% and 27%) of Star's revenue was generated through its relationships with foreign junkets. By June 2017, a junket known as Suncity was Star's largest customer, generating turnover of \$2.1 billion for Star in the financial year ended 30 June 2017.
7. The Board of Star:
 - (a) approved resolutions to increase Star's exposure to the funders of junkets in November 2017 (**Qin Resolution**) and February 2018 (**Chau Resolution**), in the absence of information which might have satisfied the Board that: (i) persons associated with the junkets were of good repute; and (ii) the junkets did not present risks to the group's compliance with its AML/CTF Obligations and Suitability Obligations (**Probity Information**);
 - (b) was informed in a Board meeting in December 2017 that it had been reported that the junket funder who was the subject of the Qin Resolution had been detained in China in 2012 for alleged involvement in money laundering (**Qin Information**);
 - (c) was provided with a report prepared by KPMG in 2018 which indicated that there were serious inadequacies in the Star group's approach to complying with its AML/CTF Obligations in particular in connection with assessing the risk posed by junkets (**KPMG Report**);
 - (d) was informed on multiple occasions in July and August 2018 that "compliance risks" had emerged around "certain activities" at an exclusive VIP salon operated by Suncity at The Star Sydney (**Salon 95 Concerns**); and

- (e) became aware of various media allegations in mid-2019 to the effect that: (i) key Suncity personalities had demonstrated links to organised crime; (ii) Suncity or persons associated with it were of interest to Australian authorities in relation to money laundering; and (iii) Mr Chau, the funder of Suncity, had been banned from entering Australia by the Australian government (**Crown Media**).
8. Mr Bekier, Ms Martin and Mr Hawkins were variously aware of some or all of the following matters in relation to Suncity (**Suncity Information**):
- (a) in 2018, Star's investigations team had identified multiple suspicious cash transactions in Suncity's exclusive VIP salon which displayed money laundering typologies;
 - (b) as a consequence, multiple letters had been issued to Suncity under the signature of Mr Hawkins which warned Suncity to cease those kinds of transactions;
 - (c) despite those warning letters, Star's investigations team continued to observe suspicious cash transactions in early 2019;
 - (d) a report prepared by the Hong Kong Jockey Club alleged that: (i) Suncity was involved in a number of criminal enterprises and was of interest to Australian law enforcement; and (ii) Mr Chau was alleged to be a member of a triad society and was reported to have received a portion of funds stolen from the Bangladesh Bank in a cyberattack; and
 - (e) six persons associated with Suncity had been excluded from The Star Sydney by the NSW Police Commissioner, likely on suspicion of having committed a serious crime.

The use of CUP cards at Star Sydney

9. NAB was a significant lender to Star and, from around October 2012, NAB provided payment terminals, located in hotels operated by the Star group that were adjacent to casinos (**NAB Terminals**), which could accept cards issued by China UnionPay (**CUP**).
10. A large proportion of the funds transacted at the NAB Terminals by way of CUP cards was for use by the patron to gamble. In February 2016, CUP made plain to NAB that it considered transactions relating to the purchase of gaming chips were not permitted, and NAB conveyed that to Star in 2016 and 2017.
11. On a number of occasions from 2016 to December 2019, CUP raised inquiries (passed by NAB to Star) about transactions conducted at the NAB Terminals, including as to whether they were for gambling. In its responses, Star did not indicate that a large proportion of the funds was ultimately used for gambling.
12. In particular, on 7 November 2019, Star sent a response to NAB, after it had been reviewed by Ms Martin and Mr Theodore, which conveyed that the funds were used for non-gambling expenses such as hotel accommodation, private jet travel, tourism services, food and wine and jewellery, and that none of the funds obtained were used (whether directly or ultimately) to fund the purchase of gaming chips (**7 November Email**). Those representations were inaccurate, incomplete and misleading, and there was a real chance or possibility that representatives of NAB and/or CUP would be misled by them.
13. The day after receiving a further request for information from CUP (via NAB) in March 2020 (**2020 CUP Warning Letter**), Star decided to cease accepting CUP cards at NAB Terminals.

C. THE RELIEF SOUGHT FROM THE COURT

14. ASIC seeks declarations, pecuniary penalties, and disqualification orders against the defendants, as set out in the Originating Process.

