

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 19/08/2021 3:44:33 PM 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: Statement of Claim - Form 17 - Rule 8.06(1)(a)
File Number: VID1010/2019
File Title: MATTHEW HALL v ARNOLD BLOCH LEIBLER (A FIRM)
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 20/08/2021 9:25:12 AM AEST

A handwritten signature in blue ink that reads 'Sia Lagos'.

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 17
Rule 15.06(1)(a)

Further Amended Statement of Cross-Claim

No. VID1010 of 2019

Federal Court of Australia
District Registry: Victoria
Division: General

Matthew Hall

Applicant

Arnold Bloch Leibler (a firm)

Respondent

Arnold Bloch Leibler (a firm)

Cross-Claimant

Slater & Gordon Ltd (ACN 097 297 400) and others named in the Schedule

Cross-Respondents

Note:

*Capitalised terms not otherwise defined below have the same meaning as that ascribed to them in the amended statement of claim filed 26 July 2021~~17 September 2019~~ (Statement of Claim) and/or the Respondent's amended defence filed 17 August 2021~~9 December 2020~~ (**Defence**).*

Where paragraphs of the Statement of Claim are referred to and repeated below, ABL does so for the purposes of its cross-claim only, in the alternative to its Defence, and the reference does not derogate from or otherwise modify the Respondent's Defence to those allegations of the Statement of Claim.

Further particulars of this Further Amended Statement of Cross-Claim may be provided following production of documents pursuant to subpoenas, notices to produce, service of the Respondent's evidence and/or receipt of the Cross-Respondents' evidence.

- 1 The Cross-Claimant (**ABL**) makes the allegations in this statement of cross-claim in the alternative to the matters pleaded in its Defence and:
 - (a) only to the extent it is (notwithstanding those matters) liable to Hall and Group Members in relation to the claims made against ABL by Hall and Group Members in this proceeding;

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- (b) further or alternatively, if it is found not liable to Hall and Group Members in relation to the claims made against ABL by Hall and Group Members, only to the extent it has suffered loss and damage by reason of costs which ABL has incurred, and continues to incur, in defending the allegations made by Hall and Group Members in the Statement of Claim.

A. INTRODUCTION

2 At all material times, the First Cross-Respondent (SGH) was:

- (a) a public company within the meaning of s 9 of the Corporations Act;
- (b) listed on the ASX;
- (c) subject to prohibitions on misleading or deceptive conduct in:
 - (i) s 1041H of the Corporations Act;
 - (ii) s 12DA of the ASIC Act;
 - (iii) s 18 of the ACL;
- (d) subject to and bound by the ASX Listing Rules;
- (e) was a member of the DDC.

3 The Second Cross-Respondent (**Grech**):

- (a) was appointed the Managing Director of SGH on 27 June 2001 and remained in that office throughout the Relevant Period;
- (b) at all material times, was an officer of SGH within the meaning of s 9 of the Corporations Act;
- (c) was a representative of SGH on the DDC.

4 The Third Cross-Respondent (**Brown**):

- (a) was appointed as the Chief Financial Officer of SGH in 2004, and remained in that office until on or about 15 November 2015;
- (b) was appointed company secretary of SGH on 5 January 2004, and remained in that role until 29 January 2016;

(c) at all material times, was an officer of SGH within the meaning of s 9 of the Corporations Act;

(d) was a representative of SGH on the DDC.

5 In the premises, throughout the Relevant Period:

(a) Grech was a director of SGH; and

(b) Brown was an officer of SGH

within the meaning of s 9 of the Corporations Act.

B. SGH'S RETAINER OF ABL

6 Between 23 February 2015 and 29 March 2015, SGH retained ABL to:

(a) act as Australian legal advisor in relation to the Entitlement Offer;

(b) participate as a member of the DDC established by SGH in relation to the Entitlement Offer, on the terms provided in the DDPM;

(c) provide Australian legal advice to the DDC on the Entitlement Offer, the Offer Documents and legal matters arising in connection with the due diligence process; and

(d) provide a legal opinion in respect of the contents of the Offer Documents, on the terms provided in the DDPM,

(the **Retainer**).

Particulars

The Retainer was partly oral, partly in writing and partly to be implied. To the extent it was oral, it was constituted by conversations between Wenig and Grech in January to February 2015 to the effect alleged in sub-paragraph (a)(i) above.

