

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 5/07/2021 11:29:38 AM 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: NSD1220/2020
File Title: AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v
MELISSA LOUISE CADDICK & ANOR
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF
AUSTRALIA



Sia Lagos

Dated: 5/07/2021 11:29:50 AM 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

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

No. NSD 1220 of 2020

IN THE MATTER OF MALIVER PTY LTD (ACN 164 334 918)

ACN: 164 334 918

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

MELISSA LOUISE CADDICK and another

Defendants

Affidavit of: **Susan Margaret Coetzee**

Address:

REDACTED

Occupation:

Date: 31 March 2021

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| 1 | Affidavit of Susan Margaret Coetzee sworn on | 1 | 1 |

Filed on behalf of (name & role of party) Australian Securities and Investments Commission, Plaintiff

Prepared by (name of person/lawyer) Nicolette Bearup

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(include state and postcode)

[Version 2 form approved 09/05/2013]

| Document number | Details | Paragraph | Page |
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| 2 | Exhibit SMC-1, being a bundle of documents exhibited to this affidavit | 2 | 2 |

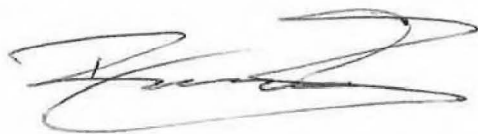
I, Susan Margaret Coetzee, ^{REDACTED}

^{REDACTED} say on oath:

1. Unless otherwise stated, I make this affidavit from information within my knowledge and from an examination of records within my possession. Where I depose to matters from information and belief, I believe those matters to be true and correct.
2. Exhibited to me at the time of affirming this affidavit and marked Exhibit SMC-1 is a bundle of documents described in this affidavit.

Personal background

3. I am 68 years of age.
4. I am married to ^{REDACTED}
5. In 2009, ^{REDACTED} and I purchased ^{REDACTED} a ^{REDACTED} which serviced residential and commercial clients in the Ramsgate area. I have worked at ^{REDACTED} since that time as an ^{REDACTED}
6. From about 26 November 2014, I was under the impression that ^{REDACTED} and I had invested part of our superannuation via Maliver Pty Limited (**Maliver**).
7. Prior to investing through Maliver, ^{REDACTED} and I had some experience in investing in shares and had an established share portfolio of our own at the time that we agreed to retain Melissa Caddick's services.
8. After investing with Maliver, I usually communicated with Melissa Caddick (**Melissa**) via email using the email account ^{REDACTED}. From time to time, Melissa would call ^{REDACTED} or I on the mobile to discuss our investments.



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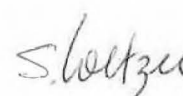
REDACTED and I had several meetings with Melissa all of which took place at the offices of REDACTED

Introduction to Melissa Caddick

9. REDACTED and I met Melissa through her parents REDACTED and REDACTED who we met in around 1997. REDACTED moved to Connells Point around the same time that we did, and we became friends. We first met Melissa around Christmas time in 1998, when we were attending a function at REDACTED home.
10. Over the years, I would see Melissa socially at various events organised by REDACTED
11. From my interactions with REDACTED I became aware that Melissa was working in the field of financial advice and funds management. I recall that REDACTED told me that Melissa had been a partner at Wise Financial but had sold her shares in the business to her then business partner. I recall that on one occasion, REDACTED showed me a magazine that had Melissa on the front cover. From my interactions with Melissa, and her parents, I had formed a view that she was a successful businesswoman.

Maliver Pty Limited

12. Around 2014, I became aware that Melissa was providing her own financial advice services. I found this out through REDACTED. My understanding was that Melissa would be able to assist REDACTED and I by managing the investments of our Self-Managed Super Fund, REDACTED. Based on my discussions with REDACTED, I understood that Melissa offered a tailored service, offering financial and investment services to a small client base.
13. At that time in 2014 and at all times since it was my understanding that Melissa was the only person providing advice at Maliver. It was my understanding that when REDACTED and I retained Maliver, we were ultimately retaining her services.

