

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged: Notice of Appeal (Fee for Leave Not Already Paid) - Form 122 - Rule 36.01(1)(b)(c)
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
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File Number: VID786/2023
File Title: AMP FINANCIAL PLANNING PTY LTD v EQUITY FINANCIAL PLANNERS PTY LTD & 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



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.



Form 122
Rule 36.01(1)(b); 36.01(1)(c)

Notice of appeal

No VID of 2023

Federal Court of Australia

District Victoria

Registry:

Division General

On appeal from the Federal Court of Australia

AMP Financial Planning Pty Ltd (ACN 051 208 327)

Appellant

Equity Financial Planners Pty Ltd (ACN 151 382 311)

First Respondent

WealthStone Pty Ltd (ACN 140 148 214)

Second Respondent

To the Respondents

The Appellant appeals from the orders as set out in this notice of appeal.

- 1 The papers in the appeal will be settled and prepared in accordance with the Federal Court Rules Division 36.5.
- 2 The Court will make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence. You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place: Commonwealth Law Courts, 305 William Street, Melbourne

Filed on behalf of the Appellant

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Version 2 form approved 09/05/2013



Date:

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Signed by an officer acting with the authority
of the District Registrar

The Appellant appeals from part of the judgment and orders of the Federal Court of Australia given and made on 29 August 2023 at Melbourne (**Orders**).

The appeal is brought by leave of the Court (if and to the extent that leave is necessary) pursuant to paragraph 8 of the Orders, a copy of which is annexed to this notice.

*Note: Unless otherwise defined in this Notice, capitalised terms have the meaning ascribed to them in the Court's reasons delivered on 5 July 2023 (**Reasons**), or the Orders.*

Grounds of appeal

- 1 The learned primary judge erred in holding that AMPFP did not effectively amend the BOLR Policy to introduce the 8 August 2019 Changes as of 8 August 2019 (Reasons [16], [602], [644]). His Honour should have held that AMPFP effectively amended the BOLR Policy to introduce the 8 August 2019 Changes as of 8 August 2019.
- 2 Further and more particularly as to paragraph 1 above:
 - (a) The learned primary judge erred in holding that the economic change he found (at Reasons [580], referred to as the First Alternative Economic Change) was not one that rendered any part of the BOLR Policy inappropriate within the meaning of the LEP Provision (Reasons [582]). His Honour should have held that the First Alternative Economic Change rendered the BOLR Policy's valuation multiple inappropriate.
 - (b) The learned primary judge erred in holding that any changes to the BOLR Policy under the LEP Provision must be proportionate to the economic change that renders the Policy (or any part of it) inappropriate (Reasons [560]). His Honour should have held that any changes to the BOLR Policy under the LEP Provision must be responsive to that economic change, and that the 8 August 2019 Changes were responsive to the First Alternative Economic Change.
 - (c) Alternatively to sub-paragraph (b), the learned primary judge erred in finding that the 8 August 2019 Changes were not proportionate to the First Alternative Economic Change (Reasons [583]).



- (d) The learned primary judge erred in holding that consultation (within the meaning of cl 1.4 of the Master Terms) with ampfpfa was a pre-condition to the effective exercise of the power to amend the BOLR Policy pursuant to the LEP Provision (Reasons [610], [615]).
- (e) Further or alternatively to sub-paragraph (d), the learned primary judge erred in finding that AMPFP did not provide ampfpfa reasonable prior notice of the 8 August 2019 Changes and thereby failed to comply with the obligation in cl 1.4(a) of the Master Terms in respect of those Changes (Reasons [634], [636], [642]).
- 3 Alternatively to paragraphs 1 and 2 above, the learned primary judge erred in holding that the announcement of the 8 August 2019 Changes on that date did not constitute 13 months' notice so as to render those Changes to the BOLR Policy effective from 8 September 2020 (Reasons, [17], [647]).
- 4 The learned primary judge:
- (a) erred in holding that AMPFP's conduct in entering the buy-back agreements was conduct in connection with the acquisition of services within the meaning of s 21(1)(b) of the Australian Consumer Law (Reasons [702]);
- (b) should have held that the buy-back agreements were not contracts for the supply or acquisition of services within the meaning of s 21(1) of the Australian Consumer Law.
- 5 The learned primary judge erred in holding that AMPFP's conduct in procuring the release in the WealthStone buy-back agreement was unconscionable within the meaning of s 21 of the Australian Consumer Law (Reasons [21], [716]-[717]).

