

NOTICE OF FILING

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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 7:55:27 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.

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.



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: Matthew James Carr
Address: Level 23, 123 Eagle Street, Brisbane QLD 4000
Occupation: Restructuring Services Manager
Date: 6 November 2020

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1	Affidavit of Matthew James Carr affirmed on 6 November 2020.	All	1 - 8

Deponent

Witness

Filed on behalf of (name & role of party) The Plaintiffs
Prepared by (name of person/lawyer) Timothy James Sackar
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[Version 3 form approved 02/05/2019]

Document number	Details	Paragraph	Page
2	Exhibit "MJC-1", being a bundle of paginated documents exhibited to the deponent.	3	2

I, Matthew James Carr, of Deloitte Financial Advisory Pty Ltd (**Deloitte**), at Level 23, 123 Eagle Street, Brisbane QLD 4000, Restructuring Services Manager, solemnly, sincerely, declare and affirm:

OVERVIEW

1. I make this affidavit from my own knowledge and belief, except where otherwise stated in which case I have stated the source of my knowledge.
2. I am a staff member of Deloitte and I assist the First Plaintiffs (**Deed Administrators**) with the deed administrations of the Second to Forty-Second Plaintiffs.
3. Exhibited to me at the time of affirming this affidavit is a bundle of documents to which I make reference in this affidavit marked "**MJC-1**" (**Exhibit MJC-1**). A reference to a Tab in this affidavit is to a tab in Exhibit MJC-1 unless otherwise stated.
4. I make this affidavit in support of the relief sought by the First Plaintiffs and the Second Plaintiff, Virgin Australia Holdings Ltd (Subject to Deed of Company Arrangement) ACN 100 686 226 (**VAH**), in the interlocutory process filed in these proceedings on 20 October 2020 (**Interlocutory Process**) namely, an order pursuant to section 444GA(1)(b) of the *Corporations Act 2001* (Cth) that leave be granted for the Deed Administrators to transfer all of the existing shares in the capital of VAH, to BC Hart Aggregator, L.P., or its nominee.

NOTICE

Overview

5. 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

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of the date of the orders, by the methods set out in subparagraphs 2(a)-(e) of the 20 October Orders.

6. 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 MJC-1**. The 23 October Circular, amongst other things, gave notice that:
- (a) the Interlocutory Process and the affidavit of Vaughan Neil Strawbridge sworn on 20 October 2020 (**Strawbridge 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;
 - (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 Strawbridge Affidavit are available on the Federal Court's website and on <https://www2.deloitte.com/au/en/pages/finance/articles/virgin-australia-holdings-limited-subsidiaries.html> (**Deloitte Website**); 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

7. On 23 October 2020 at approximately 1.04pm, I sent an email via the Halo Platform (as that is defined in the affidavit of David Michael Orr sworn 29 July 2020) to the 12,884 creditors that have registered as users (**Halo Users**).
8. On 23 October 2020 at approximately 2.40pm, I sent an email to the known email addresses of the 1,995 creditors that have not registered on the Halo Platform (**Non-Halo Users**).

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9. Each of the emails referred to paragraphs 7 and 8 above attached a copy of the 23 October Circular and the 20 October Orders.
10. A copy of the email sent to the Halo Users (without attachments) is exhibited at **Tab 2 of Exhibit MJC-1** and a copy of the email sent to the Non-Halo Users (without attachments) is exhibited at **Tab 3 of Exhibit MJC-1**.
11. As a result of the Halo Users email being sent via the Halo Platform and the Non-Halo Users email being sent by blind copy to each of the creditors, the print-out of the emails contained in **Tab 2** and **Tab 3 of Exhibit MJC-1** respectively do not identify the relevant recipients; however, I confirm that each of the Halo Users and Non-Halo Users were sent the respective communications.