Opportunity to invest

14. In or about October 2014, I received a call from Melissa. Melissa had never called me prior to this, and I am unsure how she had got my number. After exchanging pleasantries, Melissa said to me words to the effect of *"I have an opportunity to take on more investors and wanted to offer an investment opportunity to you and [REDACTED]. Mum mentioned to me that you may be interested."* I do not recall the specific conversation that I had with Melissa after that, however prior to the call ending, I said to her words to the effect of *"I'll speak to [REDACTED] about this and we will let you know."*
15. After speaking with Melissa, I discussed the investment opportunity with [REDACTED] and ultimately telephoned Melissa to set up a meeting so that we could discuss the opportunity further.
16. [REDACTED] and I met with Melissa on 23 October 2014, at the offices of [REDACTED]. [REDACTED] During the course of this meeting, I provided Melissa with information about [REDACTED] and informed her of the assets held by the [REDACTED]. I informed Melissa that [REDACTED] and I intended to retire within 10 years, and that we were looking to build up our super to facilitate retirement. Melissa took extensive notes of the information that I provided her, and of what was discussed in the meeting.
17. During the meeting, I asked Melissa about the benefits of investing in property. Melissa and I then had a conversation to the following effect:
- I said [REDACTED] *and I have been thinking of investing in property rather than shares, what do you think about that?*
- She said *I would advise against investing in property. You can expect much better returns when investing in shares. When investing in shares you have much more flexibility, and the asset can be liquidated quickly. As you are approaching retirement, I would strongly advise you to invest in shares, rather than in property.*
18. At the time of our meeting with Melissa, [REDACTED] had approximately \$917,000 worth of assets, being:

a. [REDACTED]



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- b.
c.
d.
e.

REDACTED

19. In respect of the existing Share Portfolio, Melissa advised [REDACTED] and I to start from scratch, saying words to the effect of "We can do better for you. Let's sell those shares and I will reinvest the funds for you."
20. During the meeting, Melissa told [REDACTED] and I about the benefits of investing a greater portion of [REDACTED]'s assets into Shares. We had the following conversation: -

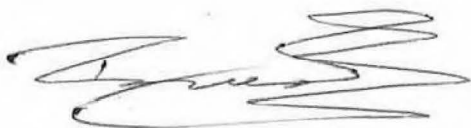
She said You currently only have approximately 15% of your super fund's assets allocated to shares. At the moment, the cash assets in the fund are not giving you a good return. I would suggest that you allocate 70-80% of the fund's assets towards purchasing shares. This approach will offer you a significantly better return on your investment. Giving that you are looking to retire you will want to take advantage of that.

[REDACTED] said I think at this stage, we want to invest more in shares, but we would only want to invest 50% of the fund's assets in shares which is \$450,000.

I said Yes, I think for the time being, let's start with 50% and we will see how that goes.

She said That's fine, we can discuss this again down the road.

21. Throughout our professional dealings with Melissa she would often encourage [REDACTED] and I to increase our investment in shares, saying words to the effect of "allocating a greater sum to shares will significantly improve your returns." Notwithstanding this advice from Melissa, [REDACTED] and I did not increase our initial investment to an amount greater than \$450,000.00.

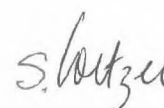


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22. During the meeting, Melissa advised [REDACTED] and I, that she would charge us an annual management fee which would equate to 0.50% of our total holding. This seemed reasonable to me.
23. During the course of the meeting, [REDACTED] and I also discussed with Melissa the possibility of us investing some of our own savings in shares and enquired whether Melissa would be willing to manage these investments for us. I do not recall the particulars of this conversation, and [REDACTED] and I ultimately did not proceed with this investment.
24. At the conclusion of the meeting, [REDACTED] and I agreed to retain Melissa's services. I recall that Melissa gave me a form to sign, I cannot recall precisely what the form was, but she said to us words to the effect of "*I will send you through the necessary paperwork via email in the coming days.*"
25. I decided to invest my superannuation through Maliver due to the following factors:
- a. Melissa provided us with clear advice and made confident representations about the great returns that she would be able to achieve for [REDACTED] and I; and
 - b. the longstanding family connection between Melissa's family and mine.
26. When making the decision to transfer money to Maliver, the only risk I thought of was the risk that the securities would not generate attractive returns. From what Melissa had told me during the course of our meeting, I was comforted by her representations that she could achieve great returns for [REDACTED] and me on our investment. I trusted Melissa to look after and manage our superannuation.

