



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD464/2020

**IN THE MATTER OF VIRGIN AUSTRALIA HOLDINGS LTD
(ADMINISTRATORS APPOINTED) ACN 100 686 226 & ORS**

**VAUGHAN STRAWBRIDGE, SALVATORE ALGERI, JOHN GREIG AND
RICHARD HUGHES, IN THEIR CAPACITY AS JOINT AND SEVERAL
VOLUNTARY ADMINISTRATORS OF THE SECOND TO THIRTY-NINTH
PLAINTIFFS** and others named in the schedule
Plaintiff

ORDER

JUDGE: JUSTICE MIDDLETON

DATE OF ORDER: 15 May 2020

WHERE MADE: Melbourne

THE COURT ORDERS THAT:

JobKeeper

1. By consent of the First Plaintiffs and the Deputy Commissioner of Taxation, the hearing of paragraph 18 of the Interlocutory Process be stood over until 10.15am on 20 May 2020, with liberty to the parties to provide the Associate to Middleton J any orders which are not opposed by the Deputy Commissioner of Taxation with respect to the relief sought in that paragraph.

Limitation of Administrators' Liability

Specified Categories of Future Agreements

2. Pursuant to section 447A(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**) and section 90-15 of the *Insolvency Practice Schedule 2016* (Cth), being Schedule 2 to the Corporations Act (**IPSC**), Part 5.3A of the Corporations Act is to operate in relation to the Plaintiffs as if section 443A(1) of the Corporations Act provides that:



- (a) the liabilities of the First Plaintiffs (in their capacity as administrators of each of the Virgin Companies) incurred with respect to any obligations arising out of, or in connection with, any future:
 - (i) agreement on the terms of, or substantially in accordance with, the Aircraft Protocols document in the form exhibited at Tab 12 of Exhibit VNS-2 to the Strawbridge Affidavit;
 - (ii) alliance agreements, being international arrangements established with various global airlines that provide the Virgin Companies with a long distance international network;
 - (iii) procurement contracts, including:
 - A. in-flight services agreements, being agreements entered into for the provision of food and beverages and other retail on-board services, catering, entertainment and internet wifi on flights operated by the Virgin Companies;
 - B. ground handling agreements, being agreements entered into for the provision of ground handling services for the Virgin Companies' flight arrivals and departures at national and international airports;
 - C. operational systems agreements, being agreements entered into for the provision of support and maintenance services in relation to licenced software, systems, platforms and network infrastructure;
 - D. fuel agreements, being agreements entered into for the supply and delivery of fuel to the Virgin Companies at various locations throughout Australia, New Zealand and the United States;
 - E. maintenance and parts agreements, being agreements entered into for the provision of maintenance, repair and modification services for aircraft operated by the Virgin Companies, including the provision of the relevant component parts;
 - F. IT agreements, being agreements entered into for the provision of core computer infrastructure and end user computing support services and business services to the Virgin Companies;



- (iv) trade mark licence agreements;
- (v) airport agreements, being agreements entered into with major airports across Australia, for the use of terminal gates, public spaces and facilities and for sub-leases in relation to each of the Virgin Companies' airport lounges;
- (vi) charter agreements, being agreements entered into with various major companies for the supply of scheduled air transport services for personnel and freight to nominated destinations agreed between the parties to the agreement;
- (vii) cargo agreements, being agreements entered into for the handling of cargo and the provision of management, administration and support services;
- (viii) corporate sales agreements, being agreements entered into with major travel agents and other platforms, including with both government and private counterparties, which set out incentives offered by the Virgin Companies for the sale of Virgin flights by the relevant agents;
- (ix) industry/agency agreements, being agreements entered into which provide for the preferred supply by the Virgin Companies of flight services to each of its clients, including with both government and private counterparties;
- (x) insurance arrangements, including contracts to support the ongoing operation of the Virgin Companies' self-insurance scheme; and
- (xi) training agreements, being agreements entered into to provide ongoing training to crew members.

