

IN THE SUPREME COURT OF NEW SOUTH WALES  
DIVISION: EQUITY  
REGISTRY: SYDNEY  
CORPORATIONS LIST

No. 2014/376655

IN THE MATTER OF **RETAIL ADVENTURES PTY LIMITED (IN LIQUIDATION)**  
ACN: 135 890 845

**Sperling Enterprises Pty Ltd**

**ACN 001 882 364**

Plaintiff

**Retail Adventures Pty Limited (In Liquidation) (ACN 135 890 845)**

First Defendant

**Vaughan Strawbridge, John Lethbridge Greig and David John Frank Lombe in their  
capacities as joint and several liquidators of the First Defendant**

Second Defendant

**TNW Australia Limited (ACN 072 775 529)**

Third Defendant

**AFFIDAVIT OF SUSANNA MARGARET KHOURI SWORN 27 FEBRUARY 2015**

On 27 February 2015, I, Susanna Margaret Khouri of Level 10, 39 Martin Place, Sydney, New South Wales, Investment Manager say on oath:

1. I am an investment manager employed by IMF Bentham Limited (**IMF**). I have been responsible for managing this matter on behalf of IMF since May 2014 and I am duly authorised to make this affidavit on IMF's behalf.
2. The following facts are within my own personal knowledge except as otherwise stated.
3. I refer in this affidavit to the affidavit of Paul Rainford sworn 18 December 2014 (**Rainford Affidavit**).



Deponent



Witness

Filed on behalf of : the Plaintiff

Prepared by:

**COLIN BIGGERS & PAISLEY**

Lawyers

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SYDNEY NSW 2000

Email: [sgh@cbp.com.au](mailto:sgh@cbp.com.au)

DX: 280 SYDNEY

Tel: (02) 8281 4555

Fax: (02) 8281 4567

Ref: SGH:HZA:134613

Attention: Heather Collins

4. Exhibited to me at the time of swearing this affidavit and marked "**SMK-1**" is a paginated and tabbed folder of documents to which I refer.

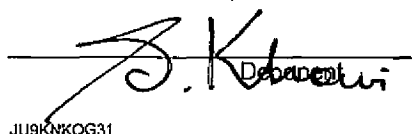
**IMF Funded Creditors**

5. Exhibited at pages 113 to 115 of Exhibit "PH -1" of the Rainford Affidavit is a list of funded creditors, being creditors who have entered into funding agreements with IMF in relation to Retail Adventures Pty Limited (in liquidation) (**RAPL**). The creditors identified in that list are the same as those set out in Schedule 2 to the originating process filed in these proceedings on 23 December 2014.
6. Subsequent to the commencement of these proceedings, the list of creditors funded by IMF has changed in two ways:
- (a) the name of the creditor identified at numbered row 97 in Schedule 2 has been amended from "Pinto Enterprises Pty Ltd as trustee for Awesome Imports" to "Anthony Pinto and Stacey Pinto as trustee for ASP Trust trading as Awesome Imports" to reflect the correct legal entity which has made a claim against RAPL.
  - (b) Humana Pty Ltd (ACN 006 308 158) (**Humana**) has been added as a creditor. Humana entered into a funding agreement with IMF on 18 December 2014. Humana and Pocantico Pty Ltd, who is also an IMF Funded Creditor, are represented by the same representative. Both entities agreed to enter into an IMF funding agreement. Due to administrative oversight, Pocantico signed an IMF funding agreement on 5 April 2013 but Humana did not. That administrative oversight only came to light in December last year. The common representative has been sent all of the updates issued by CBP Lawyers to IMF Funded Creditors.

Exhibited at **Tab 1 of SMK-1** is the updated list of funded creditors which includes the changes referred to above (**the IMF Funded Creditors**).

7. AMP Capital Investors Ltd (**AMP Capital Investors**) and AMP Capital Real Estate Pty Ltd (**AMP Capital Real Estate**) have both signed IMF funding agreements. I am informed by Tania Noonan, Senior Legal Counsel AMP Capital, and verily believe that AMP Capital Investors acts as the manager of the properties owned by the following AMP companies which owned property that was leased to RAPL:

- (i) AMP Riverside Plaza Pty Ltd;
- (ii) AMP Royal Randwick Pty Ltd - Royal Randwick Shopping Centre;
- (iii) AMP Capital Palms Pty Ltd;
- (iv) AMP Royal Randwick Pty Ltd - Ocean Keys Shopping Centre;

  
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- (v) AMP Capital Funds Management Limited;
- (vi) AMP Pacific Fair Pty Ltd as trustee for the AMP Pacific Fair Trust and AMP Capital Funds Management Limited.