Initial email

27. On 27 October 2014, I received an email from Melissa titled '*Financial Advice*' in which Melissa advised that she was preparing the necessary documents and authorities, for [REDACTED] and me to sign when we next met with her on 6 November 2014. A copy of the initial email marked **MAL.2004.0001.6814** is



at **Tab 1 of Exhibit SMC-1**. The email also contained the following attachments as follows:-

- a. a File Note of the meeting held on 23 October 2014 marked **MAL.1044.0002.0004** is at **Tab 2 of Exhibit SMC-1**;
- b. a Death Benefit Nominations Form marked **MAL.1044.0002.0011** is at **Tab 3 of Exhibit SMC-1**;
- c. an authority letter to Maliver dated 6 November 2014, authorising Melissa to establish a CommSec Account in the name of [REDACTED] marked **MAL.1044.0002.0017** is at **Tab 4 of Exhibit SMC-1**;
- d. an authority letter to Maliver dated 6 November 2014, authorising her to establish a CommSec Account in the name of [REDACTED] [REDACTED] marked **MAL.1044.0002.0019** is at **Tab 5 of Exhibit SMC-1**;
- e. a Proposed Asset Allocation for TCSF dated 27 October 2014 marked **MAL.1044.0002.0021** is at **Tab 6 of Exhibit SMC-1**;
- f. a Proposed Asset Allocation for [REDACTED] dated 27 October 2014 marked **MAL.1044.0002.0023** is at **Tab 7 of Exhibit SMC-1**;
- g. a copy of the Maliver Management Rules marked **MAL.1044.0002.0025** is at **Tab 8 of Exhibit SMC-1**;
- h. a Financial Services Guide dated August 2014 marked **MAL.1044.0002.0028** is at **Tab 9 of Exhibit SMC-1**; and
- i. an acknowledgement and engagement letter to Maliver dated 6 November 2014 marked **MAL.1044.0002.0015** is at **Tab 10 of Exhibit SMC-1**.

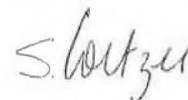
28. I have reviewed the File Note of my conference with Melissa on 23 October 2014 and it accurately reflects the matters that [REDACTED] and I discussed with Melissa, and the advice that we received.
29. I recall seeing the AFSL number and finding it in the File Note and Financial Services Guide attached to the initial email [REDACTED] [REDACTED] Having seen this,

I assumed that Maliver and Melissa had the necessary license to carry out the services she was providing.

30. The information sheet attached to the initial email indicated a 0.50% management fee. This was usually invoiced after we had our annual meeting with Melissa each year and paid directly (rather than deducting from our investment).
31. Prior to receiving the proposed asset allocation, I had not had any discussions with Melissa about what shares our funds would be purchasing.
32. Upon reviewing the documents attached to Melissa's email, [REDACTED] and I proceeded to sign the authorities from [REDACTED] to CommSec and Maliver, the Proposed Asset Allocation document for [REDACTED] and the acknowledgement and engagement letter to Maliver. We returned these documents to Melissa.

Delay in investing

33. Prior to investing with Melissa and Maliver, [REDACTED] and I had obtained advice and agreed to change the Trustee of [REDACTED]. After making this change, we applied to [REDACTED] for a new cheque book for the [REDACTED] Cash Management Account to be issued reflecting this change. It was agreed between [REDACTED], Melissa and I, that the [REDACTED] Account with Account Number [REDACTED] (Cash Management Account) would be used to transfer funds to and from Maliver as required.
34. As the new cheque book had not arrived by 6 November 2014, on or about 5 November 2015 I called Melissa to postpone our meeting as we would be unable to provide her with the initial cheque at that time. During the course of this call Melissa said to me *"I will be in the area in the next few days and will swing by to collect the paperwork you and [REDACTED] have signed."*
35. By 6 November 2014, [REDACTED] and I had signed all of the requisite authorities and disclosure forms attached to Melissa's email of 27 October 2014. On 7 November 2014, I received an email from Melissa in which she confirmed that she had collected two copies of the signed proposed asset allocation forms and Management Rules forms. To the best of my recollection, Melissa collected all of the documents signed by [REDACTED] and me on this date. A copy of





the email dated 7 November 2014 is marked **MAL.2017.0001.0007** and at **Tab 11 of Exhibit SMC-1.**