Orders sought

- 1 The appeal is allowed.
- 2 Paragraphs 3, 4, 5 and 6 of the Orders are set aside.
- 3 Within 28 days, Equity repay to AMPFP:
- (a) the sum of \$814,944.76 (which was paid by AMPFP to Equity pursuant to paragraph 3(a) of the Orders), together with interest thereon; and
- (b) the sum of \$151,138.42 (which was paid by AMPFP to Equity pursuant to paragraph 3(b) of the Orders), together with interest thereon.



- 4 Within 28 days, WealthStone repay to AMPFP:
- (a) the sum of \$115,533.51 (which was paid by AMPFP to Corrs Chambers Westgarth for distribution to WealthStone pursuant to paragraph 5(a) of the Orders), together with interest thereon; and
 - (b) the sum of \$17,177.84 (which was paid by AMPFP to Corrs Chambers Westgarth for distribution to WealthStone pursuant to paragraph 5(b) of the Orders), together with interest thereon.
- 5 The answers of the learned primary judge to the following common questions, in Schedule A to the Orders, are set aside, and in lieu thereof those common questions are answered as follows:
- a. Common question 1: Did AMPFP effectively amend the BOLR Policy to introduce the 8 August 2019 Changes as of 8 August 2019?
Yes.
 - b. Common question 1(a): Was there an economic change that rendered the BOLR Policy, or any part of it, inappropriate?
Yes, namely the First Alternative Economic Change.
 - c. Common question 1(a)(iii): Did the First Alternative Economic Change render the BOLR Policy, or any part of it, “inappropriate”, within the meaning of the LEP Provision?
Yes; the First Alternative Economic Change rendered the BOLR Policy’s valuation multiple inappropriate.
 - d. Common question 1(c): On the proper construction of the BOLR Policy, did any proposed changes pursuant to the LEP Provision have to be: (a) reasonably necessary to make the BOLR Policy appropriate in light of the economic or legislation change that renders the policy or any part of it inappropriate; or (b) responsive to the economic or legislation change that renders the policy or any party of it inappropriate?

Any proposed changes pursuant to the LEP Provision had to be responsive to the economic or legislation change that rendered the Policy (or any part of it) inappropriate. They did not have to be reasonably necessary to make the BOLR Policy appropriate in light of that change.



- e. Common question 1(c)(i): Were the 8 August 2019 Changes proportionate to the First Alternative Economic Change?

No question of proportionality arises. The 8 August 2019 Changes were responsive to the First Alternative Economic Change. *[Alternative answer, pursuant to ground of appeal 2(c): Yes].*

- f. Common question 1(e): Was consultation (within the meaning of cl 1.4 of the Master Terms) with ampfp a pre-condition to the effective exercise of the power to amend pursuant to the LEP Provision?

No.

- g. Common question 1(e)(i): Did AMPFP consult with ampfp in respect of the 8 August 2019 Changes, or any of them, within the meaning of cl 1.4 of the Master Terms?

Yes, AMPFP consulted with ampfp in respect of the 8 August 2019 Changes, within the meaning of cl 1.4 of the Master Terms.

- h. Common question 2: Did AMPFP effectively amend the BOLR policy to introduce some or all of the 8 August 2019 Changes as of 8 September 2020?

Does not arise. *[Alternative answer, pursuant to ground of appeal 3, if ground of appeal 1 is rejected: Yes, AMPFP effectively amended the BOLR Policy to introduce the 8 August 2019 Changes as of 8 September 2020].*

- i. Common question 3: Did AMPFP breach the authorised representative agreements of relevant group members within [35] or [37] of the statement of claim by offering to enter into a buyback agreement with a BOLR payment calculated pursuant to the 2019 BOLR Policy (and/or by failing to offer a register valuation, or to enter a buyback agreement, with a BOLR payment calculated pursuant to the 2017 BOLR Policy)?

No.



- j. Common question 5(b)(ii): In relation to the buy-back agreements of WealthStone (and other group members who fall within [58] of the statement of claim), was AMPFP's conduct in entering the buy-back agreements conduct in connection with the acquisition or possible acquisition of services within the meaning of s 21(1)(b) of the Australian Consumer Law?

No.

- 6 The Respondents pay the Appellant's costs of and incidental to the appeal.
7 Such further or other orders or relief as this Honourable Court deems fit.

Appellant's address

The Appellant's address for service is:

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The Appellant's address is Quay Quarter Tower, 50 Bridge St, Sydney NSW 2000 AUSTRALIA

Service on the Respondent(s)

It is intended to serve this notice of appeal on all Respondents.

Date: 26 September 2023

A handwritten signature in blue ink, appearing to read 'N. Tatasciore', with a long horizontal flourish extending to the right.

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Natalie Tatasciore
Lawyer for the Appellant
King & Wood Mallesons