D. THE PRIMARY LEGAL GROUNDS FOR THE RELIEF SOUGHT

15. In connection with the Qin Resolution and Chau Resolution, each of Mr Bekier, Mr O'Neill, Mr Sheppard, Ms Lahey, Mr Bradley and Ms Pitkin (being the members of the Board at relevant times) contravened s 180(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**) by failing to exercise the degree of care and diligence a reasonable person in their positions would have exercised, in the following ways:
 - (a) by approving the Qin Resolution and Chau Resolution without having been provided with Probity Information;
 - (b) in light of the Qin Information, by failing to direct Star's management to suspend any business association with that junket funder and his junket unless and until Star's management demonstrated that, notwithstanding that information, the individual was a person of good repute;
 - (c) in respect of the KPMG Report, by failing to request Star's management to undertake inquiries and report back to the Board as to the probity, sources of wealth and sources of funds for the individuals and junkets the subject of the Qin Resolution and Chau Resolution.
16. In relation to the Salon 95 Concerns and Crown Media, each of Mr O'Neill, Mr Sheppard, Ms Lahey, Mr Bradley, Ms Pitkin, Mr Heap and Mr Todorcevski (being the members of the Board at relevant times) contravened s 180(1) of the *Corporations Act* by failing to exercise the degree of care and diligence a reasonable person in their positions would have exercised, by failing to direct management to terminate all business associations between the Star group and Suncity and Chau or, alternatively, suspend all business associations until Star's management addressed the Crown Allegations and demonstrated to the Board that Suncity and Mr Chau were of good repute.
17. In relation to the Suncity Information, each of Mr Bekier, Ms Martin and Mr Hawkins contravened s 180(1) of the *Corporations Act* by failing to exercise the degree of care and diligence a reasonable person in their positions would have exercised, by failing to take steps to terminate or suspend all business associations between the star group and Suncity and Chau, or alternatively, failing to inform the Board of the information each knew and recommend to the Board that all business associations between the Star group and Suncity and Chau be suspended or terminated.
18. In relation to the events concerning CUP:
 - (a) each of Mr Theodore and Ms Martin contravened s 180(1) of the *Corporations Act* by failing to exercise the degree of care and diligence a reasonable person in their positions would have exercised by:
 - (i) failing to prevent the 7 November Email being sent to NAB in the terms sent;
 - (ii) failing to ensure that the Board of Star was informed of the fact that CUP and NAB had sought confirmation from Star that CUP cards would not be permitted to be used for gaming, and that NAB had been sent correspondence containing inaccurate, incomplete and misleading representations in respect of that issue;

- (b) Mr Bekier contravened s 180(1) of the Corporations Act by failing to exercise the degree of care and diligence a reasonable person in his position would have exercised, upon being provided with the 2020 CUP Warning Letter, by:
- (i) failing to take steps to inform himself of the terms of communications Star had sent to NAB and/or CUP in response to requests for information;
 - (ii) failing to ensure that the Board of Star was informed of the fact that CUP and NAB had sought confirmation from Star that CUP cards would not be permitted to be used for gaming, and the fact that the 7 November Email had been sent to NAB which contained inaccurate, incomplete and misleading representations in respect of that issue.

E. THE HARM SUFFERED

19. The duty imposed on directors and officers pursuant to s 180(1) is to protect the interests of the corporation. The conduct of the defendants exposed Star to harm, by creating or increasing the risks that Star group entities would fail to meet their Suitability Obligations and/or AML/CTF Obligations, that Star's relationship with one of its lenders would be undermined, and that Star would suffer significant reputational damage. The conduct of the defendants also exposed Star to investigations by state and federal regulators and inquiries and legal proceedings resulting from those investigations.
20. Some of those risks have now crystallised. For example, Inquiries by the NSW and Qld casino regulators found that the relevant group entities were unsuitable to hold their casino licences. In both states, the group's casino licences were suspended or a deferred suspension was applied, an independent manager was appointed to the licence-holding entity, and fines were imposed, under legislation then in force, totalling \$200 million.
21. The role of an officer or director may also have a profound effect on the community. The potential for harm attendant on the contraventions of s 180(1) was aggravated by the fact that the activities of Star, especially its dealings with junkets, were vulnerable to money laundering and exploitation by criminal influences. That conduct, if it occurs, can cause grave harm to the community more broadly.

Date: 12 December 2022

This concise statement was prepared by Ruth Higgins SC, James Arnott SC, and Stephanie Patterson, counsel, for the Australian Securities and Investments Commission.

Certificate of lawyer

I Andrew Riordan certify to the Court that, in relation to the Concise Statement filed on behalf of the Plaintiff, the factual and legal material available to me at present provides a proper basis for each allegation in the document.

Date: 12 December 2022

A handwritten signature in black ink, appearing to read 'ARL', positioned above a horizontal dotted line.

Signed by Andrew Riordan

Lawyer for the Plaintiff

Schedule of Parties

No. of 2022

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

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
Plaintiff

MATTHIAS MICHAEL BEKIER

First Defendant

PAULA MAREE MARTIN

Second Defendant

GREGORY FRANCIS HAWKINS

Third Defendant

HARRY JAMES THEODORE

Fourth Defendant

JOHN ANTHONY O'NEILL AO

Fifth Defendant

WALLACE RICHARD SHEPPARD

Sixth Defendant

KATHLEEN LAHEY AM

Seventh Defendant

GERARD PATRICK BRADLEY AO

Eighth Defendant

SALLY ANNE MAJELLA PITKIN AO

Ninth Defendant

BENJAMIN ANDREW HEAP

Tenth Defendant

ZLATKO TODORCEVSKI

Eleventh Defendant

Date: 12 December 2022