IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL COURT
CORPORATIONS LIST

B E T W E E N :

IN THE MATTER OF **IPO WEALTH HOLDINGS NO 2 PTY LTD (ACN 620 610 157) & Ors according to the attached Schedule**

BETWEEN:

VASCO TRUSTEES LIMITED (ACN 138 715 009) as trustee of the IPO Wealth Fund (ABN 71 456 233 724)

Plaintiff

- and -

IPO WEALTH HOLDINGS NO 2 PTY LTD (ACN 620 610 157) & Ors according to the attached Schedule

First Defendant

OUTLINE OF SUBMISSIONS of the PLAINTIFF
28 May 2020

1. These submissions address six matters –
   1) The structure of the Fund and the nature of the investments made,
   2) The sum of money in the Fund,
   3) The investors and their investments,
   4) What happened (a chronology),
   5) Recent representations by the Mayfair Group about the appointments, and
   6) Investor submissions.
2. The plaintiff relies upon -
   - The affidavit of Craig Mathew Dunstan of 22 May 2020 (**Dunstan Affidavit**),
   - The second affidavit of Craig Mathew Dunstan of 28 May 2020 (**Second Dunstan Affidavit**), and
   - Its written submissions of 22 May 2020.

1. The Structure of the Fund and the Nature of Investments

3. The IPO Wealth Fund (**Fund**) is a stand-alone, self-contained fund. The Fund is held by the plaintiff as trustee (**Trustee or Lender**) for the benefit of the investors, who acquire units in the Fund. The Fund is structured as an unregistered unit trust established by the Trustee pursuant to the Constitution. [1] The Trustee has a duty to act in the best interests of investors. It is to fulfil this responsibility, in the concerning circumstances that arose, that

[1] See [4] of the Dunstan Affidavit. The Constitution of the Fund is exhibit CMD-1.

the Trustee acted to protect the Fund and preserve the underlying assets, on behalf of investors, by appointing the Receivers.

4. The Fund is invested by way of secured loan by the plaintiff to IPO Wealth Holdings Pty Ltd (**Borrower**),[2] which trades as "Mayfair 101 Holdings".[3] The Fund is managed by IPO Wealth Pty Ltd (**Investment Manager**).[4] The Borrower is required to repay the loan, with interest, to the Trustee. The sole director of both the Borrower and the Investment Manager is James Mawhinney.[5]

5. The Borrower's method of investment of the Fund has been to set up special purpose vehicles (**SPV**s) with respect to each investment made. These SPVs exist for the sole purpose of investing the monies lent to it by the Fund and do not otherwise trade.[6] The Borrower on-loans the monies borrowed from the Fund to the SPVs for each investment. The returns on the investments are fed back up the chain of the Fund by way of loan principal and interest repayments to the Trustee and through to investors, less the fees and expenses provided for.[7]

6. According to the Asset Summary provided by the Borrower as at 31 March 2020, the nature of the Borrower's investments included the following[8] –

    1) IPO Wealth Holdings Pty Ltd No 2 (**SPV#2**) held an equity investment and a debt investment in Sportsfix, which provides sports management software,
    2) SPV#3 held two debt investments in Accloud PLC, which is a commerce platform,
    3) SPV#4 held an equity investment in Laundromap, a company that provides door to door dry cleaning services,
    4) SPV#5 held an equity investment in Booqed, an app which provides flexible working options including coworking spaces and serviced offices,
    5) SPV#6 held two equity investments in Northvale, a stockbroking firm, and there is a note in the Asset Summary that an IPO was imminent,
    6) SPV#7 held a debt investment in Bright Innovation, a technology company which provides application developers with access to communications platforms,
    7) SPV#8 held a debt investment in Navag8, a microsavings and microinvesting platform designed to assist businesses grow their client base,

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[2] See [8]-[10] of the Dunstan Affidavit. The loan agreement is exhibit CMD-5, and the GSA is exhibit CMD-6.
[3] See p4 of the Information Memorandum at CMD-2 of the Dunstan Affidavit – a letter to investors from the CEO of the Investment Manager, IPO Wealth Pty Ltd.
[4] See [6] of the Dunstan Affidavit. The investment manager agreement is exhibit CMD-3.
[5] See exhibit CMD-3 and CMD-4 of the Dunstan Affidavit.
[6] See [15] of the Dunstan Affidavit.
[7] See p8 and Section 4 at page 14 of the Information Memorandum at CMD-2 of the Dunstan Affidavit.
[8] See the Asset Summary at CMD-10 of the Dunstan Affidavit, and see [15] of the Second Dunstan Affidavit.