36. On or about 20 November 2014, I received the new chequebook from [REDACTED]. I proceeded to email Melissa confirming that the cheque was available for collection. A copy of my email dated 20 November 2014 marked **MAL.2017.0001.0013** is at **Tab 12 of Exhibit SMC-1.**
37. On 20 November 2014, I proceeded to draw a cheque in the sum of \$450,000. A copy of the cheque stub marked **MAL.1044.0002.1372** is at **Tab 13 of Exhibit SMC-1.**
38. On the same day, I received an email from Melissa advising that she would collect the cheque that afternoon, which she did. A copy of the email dated 20 November 2014 marked **MAL.2017.0001.0016** is at **Tab 14 of Exhibit SMC-1.**

CommSec Account

39. On 26 November 2014, I received an email from Melissa confirming that she had established the CommSec account and had commenced purchasing stocks. A copy of the email dated 26 November 2014 marked **MAL.2017.0001.0019** is at **Tab 15 of Exhibit SMC-1.**
40. As outlined above [REDACTED] and I provided Melissa with written authority to act on behalf of our [REDACTED], and to manage the account and trade.
41. I never got confirmation from Commonwealth Bank that the CommSec account had actually been set up. I just assumed it had been from the monthly reports Melissa emailed to me which included the CommSec account details. I did not have access to the CommSec account and did not speak to Commonwealth Bank about it prior to 27 November 2020. I refer to this issue at paragraphs [80]-[82] below.
42. I believed that our investment money had been transferred to the CommSec account for the purpose of trades and that all returns from trades went straight to the CommSec account. I drew this conclusion from the monthly reports Melissa emailed to me.



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Monthly Reports

43. At the end of each month, Melissa would send me emails attaching reports regarding my investments with Maliver. The monthly reports included month end balances, shares, dividends received and the amount of cash sitting outside of shares.
44. Upon receiving these reports, it was my practice to review them with [REDACTED]. I did not note anything out of the ordinary in the monthly reports.
45. I exhibit below some examples of the monthly reports that I received from Maliver and Melissa:
- a. Portfolio Valuation for the period ending 31 November 2014, marked **MAL.2017.0001.0021** is at **Tab 16** of **Exhibit SMC-1**;
 - b. Portfolio Valuation for the period ending 30 April 2015, marked **MAL.2017.0001.0054** is at **Tab 17** of **Exhibit SMC-1**;
 - c. Portfolio Valuation for the period ending 31 August 2016, marked **MAL.2017.0001.0185** is at **Tab 18** of **Exhibit SMC-1**;
 - d. Property Valuation for the period ending 31 July 2019, marked **MAL.2017.0001.0491** is at **Tab 19** of **Exhibit SMC-1**; and
 - e. Portfolio Valuation for the period ending 30 April 2020, marked **MAL.2017.0001.0627** is at **Tab 20** of **Exhibit SMC-1**.
46. I trusted Melissa to make changes to the [REDACTED] share portfolio as she saw fit. From time to time, Melissa would call me to discuss changes she proposed to make to the share portfolio. At the end of each financial year, Melissa would provide me with an Investment Strategy document for [REDACTED] and me to review and sign. One such investment strategy document dated 30 June 2016 is marked **MAL.1044.0002.0214** and at **Tab 21** of **Exhibit SMC-1**.
47. Apart from the monthly reports, Melissa would once a year send me an Economic Insights document, summarising her views on the market for the preceding 12 months. An example of one such Economic Insights document that I received from Melissa is marked **MAL.2017.0001.0682** and is at **Tab 22**



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of **Exhibit SMC-1**. Upon receiving these documents, I did not read them in any great detail.