To the extent it is in writing, it comprised:

A. an email from van Grieken of ABL to Kirsten of SGH dated 23 February 2015 (ABL.001.001.1806);

B. an email from van Grieken to Morrison and Sheehan of SGH dated 4 March 2015 (ABL.001.001.1806);

- C. the DDPM (ABL.001.016.3931 at 3937 ff) as adopted by the DDC (as to which, ABL refers to sub-paragraph 70M(b) below).

To the extent it is to be implied, it is to be implied from the request made by SGH for and the performance by ABL of the work undertaken by ABL in relation to the Entitlement Offer; ABL's participation on the DDC; and the ABL Signed Legal Opinion Letter provided by ABL to the DDC.

7 The Retainer contained terms that:

- (a) SGH executives and management had primary responsibility for making commercial, financial and accounting inquiries;
- (b) SGH executives and management were to provide information on commercial, operational and other business issues;
- (c) SGH executives and management were to consider and respond to the Due Diligence Questionnaire;
- (d) SGH was to carry out verification of the accuracy of all of the statements in the Offer Documents which ABL identified as being the responsibility of SGH to verify, to provide assurance that there were no statements in the Offer Documents that were misleading or deceptive and to minimise the risk of omissions of required material from the Offer Documents (**Verification Obligation**);
- (e) SGH executives and management were to provide sign-offs, in a form agreed with the Underwriters, to the DDC (inter alios);
- (f) all reports, sign-offs and opinions provided to the DDC could be relied on by all members of the DDC;
- (g) each member of the DDC would participate in the due diligence process having regard to their area of skill, knowledge, expertise and their accepted area of responsibility;
- (h) other members could rely on representations made by that member in its capacity as a member;
- (i) the responses to the Due Diligence Questionnaire would be accurate, so as to allow the response to be relied on by ABL (**Accurate Responses Obligation**);

- (j) the sign-offs provided by SGH executives and management would be accurate, so as to allow the response to be relied on by ABL (**Accurate Sign-Offs Obligation**);
- (k) SGH would, through its executive and management, consider questions in the Due Diligence Questionnaire, consider and verify information and statements in the Offer Documents, and undertake the Questionnaire Obligation, Verification Obligation and Sign-Off Obligation:
 - (i) with the degree of care and diligence that a reasonable person would exercise if they:
 - (A) were a director or officer of a corporation in SGH's circumstances;
 - (B) occupied the office held by that person in management, and had the same responsibilities within SGH as him; and
 - (ii) with the care and skill that an ordinary prudent person of business would exercise in conducting SGH's business as if it were his own,

(Care and Skill Obligation).

Particulars

As to (a)-(h), each term was in writing and contained in the DDPM: (a) at cl 5.4(b)(i); (b) at cl 5.4(b)(i); (c) at cl 5.4(b)(ii); (d) at cl 5.4(b)(iii), 10.1-10.2; (e) at cl 5.5(b)(iv); (f) at cl 5.5(b); (g) at cl 5.5.(c); (h) at cl 5.7(c).

As to (i), the term was partly in writing and partly implied. To the extent it was in writing, it was contained in cl 5.4(b)(iii), 5.5(b) and cl 5.7(c) of the DDPM. To the extent it was implied, it was implied to give business efficacy to the Retainer.

As to (j), the term was partly in writing and partly implied. To the extent it was in writing, it was contained in cl 5.4(b)(iv), 5.5(b) and cl 5.7(c) of the DDPM. To the extent it was implied, it was implied to give business efficacy to the Retainer.

As to (k), the term was partly in writing and partly implied. To the extent it was in writing, it was contained in cl 5.4(b)(ii) and (iii) of the DDPM and in emails from van Grieken to Morrison dated 23 February 2015 and from van Grieken to Morrison and Sheehan dated 4 March 2015 (ABL.001.001.1806). To the extent it was implied, it was implied to give business efficacy to the Retainer and/or implied in law as a necessary incident of the Retainer.

C. THE DUE DILIGENCE PROCESS

- 8 On 19 March 2015, Grech and Brown (inter alios) received a draft of the DDPM.

Particulars

A draft of the DDPM was attached to an email from van Grieken to, among others, Grech and Brown dated 19 March 2015 (ABL.001.002.0153 at .0154).