8) SPV#9 held an equity investment and a debt investment in ABCredit, an SME credit provider,
9) SPV#10 held an equity investment in OKTO Holdings, a digital payment platform,
10) SPV#11 held an equity investment in Liven, a dining rewards and payment application,
11) SPV#12 held an equity investment in Public Democracy, a values data company,
12) SPV#13 had ceased to hold assets shortly prior to this date,
13) SPV#14 held a debt investment in MYNT, a data consultancy company,
14) SPV#15 held an equity investment and a debt investment in Adbit, a media software development company,
15) SPV#16 held a debt investment in OKTO Wealth, a cloud based platform company,
16) SPV#17 held a debt investment in M12 Global, a banking alternative company,
17) Although they are not SPVs, the Asset Summary for the Fund's investment portfolio also shows investments held by the Borrower and "101 Investments" in Accloud and in Paymate, a payment platform.

2. Sum of Money in the Fund

7. As at the date of the Dunstan Affidavit of 22 May 2020, the principal amount of $76,965,000 stands owing by the Borrower to the Trustee, excluding interest and default interest.[9] The Trustee also holds cash of approximately $5,233,197 in its bank accounts on behalf of the Fund.[10]

8. The Trustee also holds cash as a capital protection reserve in its bank accounts of approximately $2,321,560.[11]

3. Investors and their Investments

9. There are approximately 181 investors in the Fund who are currently owed approximately $81.9 million.[12] Investors are not retail clients, but are wholesale clients as defined in s761G of the Corporations Act. Some are investment or trading companies, and some are private investors, including retirees who have invested superannuation savings with the

[9] See [12] and CMD-8 of the Dunstan Affidavit.
[10] See [20] of the Second Dunstan Affidavit.
[11] See [21] of the Second Dunstan Affidavit.
[12] See [14] of the Dunstan Affidavit. See also [5]. The information memorandum for the Fund is exhibit CMD-2.

Fund.[13] To qualify to invest in the Fund, investors have to meet certain requirements such as investing a minimum of $500,000, having net assets of at least $2.5m or a gross income of the last two financial years of at least $250,000, or being a professional investor.[14]

10. Investors select from different term-based investment options, enabling investments for a defined period of 3, 6, 12, 24, 36 or 60 months with the option of regular income distributions to be paid out or reinvested.[15] Unit prices at issue and withdrawal are based on the underlying value of the Fund's assets and may differ. On redemption units may be less than $1.00 but cannot exceed $1.00.[16] Distributions are generally paid each calendar quarter for which they are calculated up to a capped amount. Investors can elect at the outset whether to re-invest their distributions or have them paid out into their nominated accounts. Where there is not sufficient cash-flow to fund the distributions, the Fund may make up the deficiency in subsequent quarters or months where possible.[17]

11. The risks associated with investment in the Fund are explained in the Information Memorandum, and include that distributions and capital returns / redemptions of units are not guaranteed.[18]

12. To date, whilst redemptions were frozen on 7 April 2020 in light of the Borrower's failure to meet interest and principal repayments, the Trustee has continued to pay distributions to investors up to and including amounts payable as at the end of April 2020.[19] The Trustee's intentions from here onwards are –

    1) to make a compulsory redemption on a pro-rata basis to all unitholders in the total amount of $3,000,000 in July 2020,
    2) following an assessment of taxable income of the Fund, to ascertain whether any further distributions can be paid thereafter in the foreseeable future. If so, all unitholders will be paid the same distribution rate regardless of class of units or the original term of their investment, and
    3) to progressively make compulsory redemptions on a pro-rata basis to all unitholders as proceeds are received from the Borrower following the receivership, or from the Receivers.[20]

