

## NOTICE OF FILING

### Details of Filing

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File Title: EQUITY FINANCIAL PLANNERS PTY LTD v AMP FINANCIAL  
PLANNING PTY LTD  
Registry: VICTORIA 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.



**Further Amended Points of Defence**

No. VID 498 of 2020

Federal Court of Australia  
District Registry: Victoria  
Division: General

**EQUITY FINANCIAL PLANNERS PTY LTD**

Applicant

AND

**AMP FINANCIAL PLANNING PTY LTD**

Respondent

NOTE: Unless otherwise stated, a defined term used in these Further Amended Points of Defence has the same meaning as assigned to it in the Third Further Amended Statement of Claim, Third Further Amended Defence to the Third Further Amended Statement of Claim or further amended points of claim.

In answer to the WealthStone Further Amended Points of Claim, the Respondent (**AMPFP**) says as follows:

1. It admits paragraph 1.
2. It admits paragraph 2.
3. It admits paragraph 3.

**Authorised Representative Agreement**

4. It admits paragraph 4.
5. As to paragraph 5, it refers to and repeats paragraphs 5 to 6, 9 to 17, 20 to 36, ~~and~~ 39 to 46 and 51A to 51G of the Third Further Amended Defence to the Third Further Amended Statement of Claim.

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Filed on behalf of the Respondent

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**BOLR Application**

6. It admits paragraph 6.
7. It admits paragraph 7.
8. As to paragraph 8, it:
  - (a) admits that:
    - (i) the First Draft BBA was provided to WealthStone and Mr Finch on 31 January 2020;
    - (ii) the First Draft BBA contained a release at clause 5; and
    - (iii) the email sending the First Draft BBA requested that Mr Finch “review, print and sign two copies”;
  - (b) says that:
    - (i) in accordance with the BOLR Policy it conducted an exit audit of WealthStone on 27 and 28 February 2019;
    - (ii) the result of the audit was an overall score of 72%, meaning client remediation was required and a 25% discount would be applied to the register valuation, in accordance with the BOLR Policy;
    - (iii) Mr Finch/WealthStone disagreed with the outcome of the audit and lodged an appeal on 12 March 2019;
    - (iv) on 1 April 2019, AMPFP advised Mr Finch/WealthStone that the result of his appeal was that the audit score had been adjusted to 78%;
    - (v) on 4 April 2019, James Stone (AMPFP Partnerships Manager – QLD) suggested seeking an exception from the BOLR Policy requirement of a 25% discount to the register valuation due to the audit score, on the basis that a full audit had been conducted (as opposed to a sample only) and that Wealthstone would bear the costs of remediating all affected clients (**Exception Request**);

- (vi) on 29 July 2019, Mr Finch/WealthStone requested that the Exception Request be made;
  - (vii) on 9 September 2019, AMPFP informed Mr Finch/WealthStone that the Exception Request had been approved;
  - (viii) on 15 November 2019, AMPFP provided Mr Finch/WealthStone with a register valuation of \$134,660.12 (ex GST) (**Initial Valuation**);
  - (ix) on 21 November 2019, Mr Finch/Wealthstone disputed the Initial Valuation;
  - (x) on 21 January 2020, AMPFP provided Mr Finch/WealthStone with a revised register valuation of \$176,121.21 (ex GST) (**Revised Valuation**); and
  - (xi) on 21 January 2020 Mr Finch/WealthStone accepted the Revised Valuation;
- (c) says further that the First Draft BBA contained terms relating to:
- (i) the approved Exception Request (at clause 3.3); and
  - (ii) the Revised Valuation (definition of “BOLR Benefit”); and
- (d) otherwise denies the allegations in the paragraph.
9. As to paragraph 9, it:
- (a) admits that on 3 February 2020 WealthStone requested changes to clause 3.4, and the deletion of clause 5 of the First Draft BBA; and
  - (b) otherwise denies the allegations in the paragraph.
10. As to paragraph 10, it:
- (a) admits that on 4 February 2020 it provided the Final Draft BBA to WealthStone;
  - (b) admits that the Final Draft BBA contained changes to clause 3.4;
  - (c) admits that clause 5 (release) was not deleted from the Final Draft BBA;
  - (d) says that it explained why it was not prepared to delete clause 5; and

### Particulars

The explanation was given in an email from Taran Pelligra to Mr Finch dated 4 February 2020.

(e) otherwise denies the allegations in the paragraph.

11. It admits paragraph 11.
12. It admits paragraph 12, and says that it executed the Final Draft BBA on 10 February 2020.

### WealthStone's BBA

13. It admits paragraph 13, and refers to and relies upon the terms of the WealthStone BBA for its full force and effect.
14. It admits paragraph 14.
15. As to paragraph 15, it:
  - (a) admits that clause 5 of the WealthStone BBA is in the terms alleged; and
  - (b) otherwise denies the allegations in the paragraph.