48. In addition, from 2014 until 2020 at the end of the financial year, Melissa would send me an email attaching copies of the Commsec Direct Investment Account bank statements for the financial year, the CommSec Financial Year Summary report, copies of Holdings Statements and Dividends Statements. Sometimes Melissa would send these documents directly to our Accountants. An example of one such email dated 16 August 2017 and attachments that I received from Melissa is marked **MAL.1044.0002.0440**, **MAL.1044.0002.0441**, **MAL.1044.0002.0442**, **MAL.1044.0002.0446** and **MAL.1044.0002.0450** and are at **Tab 23** of **Exhibit SMC-1**. From my review of the CommSec reports and account statements, they appeared to me to be genuine, and I had no reason to suspect that they were not.

Yearly Meetings

49. During the Relevant Period, [REDACTED] and I would meet Melissa at least once a year to review our portfolio. The timing of these meetings fluctuated depending on Melissa's and our availability.
50. During the yearly meetings, Melissa discussed how our investments were going and asked if [REDACTED] or I had any questions. During the yearly meetings, Melissa appeared very organised and she was always very professional. I always observed her taking detailed notes of our discussions and following our meetings, she would email a file note of what was discussed to me. An example of one such file note following our meeting of 4 June 2018 is marked **MAL.2003.0004.3925** and is at **Tab 24** of **Exhibit SMC-1**.
51. I attended the following yearly meetings with Melissa:
- a. 26 November 2015: Melissa met [REDACTED] and I at our office;
 - b. 21 February 2017: Melissa met [REDACTED] and I at our office;
 - c. 4 June 2018: Melissa met [REDACTED] and I at our office; and
 - d. 27 August 2020: the meeting occurred over the phone due to COVID.



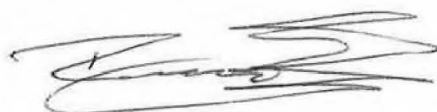
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To the best of my recollection, I did not meet with Melissa for a yearly meeting in 2016, or 2019.

52. During the yearly meetings, Melissa would hand me a hard copy of her yearly invoice. On some occasions, Melissa would also email a copy of the invoice to me. A copy of an email dated 7 September 2020 titled '*TCSF – Annual Review*' and the attached annual Invoice for the amount of \$4,567.59 dated 29 May 2020 are marked **MAL.1044.0002.1203** and **MAL.1044.0002.1210** and are at **Tabs 25** and **26** of **Exhibit SMC-1**.
53. After payment of the invoice had been made, I would receive an email from Melissa providing a Tax Receipt for my records. A copy of an email dated 9 September 2020 titled **REDACTED** Tax Receipt' and the attached receipt are marked **MAL.1033.0002.1213** and **MAL.1044.0002.1214** and are at **Tabs 27** and **28** of **Exhibit SMC-1**.
54. Other than the yearly meetings, **REDACTED** and I would intermittently meet with Melissa to discuss our investments, I depose to some of these additional meetings below.

Returns

55. Within the first few months of our decision to invest with Melissa in 2014, and having reviewed the monthly reports provided by Melissa, I was pleasantly surprised by the returns **REDACTED** and I were receiving on our investment.
56. Upon receiving the monthly reports, I would sometimes compare the number of shares and the market value of the shares in the monthly reports from Melissa against the prices listed on the ASX website. I never observed any inconsistencies between the figures in the monthly reports and those displayed on the ASX website. As it appeared that our investment was doing well, **REDACTED** and I wanted Melissa to continue providing her services to us.
57. Intermittently, Melissa would advise me to invest more of the cash assets held by **REDACTED** into shares. She would often say to me words to the effect of "*you will get a much better return if you invest another \$200,000 into shares.*"
58. Despite the fact that our initial investment was doing well, I did not want to invest any more money into shares. As **REDACTED** and I were nearing retirement, I



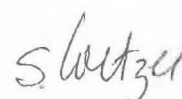
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was comfortable with the [REDACTED] having a 50% share holding and a 50% cash holding. I did not wish for this to change. Whenever I discussed this with [REDACTED] he had always said to me words to the effect of *"I think we should only invest 50% of the super's assets in shares."* Because of this, and despite Melissa's ongoing advice, that we invest more funds into Shares, we did not increase our initial investment from the original \$450,000.00.