4. What Happened - Chronology

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[13] See [9] of the Second Dunstan Affidavit.
[14] See p7 of the Information Memorandum at CMD-2 of the Dunstan Affidavit.
[15] See p4 of the Information Memorandum at CMD-2 of the Dunstan Affidavit – a letter to investors from the CEO of the Investment Manager IPO Wealth Pty Ltd.
[16] See p7 of the Information Memorandum at CMD-2 of the Dunstan Affidavit.
[17] See p6 of the Information Memorandum at CMD-2 of the Dunstan Affidavit.
[18] See p3, p7 and Section 5 commencing p15 of the Information Memorandum at CMD-2 of the Dunstan Affidavit.
[19] See [23] and the Trustee's Investor Update of 7 April 2020 at CMD-13 of the Dunstan Affidavit.
[20] See [9] of the Second Dunstan Affidavit.

13. The Receivers were appointed privately by the Trustee to the assets of the Borrower pursuant to the GSA on the morning of 22 May 2020, which include the issued capital of the SPVs. Subsequently on 22 May 2020, on the application of the Trustee, this Court appointed the Receivers to the assets of the SPVs. The events leading up to the appointments were these -

14. In February 2020 the Borrower began to breach its repayment obligations to the Trustee. The Borrower failed to pay –
    1) February Repayment 1 of $100,000,
    2) February Repayment 2 of $300,000, and
    3) February Repayment 3 of $340,000.[21]

15. In February/March 2020 the Borrower also missed two interest payments of $300,000 and an interest payment of $682,267.76.[22]

16. On 11 March 2020, other signs of financial trouble in the Borrower's group of investment companies started to appear. Entities related to the Borrower and Investment Manager Mayfair Wealth Partners Pty Ltd and Online Investments Pty Ltd (**Mayfair 101 Companies**) suspended capital redemptions to investors in the debenture products issued by them due to liquidity issues.[23] James Mawhinney is Group Managing Director.

17. On 19 March 2020 the Trustee sent an email to Mr Mawhinney of the Borrower asking him to address an overdue repayment, informing of ASIC's and the Trustee's concern about the Fund and its continued ability to meet redemption payments in the current environment, and asking for information as how redemptions over the next six months would be funded.[24]

18. On 20 March 2020 –
    1) the Trustee sent an email to Mr Mawhinney seeking a response to its 19 March email,[25] and
    2) the Trustee sent a further email advising the February interest payment was also outstanding, and seeking an update that day.[26]

19. On 25 March 2020 Mr Mawhinney of the Borrower sent an email to the Trustee saying –
    1) The COVID-19 situation had had an impact on their inflows and had stalled the listing of Accloud,
    2) They had frozen redemptions on their Mayfair Platinum products, and would consider doing the same with the Fund, subject to their expectation the next week

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[21] See [25]-[28] of the Dunstan Affidavit and CMD-14.
[22] See [25]-[28] of the Dunstan Affidavit and CMD-14. The two $300,000 payments were later made on 21 April and 1 May 2020. The payment of
[23] As reported by ASIC in a media release on 6 April 2020 – the first exhibit at CMD-12 of the Dunstan Affidavit at pages 2-3.
[24] See [7(a)] and CMD-28 of the Second Dunstan Affidavit.
[25] See [7(b)] and CMD-29 of the Second Dunstan Affidavit.
[26] See [7(c)] and CMD-30 of the Second Dunstan Affidavit.

of equity release from their Mission Beach properties, and inflows to pick up from a marketing campaign they were launching in response to COVID-19,

3) They planned to bring loan and interest payments up to date with the equity release proceeds,

4) He suggested suspending redemptions for the Fund as an interim measure given the circumstances.[27]

20. Later on 25 March 2020 the Trustee replied to Mr Mawhinney –

1) Requesting a response to the Trustee's recent correspondence urgently,

2) Asking specifically when outstanding interest and loan repayments would be made, and

3) Noting the information would impact whether the Trustee would allow further investment, rollovers, redemptions, and whether to issue a default notice and start recovery procedures.[28]

21. On 26 March 2020 the Trustee sent a further email to Mr Mawhinney stating –

1) Further to the Trustee's previous emails, due to the current uncertainty as to interest payments and loan repayments, the Trustee had decided to close the Fund to new investment, and