### Alleged manifest error

16. As to paragraph 16, it:
  - (a) admits that it calculated the Revised Valuation in accordance with the valuation methodology set out in the BOLR Policy as amended on 8 August 2019 (as it was entitled to do); and
  - (b) otherwise denies the allegations in the paragraph.
17. It denies the allegations in paragraph 17, and refers to and repeats paragraphs 28, 29, 33, and 42 of the Third Further Amended Defence to the Third Further Amended Statement of Claim.
18. It denies the allegations in paragraph 18.
19. It admits paragraph 19.
20. It denies the allegations in paragraph 20, and refers to and repeats paragraph 17 above.
21. As to paragraph 21, it:

- (a) admits the payment of \$51,268.24 to WealthStone was made on 2 March 2020;
- (b) says that payment was in discharge of the Initial Payment and GST on the BOLR Benefit; and
- (c) otherwise denies the allegations in the paragraph.

22. As to paragraph 22, it:

- (a) admits the payment of \$82,425.76 to WealthStone was made on 16 March 2021;
- (b) says that payment was in discharge of the Deferred Payment; and
- (c) otherwise denies the allegations in the paragraph.

23. As to paragraph 23, it:

- (a) admits sub-paragraph (a); and
- (b) denies the allegations in sub-paragraph (b).

24. It denies the allegations in paragraph 24.

#### **Alleged unfair contract term**

25. It does not plead to paragraph 25, as it makes no allegations against it.

#### Small business contract

26. It denies the allegations in paragraph 26.

27. It denies the allegations in paragraph 27.

28. It admits paragraph 28.

29. It admits paragraph 29.

30. It admits paragraph 30.

31. It denies the allegations in paragraph 31.

#### Standard form contract

32. It denies the allegations in paragraph 32, and says:

- (a) the WealthStone BBA took account of WealthStone's specific characteristics and the specific characteristics of its BOLR transaction;

**Particulars**

AMPPF refers to and repeats paragraphs 8, 9 and 10 above.

WealthStone BBA, definition of "Client Register", "BOLR Benefit", "Initial Payment", "Initial Remediation", "Deferred Payment", clause 3.3.

- (b) WealthStone negotiated the terms of the WealthStone BBA with AMPFP;

**Particulars**

AMPFP refers to and repeats paragraphs 8, 9 and 10 above.

- (c) WealthStone had the opportunity to seek independent legal, tax and accounting advice; and

**Particulars**

WealthStone BBA, clause 15.

- (d) as set out in the BOLR Policy, a BOLR transaction was not compulsory and a practice to practice transaction (which would not have required entry into the WealthStone BBA) was the preferred exit arrangement for Practices.

Release alleged to be unfair contract term

*No imbalance in the rights of the parties*

33. It denies the allegations in paragraph 33 and says that the terms of the BOLR Policy require a practice to (among other things) enter into a BOLR Licensee Buy-Back Agreement (as that term is used in the BOLR Policy) in order to receive a BOLR benefit payment.
34. It denies the allegations in paragraph 34, and refers to and repeats paragraph 33 above and paragraph 38 below.
35. It denies the allegations in paragraph 35, and says:

- (a) it did offer to enter into a BOLR Licensee Buy-Back Agreement (as that term is defined in the BOLR Policy), in accordance with the terms of the BOLR Policy; and
  - (b) even if it did breach the Authorised Representative Agreement as alleged in sub-paragraph 36(a) or 45 of the Third Further Amended Statement of Claim (which is denied), WealthStone has released any right to seek any damages resulting from such breach by entry into the WealthStone BBA (clause 5); and
  - (c) further to sub-paragraph 35(b) or in the alternative, there has been an accord and satisfaction.
36. As to paragraph 36, it:
- (a) admits that, in the event WealthStone has suffered loss or damage (which is denied), the release at clause 5 of the WealthStone BBA prevents WealthStone from obtaining compensation from AMPFP; and
  - (b) otherwise denies the allegations in the paragraph.
37. It denies the allegations in paragraph 37, and refers to and repeats paragraphs 33 and 35 above.
38. It denies the allegations in paragraph 38, refers to and repeats paragraph 33 above and says further that:
- (a) the purpose of the WealthStone BBA was to finalise the contractual and legal arrangements between WealthStone and AMPFP;
  - (b) the terms of the WealthStone BBA must be considered as a whole and in the context of the AR Agreement (including the BOLR Policy); and
  - (c) the terms of the WealthStone BBA provided for payment to be made to WealthStone without the 25% discount required by the BOLR Policy.

### **Particulars**

AMPFP refers to and repeats sub-paragraphs 8(b) and (c) above.