- 9 On 19 March 2015, ABL provided to SGH, Grech and Brown an initial draft of the ABL Management Questionnaire, and in successive drafts of the ABL Management Questionnaire, ABL notified each of SGH, Grech and Brown that it was relying on SGH's response to the questionnaire to confirm that, inter alia, all material information was disclosed to the ASX.

Particulars

A draft of the ABL Management Questionnaire was provided by ABL to S&G on 17 March: SGH.605.035.10466, SGH.605.035.1047. An email dated 19 March 2015 from van Grieken to Grech, Brown, Morrison, Sheehan and others refers to the ABL Management Questionnaire being attached (ABL.001.002.0153). An email dated 24 March 2015 from van Grieken to Grech, Brown, Morrison, Sheehan and others attaches an updated copy of the ABL Management Questionnaire and states that 'The purpose of the questionnaire is to determine S&G's eligibility to undertake the entitlement offer without issuing a prospectus and whether any additional disclosure is required to be made by S&G in a 'cleansing notice' to be issued prior to undertaking the offer (SGH.605.048.5975, SGH.605.048.5976).

~~Paragraph 5 of the draft ABL Management Questionnaire circulated on 22 March 2015 (ABL.001.001.7008) was~~ Each contained a paragraph in the same form as paragraph 5 in the completed due diligence questionnaire referred to in paragraph 15 below.

~~Further particulars may be provided.~~

- 10 On 24 March 2015, SGH established the DDC.

Particulars

The establishment of the DDC is recorded in the minutes of a meeting of the DDC on 24 March 2015 at 9:30 am (ABL.001.016.3931 at 4029).

- 11 The DDC comprised of SGH and ABL.

12 At all material times, Grech:

- (a) had skill, knowledge and expertise in relation to the SGH business, including commercial and operational issues; and
- (b) had skill, knowledge and expertise in relation to the risk profile of the SGH business, including regulatory reform risk in the UK.

Particulars

As to (a), Grech had been the Managing Director of SGH since 2001. As to (b), this can be inferred from his work and experience as Managing Director, including his attendance at and participation in the SGH Board meetings at which regulatory risk was considered and discussed (referred to in the particulars subjoined to 32 below).

13 At all material times, Brown:

- (a) had skill, knowledge and expertise in relation to the SGH business, including commercial and operational issues; and
- (b) had skill, knowledge and expertise in relation to the risk profile of the SGH business, including regulatory reform risk in the UK.

Particulars

As to (a), Brown had been the Managing Director of SGH since 2001. As to (b), this can be inferred from his work and experience as Chief Financial Officer, including his attendance at the SGH Board meetings at which regulatory risk was considered and discussed (referred to in the particulars subjoined to 32 below).

14 Between ~~13~~ 20 March 2015 and 29 March 2015, Grech and Brown received copies of the draft Offer Documents.

Particulars

The first draft of the Investor Presentation was attached to an email dated 13 March 2015 from Jourdan Thompson of Greenhill & Co to Grech, Brown and others (SGH.605.004.1385). A 'preliminary draft ASX announcement' was attached to an email dated 13 March 2015 from Peter Morrison of Citi to Grech, Brown and others (SGH.605.041.8163). A draft of the Offer Booklet was attached to an email from van Grieken to Grech and Brown on 20 March 2020 (ABL.001.001.4962, ABL.001.001.4963). ~~Further particulars may be provided.~~

- 15 On 28 March 2015, Grech and Brown responded to the ABL Management Questionnaire (**Due Diligence Response**).

Particulars

The responses are contained in letter, dated 28 March 2015, on ABL letterhead and addressed to Grech and Brown (ABL.001.016.3931 at 4010).

- 16 By way of the Due Diligence Response:

- (a) In response to Question 25, "*Please identify the factors which may cause profitability and net debt for the current and next financial year to be materially worse than internal forecasts or analyst expectations and for each factor identified provide your opinion of the risk of occurrence. As part of your response please consider any impacts that may occur as a result of the acquisition of Quindell Plc*", Grech and Brown each stated:

Response: *Disclosure will be made in the investor presentation regarding key risk factors.*

- (b) Grech and Brown each acknowledged that:
- (i) SGH and advisors of SGH would rely on the responses given by them;
- (ii) ABL would rely on the responses given to ensure that all material information was disclosed to the ASX.

- 17 On 29 March 2015, Grech signed and provided to ABL, inter alios, a document entitled "Management Sign-Off: Slater & Gordon Limited Entitlement Offer" (**Grech Sign-Off**).

