

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 28/07/2020 9:21:27 PM AEST 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: NSD818/2020
File Title: IN THE MATTER OF VAH NEWCO NO. 2 PTY LTD (IN LIQUIDATION) ACN 160 881 354 AND VB INVESTCO PTY LTD (IN LIQUIDATION) ACN 101 961 095
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Dated: 28/07/2020 9:21:32 PM AEST

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.



Form 59
Rule 29.02(1)

Affidavit

No. NSD818 of 2020

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

IN THE MATTER OF VAH NEWCO NO.2 PTY LTD (IN LIQUIDATION) ACN 160 881 354 AND VB INVESTCO PTY LTD (IN LIQUIDATION) ACN 101 961 095

RICHARD HUGHES IN HIS CAPACITY AS LIQUIDATOR OF EACH OF VAH NEWCO NO.2 PTY LTD (IN LIQUIDATION) AND VB INVESTCO PTY LTD (IN LIQUIDATION)

First Plaintiff

AND OTHERS IN THE SCHEDULE

Affidavit of: **Kassandra Suzann Adams**
Address: Level 15, 1 Bligh Street, Sydney NSW 2000
Occupation: Solicitor
Date: 28 July 2020

Contents

Document number	Details	Paragraph	Page
1	Affidavit of Kassandra Suzann Adams sworn on 28 July 2020	All	1-4
2	Annexure "A", being a copy of Mr David Lombe's email to ASIC dated 27 July 2020	4	5-6
5	Annexure "B", being a copy of the email sent to the Virgin Group creditors dated 27 July 2020 on the Halo Platform	6	7
6	Annexure "C", being a copy of the email sent to the Virgin Group creditors dated 28 July 2020 to their email addresses	6	8

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
Tel +61 2 9353 4000 Fax +61 2 8220 6700
Email kaadams@claytonutz.com
Address for service Level 15, 1 Bligh Street, Sydney NSW 2000
(include state and postcode)

I, Cassandra Suzann Adams, solicitor of Clayton Utz, Level 15, 1 Bligh Street, Sydney NSW 2000 swear:

1. I am a solicitor employed by Clayton Utz, solicitors for the Plaintiffs. I have the day to day carriage of this matter under the supervision of Timothy Sackar, a partner of Clayton Utz.
2. 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.
3. I make this affidavit in relation to the Plaintiffs' Originating Process dated 27 July 2020 (**Originating Process**). At 11:53am on 27 July 2020, I caused to be submitted the Originating Process to the Court's registry for filing on behalf of the Plaintiffs, together with a supporting affidavit of Richard John Hughes dated 24 July 2020 (**Hughes Affidavit**) and its exhibit marked RJH-1 (**Exhibit RJH-1**).

NOTICE OF THE ORIGINATING PROCESS TO AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION (ASIC)

4. I am informed by David Lombe, Special Principal, Restructuring Services at Deloitte Touche Tohmatsu (of which Deloitte Financial Advisory Pty Ltd is a wholly owned subsidiary) (**Deloitte**) (**Mr Lombe**) and verily believe to be true that on 27 July 2020:
 - (a) at 5:51pm, Mr Lombe sent an email to Yvan Dang, Thea Eszenyi and Carl Sibilila, each employed by ASIC. The email gave notice of the Originating Process and attached a copy of the Originating Process, the Hughes Affidavit and the calendar invite containing Microsoft Teams details for the hearing listed for 10.15am on Thursday 20 July 2020; and
 - (b) at 5:54pm, Ms Dang, Senior Accountant, Insolvency Practitioners, ASIC confirmed receipt of the email from Mr Lombe.

A copy of the chain of correspondence (excluding its attachment as it is in the same form as filed with the Court) between Mr Lombe and Ms Dang is annexed to this affidavit and marked **Annexure A**.

