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AFFIDAVIT OF SYMN WATERS - 11 March 2022

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity Division
List	
Registry	Sydney
Case number	2009/00291458

TITLE OF PROCEEDINGS

First plaintiff	PATRICIA CLEARY
Number of plaintiffs	4

First defendant	RECY KYPRI
Number of defendants	6

FILING DETAILS

Filed for	SYMN WATERS, Defendant
Filed in relation to	Defendant's Notice of Motion
Contact name and telephone	0435 222 456
Contact email	symn.w@ters.me

[on separate page]

AFFIDAVIT

Name Symn Waters
Address 20 Newman Street, Newtown NSW 2042
Occupation Law firm office manager - IT consultant
Date 11 March 2022

I say on oath:

- 1 I am a defendant in these proceedings.
- 2 On 27 November 2009, Terence Goldberg of Turner Freeman Lawyers represented the four plaintiffs in the only hearing of these proceedings. Pigott Stinson Lawyers represented the first to fifth defendants. The sixth defendant, an incorporated association, was unrepresented. Such hearing took place before the Honourable Justice Patricia Bergin, Chief Judge in Equity.
- 3 In these proceedings the Court made one Order only, in that each party was to pay their own costs. I attach a copy of that Order and such can be found marked as "A".
- 4 On 23 June 2010, Terence Goldberg of Turner Freeman Lawyers filed with the Court an Application for Assessment of Solicitor/Client Costs, and in such Application to the Court Mr Goldberg states that he acted for the sixth defendant in these proceedings. Terence Goldberg did not act for the sixth defendant. Mr Goldberg acted for the four plaintiffs.
- 5 In the Application for Assessment of Solicitor/Client Costs, Terence Goldberg states that there are five defendants in these proceedings. There are six defendants in these proceedings.
- 6 In the Application for Assessment of Solicitor/Client Costs as filed with the Court on 23 June 2010, Terence Goldberg improperly names the sixth defendant as a costs respondent alongside his clients, being the four plaintiffs. A copy of the said Application for Assessment of Solicitor/Client Costs can be found attached and is marked as "B".
- 7 On 27 January 2011, a certificate of determination was issued by the costs assessor in the amount of \$124,661.90 against the sixth defendant and the four plaintiffs. I attach a copy of the said certificate of determination and such be found marked as "C".
- 8 On 15 February 2011 in the District Court, Sydney, judgment was made against the sixth defendant in these proceedings alongside the four plaintiffs in these

Symn Waters

[Signature]

proceedings. The reference for the District Court proceedings is 2011/00050391, with the plaintiffs in such being Turner Freeman Lawyers, with the Enmore Spiritualist Church Incorporated being named as the first defendant and Turner Freeman's four clients being named as the second to fifth defendants. I attach a copy of the District Court Judgment and such be found marked as "D".

- 9 On 21 June 2011, the liquidator, having been appointed by Terence Goldberg, sold the only asset as owned by the sixth defendant, being the premises of 2 London Street, Enmore, to pay Turner Freeman's claimed debt \$124,661.90. That sale realised the amount of \$965,000.00.
- 10 As per NSW Fair Trading, the liquidator paid Turner Freeman Lawyers the sum of \$188,303.60 on 20 December 2012, with this sum being a surplus of \$63,641.70 to the sum specified in the certificate of determination (as issued against the sixth defendant and the four plaintiffs in these proceedings) and also that of the judgment debt as obtained in the District Court, Sydney.
- 11 On 29 May 2014, some 17 months after being paid by the liquidator, Terence Goldberg attended by telephone a 'meeting of creditors' as held at the offices of the liquidator, being Michael Jones of Jones Partners. Terence Goldberg was the only attendee at this meeting. Terence Goldberg's attendance at this 'meeting of creditors' is unable to be proper.
- 12 As per the minutes of this 'meeting of creditors' Terence Goldberg discusses the creation of two new entities, being a new incorporated association and a Trust. The minutes of this meeting state that the proper quorum for such meeting was achieved. This statement is false. A copy of the minutes of this meeting is attached and is marked as "E".
- 13 On 16 December 2016, Terence Goldberg created the discussed Trust to act as a receptacle for the remainder of monies as owned by the sixth defendant. Shortly thereafter, the Trust as created by Terence Goldberg received an amount in the region of \$985,447.00 (as per the website of the Australian Charities and Not-for-profits Commission ("ACNC")), of which the liquidator declared \$500,000.00 to be the residue of monies as owned by sixth defendant. I attach a copy of the liquidator's declaration to ASIC, and such can be found marked as "F".
- 14 Again as per the website of the ACNC, the residue as owned by the sixth defendant remains resident in such Trust some 11 years after the winding up of that entity.
- 15 In his declaration to ASIC, Michael Jones puts that he paid \$242,179.00 to unsecured creditors. This is somewhat difficult to understand as at winding up, the sixth

Sydney, NSW

[Signature]

defendant had one creditor only, ie CBC Partners, Sydney, in the amount of \$3,514.50, which the sixth defendant had the means to pay. Mr Jones also states that an amount of \$81,826.35 was paid in legal fees. Given Turner Freeman's continuing involvement in the matter, it is presumed that Turner Freeman received these monies.

