

## NOTICE OF FILING AND HEARING

### Filing and Hearing Details

Document Lodged: Notice of Cross-Appeal - Form 123 - Rule 36.21(1)  
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)  
Date of Lodgment: 18/10/2023 2:33:17 PM AEDT  
Date Accepted for Filing: 19/10/2023 9:45:18 AM AEDT  
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 123  
Rule 36.21(1)



## Notice of cross-appeal

No. VID 786 of 2023

Federal Court of Australia  
District Registry: Victoria  
Division: General

On appeal from the Federal Court

**AMP Financial Planning Pty Ltd (ACN 051 208 327)**

Appellant

**Equity Financial Planners Pty Ltd (ACN 151 382 311)** and another named in the schedule

First Respondent

**Equity Financial Planners Pty Ltd (ACN 151 382 311)** and another named in the schedule

First Cross-appellant

**AMP Financial Planning Pty Ltd (ACN 051 208 327)**

Cross-respondent

To the Appellant

The Respondents appeal from part of the judgment or the order as set out in this notice of cross-appeal.

The papers in the cross-appeal will be settled before a Registrar at the time and place to be advised.

3458-4893-3415v1

---

Filed on behalf of (name & role of party)	Equity Financial Planners Pty Ltd and WealthStone Pty Ltd (Respondents)
Prepared by (name of person/lawyer)	Chris Pagent
Law firm (if applicable)	Corrs Chambers Westgarth
Tel (02) 9210 6162	Fax (02) 9210 6611
Email	chris.pagent@corrs.com.au
<b>Address for service</b> (include state and postcode)	Level 37, Quay Quarter Tower, 50 Bridge Street, Sydney NSW 2000

---



Date:

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

The cross-appeal is brought by leave of the Court (if and to the extent leave is necessary)  
granted on 29 August 2023.

*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 of the learned primary judge dated 29 August 2023 (**Orders**).*

### **Details of cross-appeal**

This cross-appeal relates to:

- (a) common questions and answers 1.a.ii., 5.a. and 5.b.iii. in Schedule A of the Orders;  
and
- (b) the learned primary judge's dismissal of the First Respondent's application for an order pursuant to s 237 of the Australian Consumer Law declaring that the release in WealthStone's Buy-Back Agreement is void.

### **Grounds of cross-appeal**

1. The learned primary judge erred in holding that the First Alternative Economic Change was an "economic change" within the meaning of the LEP Provision (Reasons, [581]). His Honour should have held that the First Alternative Economic Change was not an "economic change" within the meaning of the LEP Provision.
2. The learned primary judge erred in holding that, on the proper construction of the WealthStone Buy-Back Agreement (and the buy-back agreements of other group members who fall within [58] of the statement of claim), AMPFP, by paying a BOLR Benefit calculated based on the 8 August 2019 Changes, had paid the "BOLR Benefit" within the meaning of the agreement so as to satisfy the condition precedent to the operation of the release in those agreements (Reasons, [687]–[688]). His Honour should have held that AMPFP had not paid the "BOLR Benefit" within the meaning of the agreements, and that the condition precedent to the operation of the release in each such agreement was not satisfied.
3. The learned primary judge erred in holding that, where the buy-back agreements of WealthStone and the group members in paragraph [58] of the statement of claim provided for payment of the BOLR Benefit in the form of an initial payment and a



deferred payment (however described), the “upfront price” payable under those contracts, within the meaning of s 23(4)(c) of the Australian Consumer Law was the (entire) BOLR Benefit (Reasons, [695(c)(i)]). His Honour should have held that the “upfront price” was the initial payment (however described).

4. The learned primary judge erred in holding that the WealthStone Buy-Back Agreement is not a “standard form contract” within the meaning of s 23(1) of the Australian Consumer Law (Reasons, [698]). His Honour should have found that the release in the WealthStone Buy-Back Agreement is:
  - a. a “standard form contract” within the meaning of s 23(1) of the Australian Consumer Law;
  - b. “unfair” within the meaning of s 23(1) of the Australian Consumer Law; and
  - c. void under s 23(1) of the Australian Consumer Law.

#### Orders sought

1. The answer of the learned primary judge to common question 1.a.ii., in Schedule A to the Orders, be set aside, and in lieu thereof the common question be answered as follows:
 

Was the First Alternative Economic Change an “economic change” within the meaning of the LEP Provision?

**No.**
2. The answer of the learned primary judge to common question 5.a., in Schedule A to the Orders, be set aside, and in lieu thereof that common question be answered as follows:
 

In respect of WealthStone (and other group members who fall within [58] of the statement of claim) on the proper construction of those group members’ buy-back agreements, has AMPFP, by paying a BOLR Benefit calculated based on the 8 August 2019 Changes, paid the “BOLR Benefit” within the meaning of the agreements so as to satisfy the condition precedent to the operation of the release?

**No.**
3. The answer of the learned primary judge to common question 5.b.iii., in Schedule A to the Orders, be set aside, and in lieu thereof that common question be answered as follows:





In relation to the buy-back agreements of WealthStone (and other group members who fall within [58] of the statement of claim), in the case of buy-back agreements providing for payment of the BOLR Benefit in the form of an initial payment and a deferred payment (however described), was the “upfront price” payable under those contracts, within the meaning of s 23(4)(c) of the Australian Consumer Law:

1. the initial payment; or
2. the BOLR Benefit?

**The upfront price was the initial payment (however described).**

4. An order pursuant to s 237 of the Australian Consumer Law declaring that the release in WealthStone’s Buy-Back Agreement is void.

#### **Respondents’ address**

The Respondents’ address for service is:

Place: Corrs Chambers Westgarth  
Level 37, 50 Bridge Street  
SYDNEY NSW 2000

Email: Chris.pagent@corrs.com.au

The Respondents’ address is c/o Corrs Chambers Westgarth, Level 37, 50 Bridge Street, Sydney, NSW, 2000.

#### **Service on the Appellant**

It is intended to serve this notice of appeal on the Appellant.

Date: 18 October 2023

A handwritten signature in blue ink, appearing to read 'C. Pagent'.

Signed by Christopher John Pagent  
Lawyer for the Respondents

**Schedule**

No. VID 786 of 2023

Federal Court of Australia  
District Registry: Victoria  
Division: General

**Respondents**

Second Respondent: WealthStone Pty Ltd (ACN 140 148 214)

**Cross-appellants**

Second Cross-appellant: WealthStone Pty Ltd (ACN 140 148 214)

Date: 18 October 2023