

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 6/11/2020 7:55:21 PM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)
File Number: NSD464/2020
File Title: APPLICATION IN THE MATTER OF VIRGIN AUSTRALIA HOLDINGS LTD (ADMINISTRATORS APPOINTED) ACN 100 686 226 & ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Dated: 6/11/2020 7:55:29 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.

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Affidavit

No. NSD 464 of 2020

Federal Court of Australia
District Registry: New South Wales
Division: Commercial and Corporations List

IN THE MATTER OF VIRGIN AUSTRALIA HOLDINGS LTD (SUBJECT TO DEED OF COMPANY ARRANGEMENT) ACN 100 686 226 & ORS

VAUGHAN STRAWBRIDGE, SALVATORE ALGERI, JOHN GREIG AND RICHARD HUGHES, IN THEIR CAPACITIES AS JOINT AND SEVERAL DEED ADMINISTRATORS OF VIRGIN AUSTRALIA HOLDINGS LTD (SUBJECT TO DEED OF COMPANY ARRANGEMENT)

First Plaintiffs / First Applicants

VIRGIN AUSTRALIA HOLDINGS LTD (SUBJECT TO DEED OF COMPANY ARRANGEMENT) ACN 100 686 226

Second Plaintiff / Second Applicant

Affidavit of: Vaughan Neil Strawbridge
Address: 9 Grosvenor Place, 225 George Street, Sydney, New South Wales
Occupation: Registered Liquidator and Chartered Accountant
Date: 6 November 2020

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1	Affidavit of Vaughan Neil Strawbridge in support of application for leave under section 444GA of the <i>Corporations Act 2001</i> (Cth) sworn on 6 November 2020.	All	1 - 7

Deponent

Witness

Filed on behalf of (name & role of party) The Plaintiffs
Prepared by (name of person/lawyer) Timothy James Sackar
Law firm (if applicable) Clayton Utz
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(include state and postcode)

[Version 3 form approved 02/05/2019]

Document number	Details	Paragraph	Page
2	Exhibit "VNS-8", being a bundle of paginated documents exhibited to the deponent.	7	3

I, Vaughan Neil Strawbridge, of Deloitte Touche Tohmatsu (of which Deloitte Financial Advisory Pty Ltd is a wholly owned subsidiary) (**Deloitte**), at Level 9 Grosvenor Place, 225 George Street, Sydney, New South Wales, Registered Liquidator and Chartered Accountant, say on oath:

OVERVIEW

1. I am a partner in the Financial Advisory Group of the professional services firm trading as Deloitte. I am a Chartered Accountant and a Registered Liquidator and I have practised for more than 25 years as an accountant specialising in insolvency related matters in Australia, Thailand and the United Kingdom.
2. I am one of the four joint and several deed administrators of each of the Second to Forty-Second Plaintiffs (**Virgin Companies**), together with Mr Salvatore Algeri, Mr John Greig and Mr Richard Hughes (together, the **Deed Administrators** and each a **Deed Administrator**).
3. I am authorised by Mr Algeri, Mr Greig and Mr Hughes to make this affidavit on behalf of the Deed Administrators. Where I depose below to the view or views of the Deed Administrators, they are the view(s) which each of I, Mr Algeri, Mr Greig and Mr Hughes hold at the date of swearing this affidavit.
4. Unless otherwise stated, I make this affidavit based on my own knowledge and belief and from information I and staff members at Deloitte have obtained through my role as a Deed Administrator of the Virgin Companies, which I believe to be true.
5. This is the seventeenth affidavit that I have sworn in these proceedings and my second affidavit sworn in support of the interlocutory process filed in these proceedings on 20 October 2020 (**Interlocutory Process**).
6. I refer to and rely upon my affidavit sworn on 20 October 2020 (**Sixteenth Affidavit**).

Deponent

Witness

7. Exhibited to me at the time of swearing this affidavit is a bundle of documents to which I make reference in this affidavit marked "**VNS-8**" (**Exhibit VNS-8**). A reference to a Tab in this affidavit is to a tab in Exhibit VNS-8, unless otherwise stated.
8. I make this affidavit in support of the relief sought by the First Plaintiffs and the Second Plaintiff in the Interlocutory Process namely, an order pursuant to section 444GA(1)(b) of the *Corporations Act 2001* (Cth) (**Corporations Act**) that leave be granted for the Deed Administrators to transfer all of the existing shares in the capital of the Second Plaintiff, Virgin Australia Holdings Ltd (Subject to Deed of Company Arrangement) ACN 100 686 226 (**VAH**), to BC Hart Aggregator, L.P., or its nominee.