(together, the **Applicable Agreements** and each, an **Applicable Agreement**) are in the nature of debts incurred by the First Plaintiffs in the performance and exercise of their functions as joint and several administrators of each of the Virgin Companies; and



- (b) notwithstanding that the liabilities in suborder (a) are debts incurred by the First Plaintiffs in the performance and exercise of their functions as joint and several administrators of each of the Virgin Companies, the First Plaintiffs will not be personally liable to repay such debts or satisfy such liabilities to the extent that the assets of the particular Virgin Company or Virgin Companies that is or are a party to the particular Applicable Agreement are insufficient to satisfy the debt and liabilities incurred by the First Plaintiffs arising out of, or in connection with, the Applicable Agreements.
3. Pursuant to section 447A of the Corporations Act and section 90-15 of the IPSC, the First Plaintiffs are to provide notice, in the Applicable Agreement or otherwise, to any counterparty to an Applicable Agreement of order 2 above, prior to that counterparty entering into an Applicable Agreement.
4. Pursuant to section 447A of the Corporations Act and section 90-15 of the IPSC, the First Plaintiffs are to:
- (a) keep a schedule noting each Applicable Agreement entered into by the First Plaintiffs on behalf of any of the Virgin Companies; and
 - (b) provide an update to the Committee of Inspection formed for the Second to Fortieth Plaintiffs (**Committee**), at each meeting of the Committee, as to each Applicable Agreement that the First Plaintiffs have entered into or proposed to be entered into together with estimated debts that may be incurred in respect of each Applicable Agreement, on behalf of any of the Virgin Companies.

Virgin Company Loan Monies

5. Pursuant to section 447A(1) of the Corporations Act and section 90-15 of the IPSC, Part 5.3A of the Corporations Act is to operate in relation to the Plaintiffs as if section 443A(1) of the Corporations Act provides that:
- (a) any liability incurred by the First Plaintiffs arising out of, or in connection with, any loan or monies borrowed by a Virgin Company from another Virgin Company or Virgin Companies are in the nature of debts incurred by the First



Plaintiffs in the performance and exercise of their functions as joint and several administrators of each of the Virgin Companies; and

- (b) notwithstanding that the liabilities in suborder (a) are debts incurred by the First Plaintiffs in the performance and exercise of their functions as joint and several administrators of each of the Virgin Companies, the First Plaintiffs will not be personally liable to repay such debts or satisfy such liabilities to the extent that the assets of the particular Virgin Company that has borrowed monies from any other Virgin Company or Virgin Companies are insufficient to satisfy the debt and liabilities incurred by the First Plaintiffs.

Report on company activities and property

- 6. Pursuant to section 447A(1) of the Corporations Act and section 90-15 of the IPSC, Part 5.3A of the Corporations Act is to operate in relation to the Plaintiffs as if:
 - (a) a single report in the prescribed form about the business, property, affairs and financial circumstances of the Second, Third, Seventh to Tenth, Thirteenth, and Ninetieth to Twenty-Fourth Plaintiffs be prepared by each of the directors of the Second Plaintiff;
 - (b) the requirement in section 438B(2) that the directors of each of the Second, Third, Seventh to Tenth, Thirteenth, and Ninetieth to Twenty-Fourth Plaintiffs prepare a separate report about the business, property, affairs and financial circumstances of each of those companies, be dispensed with; and
 - (c) the requirement in section 438B(2) that the directors of each of the Fourth to Sixth, Eleventh to Twelfth, Fourteenth to Eighteenth, and Twenty-Fifth to Fortieth Plaintiffs prepare a separate report about the business, property, affairs and financial circumstances of each of those companies, be maintained.

Leave to members of the committee of inspection to derive profit

- 7. Subject to Orders 8 and 9 below, pursuant to sections 80-55(5)(b) and 90-15 of the IPSC, leave be granted to the members of the Committee to derive a profit or advantage from the external administration of each of the Virgin Companies.



8. No leave be granted for the members of the Committee to receive any gift or remuneration from the external administration of any of the Virgin Companies by reason of their position as a member of the Committee.
9. Pursuant to section 447A of the Corporations Act and section 90-15 of the IPSC, the First Plaintiffs are to:
 - (a) keep a schedule noting each agreement entered into by the First Plaintiffs on behalf of any of the Virgin Companies with a member of the Committee or any related entity of a member of the Committee (**Agreements with Committee Members**); and
 - (b) provide an update to the Committee, at each meeting of the Committee, as to each of the Agreements with Committee Members that the First Plaintiffs have entered into on behalf of any of the Virgin Companies;
 - (c) include, as a section in a report to creditors of the Virgin Companies pursuant to section 75-225 of the *Insolvency Practice Rules (Corporations) 2016* (Cth), a list of the Agreements with Committee Members and a summary of the key terms of each such agreement.