Particulars

The Grech Sign-Off is signed by Grech, dated 29 March 2015, is addressed to the Board of Directors of SGH, and copied to the members of the DDC (ABL.001.002.7927).

- 18 In the Grech Sign-Off, Grech stated that:

- (a) he had been provided with the 30 March Cleansing Notice, the Offer Booklet and the 30 March Presentation;
- (b) he had read and understood the DDPM and the due diligence process outlined in the DDPM, and understood the purpose of due diligence;

- (c) all information and responses he had provided during the course of the due diligence process had been true, complete and accurate in all respects and had not been false, misleading or deceptive, or likely to mislead or deceive;
- (d) he had satisfied himself, having regard to his knowledge of SGH's business, that SGH had complied with s 674 and the provisions of Chapter 2M of the Corporations Act;
- (e) he had satisfied himself, having regard to his knowledge of SGH's business, that all information that investors and their professional advisers would reasonably require for the purposes of making an informed assessment of:
 - (i) the assets and liabilities, financial position and performance, profits and losses and prospects of SGH; or
 - (ii) the rights and liabilities attaching to the new shares to be issued by SGH pursuant to the Entitlement Offer,have previously been disclosed to the ASX or he had otherwise notified such information to the DDC;
- (f) he had read and understood the final drafts of each of the 30 March Cleansing Notice, the Offer Booklet and the 30 March Presentation, and he believed that:
 - (i) each of the 30 March Cleansing Notice, the Offer Booklet and the 30 March Presentation were accurate, and did not contain any statement that was false, misleading or deceptive or likely to mislead or deceive (including by way of statements in or omissions from those documents);
 - (ii) there was no omission from any of the 30 March Cleansing Notice, the Offer Booklet and the 30 March Presentation of information which was required to be included by s 708AA of the Corporations Act as modified by ASIC Class Order 08/35;
 - (iii) where the 30 March Cleansing Notice, the Offer Booklet or the 30 March Presentation contained a statement of opinion or statement about a future matter, those statements were based on reasonable grounds.
- (g) nothing had come to his attention that caused him to believe, and he did not believe, that:
 - (i) the 30 March Cleansing Notice did not comply with s 708AA of the Corporations Act;

- (ii) the 30 March Cleansing Notice was defective;
 - (iii) the 30 March Cleansing Notice, the Offer Booklet or the 30 March Presentation contained a statement that was false, misleading or deceptive, or likely to mislead or deceive, including by omission;
 - (iv) there was an omission from either the 30 March Cleansing Notice, the Offer Booklet or the 30 March Presentation of information required by the Corporations Act;
 - (v) where the 30 March Cleansing Notice, the Offer Booklet or the 30 March Presentation contained a statement of opinion or statements about a future matter, those statements were not based on reasonable grounds;
- (h) he would immediately advise Wenig, as Chair of the DDC, in writing, if at any time prior to the issue of the new shares in SGH pursuant to the Entitlement Offer, he became aware of:
- (i) a false, misleading or deceptive statement in any of the 30 March Cleansing Notice, the Offer Booklet or the 30 March Presentation;
 - (ii) an omission from the Offer Documents of information required to be included by the Corporations Act;
 - (iii) any new circumstance that had arisen since the 30 March Cleansing Notice, the Offer Booklet or the 30 March Presentation were lodged which may be required to be included in the documents if it had arisen before lodgement.

19 On 29 March 2015, Brown signed and provided to ABL, inter alios, a document entitled "Management Sign-Off: Slater & Gordon Limited Entitlement Offer" (**Brown Sign-Off**).

Particulars

The Brown Sign-Off is signed by Brown, dated 29 March 2015, is addressed to the Board of Directors of SGH, and copied to the members of the DDC (ABL.001.002.7931).

