



Issued: 6 April 2021 5:41 PM

JUDGMENT/ORDER

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Corporations List
Registry	Supreme Court Sydney
Case number	2021/00084223

TITLE OF PROCEEDINGS

First Plaintiff	The Trustee for Project Volar Creditors' Trust ABN 41124353207
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First

DATE OF JUDGMENT/ORDER

Date made or given	6 April 2021
Date entered	6 April 2021

TERMS OF JUDGMENT/ORDER

Filed in Court for Plaintiff: Affidavit of Cassandra Suzann Adams sworn 6 April 2021.

VERDICT, ORDER OR DIRECTION:

Hearing of Amended Originating Process filed 1 April 2021.

- Black J grants leave to file in Court affidavit of Cassandra Suzann Adams sworn 6 April 2021.

Black J makes orders in accordance with Short Minutes of Order initialled by him and placed in the file.

THE COURT ORDERS THAT:

1. Pursuant to s 63 of the Trustee Act 1925 (NSW) (Act), Salvatore Algeri, Richard Hughes, and John Grieg in each of their capacity as joint and several trustees of the Project Volar Creditors' Trust (Trustees) established in the administration of each of Virgin Australia Holdings Ltd & Ors (Creditors Trust):

(a) are justified in requesting that any Trust Creditor (as that term is defined by the Project Volar Creditors' Trust Deed dated 17 November 2020 (Trust Deed)) (each, a Trust Creditor and, collectively, Trust Creditors) who has not yet registered on the Halo Platform (as that term is referred to in the affidavit of David Michael Orr sworn 25 March 2021), but intends to:

(i) vote at, or participate in, any meetings convened under the terms of the Trust Deed; and / or
(ii) lodge any proof of debt or claim in the Creditors' Trust (or otherwise seek to establish that he, she or it is a Trust Creditor),

register on, or with, the Halo Platform by no later than the POD Lodgement Date (as defined by Order 1(f) below, being the date provided for under regulation 5.6.48(1) of the Corporations

Regulations 2001 (Cth) (Regulations) with respect to the submission of proofs of debt in a liquidation, as applied to the Creditors' Trust);

(b) are justified in utilising the Halo Platform to communicate with any Trust Creditor who has registered on the Halo Platform in respect of:

- (i) notification and provision of information as to the conduct of the Creditors' Trust;
- (ii) any proof or particulars of debt or claim lodged in the Creditors' Trust on the Halo Platform, including:

A. the adjudication of such proof or particulars of debts or claims for the purposes of voting at meetings of Trust Creditors; and

B. requesting further evidence from a Trust Creditor in respect of a debt or claim in the Creditors' Trust;

(c) are justified in providing such notices as are required to be provided under the terms of the Trust Deed (Notice), by taking the following steps (where applicable):

(i) if the Trust Creditor is a registered user on the Halo Platform, by publishing a notice via the Halo Platform;

(ii) if the Trust Creditor has not registered or been registered on, or with, the Halo Platform and the Trustees have an email address for such Trust Creditor, by sending the Notice to that Trust Creditor by email to that address;

(iii) if the Trust Creditor has not registered or been registered on, or with, the Halo Platform and the Trustees do not have an email address for the Trust Creditor, but have a postal address for the Trust Creditor, or have received notification of non-delivery of a notice sent by email in accordance with subparagraph 1(c)(ii) above, by sending the Notice to that Trust Creditor by post to that address;

(iv) in addition to subparagraphs (i), (ii) or (iii) above (as applicable), by:

A. causing the Notice to be published on the website maintained by the Plaintiffs at

<https://www2.deloitte.com/au/en/pages/finance/articles/virgin-australia-holdings-limited-subsidiaries.html>; and

B. causing the Notice to be published in The Australian newspaper;

(d) are justified in holding any meetings of Trust Creditors, convened pursuant to clause 9 of the Trust Deed, by telephone or audio-visual conference only at the place of the Trustees' offices, without the Trust Creditors or their representatives being permitted to attend physically at that place, with such details of the arrangements for using the telephone or audio-visual conference facilities to be specified in any Notice;

(e) are justified in:

(i) requesting that any Trust Creditors who wish to participate at any meetings held by telephone or audio-visual conference, lodge their vote on the Halo Platform no later than the second last business day before the day on which the meeting is held (with liberty to notify the Trustees of the withdrawal or amendment of any vote following discussion at a meeting, in advance of a resolution being passed); and

(ii) not permitting any Trust Creditor to vote at any meetings if they do not lodge a vote in accordance with subparagraph (i) above;

(f) are justified in:

(i) requesting that all formal proofs of debt or claim be lodged via the Halo Platform by the date specified in a Notice issued by the Trustees in a form equivalent to a notice issued under regulation 5.6.48(1) of the Regulations, such date to be no less than 14 days from the date on which the Notice is served (POD Lodgement Date) and;