Sale of Shares

59. On or about 19 February 2019 [REDACTED] and I had a meeting with Melissa to discuss our investment plan. I do not recall specifically what was discussed, however at the conclusion of the meeting Melissa said to us words to the effect of *"I'm concerned about how behind your accountant is with completing the Tax Returns for [REDACTED]. I think it best that we close your account for the time being to enable you and [REDACTED] to resolve the Accounting matters, once that is settled and once you and [REDACTED] decide what you want to do about your retirement, we can reevaluate and reinvest."*
60. On 21 February 2019, I received an email from Melissa titled [REDACTED] *DIVS & CBA DIA'* in which she confirmed the funds that would be reverted into [REDACTED] account following the sale of the shares. A copy of the email is marked **MAL.1044.0002.0632** and attached at **Tab 29** of Exhibit SMC-1.
61. I have reviewed the bank statements for the Cash Management Account, I observed that Melissa had deposited a total of \$850,391.80 into the account as follows:
- a. \$100,000 on 19 February 2019;
 - b. \$92,293.83 on 20 February 2019;
 - c. \$41,490.01 on 22 February 2019; and,
 - d. \$616,607.96 on 25 February 2019.

A copy of the bank account statement for the Cash Management Account for the period 31 December 2018 – 31 August 2019 is marked **MAL.1044.0002.1368** and attached at **Tab 30** of **Exhibit SMC-1**.

62. I was extremely happy with the return we had received on our initial investment. I wanted to retain Melissa's services once more, however, in the period of February – June 2019 [REDACTED] and I were busy with work and family commitments and did not contact Melissa about renewing our investment.

63. On 24 June 2019, I recall having a conversation with [REDACTED] about again retaining Melissa's services. We had the following conversation:

I said I think we should get in touch with Melissa, the money is just sitting in the bank.

[REDACTED] said *I thought Melissa was still looking after our shares.*

I said No she sold them a few months ago.

[REDACTED] said *I'll follow up with her. If that's right, I think we should reinvest again.*

I said Yes, I agree.

64. I am aware that [REDACTED] sent Melissa an email on the same day, enquiring about whether she was still managing our super. I know this because [REDACTED] had told me that he had sent Melissa an email.

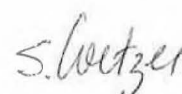
65. A short time later, on 24 June 2019, I received an email from Melissa titled 'Re: Superannuation' in which she advised that she would be happy to re-invest our super. A copy of this email is marked **MAL.1044.0002.0728** and is at **Tab 31 of Exhibit SMC-1**.

66. Later that day, I was copied on a further email from Melissa, which she sent in response to [REDACTED]. In the body of this email, Melissa wrote that "[she] would require Superannuation Accounting to do the accounts for [REDACTED] [REDACTED] SF." A copy of this email is marked **MAL.1044.0002.0730** and is at **Tab 32 of Exhibit SMC-1**. Melissa had previously spoken to us about retaining the services of Superannuation Accounting, and I depose further in this regard below. Having read this email, it was my understanding that Melissa would only agree to continue looking after our superannuation investments, if we transferred our accounting work for the Super Fund to

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Superannuation Accounting. On this basis, I agreed to retain the services of Superannuation Accounting.

67. [REDACTED] and I met with Melissa on 4 July 2019, to re-establish our investment. During the meeting, I recall saying to Melissa words to the effect of "*We would like you to reinvest the same amount as previously into shares.*" I recall Melissa saying to me words to the effect of "*I think you would be better off investing more than just 50% of the Funds cash assets in shares, as this will give you the best return.*" Ultimately however, [REDACTED] and I instructed Melissa that we wanted to invest \$450,000 into the share market. I recall that during the meeting, Melissa informed me that her management fee had increased to 0.75%, however, I do not recall the conversation that we had in this regard.
68. At the meeting, at Melissa's request, we provide her with copies of the following documents:
- a. [REDACTED] Member Transaction Detail Report for the period 01/07/2017 to 30/06/2018 marked **MAL.1044.0002.0741** is at **Tab 33 of Exhibit SMC-1**;
 - b. [REDACTED] Consolidated Member Benefit Totals for myself for the period 1 July 2017 – 30 June 2018 marked **MAL.1044.0002.0744** is at **Tab 34 of Exhibit SMC-1**;
 - c. [REDACTED] Consolidated Member Benefit totals for [REDACTED] for the period 1 July 2017 – 30 June 2018 marked **MAL.1044.0002.0749** is at **Tab 35 of Exhibit SMC-1**;
 - d. The Audit Completion Letter for TCSF dated 24 July 2018 marked **MAL.1044.0002.0754** is at **Tab 36 of Exhibit SMC-1**;
 - e. The Audit Certificate for TCSF dated 09 July 2018 marked **MAL.1044.0002.0761** is at **Tab 37 of Exhibit SMC-1**;
 - f. The [REDACTED] Trust Deed marked **MAL.1044.0002.0764** is at **Tab 38 of Exhibit SMC-1**;
 - g. The Deed of Appointment of a Trustee marked **MAL.1044.0002.0812** is at **Tab 39 of Exhibit SMC-1**;