Notice to the Shareholders

12. I am informed by Mr Wayne Hopkins, Senior Relationship Manager, of Computershare Ltd (**Computershare**), VAH's share registry provider (**Mr Hopkins**), and verily believe to be true that:
 - (a) Computershare maintains and administers the share register of VAH (**Register**), which is maintained on a computer system at Computershare;
 - (b) the Register records the name of each Shareholder and either an email address or postal address for each Shareholder; and
 - (c) 9,008 Shareholders have an email address recorded on the Register (excluding duplicate email addresses) (**Email Shareholders**) and 9,000 Shareholders have a postal address recorded on the Register (**Non-Email Shareholders**).

Post

13. On 26 October 2020 at approximately 4.53pm, I received an email from Mr John Harris, Client Support, of Computershare (**Mr Harris**), which attached a copy of the 23 October Circular which had a sample postal address stamped on the first page (**Sample Circular**), which Computershare proposed to send via post to the Non-Email Shareholders. A copy of the Sample Circular is exhibited at **Tab 4 of Exhibit MJC-1**. On 26 October 2020 at approximately 6.00pm, I sent an email to Mr Harris confirming that Computershare was authorised to dispatch the 23 October Circular in the form of the Sample Circular to the

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Non-Email Shareholders. On 29 October 2020 at approximately 8.43am, I received an email from Mr Harris which confirmed that the 23 October Circular had been successfully dispatched to the Non-Email Shareholders on 28 October 2020. A copy of this chain of correspondence is exhibited at **Tab 5 of Exhibit MJC-1**.

Email

14. On 26 October 2020 at approximately 12.09pm, I was blind copied to an email from a Computershare email address which contained a link to the 23 October Circular (**26 October Email**). A copy of this email is exhibited at **Tab 6 of Exhibit MJC-1**.
15. As a result of the 26 October Email being sent by blind copy, the print-out of the 26 October Email contained in Tab 6 of Exhibit MJC-1 does not identify the relevant recipients, however I am informed by Mr Harris, and verily believe to be true, that the 26 October Email was sent to each Email Shareholder.
16. On 5 November 2020 at approximately 11.27am, I sent an email to Mr Harris requesting written confirmation that the 26 October Email was dispatched to the Email Shareholders. On 5 November 2020 at approximately 11.31am, I received an email from Mr Hopkins in reply to my email to Mr Harris, which confirmed that the 26 October Email had been successfully dispatched to the Email Shareholders. A copy of this chain of correspondence is exhibited at **Tab 7 of Exhibit MJC-1**.

Discrepancy in the number of Shareholders

17. I refer to and rely upon the affidavit of Vaughan Neil Strawbridge (**Mr Strawbridge**) dated 6 November 2020 (**Strawbridge Affidavit**) filed in these proceedings.
18. I refer to paragraph 13 of the Strawbridge Affidavit, which states that in addition to the five Major Shareholders (as that is defined in the affidavit of Vaughan Neil Strawbridge sworn on 20 October 2020), VAH has 19,181 other Shareholders. As I deposed at paragraphs 12 to 16 above, Computershare has sent the 23 October Circular to a total of 18,008 Shareholders (comprised of 9,008 emails containing the 23 October Circular being sent to the Email Shareholders and 9,000 copies of the 23 October Circular being posted to the Non-Email Shareholders). On 5 November 2020 at approximately 8.05pm, I sent an email to Mr Harris and Mr Hopkins asking for clarification as to why there is a discrepancy between the total number of Shareholders and the number of communications that were

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sent by Computershare. On 5 November 2020 at approximately 9.00pm and 6 November 2020 at approximately 8.53am, I received respective emails from Messrs Hopkins and Harris explaining the discrepancy. A copy of this email chain of correspondence is exhibited at **Tab 8 of Exhibit MJC-1**. In his email, Mr Hopkins explained that the discrepancy "*will be because holders with the Return Mail flag were excluded and also because of suppressed custodians, where for those that subscribe to this service receive a single email and not one each for their clients, which is why they subscribe to this service*". Mr Harris confirmed in his email to me that Mr Hopkin's explanation was correct, and in addition the discrepancy can further be explained due to the fact that duplicate email addresses recorded on the Register were excluded to avoid different Shareholders who have recorded the same email address on the Register receiving the email multiple times.