2) The Trustee would make a decision on redemptions, distributions and consequences under the loan agreement when it had further information from the Borrower the next week.[29]

22. In March the Borrower failed to pay –

1) March Repayment 1 of $2 million, and

2) March Repayment 2 of $2 million.[30]

23. On 31 March 2020 the Trustee served a Notice of Default upon the Borrower.[31]

24. On 3 April 2020 –

1) Mr Mawhinney of the Borrower sent an email to the Trustee suggesting the Trustee release the capital protection reserve to the Investment Manager (IPO Wealth Pty Ltd) to "*free up some liquidity for the benefit of the Fund's unitholders*", and

2) The Trustee replied refusing, advising the Trustee had a "very different view" of the operation of the capital protection reserve, and seeking a response to the

[27] See [7(d)] and CMD-31 of the Second Dunstan Affidavit.
[28] See 7(e) and CMD-32 of the Second Dunstan Affidavit.
[29] See 7(f) and CMD-33 of the Dunstan Affifdavit.
[30] See [25]-[28] of the Dunstan Affidavit and CMD-14.
[31] See the Trustee's letter to the Borrower of 8 April 2020 citing the Notice of Default and the response received – the first exhibit at CMD-14 of the Dunstan Affidavit.

Trustee's previous correspondence.[32]

25. On 6 April 2020 ASIC announced it had issued proceedings against the Mayfair 101 Companies on 3 April 2020, and that in light of Mayfair 101's suspension of capital redemptions, ASIC was also seeking an interim injunction restraining the promoting and issuing of Mayfair products while redemptions to existing investors remained suspended.[33]

26. On 7 April 2020 –

    1) The Borrower responded to the Trustee's default notice with a proposed payment plan which was not acceptable,[34] and

    2) The Trustee suspended redemptions on investments in the Fund as a result of the Borrower's breaches.[35]

27. On 8 April 2020 the Trustee wrote to the Borrower, thanking him for but rejecting his payment proposal of 7 April 2020, setting out a counter-proposed payment plan for the February/March payments and requiring within 1 business day a payment plan for April interest and for the funding of redemption requests.[36]

28. On 16 April 2020, the Trustee sent an email to Mr Mawhinney of the Borrower stressing that he needed to take the deadlines seriously, explaining that unitholders were worried about their savings, and stating that Trustee would take whatever action was necessary to look after the unitholders, whether that be removing IPO Wealth Ltd as the Investment Manager, appointing administrators to the Borrower or any other action.[37]

29. Also on 16 April 2020 the Federal Court made the interim injunction orders against the Mayfair 101 Companies[38] Two aspects of the judgment were notable –

    1) The Court was satisfied it ought to make orders prohibiting the Mayfair 101 companies from promoting two products, and from using certain prohibited phrases in promotion of their business.[39] The Court also required the Mayfair 101 Companies to publish a statement to the effect that Mayfair 101 is not a bank, is not regulated by APRA, investment in its products is not covered by the

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[32] See [7(g)] and CMD-34 of the Second Dunstan Affidavit.

[33] As reported by ASIC in a media release on 6 April 2020 – the first exhibit at CMD-12 of the Dunstan Affidavit at pages 2-3. See also the second exhibit at CMD-12 - *ASIC v Mayfair Wealth Partners Pty Ltd* [2020] FCA 494 per Anderson J at [42].

[34] See the Trustee's letter to the Borrower of 8 April 2020 citing the Notice of Default and the response received – the first exhibit at CMD-14 of the Dunstan Affidavit.

[35] See [23] and CMD-13 of the Dunstan Affidavit.

[36] The 8 April 2020 Letter is the first exhibit at CMD-14 of the Dunstan Affidavit.

[37] See [7(h)] and CMD-35 of the Second Dunstan Affidavit.

[38] ASIC has alleged misleading and deceptive conduct on the part of the Mayfair 101 companies in this proceeding, including alleged "bank term deposit representations", "repayment representations", "no risk of default representations", and "capital growth representations": see *ASIC v Mayfair Wealth Partners Pty Ltd* [2020] FCA 494 per Anderson J at [30]-[31]. These allegations are denied by the Mayfair 101 Companies – see [36]-[40].

