

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged: Originating Application Starting a Representative Proceeding under Part IVA
Federal Court of Australia Act 1976 - Form 19 - Rule 9.32
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File Number: VID498/2020
File Title: EQUITY FINANCIAL PLANNERS PTY LTD v AMP FINANCIAL
PLANNING PTY LTD
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.



**Second Further Amended originating application starting a
representative proceeding under Part IVA of the Federal Court of
Australia Act 1976**

No. VID 498 of 2020

Federal Court of Australia
District Registry: Victoria
Division: Commercial

Equity Financial Planners Pty Limited

Applicant

AMP Financial Planning Pty Limited

Respondent

To the Respondent

The Applicant applies for the relief set out in this application.

The Court will hear this application, or 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:

Date:

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

Filed on behalf of	Equity Financial Planners Pty Ltd, the applicant
Prepared by	Chris Pagent
Law firm	Corrs Chambers Westgarth
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Address for service	Level 17, 8-12 Chifley Square, Sydney NSW 2000



Details of claim

On the grounds stated in the accompanying second further amended statement of claim, the applicant claims for itself and the group members:

1. A declaration that the respondent's actions on or around 8 August 2019 were ineffective to amend the Buyer of Last Resort Policy (forming part of the Authorised Representative Agreement between the respondent and the applicant and between the respondent and each group member) insofar as those actions purported to change the buyer of last resort multiple applicable under the Buyer of Last Resort Policy.
2. An order that the respondent, in its dealings with the applicant and with group members, be restrained from relying on, or giving effect to, the purported changes to the buyer of last resort multiple announced by the respondent on 8 August 2019.
3. Damages, including under s 236 of the Australian Consumer Law.
 - 3A. Compensation pursuant to s. 237 of the Australian Consumer Law.
 - 3B. Alternatively to (1) and (2), an order pursuant to s. 237 of the Australian Consumer Law declaring the 8 August 2019 Changes void and of no effect.
 - 3C. A declaration that the respondent engaged in unconscionable conduct, in contravention of s.21 of the Australian Consumer Law.
 - 3AD. A declaration that by representations made to the applicant and group members on 8 August 2019 the respondent engaged in misleading or deceptive conduct, or conduct that was likely to mislead or deceive, in contravention of s. 18 of the Australian Consumer Law.
4. An order pursuant to s. 237 of the Australian Consumer Law varying the Authorised Representative Agreement between the respondent and each group member to permit the group member, for the purpose of the Buyer of Last Resort Policy, to elect to have its annual ongoing revenue assessed over either **(a)** the 12 month period ending 8 August 2019; or **(b)** the period otherwise identified by the Buyer of Last Resort Policy.
 - 4A An order pursuant to s. 237 of the Australian Consumer Law declaring any Purported Releases in group members' Buy Back Agreements void.
 - 4B Alternatively to (6), an order pursuant to s. 237(2) and/or s. 232(1) of Australian Consumer Law restraining the respondent from enforcing any Purported Releases in group members' Buy Back Agreements.



5. Interest pursuant to s. 51A of the *Federal Court of Australia Act 1976* (Cth).
6. Costs.
7. Such other order as the Court thinks fit.

Questions common to claims of group members

The questions of law or fact common to the claims of the group members are (with defined terms having the same meaning as given to them in the accompanying second further amended statement of claim):

1. Whether the changes to the Buyer of Last Resort Policy purportedly made by the respondent on 8 August 2019 were effective to amend the terms of the Authorised Representative Agreement between the respondent and each group member, insofar as those changes purported to amend the buyer of last resort multiple?
2. If yes – whether the respondent breached the terms of the Authorised Representative Agreement between the respondent and each group member by:
 - a. making those changes without giving 13 months' notice?
 - b. failing to consult with the AMP Financial Planners Association Incorporated in good faith before making those changes?
 - c. failing to allow the AMP Financial Planners Association Incorporated a reasonable period of time to obtain advice on, consider, and respond to the proposed changes?
3. What was a reasonable period of time, from the provision of Mr Akers' memorandum on 26 July 2019, to allow the AMP Financial Planners Association Incorporated to obtain advice on, consider, and respond to the proposed changes?
4. In respect of group members who entered into a Buy-Back-Agreement with the respondent after 8 August 2019:
 - a. whether the respondent has breached the Authorised Representative Agreements between itself and those group members by failing, since 8 August 2019, to offer to enter into Buy-Back Agreements with those group members calculated using a 4x multiple?
 - b. whether the Buy-Back Agreements are contracts for the supply of services within the meaning of section 23(4) of the ACL?
 - c. whether deferred payments payable under the Buy-Back Agreements form part of the upfront price payable under them?