20 In the Brown Sign-Off, Brown stated that:

- (a) he had been provided with the 30 March Cleansing Notice, the Offer Booklet and the 30 March Presentation;

- (b) he had read and understood the DDPM and the due diligence process outlined in the DDPM, and understood the purpose of due diligence;
- (c) all information and responses he had provided during the course of the due diligence process had been true, complete and accurate in all respects and had not been false, misleading or deceptive, or likely to mislead or deceive;
- (d) he had satisfied himself, having regard to his knowledge of SGH's business, that SGH had complied with s 674 and the provisions of Chapter 2M of the Corporations Act;
- (e) he had satisfied himself, having regard to his knowledge of SGH's business, that all information that investors and their professional advisers would reasonably require for the purposes of making an informed assessment of:
 - (i) the assets and liabilities, financial position and performance, profits and losses and prospects of SGH; or
 - (ii) the rights and liabilities attaching to the new shares to be issued by SGH pursuant to the Entitlement Offer,

have previously been disclosed to the ASX or he had otherwise notified such information to the DDC;
- (f) he had read and understood the final drafts of each of the 30 March Cleansing Notice, the Offer Booklet and the 30 March Presentation, and he believed that:
 - (i) each of the 30 March Cleansing Notice, the Offer Booklet and the 30 March Presentation were accurate, and did not contain any statement that was false, misleading or deceptive or likely to mislead or deceive (including by way of statements in or omissions from those documents);
 - (ii) there was no omission from any of the 30 March Cleansing Notice, the Offer Booklet and the 30 March Presentation of information which was required to be included by s 708AA of the Corporations Act as modified by ASIC Class Order 08/35;
 - (iii) where the 30 March Cleansing Notice, the Offer Booklet or the 30 March Presentation contained a statement of opinion or statement about a future matter, those statements were based on reasonable grounds.
- (g) nothing had come to his attention that caused him to believe, and he did not believe, that:

- (i) the 30 March Cleansing Notice did not comply with s 708AA of the Corporations Act;
 - (ii) the 30 March Cleansing Notice was defective;
 - (iii) the 30 March Cleansing Notice, the Offer Booklet or the 30 March Presentation contained a statement that was false, misleading or deceptive, or likely to mislead or deceive, including by omission;
 - (iv) there was an omission from either the 30 March Cleansing Notice, the Offer Booklet or the 30 March Presentation of information required by the Corporations Act;
 - (v) where the 30 March Cleansing Notice, the Offer Booklet or the 30 March Presentation contained a statement of opinion or statements about a future matter, those statements were not based on reasonable grounds;
- (h) he would immediately advise Wenig, as Chair of the DDC, in writing, if at any time prior to the issue of the new shares in SGH pursuant to the Entitlement Offer, he became aware of:
- (i) a false, misleading or deceptive statement in any of the 30 March Cleansing Notice, the Offer Booklet or the 30 March Presentation;
 - (ii) an omission from the Offer Documents of information required to be included by the Corporations Act;
 - (iii) any new circumstance that had arisen since the 30 March Cleansing Notice, the Offer Booklet or the 30 March Presentation were lodged which may be required to be included in the documents if it had arisen before lodgement.

21 On 29 March 2015:

- (a) SGH provided to ABL the Verification Report, signed by Grech and Brown;
- (b) Wenig signed the Verification Report.

Particulars

ABL.001.016.3914.

22 By signing the Verification Report, each of Grech and Brown, personally and on behalf of SGH, certified to the DDC (including to ABL) that (**SGH Verification Confirmation**),

in relation to each statement for which SGH was denoted responsibility in the Verification Report:

- (a) he had read and approved the statement;
- (b) the column headed "Verification Material" adjacent to the statement contained a cross-reference to the relevant documentation, or other matters within his knowledge, which he had relied on for verification of the statement (**Verification Material**);
- (c) to the best of his knowledge and belief, having made all reasonable and proper enquiries:
 - (i) no such statement, considered in the context in which it appears in the Offer Documents, is misleading or deceptive;
 - (ii) there are no matters relevant to the subject to which the statement relates which have been omitted from the Offer Documents;
- (d) he had a continuing responsibility to bring to the attention of the DDC any new circumstances which arise or otherwise come to his knowledge during the period between signing the Verification Report and the close of the retail component of the Entitlement Offer which may render any of the statements misleading or deceptive or constitute an omission from the Offer Documents

Particulars

Verification Report, clauses 3 and 6.

- 23 By Grech signing the Verification Report, he verified all statements in the Offer Documents for which the Verification Material was listed as "Management statement" or "Management statement" as having been verified for completeness and accuracy on behalf of the directors of SGH (**Management Statement Confirmation**).

Particulars

Verification Report, clause 2.4 and "Verification Schedule".