- 16 The Trust as set up by Terence Goldberg to act as a receptacle for the monies as owned by the sixth defendant is named 'The Congregation of the Enmore Spiritualist Church Foundation Trust'.
- 17 The incorporated association as set up alongside the above Trust is named 'The Congregation of the Enmore Spiritualist Church Incorporated'. The sole object of the Trust as created by Terence Goldberg is to provide monies to the newly formed incorporated association. Shortly after the liquidator placed the sum of \$985,447.00 into the said Trust, the sum of \$492,307.00 appears to have then left the Trust. The destination or whereabouts of these monies is presently unknown.
- 18 The constitution of the sixth defendant in these proceedings states that in the event of it being wound up, its assets be passed to a likewise organisation or association. It is without question that Terence Goldberg, together with Michael Jones, the liquidator, created two likewise associations to receive those funds.
- 19 Both of the above new entities have been set up as charitable bodies and therefore do not report to and avoid any scrutiny by the Australian Taxation Office.
- 20 Mr Jon Lindsay, being a long-time acquaintance of Terence Goldberg, who in a meeting at the offices of the liquidator on 17 May 2011 and while claiming to be a creditor of the sixth defendant in the amount of \$85.00, resolved to wind up the sixth defendant in order to pay Turner Freeman's alleged debt. At the inception of the newly formed incorporated association, such was based at the given home address of Mr Lindsay, with Mr Lindsay also being the public officer of same.
- 21 At the rear of the aforementioned Application for Assessment of Solicitor/Client Costs is found a purported costs agreement between Turner Freeman Lawyers and the four plaintiffs and also the sixth defendant. This costs agreement is unable to be a faithful document. If the sixth defendant was Turner Freeman's client, it could not be a defendant in this matter, nor clearly could it be an unrepresented party.
- 22 I wrote to Terence Goldberg on 4 November 2019 and 12 February 2020 and separately to Michael Jones on 30 March 2020 and 12 June 2020 setting out the above and further examples of anomalous conduct issues. None of these letters received any response. A copy of such can be found marked as "G".

Sign J et

Baris

23 To assist the Court, I also provide copies of:

- The original Summons in relation to these proceedings. Such is marked as "H".
- Affidavit of Terence Goldberg of Turner Freeman Lawyers, of 24 November 2009 wherein it is correctly stated that Mr Goldberg acts for the four plaintiffs. Such is marked as "I".
- Affidavit of Terence Goldberg of Turner Freeman Lawyers, of 25 November 2009 wherein it is correctly stated that Mr Goldberg acts for the four plaintiffs. Such is marked as "J".
- The transcript of the proceedings of 27 November 2009, which clarifies that the sixth defendant was unrepresented. Such is marked as "K".
- Copy of the Trust Deed in relation to the aforementioned Trust as set up and conceived by Terence Goldberg of Turner Freeman Lawyers (as referred to in paragraph 16). Such is marked as "L".
- Copy of the constitution of the new incorporated association as conceived and created by Terence Goldberg of Turner Freeman Lawyers (as referred to in paragraph 17). Such is marked as "M".

SWORN at

Signature of deponent

Symon Watkins

Name of witness

Brett Anthony Thomas

Address of witness

36A Hannam St, Bardwell Valley NSW 2207

Capacity of witness

Justice OF The Peace NSW

And as a witness, I certify the following matters concerning the person who made this affidavit (the deponent):

- 1 #I saw the face of the deponent. [OR, delete whichever option is inapplicable]
~~#I did not see the face of the deponent because the deponent was wearing a face covering, but I am satisfied that the deponent had a special justification for not removing the covering.*~~
- 2 #I have known the deponent for at least 12 months. [OR, delete whichever option is inapplicable]
 #I have confirmed the deponent's identity using the following identification document:

Passport PB1443941

Identification document relied on (may be original or certified copy)[†]

Signature of witness

JP 104295

Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.

[* The only "special justification" for not removing a face covering is a legitimate medical reason (at April 2012).]

[[†] "Identification documents" include current driver licence, proof of age card, Medicare card, credit card, Centrelink pension card, Veterans Affairs entitlement card, student identity card, citizenship certificate, birth certificate, passport or see [Oaths Regulation 2011](#) or refer to the guidelines in the NSW Department of Attorney General and Justice's "[Justices of the Peace Handbook](#)" section 2.3 "Witnessing an affidavit" at the following address: <http://www.jp.nsw.gov.au/Documents/jp%20handbook%202014.pdf>]