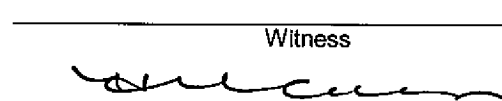
(collectively referred to as "**AMP Funds**")

8. I am informed by Tania Noonan and verily believe AMP Capital Real Estate renders all of the invoices for the rent owed to the AMP Funds.
9. Exhibited at the following tabs of **Exhibit SMK-1** are copies of the following in relation to the IMF Funded Creditors:
  - (a) Set out at pages 24 to 54 of Exhibit PH-1 to the Rainford Affidavit is the 'Retail Adventures Investigation, Management and Funding Agreement' (**the IMF Funding Agreement**). At **Tab 2** of this affidavit is each of the IMF Funded Creditors' execution pages of the IMF Funding Agreement;
  - (b) Set out at pages 55 to 62 of Exhibit PH-1 to the Rainford Affidavit is a copy of the 'Costs Agreement'. At **Tab 3** is each of the IMF Funded Creditors' execution pages of the Costs Agreement other than Humana who has not executed a Costs Agreement.
  - (c) At **Tab 4** is a copy of the agreement between Sperling Enterprises Pty Ltd, IMF and CBP Lawyers dated 9 December 2014.
  - (d) At **Tab 5**, is the notice of variation to the IMF Funding Agreement and IMF Disclosure Statement sent to all the IMF Funded Creditors, except Humana (**the Notice of Variation**) sent to all creditors on the IMF mailing list.
  - (e) At **Tab 6** is a copy of the IMF mailing list referred to in paragraph 9(d) above.
10. PMP Digital Pty Ltd and PMP Print Pty Ltd signed a joint IMF funding agreement. That is, both names are listed on the one IMF funding agreement. As a result IMF sent the Notice of Variation to one of them, being PMP Print Pty Ltd.
11. Humana was not sent a Notice of Variation. However, Pocantico Pty Ltd was sent a Notice of Variation.
12. IMF did not receive any objection in response to the Notice of Variation.

**Creditors' opportunity to participate**

13. I refer to paragraphs 8 and 9 of the Rainford Affidavit. My review of the records maintained by IMF discloses that the list exhibited at pages 5 to 16 of PH-1 of the Rainford Affidavit comprises all creditors that were sent the information pack by email, on 18 March 2013, and

  
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by post on 20 March 2013. The second list which is exhibited at pages 63 to 72 of PH-1 to the Rainford Affidavit discloses only those creditors who were sent the information pack by post only on 20 March 2013. The heading of the first list is incorrect. The heading should read as follows "List of Creditors who were sent an Information Pack by post or email on or before 20 March 2013".

#### **Application to extend the convening period**

14. On 20 February 2013 the administrators of RAPL applied to the Federal Court of Australia to extend the convening period of the second creditors meeting of RAPL's creditors for six months. As at 20 February 2013 IMF had not received any signed funding agreements from creditors of RAPL. The first executed funding agreement was received by IMF on 20 March 2013.
15. All the funding agreements, except Humana's, were signed before the second creditors meeting on 2 September 2013.

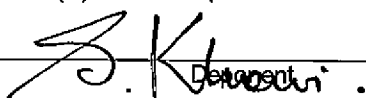
#### **IMF Project Costs**

16. Between November 2012 and 20 February 2015 IMF has paid or incurred \$1,059,516.89 of Project Costs (as defined by clause 1.1 of the IMF Funding Agreements) in connection with the claims of the IMF Funded Creditors against RAPL. These costs include legal costs and out of pocket expenses or disbursements.
17. Of the costs referred to in paragraph 16 above the sum of \$726,636.94 was incurred prior to RAPL being wound up on 3 February 2014, and the remaining sum of \$332,879.95 was incurred after RAPL was wound up.
18. IMF has recovered the total sum of \$603,687.05 in respect of legal costs, comprising \$153,687.05 from the Liquidators and \$450,000 from the third and fourth defendants, in New South Wales Supreme Court Proceedings No. 2013/275631.
19. IMF has also recovered the sum of \$21,443 in respect of GST for the period December 2012 to date.
20. As at 20 February 2015 the total costs incurred by IMF for which it has not been reimbursed is the total sum of \$434,386.84. These costs are the subject of the IMF Funding Agreements.

#### **Notice of Application**

21. IMF caused letters from CBP Lawyers to be sent to all of the IMF Funded Creditors, except Humana, on the following dates:

(a) 4 September 2014;

  
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- (b) 10 October 2014;
- (c) 28 November 2014;

22. IMF caused letters to be sent from CBP Lawyers to all of the IMF Funded Creditors on the following dates:

- (a) 13 January 2015;
- (b) 18 February 2015.

Exhibited at **Tab 7 at SMK-1** are copies of those letters.

SWORN at

SYDNEY

Signature of deponent

Name of witness

HEATHER MAY COLLINS

Address of witness

LEVEL 12, 2 PARK ST SYDNEY.

Capacity of witness

LAWYER

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.
- 2 I have known the deponent for at least 12 months.

Signature of witness

Deponent

Witness

**SCHEDULE**

**PLAINTIFF**

Sperling Enterprises Pty Ltd

ACN 001 882 364

**Plaintiff**

**DEFENDANTS**

Retail Adventures Pty Limited (In Liquidation) ACN  
135 890 845

**First Defendant**

Vaughan Strawbridge, John Lethbridge  
Greig and David John Frank Lombe in their  
capacities as joint and several liquidators of the  
First Defendant

**Second Defendant**

TNW Australia Limited (ACN 072 775 529)

**Third Defendant**

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Deponent

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