Bank account

10. Pursuant to sections 65-45 and 90-15 of the IPSC, the First Plaintiffs (in their capacity as administrators of each of the Virgin Companies) are not required to maintain a separate administration account in relation to each of the Virgin Companies (as otherwise required by the operation of Division 65 of the IPS).

Other ancillary orders

11. The First Plaintiffs must take all reasonable steps to cause notice of these orders to be given, within one (1) business day after the making of these orders, to:
 - (a) the creditors (including persons or entities claiming to be creditors) of each of the Virgin Companies, in the following manner:



- (i) where the First Plaintiffs have an email address for a creditor, notifying each such creditor, via email, of the making of the orders and providing a link to a website where the creditor may download the orders and the Interlocutory Process;
 - (ii) where the First Plaintiffs do not have an email address for a creditor but have a postal address for that creditor (or have received notification of non-delivery of a notice sent by email in accordance with (a)(i) above), notifying each such creditor, via post, of the making of the orders and providing a link to a website where the creditor may download the orders and the Interlocutory Process; and
 - (iii) placing scanned, sealed copies of the orders and the Interlocutory Process on the website maintained by the First Plaintiffs at <https://www2.deloitte.com/au/en/pages/finance/articles/virgin-australia-holdings-limited-subsiidiaries.html>; and
 - (b) the Australian Securities and Investments Commission;
 - (c) the Deputy Commissioner of Taxation; and
 - (d) the Attorney-General's Department (administering the Fair Entitlements Guarantee Scheme).
12. Any person who can demonstrate a sufficient interest has liberty to apply to vary or discharge any orders made pursuant to orders 2 to 10 above, on 1 business day's written notice being given to the Plaintiffs and to the Associate to Justice Middleton.
 13. The Plaintiffs' costs of this application be costs in the administration of the Virgin Companies, jointly and severally.
 14. The hearing be stood over until 10.15am on Wednesday 20 May 2020 in respect of paragraph 18 of the Interlocutory Process.
 15. These orders be entered forthwith.





Date that entry is stamped: 15 May 2020

Sia Lagos
Registrar



Schedule

No: NSD464/2020

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Division: General

Interested Person	DEPUTY COMMISSIONER OF TAXATION
Second Plaintiff	VIRGIN AUSTRALIA HOLDINGS LTD (ADMINISTRATORS APPOINTED) ACN 100 686 226
Second Interested Person	COMMONWEALTH OF AUSTRALIA
Third Plaintiff	VIRGIN AUSTRALIA INTERNATIONAL OPERATIONS PTY LTD (ADMINISTRATORS APPOINTED) ACN 155 859 608
Fourth Plaintiff	VIRGIN AUSTRALIA INTERNATIONAL HOLDINGS PTY LTD (ADMINISTRATORS APPOINTED) ACN 155 860 021
Fifth Plaintiff	VIRGIN AUSTRALIA INTERNATIONAL AIRLINES PTY LTD (ADMINISTRATORS APPOINTED) ACN 125 580 823
Sixth Plaintiff	VIRGIN AUSTRALIA AIRLINES (SE ASIA) PTY LTD (ADMINISTRATORS APPOINTED) ACN 097 892 389
Seventh Plaintiff	VIRGIN AUSTRALIA AIRLINES HOLDINGS PTY LTD (ADMINISTRATORS APPOINTED) ACN 093 924 675
Eighth Plaintiff	VAH NEWCO NO.1 PTY LTD (ADMINISTRATORS APPOINTED) ACN 160 881 345
Ninth Plaintiff	TIGER AIRWAYS AUSTRALIA PTY LIMITED (ADMINISTRATORS APPOINTED) ACN 124 369 008
Tenth Plaintiff	VIRGIN AUSTRALIA AIRLINES PTY LTD (ADMINISTRATORS APPOINTED) ACN 090 670 965
Eleventh Plaintiff	VA BORROWER 2019 NO. 1 PTY LTD (ADMINISTRATORS APPOINTED) ACN 633 241 059
Twelfth Plaintiff	VA BORROWER 2019 NO. 2 PTY LTD (ADMINISTRATORS APPOINTED) ACN 637 371 343
Thirteenth Plaintiff	VIRGIN TECH PTY LTD (ADMINISTRATORS APPOINTED) ACN 101 808 879