(ii) subject to order 1(h) below, disregarding any formal proofs of debt or claim not lodged via the Halo Platform by the POD Lodgement Date;

(g) with respect to any particulars of a debt or claim submitted by a Trust Creditor (including a person or entity claiming to be a Trust Creditor) prior to the POD Lodgement Date, are justified in entering the information provided by the Trust Creditor onto the Halo Platform and registering the relevant Trust Creditor's details on, or with, the Halo Platform;

(h) are justified in:

(i) treating any proofs of debt or claim that were lodged on, or with, the Halo Platform by a creditor of any one or more of the Virgin Companies in the administration or deed administration of the Virgin Companies, as a formal proof of debt or claim in the Creditors' Trust (notwithstanding that no such formal proof of debt or claim has been lodged by the Trust Creditor prior to the POD Lodgement Date); and

(ii) recording the information previously provided (including the creditor's details) on the Halo Platform;

(i) are justified in proceeding on the basis that Trust Creditors may not, at any time after the POD Lodgement Date, without the express written consent of the Trustees, amend or replace any formal proof of debt or claim lodged on, or with, the Halo Platform;

(j) are justified in collecting and storing bank account details of Trust Creditors for the purposes of paying any dividend that may be payable to any Trust Creditor pursuant to the terms of the Creditors' Trust;

(k) if, for the purposes of s 554C of the Corporations Act 2001 (Cth) (Corporations Act) as applied to the Creditors' Trust:

(i) one or more of the Virgin Companies and a Trust Creditor have not previously agreed on a method to be applied for the purpose of converting the relevant Virgin Company's liability in respect of the Trust Creditor's debt or claim into Australian currency; and

(ii) the opening carded on demand airmail buying rate available at the Commonwealth Bank of Australia does not list a particular foreign currency for the debt or claim of the Trust Creditor,

are justified in:

(iii) using the exchange rate for the particular foreign currency recorded with the Reserve Bank of Australia as at the relevant date (as that term is defined at s 9 of the Corporations Act); or

(iv) should the particular foreign currency exchange not be recorded with the Reserve Bank of Australia, using the relevant foreign exchange rate as recorded on <https://www.xe.com> as at the relevant date (as that term is defined at s 9 of the Corporations Act); and

(l) are justified in proceeding on the basis of using the best available Australian Dollar (AUD) exchange rate available to them on the date of payment of any dividend into any foreign nominated account.

2. Pursuant to s 81 of the Act:

(a) with respect to material and information concerning a Trust Creditor's debt or claim that has been provided by that Trust Creditor to the Trustees, the Trustees are empowered and authorised to store that material and information on the Halo Platform in an accessible form in the relevant Trust Creditor's Halo Platform account; and

(b) if a Trust Creditor (including a person or entity claiming to be a Trust Creditor) notifies the Trustees that he, she or it disputes a decision, notice or adjudication by the Trustees about the Trust Creditor's debt or claim, the Trustees are empowered and authorised (to the extent that they had not previously been) to provide that person or entity with all relevant material and information used or relied upon by the Trustees in making their decision, notification or adjudication not

already provided to or by the Trust Creditor (subject to any obligations of confidentiality relating to information or documentation of third parties).

3. Pursuant to s 81 of the Act, the Trustees are empowered and authorised, in processing and adjudicating on a Trust Creditor's debt or claim to request that any Trust Creditor who, or which, has not yet registered on the Halo Platform, but intends to:

- (a) vote at, or participate in, any meetings convened under the terms of the Trust Deed; and / or
- (b) lodge any proof of debt in the Creditors' Trust (or otherwise seek to establish that he, she or it is a Trust Creditor),

register on, or with, the Halo Platform by no later than the POD Lodgement Date (as defined by Order 1(f) above, being the date provided for under regulation 5.6.48(1) of the Regulations with respect to the submission of proofs of debt in a liquidation, as applied to the Creditors' Trust).

4. Pursuant to s 81 of the Act, the Trustees are empowered and authorised, in processing and adjudicating on a Trust Creditor's debt or claim, once a Trust Creditor is registered on or with the Halo Platform, to treat any such Trust Creditor as having been deemed to have nominated the Halo Platform as his, her or its "nominated electronic address" for the purpose of s 600G of the Corporations Act (as if that provision applied to the Creditors' Trust).

5. Pursuant to s 81 of the Act, the Trustees are empowered and authorised, in processing and adjudicating on the claims of Trust Creditors, to proceed on the basis that, for the purposes of the application of regs 5.6.48(1) and 5.6.49(1) by clause 7.3(b) of the Trust Deed (and notwithstanding regs 5.6.48(1) and 5.6.49(1)), lodgement of proofs of debt or claims may be sent via the Halo Platform.