- h. [REDACTED] Notice to Member marked **MAL.1044.0002.0814** is at **Tab 40 of Exhibit SMC-1**;
- i. [REDACTED] Investment Allocation Summary marked **MAL.1044.0002.0815** is at **Tab 41 of Exhibit SMC-1**;
- j. [REDACTED] Self-managed superannuation fund annual return for the financial year ending 30 June 2018 marked **MAL.1044.0002.0817** is at **Tab 42 of Exhibit SMC-1**;
- k. [REDACTED] Financial Statement for the year ending 30 June 2018 marked **MAL.1044.0002.0831** is at **Tab 43 of Exhibit SMC-1**.

69. I understood that these documents were necessary to have Superannuation Accounting set up their client file for [REDACTED]. At the meeting, [REDACTED] and I also completed and signed a retainer for Superannuation Accounting with Melissa. A copy of this document titled '*Administration, accounting and tax service*' is marked **MAL.1044.0002.0844** and at **Tab 44 of Exhibit SMC-1**.
70. I recall that following this meeting, on 9 July 2019, I drew a cheque in the sum of \$450,000 in favour of CommSec and provided it to Melissa. A copy of the cheque stub for the cheque dated 9 July 2019, is at **Tab 13 of Exhibit SMC-1**.
71. On 10 July 2019, I recall receiving a call from Melissa who said to me words to the effect of "*Sue, I'm very sorry but my dog has somehow gotten a hold of the cheque you gave me and chewed it up, I won't be able to deposit it.*" Melissa went on to ask me to draw a second cheque to replace the one that had been destroyed. Instead of drawing the cheque in favour of CommSec, Melissa asked me to make the cheque out in favour of Maliver, saying words to the effect of "*I'm sorry to ask you this, but would you be able to draw a replacement cheque made out to the Maliver Trust? I can come by and collect it this afternoon.*"
72. I was a little taken aback by this request and had some reservations about making the cheque out to the Maliver Trust. However, due to my longstanding relationship with Melissa, I proceeded to make out a second cheque as



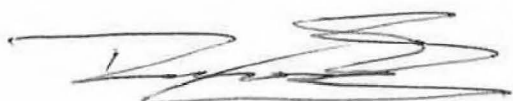
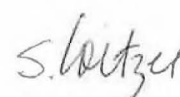
S. Holtzer

requested by her. A copy of the cheque dated 10 July 2019, is at **Tab 13 of Exhibit SMC-1.**

73. On 10 July 2019, I recall receiving a call from Melissa who said to me words to the effect of *"I have commenced purchasing stocks. I will send a monthly report to you in a few weeks' time."*