NOTICE OF THE ORIGINATING PROCESS TO THE CREDITORS OF THE SECOND AND THRID PLAINTIFFS

5. I am informed by Matthew Carr, Manager, Restructuring Services at Deloitte (**Mr Carr**) and verily believe to be true that on:
 - (a) 27 July 2020 at 5:38pm, Mr Carr sent an email via Halo to the 11,959 creditors that have registered as users (**Halo Users**); and
 - (b) 28 July 2020 at 12:42pm, Mr Carr sent an email to the known email address of the 1,944 creditors that have not yet registered on the Halo Platform (**Non-Halo Users**).
6. Each of the emails referred to paragraph 5 above:
 - (a) notified all known creditors of the Second Plaintiff, the Third Plaintiffs and of Virgin Australia Holdings Limited (Administrators Appointed) and its subsidiaries in voluntary administration (**Virgin Group**), that the First Plaintiff has caused to be filed an application to stay the liquidation of the Second and Third Plaintiffs and appoint the First and Fourth

Plaintiffs as administrators of the Second and Third Plaintiffs, to be heard at 10:15am on Thursday, 30 July 2020 before Justice Middleton in the Federal Court of Australia; and

(b) attached a copy of the Originating Process and the Hughes Affidavit.

A copy of the email sent to the Halo Users is annexed to this affidavit and marked **Annexure B** and a copy of the email sent to the Non-Halo Users is annexed to this affidavit and marked **Annexure C**.

7. I am informed by Mr Carr that as a result of the Halo Users email being sent by via Halo and the Non-Halo Users email being sent by blind copy, to each of the creditors, the print-out of the emails contained in Annexure B and Annexure C do not identify the relevant recipients, however I verily being that the creditors referred to in paragraph 5 and 6 were issued the respective emails.

SWEARING OF THIS AFFIDAVIT

8. 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.

9. I have been informed by Thomas John Gardner, 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.

10. I will formally swear this affidavit when circumstances allow and will file the sworn version with the Court.

Sworn by the deponent
at Sydney
in New South Wales
on 28 July 2020
Before me:

)
)
)
)
)

Signature of **Kassandra Suzann Adams**

Signature of witness
Thomas John Gardner, Solicitor

SCHEDULE

No. NSD818 of 2020

Federal Court of Australia

District Registry: New South Wales

Division: Commercial and Corporations List

IN THE MATTER OF VAH NEWCO NO. 2 PTY LTD (IN LIQUIDATION) ACN 160 881 354 AND VB INVESTCO PTY LTD (IN LIQUIDATION) ACN 101 961 095

Plaintiffs

First Plaintiff	RICHARD HUGHES IN HIS CAPACITY AS LIQUIDATOR OF EACH OF VAH NEWCO NO.2 PTY LTD (IN LIQUIDATION) ACN 160 881 354 AND VB INVESTCO PTY LTD (IN LIQUIDATION) ACN 101 961 095
Second Plaintiff	VAH NEWCO NO.2 PTY LTD (IN LIQUIDATION) ACN 160 881 354
Third Plaintiff	VB INVESTCO PTY LTD (IN LIQUIDATION) ACN 101 961 095
Fourth Plaintiffs	SALVATORE ALGERI, VAUGHAN NEIL STRAWBRIDGE AND JOHN LETHBRIDGE GREIG

This and the following page is Annexure
A referred to in the affidavit of
Kassandra Suzann Adams sworn on 28
July 2020

Before me

From: Yvan Dang <Yvan.Dang@asic.gov.au>
Sent: Monday, 27 July 2020 5:54 PM
To: Lombe, David <dlombe@deloitte.com.au>
Cc: Thea Eszenyi <Thea.Eszenyi@asic.gov.au>; Carl Sibilila <Carl.Sibilila@asic.gov.au>
Subject: [EXT]RE: MVL Liquidations Conversion To VA's - Notice of Court Application [SEC=OFFICIAL]

Thank you for the update David.