Fourteenth Plaintiff	SHORT HAUL 2018 NO. 1 PTY LTD (ADMINISTRATORS APPOINTED) ACN 622 014 831
Fifteenth Plaintiff	SHORT HAUL 2017 NO. 1 PTY LTD (ADMINISTRATORS APPOINTED) ACN 617 644 390
Sixteenth Plaintiff	SHORT HAUL 2017 NO. 2 PTY LTD (ADMINISTRATORS APPOINTED) ACN 617 644 443
Seventeenth Plaintiff	SHORT HAUL 2017 NO. 3 PTY LTD (ADMINISTRATORS APPOINTED) ACN 622 014 813
Eighteenth Plaintiff	VBNC5 PTY LTD (ADMINISTRATORS APPOINTED) ACN 119 691 502
Nineteenth Plaintiff	A.C.N. 098 904 262 PTY LTD (ADMINISTRATORS APPOINTED) ACN 098 904 262
Twentieth Plaintiff	VIRGIN AUSTRALIA REGIONAL AIRLINES PTY LTD (ADMINISTRATORS APPOINTED) ACN 008 997 662
Twenty First Plaintiff	VIRGIN AUSTRALIA HOLIDAYS PTY LTD (ADMINISTRATORS APPOINTED) ACN 118 552 159
Twenty Second Plaintiff	VB VENTURES PTY LTD (ADMINISTRATORS APPOINTED) ACN 125 139 004
Twenty Third Plaintiff	VIRGIN AUSTRALIA CARGO PTY LTD (ADMINISTRATORS APPOINTED) ACN 600 667 838
Twenty Fourth Plaintiff	VB LEASECO PTY LTD (ADMINISTRATORS APPOINTED) ACN 134 268 741
Twenty Fifth Plaintiff	VA HOLD CO PTY LTD (ADMINISTRATORS APPOINTED) ACN 165 507 157
Twenty Sixth Plaintiff	VA LEASE CO PTY LTD (ADMINISTRATORS APPOINTED) ACN 165 507 291
Twenty Seventh Plaintiff	VIRGIN AUSTRALIA 2013-1 ISSUER CO PTY LTD (ADMINISTRATORS APPOINTED) ACN 165 507 326
Twenty Eighth Plaintiff	737 2012 NO.1 PTY. LTD (ADMINISTRATORS APPOINTED) ACN 154 201 859
Twenty Ninth Plaintiff	737 2012 NO. 2 PTY LTD (ADMINISTRATORS APPOINTED) ACN 154 225 064
Thirtieth Plaintiff	SHORT HAUL 2016 NO. 1 PTY LTD (ADMINISTRATORS



APPOINTED) ACN 612 766 328

Thirty First Plaintiff SHORT HAUL 2016 NO. 2 PTY LTD (ADMINISTRATORS
APPOINTED) ACN 612 796 077

Thirty Second Plaintiff SHORT HAUL 2014 NO. 1 PTY LTD (ADMINISTRATORS
APPOINTED) ACN 600 809 612

Thirty Third Plaintiff SHORT HAUL 2014 NO. 2 PTY LTD (ADMINISTRATORS
APPOINTED) ACN 600 878 199

Thirty Fourth Plaintiff VA REGIONAL LEASECO PTY LTD (ADMINISTRATORS
APPOINTED) ACN 127 491 605

Thirty Fifth Plaintiff VB 800 2009 PTY LTD (ADMINISTRATORS APPOINTED)
ACN 135 488 934

Thirty Sixth Plaintiff VB LEASECO NO 2 PTY LTD (ADMINISTRATORS
APPOINTED) ACN 142 533 319

Thirty Seventh Plaintiff VB LH 2008 NO. 1 PTY LTD (ADMINISTRATORS
APPOINTED) ACN 134 280 354

Thirty Eighth Plaintiff VB LH 2008 NO. 2 PTY LTD (ADMINISTRATORS
APPOINTED) ACN 134 288 805

Thirty Ninth Plaintiff VB PDP 2010-11 PTY LTD (ADMINISTRATORS APPOINTED)
ACN 140 818 266