- d. whether the duration of the Buy-Back Agreements is longer than 12 months?
 - e. whether the Purported Releases in the Relevant BBAs would cause (if AMPFP were permitted to rely upon those releases) a significant imbalance in the parties' rights and obligations under the Relevant BBA?
 - f. whether the Purported Releases in the Relevant BBAs are reasonably necessary to protect the legitimate interests of AMPFP?
 - g. whether the Purported Releases in the Relevant BBAs would cause (if AMPFP were permitted to rely upon them) detriment to the group members who are parties to the Buy-Back Agreements?
- 4A. Whether a condition precedent to the operation of the purported release contained in the BOLR Licensee Buy-Back Deed, entered into with some group members, has been satisfied?
5. Whether the respondent engaged in misleading or deceptive conduct, or conduct likely to mislead or deceive, by representations it made to the applicant and group members on 8 August 2019?
6. In respect of BBA Release Group Members who entered into a Buy-Back Agreement with the respondent containing a Purported Release:
- a. whether the respondent knew or ought to have known that Practices were likely to challenge, or had challenged, the legal validity of the 8 August 2019 Changes?
 - b. whether the respondent knew or ought to have known that the release of claims related to the 8 August 2019 Changes was not reasonably necessary to protect AMPFP's legitimate commercial interests?
 - c. whether the respondent knew or ought to have known that the Buy-Back Agreements entered into by the BBA Release Group Members were standard form contracts?
 - d. whether the respondent knew or ought to have known that it had no right, under the Authorised Representative Agreements, to require BBA Release Group Members to give a Purported Release in order to receive a buyer of last resort payment to which the BBA Release Group Members were entitled?
 - e. whether the respondent adopted a procedure in respect of Buy-Back Agreements under which it determined to use a buyer of last resort



valuation methodology that included the 8 August 2019 Changes for the purpose of calculating the value of the Register Rights?

- f. whether the respondent adopted a procedure in respect of Buy-Back Agreements under which it would not pay a benefit to a Practice under the buyer of last resort facility without the BBA Release Group Member entering into a Buy-Back Agreement which contained, save for exceptional cases, a Purported Release?
 - g. whether the respondent adopted a procedure in respect of Buy-Back Agreements which was designed by it to exploit its superior bargaining position vis a vis the BBA Release Group Members?
7. In respect of the Termination Option Group Members who entered into a Termination Agreement with the respondent containing a Purported Release:
- a. whether the respondent knew or ought to have known that Practices were likely to challenge, or had challenged, the legal validity of the 8 August 2019 Changes?
 - b. whether the respondent knew or ought to have known that the release of claims related to the 8 August 2019 Changes was not reasonably necessary to protect AMPFP's legitimate commercial interests?
 - c. whether the respondent knew or ought to have known that the Termination Agreements entered into by the Termination Option Group Members, or some of them, were standard form contracts?
 - d. whether the respondent knew or ought to have known that it had no right, under the Authorised Representative Agreements, to require the Termination Option Group Members to give a Purported Release in order to receive a buyer of last resort payment to which they were entitled?
 - a. whether the respondent knew or ought to have known that the Termination Option Group Members were given no, or no viable option that would see them either receive the full buyer of last resort payment to which they were entitled (being a payment calculated based on a 4x multiple) or retain (subject to the matter pleaded in paragraph 121 of the Second Further Amended Statement of Claim) the right to sue AMPFP for any loss the group member was caused by AMPFP's conduct in relation to the 8 August 2019 Changes?

**Representative action**

The Applicant brings this application as a representative party under Part IVA of the *Federal Court of Australia Act 1976*.

The group members to whom this proceeding relates are persons who, as at 8 August 2019:

- (a) were a party to an Authorised Representative Agreement with the respondent and were named as the Practice in that Authorised Representative Agreement; and
- (b) had not received a confirmed exercise date (for the purpose of the BOLR Policy) of 8 August 2019 or earlier,

where the terms “Authorised Representative Agreement” and “BOLR Policy” have the meanings given to them in the accompanying second further amended statement of claim.

Applicant’s address

The Applicant’s address for service is:

Place: c/o Chris Pagent, Level 17, 8 Chifley, 8-12 Chifley Square, Sydney, NSW, 2000

Email: c/o chris.pagent@corrs.com.au

The Applicant’s address is c/o Corrs Chambers Westgarth, Level 17, 8 Chifley, 8-12 Chifley Square, Sydney, NSW, 2000

Service on the Respondent

It is intended to serve this application on the Respondent.

Amended: 13 July 2021 ~~3 August 2022~~ 15 October 2022

A handwritten signature in black ink, appearing to read 'Chris Pagent'.

Signed by Chris Pagent
Lawyer for the Applicant