39. It denies the allegations in paragraph 39.



*Reasonably necessary in order to protect the legitimate interests of AMPFP*

40. It denies the allegations in paragraph 40, and says further that the WealthStone BBA was a commercial bargain on ordinary commercial terms struck between the parties which provided for value to be provided to WealthStone.
41. It denies the allegations in paragraph 41, and says the release in clause 5 of the WealthStone BBA was reasonably necessary to protect its legitimate interests, including because it had a legitimate commercial interest in minimising the risk of litigation, particularly in circumstances where:
- (a) litigation had been threatened by Mr Finch/WealthStone;
  - (b) it was making a payment to WealthStone; and
  - (c) the amount paid to WealthStone was more than the sum payable pursuant to the BOLR Policy.

#### **Particulars**

AMPFP refers to and repeats sub-paragraph 38(c) above and the particulars thereto.

*No detriment to WealthStone if relied upon*

42. It denies the allegations in paragraph 42

*Release is not unfair*

43. It denies the allegations in paragraph 43, refers to and repeats paragraphs 26, 31, 32, 39 and 41 above, and says further that the term:
- (a) is transparent within the meaning of s 24(3) of the ACL; and
  - (b) must be assessed in the context of the WealthStone BBA as a whole, including the express acknowledgment by WealthStone (at clause 15) that:
    - (i) it had the opportunity to obtain its own independent accounting, taxation and legal advice;
    - (ii) it obtained independent advice or elected not to obtain such advice; and

- (iii) it reviewed, understood and agreed to the terms and conditions contained in the WealthStone BBA.

Release is valid

- 44. It denies the allegations in paragraph 44 and refers to and repeats paragraphs 31, 32, 33, and 43 above.

**Alleged unconscionable conduct**

- 45. It does not plead to paragraph 45, as that paragraph makes no allegation against it.

- 46. As to paragraph 46, it:

- (aa) as to sub-paragraph 46(aa):

- (i) refers to and repeats paragraphs 34A to 34C and 51A to 51E of the Third Further Amended Defence; and
- (ii) otherwise denies sub-paragraph 46(aa);

- (a) admits that it knew that:

- (i) it was possible that one or more Practices might challenge the legal validity of the 8 August 2019 Changes;
- (ii) Mr Finch/WealthStone had threatened litigation in connection with the WealthStone BOLR transaction; and
- (iii) WealthStone had alleged in correspondence dated 19 September 2019 that the 8 August 2019 Changes did not apply to its BOLR application;

- and otherwise denies sub-paragraph (a);

- (b) denies the allegations in sub-paragraph (b) and refers to and repeats paragraphs 40 and 41 above;
- (c) denies the allegations in sub-paragraph (c) and refers to and repeats paragraph 32 above;
- (d) denies the allegations in sub-paragraph (d) and refers to and repeats paragraphs 33 and 38 above, and sub-paragraph 102(d) of the Third

Further Amended Defence to the [Third](#) Further Amended Statement of Claim; and

- (e) denies the allegations in sub-paragraph (e), (f) and (g) and refers to and repeats paragraphs 32, 33, 38 above, and sub-paragraph 102(d) of the [Third](#) Further Amended Defence to the [Third](#) Further Amended Statement of Claim, and says further that Wealthstone was a financial planning practice, which was appointed as an authorised representative of AMPFP to provide financial advisory services to clients.
47. It denies the allegations in paragraph 47 and refers to and repeats paragraphs 8-10, 16, 32, 33, 38, 40, 41 and 43(b) above, and sub-paragraph 102(d) of the [Third](#) Further Amended Defence to the [Third](#) Further Amended Statement of Claim, and says further that after receiving the explanation referred to in sub-paragraph 10(d) above WealthStone did not further negotiate the terms of the WealthStone BBA, and executed the Final Draft BBA as pleaded at paragraph 11.
48. It denies the allegations in paragraph 48 and refers to and repeats paragraph 47.
49. It denies the allegations in paragraph 49.
50. It denies the allegations in paragraph 50.
51. It denies the allegations in paragraph 51.

Date: ~~5 August 2021~~ 6 July 2022 24 October 2022

A handwritten signature in black ink, appearing to read 'N. Yata', written over a horizontal dotted line.

Signed by Natalie Tatasciore  
Lawyer for the Respondent

These further amended points of defence were prepared by Tamiaka Spencer Bruce and Ahmed Terzic of counsel.

**Certificate of lawyer**

I, Natalie Tatasciore, certify to the Court that, in relation to the Further Amended Points of Defence filed on behalf of the Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: ~~5 August 2021~~ 6 July 2022-24 October 2022



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Signed by Natalie Tatasciore  
Lawyer for the Respondent