NOTICE

Overview

9. On 20 October 2020, various orders were made by Justice Middleton in these proceedings (**20 October Orders**), including orders that the Plaintiffs give notice to the creditors and members (**Shareholders**) of VAH of the Interlocutory Process, the hearing date of the Interlocutory Process, the Explanatory Statement in the form annexed to the Interlocutory Process (**Explanatory Statement**) and the availability of the independent expert's report of FTI Consulting (Australia) Limited dated 19 October 2020 (**IER**), within 3 business days of the date of the orders, by the methods set out in subparagraphs 2(a) - (e) of the 20 October Orders.
10. On 23 October 2020, the Deed Administrators prepared a circular to creditors and shareholders (**23 October Circular**), a copy of which is exhibited at **Tab 1** of **Exhibit VNS-8**. The 23 October Circular, amongst other things, gave notice that:
 - (a) the Interlocutory Process and my Sixteenth Affidavit in support of the Interlocutory Process had been filed on 20 October 2020;
 - (b) the Interlocutory Process has been listed for hearing on 10 November 2020 at 10.15am (**Hearing**);
 - (c) any interested person that wishes to appear at the Hearing must file and serve on the Deed Administrators and the Australian Securities and Investments Commission (**ASIC**) a Notice of Appearance in the prescribed form and indicating the grounds of opposition by 4pm on 5 November 2020;

Deponent

Witness

- (d) the Explanatory Statement, which encloses a copy of the IER, has been prepared and released to the Australian Stock Exchange (**ASX**) and a copy of each of the Explanatory Statement and IER are available on the ASX website;
- (e) a copy of the Interlocutory Process, 20 October Orders and my Sixteenth Affidavit are available on the Federal Court's website and at <https://www2.deloitte.com/au/en/pages/finance/articles/virgin-australia-holdings-limited-subsidiaries.html>; and
- (f) they can contact virginadmin@deloitte.com.au (**Virgin Email**) if they require a copy of Explanatory Statement and IER via email.

Notice to creditors and members of VAH

11. I refer to and rely upon the affidavit of Matthew James Carr (**Mr Carr**) dated 6 November 2020 (**Carr Affidavit**) filed in these proceedings. The Carr Affidavit deposes to the notification of the Interlocutory Process provided to creditors and Shareholders of VAH in accordance with orders 2(a) - (d) of the 20 October Orders.

Announcement to the ASX

12. In accordance with paragraph 2(e) of the 20 October Orders, on 23 October 2020, the Deed Administrators made an announcement to the ASX by causing to be uploaded to the ASX a copy of the 23 October Circular, the Explanatory Statement and the IER. A print-out of the ASX website page is exhibited at **Tab 2 of Exhibit VNS-8**.

COMMUNICATIONS WITH INTERESTED PARTIES

VAH Shareholders

13. I refer to paragraph 66 of my Sixteenth Affidavit which contains a typographical error in the final sentence of that paragraph. Paragraph 66 of my Sixteenth Affidavit should read: *"As I deposed at paragraph 29(b) above, VAH's Major Shareholders are comprised of Etihad Airways (which has approximately 20.03% of the total share capital), Singapore Airlines Ltd (20.01%), Nanshan Group (20.01%), HNA Group (19.86%) and Virgin Group Ltd (a company incorporated in the United Kingdom and not otherwise related to VAH other than through its shareholding) (10.02%). In addition to the **Major** Shareholders, VAH has **19,181** other shareholders."*