19. I refer to the statement in Mr Hopkin's email which reads "*...the difference will be because holders with the Return Mail flag were excluded...*". I am informed by Mr Hopkins, and verily believe to be true, that a Shareholder will have a "*Return Mail flag*" if the email address it has recorded on the Register automatically returns an email that Computershare has sent that Shareholder in the past and Computershare is unable to obtain an updated email address for that Shareholder. In the event that a Shareholder has a "*Return Mail flag*" Computershare will not include that Shareholder's email address when it sends a broadcast email to all Email Shareholders.

Upload to Deloitte Website

20. Between 20 October 2020 and 23 October 2020, I uploaded copies of each of the following documents to the Deloitte Website:
- (a) 23 October Circular;
 - (b) Explanatory Statement and IER;
 - (c) Interlocutory Process;
 - (d) Strawbridge Affidavit; and
 - (e) 20 October Orders.

Print-outs of the Deloitte Website displaying that the documents listed above have been uploaded is exhibited at **Tab 9 of Exhibit MJC-1**.

Deponent

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Communications with the Shareholders

21. I refer to the correspondence referred to in paragraphs 17 and 18 of the Strawbridge Affidavit. On 6 November 2020 at approximately 2.48pm, I sent an email to Mr Perry McNeil which contained the Microsoft Teams link to attend the Hearing. A copy of this email correspondence is exhibited at **Tab 10 of Exhibit MJC-1**.
22. On 4 November 2020, I had a telephone conversation with Ms Rebecca Chen in relation to the Interlocutory Process, during which Ms Chen indicated that she intended to oppose the Interlocutory Process. Following our call, I exchanged three emails with Ms Chen. On 5 November 2020 at approximately 8.40pm, I sent an email to Ms Chen which contained the Microsoft Teams link to attend the Hearing. A copy of this email correspondence is exhibited at **Tab 11 of Exhibit MJC-1**.
23. I refer to paragraph 20 of the Strawbridge Affidavit, which refers to the Notices of Appearance for Shelleycom and Tymar (as they are defined in the Strawbridge Affidavit) that were provided to Clayton Utz via email from Mr Anthony Collopy. On 6 November 2020 at approximately 2.46pm, I sent an email to Ms Collopy which contained the Microsoft Teams link to attend the Hearing. A copy of this email correspondence is exhibited at **Tab 12 of Exhibit MJC-1**. On 6 November 2020 at approximately 3.11pm, I sent an email to Mr Hopkins which asked for confirmation as to whether Shelleycom and Tymar is each a current Shareholder. On 6 November 2020 at approximately 3.42pm, Mr Harris replied to my email confirming that each of Shelleycom and Tymar, currently hold 201,011 and 225,002 shares in VAH respectively. A copy of this email correspondence is exhibited at **Tab 13 of Exhibit MJC-1**.
24. On 6 November 2020, I received a call from Mr David Nasrawi, who claimed to represent a Shareholder. On 6 November 2020, at approximately 2.50pm, I sent an email to Mr Nasrawi which contained the Microsoft Teams link to attend the Hearing. A copy of this email correspondence is exhibited at **Tab 14 of Exhibit MJC-1**.
25. On 6 November 2020, I received a call from Ms Lydia Wlodarczyk, who claimed to be a Shareholder. On 6 November 2020, at approximately 3.07pm, I sent an email to Ms Wlodarczyk which contained the Microsoft Teams link to attend the Hearing. A copy of this email correspondence is exhibited at **Tab 15 of Exhibit MJC-1**.

Deponent

Witness

Affirming this affidavit

- 26. I have not been able to affirm 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.
- 27. 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 unaffirmed 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.
- 28. I will formally affirm this affidavit when circumstances allow and will instruct Clayton Utz to file the affirmed version with the Court.

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

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 Signature of deponent

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

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 Deponent

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 Witness