[39] Being "bank deposit", "capital growth", "certainty", "fixed term", "term deposit" and "term investment" – see *ASIC v Mayfair Wealth Partners Pty Ltd* [2020] FCA 494 per Anderson J at [79].

Government Bank Guarantee, and investing in Mayfair 101 products has a higher level of risk than, and is not the same as, investing in a term deposit with a bank,[40]

2) The Court made findings that aspects of Mr Mawhinney's evidence potentially tended, on their face, to raise concerns regarding Mayfair's present financial position.[41] The Court also found that a "noteworthy aspect" of Mr Mawhinney's evidence was the lack of supporting financial documentation provided to the Court, pointing to assertions Mr Mawhinney made as to the value of assets held by the Mayfair Group without any financial documentation to support it, even on a confidential basis.[42]

30. Through this time –

1) ASIC was in regular communication with the Trustee about concerns arising from the freezing of redemptions and as to the value of the assets of the Borrower underpinning the Fund,[43] and

2) The Trustee's concerns were mounting that there had been a deterioration in the assets held by the SPVs.[44]

31. On 17 April 2020, the Trustee wrote again to Mr Mawhinney of the Borrower, seeking an urgent response the same day to the Repayment Plan Letter of 8 April 2020, referring to Mr Mawhinney's emails of 14 April and 17 April 2020 in which he had promised a response, and seeking further information.[45]

32. On 19 April 2020 Mr Mawhinney of the Borrower wrote to the Trustee setting out a proposed payment plan to bring outstanding February/March sums owing up to date.[46]

33. On 20 April 2020 the Trustee wrote to the Borrower accepting this plan, repeating the request for a proposed plan to meet the April interest payments and investors' further redemption requests, and repeating the request for additional information.[47]

34. On 21 April 2020 the Trustee received an Asset Summary by email from the Borrower, showing that the total assets of the Borrower had dropped by approximately $17.7 million, which appeared to relate to investments in Accloud PLC and Paymate India. In his email, Mr Mawhinney made the following comments –

1) Due to the current illiquid nature of the investments the Borrower would be drawing on funds under its unsecured loan agreement with Eleuthera Group Pty Ltd to facilitate the payments per the schedule,

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[40] Ibid.
[41] *ASIC v Mayfair Wealth Partners Pty Ltd* [2020] FCA 494 per Anderson J at [71].
[42] *ASIC v Mayfair Wealth Partners Pty Ltd* [2020] FCA 494 per Anderson J at [72]-[73].
[43] See [23]-[24] of the Dunstan Affidavit.
[44] See [25]-[26] of the Dunstan Affidavit.
[45] This is the second letter at CMD-14 to the Dunstan Affidavit.
[46] The third letter at CMD-14 to the Dunstan Affidavit.
[47] The fourth letter at CMD-14 to the Dunstan Affidavit.

2) The Borrower was selling down its ThinkMarkets shares at cost,
3) Accloud was expecting a significant capital injection from an Indian fund, and was open to share buy-back "*to improve our liquidity (this discussion was held on Sunday evening)*", and
4) The Group was launching a new product tomorrow which was expected to improve general liquidity within 2 weeks.[48]

35. On 23 April 2020 –
    1) the Trustee wrote to Mr Mawhinney of the Borrower noting that the Asset Summary showed the Borrower/SPV no longer owned shares in Accloud but only had $5m of debt investments with them, and that the Trustee was trying to reconcile Mr Mawhinney's previous comment that the listing of Accloud would provide a significant liquidity event for the fund,[49] and
    2) Mr Mawhinney replied by email, simply directing one of his colleagues to respond to the trustee's queries regarding Accloud.[50]

36. On 30 April 2020 the Trustee wrote again to Mr Mawhinney –
    1) Asking would he please answer the Trustee's questions in relation to Accloud,
    2) Asking what holdings in Accould did the Borrower have and what was its value,
    3) Asking if there had been any transactions by the Borrower involving Accloud equity or debt please detail the date, consideration and rationale, and
    4) Stating the Trustee needed prompt and accurate information from the Borrower if it was to work with the Borrower whilst the Borrower is in default under the loan agreements, and
    5) Stating that failure to provide such information would give the Trustee little choice but to adopt an alternative approach.[51]