Deponent

Witness

Communications with Shareholders*HNA Group*

14. I am informed by Mr Algeri and verily believe to be true that, on 8 September 2020, Mr Algeri received a letter from Mr John Stragalinos, Partner, Dentons Australia acting on behalf of the HNA Group, including HNA Innovation Ventures (Hong Kong) Co. Limited, in relation to its shareholding in VAH. A copy of the email from Mr Stragalinos to Mr Algeri which attaches this letter is exhibited at **Tab 3 of Exhibit VNS-8**, while a copy of the letter is exhibited at **Tab 4 of Exhibit VNS-8**. The letter:
- (a) requested that Mr Stragalinos be provided copies of any material in relation to the Interlocutory Process so that the HNA Group has sufficient time to consider the material and determine its position; and
 - (b) stated, amongst other things, that Mr Stragalinos had instructions to receive any material in relation to the Interlocutory Process and accept service of the Interlocutory Process on behalf of his client.
15. I am informed by Timothy Sackar of Clayton Utz, the Deed Administrators' legal advisers, and verily believe to be true that, on 21 October 2020, Mr Sackar received a letter from Mr Stragalinos which, amongst other things, requested that Clayton Utz provide a copy of the final Explanatory Statement and IER. A copy of the email from Mr Stragalinos to Mr Sackar which attaches this letter is exhibited at **Tab 5 of Exhibit VNS-8**, while a copy of the letter is exhibited at **Tab 6 of Exhibit VNS-8**.
16. On 2 November 2020, Clayton Utz sent a letter to Mr Stragalinos which stated, amongst other things, that copies of the Explanatory Statement and IER are available on the Deloitte Website and that these documents were also released to the ASX on 23 October 2020 and are available via the ASX website (**CU Letter**). A copy of the CU Letter is exhibited at **Tab 7 of Exhibit VNS-8**. I am informed by Mr Sackar and verily believe to be true that on 2 November 2020, Mr Stragalinos sent an email to Ms Jillian Robertson of Clayton Utz, copied to Mr Sackar and others, in response to the email sent by Ms Robertson to Mr Stragalinos which attached the CU Letter, in which Mr Stragalinos thanked Ms Robertson for providing the CU Letter. A copy of the email chain between Mr Stragalinos and Ms Robertson is exhibited at **Tab 8 of Exhibit VNS-8**.

Deponent

Witness

Colonial Airways

17. On 28 October 2020, Mr Perry McNeil sent an email to, amongst others, the Virgin Email (**McNeil Email**). A copy of the McNeil Email is exhibited at **Tab 9** of **Exhibit VNS-8**. Mr McNeil stated in the McNeil Email that "*Colonial Airways ATF the McNeil Family SMSF lists objection to this application and will be opposing the same in the Federal Court of Australia.*"
18. I am informed by Mr Carr and verily believe to be true that on 28 October 2020:
- (a) Mr Carr sent an email to Wayne Hopkins, Senior Relationship Manager, of Computershare Ltd (**Computershare**), VAH's share registry provider (**Mr Hopkins**) which asked for confirmation as to whether Colonial Airways ATF the McNeil Family SMSF was a current Shareholder; and
 - (b) Mr Hopkins replied to Mr Carr's email confirming that Mr McNeil, through the McNeil Family SMSF, currently holds 3,000 shares in VAH.

A copy of this email correspondence is exhibited at **Tab 10** of **Exhibit VNS-8**.

19. As at the date of swearing this affidavit, I am not aware of any further correspondence having been received by the Deed Administrators or our solicitors, Clayton Utz, from Mr Perry.

Shelleycom Pty Ltd and Tymar Pty Ltd

20. I am informed by Mr Sackar and verily believe to be true that, on 5 November 2020 at approximately 5.55pm, Mr Sackar received an email from Mr Anthony Collopy on behalf of Shelleycom Pty Ltd ACN 113 671 266 (**Shelleycom**) and Tymar Pty Ltd ACN. 006 856 159 (**Tymar**). The email attached a copy of the 23 October Circular, which I understand Mr Collopy received by post from Computershare in the manner described in paragraph 13 of the Carr Affidavit, and a Notice of Appearance in these proceedings for each of Shelleycom and Tymar. A copy of the email (without attachments) is exhibited at **Tab 11** of **Exhibit VNS-8**, and copies of the Notices of Appearance for Shelleycom and Tymar are respectively exhibited at **Tabs 12** and **13** of **Exhibit VNS-8**.
21. Other than the matters deposed to in this affidavit and the matters deposed to by Mr Carr in the Carr Affidavit, I am not aware of any correspondence received from Shareholders

Deponent

Witness

or other interested parties indicating that they intend to oppose the relief sought in the Interlocutory Process.

Swearing of this affidavit

- 22. I have not been able to swear this affidavit in proper form at the time that I have signed it due to the measures I have taken to minimise the spread of COVID-19.
- 23. I have been informed by Jillian Kate Robertson, as the proposed witness to this affidavit, and believe, that the relaxation of formality with respect to the unsworn nature of this affidavit does not diminish the need for me to satisfy myself that the contents of this affidavit are true and correct. I have satisfied myself that that is the case.
- 24. I will formally swear this affidavit when circumstances allow and will instruct Clayton Utz to file the sworn version with the Court.

Sworn by the deponent)
 at Sydney)
 in New South Wales)
 on 6 November 2020)
 Before me:)

.....
 Signature of deponent

.....
 Signature of witness
 Jillian Kate Robertson, solicitor

 Deponent

 Witness