Regards

Yvan Dang

Senior Accountant, Insolvency Practitioners

Australian Securities and Investments Commission

Level 7, 120 Collins Street, Melbourne, 3000

Tel: +61 3 9280 3405

yvan.dang@asic.gov.au



From: Lombe, David <dlombe@deloitte.com.au>
Sent: Monday, 27 July 2020 5:51 PM
To: Yvan Dang <Yvan.Dang@asic.gov.au>; Thea Eszenyi <Thea.Eszenyi@asic.gov.au>; Carl Sibilila <Carl.Sibilila@asic.gov.au>
Subject: MVL Liquidations Conversion To VA's - Notice of Court Application

EXTERNAL EMAIL: Do not click any links or open any attachments unless you trust the sender and know the content is safe.

Dear Yvan,

As you may recall and as noted in the Administrators DIRRI on 26 April 2019, Richard Hughes was appointed to members Voluntary liquidator to VAH Newco No 2 Pty Ltd and VB Investco Pty Ltd (**MVL Companies**) by a special resolution of the sole shareholder of the companies.

Due to the effect the administration of the Virgin Companies has on these companies, it has become necessary for Mr Hughes as liquidator to apply to the Court to seek that the Administrators (including Mr Hughes) be appointed to the MVL Companies as administrators and for the liquidation to be stayed. This is due in particular to the fact that the VA appointments to the Virgin Companies may have triggered the companies contingent liabilities. Please refer to the affidavit of Richard Hughes for further details.

Accordingly, please find attached a copy of the Originating Process together with supporting affidavit affirmed by Richard Hughes, filed with the Federal Court of Australia today.

The Court has listed the matter to be heard at **10.15am on Thursday, 30 July 2020** before Justice Middleton.

A copy of the calendar invitation with the Microsoft Teams link to the hearing is attached.

Kind regards,
David

David Lombe
Special Principal | Restructuring Services
Deloitte Financial Advisory Pty Ltd
Grosvenor Place, 225 George Street, Sydney, NSW, 2000
D: +61 2 9322 7400 | F: +61 2 9322 7001
dlombe@deloitte.com.au | www.deloitte.com

Deloitte.

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Before me

15920 Case(s)

Download List

Sent email to 11959 user(s) of 15920 case(s).

Sender

Virgin Halo Administrator <virginhalo@deloitte.com.au>

Subject

Virgin Group (Administrators Appointed) | Notice of proposed Orders sought by the Administrators

Content

Dear Sir / Madam,

As you may be aware, on 26 April 2019, Richard Hughes was appointed to VAH Newco No 2 Pty Ltd and VB Investco Pty Ltd (**MVL Companies**) as liquidator by a special resolution of the sole shareholder of the MVL Companies.

Due to the administration of the Virgin Group, it has become appropriate for Mr Hughes as liquidator to apply to the Court to seek that the Administrators (including Mr Hughes) be appointed to the MVL Companies as administrators and for the liquidation to be stayed.

Accordingly, please find attached a copy of the Originating Process together with supporting affidavit affirmed by Richard Hughes, filed with the Federal Court of Australia today.

The Court has listed the matter to be heard at **10.15am on Thursday, 30 July 2020** before Justice Middleton.

Why am I receiving this email?


The Court has directed the Administrators to provide notice of the matter to all known creditors of the Virgin Group.


What action is required by me?

No action is required by you, the purpose of this email is to keep you informed of the Orders that the Administrators are seeking to obtain from the Court.

Kind regards,

Vaughan Strawbridge, Sal Algeri, John Greig and Richard Hughes
The Joint and Several Administrators of the Virgin Group

 Affidavit of Richard John Hughes.pdf

 Originating Process.pdf

Performed by Carr, Matthew on 27 Jul 2020 05:38 PM

This is Annexure C referred to in the affidavit of Kassandra Suzann Adams sworn on 28 July 2020

Archived: Tuesday, 28 July 2020 7:58:57 PM

From: virginhalo@deloitte.com.au

Subject: Virgin Group (Administrators Appointed) | Notice of proposed Orders sought by the Administrators

Sensitivity: Normal

Attachments:

Affidavit of Richard John Hughes.pdf  Originating Process.pdf 

Before me

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Vaughan Strawbridge, Sal Algeri, John Greig and Richard Hughes
The Joint and Several Administrators of the Virgin Group

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