Accountant

74. Prior to July 2019, [REDACTED] and I had my own accountants, at J.W. Kellert & Co. Our accountant had fallen ill, and there were ongoing delays in the completion of [REDACTED] annual returns in the period of 2017-2019. Melissa intermittently spoke to me about retaining the services of Superannuation Accounting, saying to me words to the effect of *"I have done a lot of work with them, they would be well suited to looking after [REDACTED] tax obligations."*
75. Due to our longstanding relationship with J.W. Kellert, I did not wish to take our business away from them. However, for the reasons set out at paragraph [66] above, in July 2019, [REDACTED] and I agreed to retain the services of Superannuation Accounting.
76. From July 2019, Superannuation Accounting have been retained to prepare the Annual returns for [REDACTED]. I did not deal with Superannuation Accounting Services directly; it was always through Melissa.
77. I have received one invoice from Superannuation Accounting for services rendered to date. On 25 August 2020, I received an email from Melissa titled [REDACTED]. The email attached two copies of an annual financial statement prepared by Superannuation Accounting, one for me to keep, and one for [REDACTED] and I to sign and return to Melissa. The email also attached an ATO Payment Slip for the 2020 financial year, and an Invoice for Superannuation Accounting. Copies of Melissa's email dated 25 August 2020 and the attachments to the email are marked **MAL.1044.0002.1075, MAL.1044.0002.1078, MAL.1004.0002.1077 and MAL.1044.0002.1076** and at **Tab 45 of Exhibit SMC-1.**

78. I paid a total of \$1,700.00 to Superannuation Services for services rendered by them during the 2020 Financial Year.

Last Contact with Melissa

79. On 2 November 2020, I received an email from Melissa attaching the portfolio valuation for the month ending 30 October 2020. A copy of this email is marked **MAL.2017.0001.0740** and at **Tab 46** of **Exhibit SMC-1**. This was the last communication that I received from Melissa.
80. I had not spoken to Melissa for some time prior to that, the last time that I recall speaking to Melissa was in or about early October. I cannot recall what was discussed.

Communication with CommSec

81. On 27 November 2020, REDACTED and I attended the Kogarah branch of the Commonwealth Bank of Australia.
82. I recall speaking to a Commonwealth Bank employee, Mr Kumar, about the CommSec statements provided to us by Melissa, we had the following conversation:

I said *We've received the following CommSec statements from our financial advisor, we would like to access those accounts please.*

He said *I'm sorry, we do not have any records of those accounts on our system.*

I said *How could that be, could it be that the account is closed?*

He said *If these were old accounts that have been subsequently closed it would still show up on our system. The fact that there is no record of this account, means that the account was never opened with us.*

83. I observed Mr Kumar make a call to a colleague, following which, he said to me words to the effect of *"I'm sorry but these accounts were never opened with us."*



S. Wiltzer


Financial Impact

- 84. [REDACTED] and I invested a total of \$900,000 with Maliver. We invested \$450,000 initially in 2014, and then we invested another \$450,000 in July 2019.
- 85. Following the sale of our share portfolio in February 2019 [REDACTED] and I have received the sum of \$850,391.80 from Ms Caddick. A copy of a statement from my [REDACTED] marked **MAL.1044.0002.1368** is at **Tab 30** of **Exhibit SMC-1**. The statement indicates that from 19 February 2019 to 25 February 2019, there were four deposits from Ms Caddick's accounts into my [REDACTED] Account which amount to \$850,391.80.
- 86. As a result [REDACTED] and I are currently out of pocket \$49,608.20. Additionally, we are out of pocket for the management fees paid to Melissa in the period 2014 to 2020.
- 87. On 2 November 2020, we received an email from Ms Caddick which attached a portfolio valuation for the period ending 30 October 2020. This was the last portfolio valuation I received from Ms Caddick. The portfolio valuation indicates that the total value of my portfolio with Maliver was \$531,875.66. Copies of the email marked **MAL.2017.0001.0740** and the portfolio valuation marked **MAL.2017.0001.0741** are at **Tabs 46** and **47** of **Exhibit SMC-1**, respectively.

Sworn / Affirmed by the deponent)
 at Level 5, 100 Market Street, Sydney)
 in the State of New South Wales)
 on 18 March 2021)
 Before me:)



 Signature of deponent



 Signature of witness

[Click here to insert full name of person before whom the affidavit is made](#)

[Click here to insert capacity of witness](#)



Schedule

Federal Court of Australia

No. NSD 1220 of 2020

District Registry: New South Wales

Division: Commercial and Corporations

IN THE MATTER OF MALIVER PTY LTD (ACN 164 334 918)

Defendants

Second Defendant: MALIVER PTY LTD (ACN 164 334 918)

Date: 31 March 2021



S. Gutzke