37. On 5 May 2020 Mr Mawhinney of the Borrower wrote to the Trustee purporting to provide the explanation sought.[52] However –
    1) The letter asserted that shares in Accloud PLC Investments – which were supposed to be held by IPO Wealth Holdings #3 Pty Ltd (**SPV#3**) – had instead initially been held by a number of different entities on a bare trust for SPV#3 as at 26 July 2017, 24 October 2017 and 26 January 2018, and had then on about 30 January 2019 been transferred away to a company which is not part of the Fund structure, called "101 Investments Ltd",[53] and SPV#3's ownership of the shares

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[48] See [33]-[34] and CMD-16 (email) and CMD-17 (Asset Summary) of the Dunstan Affidavit.
[49] See [7(i)] and CMD-36 of the Second Dunstan Affidavit.
[50] See [7(j)] and CMD-37 of the Second Dunstan Affidavit.
[51] See [7(k)] and CMD-38 of the Second Dunstan Affidavit.
[52] See [36]-[38] and CMD-19 of the Dunstan Affidavit.
[53] ASIC's records show no company by this name exists. A private company named 101 Investments Pty

replaced by a book debt of EUR12,156,310.61, and

2) It did not explain the deterioration of the investment in Paymate India, stating only that that the same non-Fund company "101 Investments Ltd" had used money from the Borrower to invest in Paymate India.

38. This 5 May 2020 letter also set out a payment plan for April 2020 interest, but would not commit to a payment plan for the loan repayment of $5.4 million to meet redemption requests.

39. On 6 May 2020 the Trustee wrote to the Borrower accepting the payment terms for the April interest payments and proposing additional monthly repayments of principal of $2 million until the Borrower's liquidity position improves, as well as seeking more information regarding the Borrower's investment in "Paymate" and use of loan monies. The Trustee noted it was reviewing the answers the Borrower had provided regarding the Accloud PLC Investment.[54]

40. On 13 May 2020 the Trustee went an email to Mr Mawhinney of the Borrower reminding him that per the agreed payment plan an amount of $682k was due the next day, and $2.3m was due Friday the 15th, and noting these amounts were important to enable the Trustee to continue to pay distributions to investors.[55]

41. On 14 May 2020 the Borrower failed to pay $682,267.76 interest for February/March 2020 Payment 2, due on this day under the repayment arrangement agreed on 20 April following default.[56]

42. On 15 May 2020, critically, the Borrower failed to pay –

1) the $2 million March Repayment 1 due on this day under the repayment arrangement agreed on 20 April following default, and

2) the $300,000 February Repayment 2 due on this day under the repayment arrangement agreed on 20 April 2020.[57]

43. As a result, on that day 15 May 2020 –

1) the Trustee attempted to phone and email Mr Mawhinney of the Borrower and requested a call back. Mr Mawhinney did not respond,[58] and

2) the Trustee's solicitors Madgwicks Lawyers wrote to the Borrower outlining the Defaults and proposing a way forward, suggesting a work out agreement with a new repayment proposal.[59]

Ltd does exist. It's sole director and shareholder is a John Fredrick McMahon. See [15(q)] and CMD-45 of the Second Dunstan Affidavit.

54 The last letter at CMD-14 to the Dunstan Affidavit.

55 See [7(l)] and CMD-39 of the Second Dunstan Affidavit.

56 See [25]-[28] of the Dunstan Affidavit and CMD-14.

57 See [25]-[29] of the Dunstan Affidavit and CMD-14.

58 See [30] of the Dunstan Affidavit.

59 See [31] of the Dunstan Affidavit.

44. The Borrower failed to respond substantively to Madgwicks Lawyers' proposal or at all, save for the following email.

45. On 20 May 2020, Mr Mawhinney of the Borrower sent a brief, vague email to the Trustee which claimed that –

> *We are going through this proposal at the moment with our various advisers to see if this is the right move for us in light of other restructuring we are undertaking at the moment, including evaluating putting two of our business credit investments into a listed shell we are in communication with. I'll aim to get back to you on Friday with initial feedback.*