6. Pursuant to s 81 of the Act, the Trustees are empowered and authorised, in processing and adjudicating on the claims of Trust Creditors, to proceed on the basis that, for the purposes of the application of reg 5.6.53(1) by clause 7.3(b) of the Trust Deed (and notwithstanding reg 5.6.53(1)), Trustees may admit all or part of the formal proofs of debt or claim, reject all or part of the proof of debt or claim or require further evidence in support of it, within 28 business days after the POD Lodgement Date.

7. Pursuant to s 63 of the Act, the Trustees are justified in admitting all or part of the formal proofs of debt or claim, rejecting all or part of the proof of debt or claim, or requiring further evidence in support of it, within 28 business days after the POD Lodgement Date.

8. Pursuant to s 81 of the Act, the Trustees are empowered and authorised, in processing and adjudicating on the claims of Trust Creditors, to proceed on the basis that, for the purposes of the application of reg 5.6.65(1) by clause 7.3(b) of the Trust Deed (and notwithstanding reg 5.6.65(1)), the Trustees may give notice of their intention to declare a dividend not more than 4 months before the intended date.

9. Pursuant to s 63 of the Act, the Trustees are justified in giving notice of his or her intention to declare a dividend not more than 4 months before the intended date.

10. Pursuant to s 81 of the Act, the Trustees are empowered and authorised, in processing and adjudicating on the claims of Trust Creditors, to proceed on the basis that, for the purposes of the application of reg 5.6.66(1) by clause 7.3(b) of the Trust Deed (and notwithstanding reg 5.6.66(1)), if notice has been given in accordance with subregulation 5.6.65(1), the Trustees may take the following steps within 28 business days of that notice:

- (a) admit a formal proof of debt or claim received by the Trustees; or
- (b) reject it; or
- (c) admit part of it and reject part of it; or
- (d) require further evidence in support of it; and
- (e) in each case, give notice of the Trustees' decision to the Trust Creditor who submitted the proof.

11. Pursuant to s 63 of the Act, if notice has been given in accordance with subregulation 5.6.65(1), the Trustees are justified in taking the following steps within 28 business days of that notice:

- (a) admit a formal proof of debt or claim received by the Trustees; or
- (b) reject it; or
- (c) admit part of it and reject part of it; or
- (d) require further evidence in support of it; and
- (e) in each case, give notice of the Trustees' decision to the Trust Creditor who submitted the proof.

12. Pursuant to s 81 of the Act, the Trustees are empowered and authorised, in processing and adjudicating on the claims of Trust Creditors, to proceed on the basis that, for the purposes of the application of reg 5.6.44 by clause 7.3(b) of the Trust Deed (and notwithstanding reg 5.6.44), the Trustees may apply a discount by which the amount payable on the future date is to be reduced under s 554B of the Corporations Act, of 4% a year calculated from the declaration of the dividend to the time when the debt would be payable according to the terms on which it was contracted.

13. Pursuant to s 63 of the Act, the Trustees are justified in applying a discount by which the amount payable on the future date is to be reduced under s 554B of the Corporations Act, of 4% a year calculated from the declaration of the dividend to the time when the debt would be payable according to the terms on which it was contracted.

14. Pursuant to s 81 of the Act, the Trustees are empowered and authorised, in processing and adjudicating on the claims of Trust Creditors, to proceed on the basis that, for the purposes of clause 18.2 of the Trust Deed (and notwithstanding clause 18.2), the Trustees may issue a notice by means of the Halo Platform.

15. Pursuant to s 63 of the Act, the Trustees are justified in proceeding on the basis that a notice, for the purposes of clause 18.2 of the Trust Deed, is regarded as having been given and received when the message (including any attachment or a link to any attachment) has been sent via the Halo Platform to the registered participant's account.

16. Pursuant to s 81 of the Act, the Trustees are empowered and authorised, in processing and adjudicating on the claims of Trust Creditors, to proceed on the basis that (notwithstanding clause 18.3), the Trustees may issue an electronic communication by means of the Halo Platform.

17. The Trustees are to take all reasonable steps to cause notice of the Court's orders to be given, within three (3) business days of the making of the orders, to the Trust Creditors (including persons or entities claiming to be Trust Creditors) in the manner prescribed by order 1(c) above.

18. In these proceedings, the Trustees and any Trust Creditor have liberty to make any other application concerning the Creditors' Trust, on 2 business days' notice to the Associate to the Justice Black.

19. These orders be entered forthwith.

SEAL AND SIGNATURE



Signature

Chris D'Aeth

Capacity Principal Registrar

Date 6 April 2021

If this document was issued by means of the Electronic Case Management System (ECM), pursuant to Part 3 of the Uniform Civil Procedure Rules (UCPR), this document is taken to have been signed if the person's name is printed where his or her signature would otherwise appear.

FURTHER DETAILS ABOUT Plaintiff(s)

First Plaintiff

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ABN 41124353207

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Client reference

Legal representative for plaintiffs

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FURTHER DETAILS ABOUT (s)