46. At this point it was clear to the Trustee that its investors' capital investments in the Fund were at risk because –

    1) Some of the purported assets of the SPVs appeared to have been transferred away from the SPVs to an entity outside of the Fund and the reach of the security held by the Trustee, and replaced by lesser rights. The Borrower's assertions on this had been troublingly contradictory,
    2) The Borrower was increasingly in breach of its repayment obligations to the Trustee, including the critical $2 million payment which had initially been due in March and had subsequently been promised to be paid on 15 May,
    3) The Trustee was increasingly having difficulty getting adequate responses from the Borrower and having difficulty getting adequate information from the Borrower as to the assets of the SPVs underpinning the Fund, and
    4) The Borrower ceased all communication with the Trustee after it failed to make the $2m repayment on 15 May 2020, save for the brief, troubling and cryptic email of 20 May 2020, which suggested for the first time the Borrower intended to realise assets in what appeared to be a "wholesale method", with no detail.
    5) The Borrower's references to the assets of the Mayfair Group as being relevant raising further concerns given the freezing of redemptions by the Mayfair Group entities over the debenture products issued by them and ASIC's action against the Mayfair Group entities over misleading and deceptive conduct.

5. Recent Representations by the Mayfair Group about the Appointments of Receivers

47. Following the appointment of the Receivers to the assets of the Borrower under the GSA by the Trustee, and the Court appointment of the Receivers to the assets of the SPVs on 22 May 2020, the Mayfair Group released a Statement making certain allegations and representations.[60]

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[60] See [4]-[6] and CMD-26 of the Second Dunstan Affidavit.

48. The Trustee rejects these allegations and representations for these reasons –

1) The Trustee made a concerted and sustained effort over a period of nearly 4 months to engage with and work flexibly with the Borrower to bring the Borrower up to date with its payment obligations, to obtain adequate and timely communication from the Borrower, to obtain adequate information as to the state of the Fund and the Borrower's ability to meet its payment obligations moving forward so that the Trustee could continue to meet distributions and redemptions to investors, and to clarify inconsistencies, gaps and generalities in the inadequate information that was provided by the Borrower,
2) The Trustee held serious, mounting concerns through these 4 months due to the escalating evidence of the Borrower's inability to meet its interest payment and principal repayment obligations to the Trustees for distributions and redemptions to the investors, the mounting financial and legal problems of the Mayfair Group, the quality of the information that was and was not forthcoming from the Borrower, the serious deterioration in the value of the Fund, and the troubling signs of assets thought to have been held in the Fund having exited the Fund,
3) Once it was apparent that the risk to the Fund was too high, the Trustee' duty to act in the best interests of its investors compelled it to appoint the Receivers to the Borrower and apply for their appointment to the SPVs, in order to seek to protect the assets of the Fund and preserve their value, and
4) The evidence shows that the Trustees consulted with Mr Mawhinney, sole director of both the Borrower and the Investment Manager, extensively over the 4 months leading up to the appointments of the Receivers, trying hard to extract adequate information as to the state of the Fund, what was being done to protect it, and how Fund redemptions for investors over the forward 6 month period would be funded. To suggest otherwise flies in the face of the correspondence in evidence and described above.

6. Investor Submissions

49. Submissions received from investors are referred to and exhibited to the Second Dunstan Affidavit at [10]-[12] and exhibits CMD-40, CMD-41 and CMD-42.

50. The Trustee observes –

1) There are multiple submissions received from investors in support of the actions taken by the Trustees to seek to protect the Fund, as well as multiple submissions expressing concerns,
2) It is not the intention of the Trustee that the assets of the Fund be sold in any kind

of 'fire sale' scenario. Neither the Borrower nor any of the SPVs are in liquidation. Rather, the Trustee intends for the Receivers to carefully manage the illiquid investment position of each of the SPVs over a period of time with a view to ascertaining the true position and obtaining the best possible result for investors in the Fund, and

3) The Borrower was given plenty of time over up to 4 months to remedy its defaults. Repayment plans were discussed and agreed, yet then defaulted on again, and communications from the Borrower became less and less responsive, informative and transparent.

C G ROME-SIEVERS

Counsel for the Plaintiff

Lonsdale Chambers
28 May 2020