- 24 Pursuant to the Verification Report:
- (a) SGH was responsible for confirming the matters set out in paragraph 22 above in relation to:
 - (i) the 30 March Announcement;

- (ii) the 30 March Presentation Slides 1 and 4-80;
- (iii) (together with the ABL), the 30 March Presentation Slides 2 and 3; and
- (iv) in the premises, each of the statements alleged in paragraphs 42 to 45 of the Statement of Claim; and

Particulars

Verification Report, Part 3; Verification Schedule

- (aa) in relation to each of the statements alleged in paragraphs 42 to 45 of the Statement of Claim, SGH was responsible for confirming that each statement could be cross-referenced to independent source documents to establish the truth and accuracy of the statement, or, where that was not feasible, the truth and accuracy of the statement was based on direct personal knowledge and expertise and/or analysis, demonstrating that the relevant statement had been made on reasonable grounds;

Particulars

Verification Report, clause 2.1

- (b) the Verification Material relating to each of the statements alleged in paragraphs 42 to 45 of the Statement of Claim were as follows:
- (i) the 30 March Announcement (insofar as it included statements relating to Quindell's professional services division): Board minute approving entry into principal transaction documents; Quindell Sale agreement; EY Report; Macfarlanes' DD Report; Instinctif Report; Investor presentation;
 - (ii) page 7 of the 30 March Investor Presentation: Macfarlanes' DD Report;
 - (iii) page 8 of the 30 March Investor Presentation: no verification required;
 - (iv) page 9 of the 30 March Investor Presentation: Management statement;
 - (v) page 13 of the 30 March Investor Presentation: no verification required;
 - (vi) page 15 of the 30 March Investor Presentation: Management statements; Macfarlanes' DD Report;
 - (vii) page 17 of the 30 March Investor Presentation: Management statements; financial model; EY Report;

- (viii) page 19 of the 30 March Investor Presentation: EY DD Report; Macfarlanes' DD Report; Instinctif Report; Management statements;
- (ix) page 20 of the 30 March Investor Presentation: Management statement;
- (x) page 21 of the 30 March Investor Presentation: no verification required;
- (xi) page 25 of the 30 March Investor Presentation: no verification required;
- (xii) page 28 of the 30 March Investor Presentation: financial model; Management statements;
- (xiii) page 30 of the 30 March Investor Presentation: Management statement;
- (xiv) page 41 of the 30 March Investor Presentation: Management statement; Rule 15 of AIM rules; Signed irrevocables; Quindell sale agreement; Quindell notice of meeting documentation; Applications for approval from regulators;
- (xv) page 45 of the 30 March Investor Presentation: Management statement;
- (xvi) page 51 of the 30 March Investor Presentation: Management statement;
- (xvii) page 53 of the 30 March Investor Presentation: Macfarlanes' DD Report; management statement;
- (xviii) page 59 of the 30 March Investor Presentation: Management statement; and
- (xix) page 61 of the 30 March Investor Presentation: Management statement; and

Particulars

Verification Schedule.

25 On 30 March 2015, the DDPM was signed by each of:

- (a) Grech and Brown on behalf of SGH;
- (b) Wenig on behalf of ABL.

Particulars

The DDPM was signed by Grech and Brown on behalf of SGH, and Wenig on behalf of ABL, and dated 30 March 2015 (ABL.001.002.0153 at .0154).

D. REPRESENTATIONS AND KNOWLEDGE OF SGH, GRECH AND BROWN

D.1. Representations

26 By the Due Diligence Response, the SGH Verification Confirmation, the Management Statement Confirmation, the Grech Sign-Off and the Brown Sign-Off, SGH represented to ABL that:

- (a) each of SGH, Grech and Brown believed that the Offer Documents were accurate, and did not contain any statement that was false, misleading or deceptive or likely to mislead or deceive (including by way of statements in or omissions from those documents) (**Offer Documents Not Misleading Representation**);
- (b) each of SGH, Grech and Brown had a reasonable basis for the Offer Documents Not Misleading Representation;
- (c) each of SGH, Grech and Brown had approved each statement set out in the Verification Schedule for which SGH was responsible (including each statement alleged in paragraphs 42 to 45 of the Statement of Claim) as accurate after verifying its accuracy including by reference to the Verification Material attributed to that statement in the Verification Schedule (**Verified Statements Representation**);
- (d) each of SGH, Grech and Brown had a reasonable basis for approving as accurate each statement referred in the Verified Statements Representation;
- (e) each of SGH, Grech and Brown had approved the statements for which SGH was denoted as responsible in the Verification Schedule after relying on the Verification Material for those statements and that:
 - (i) no such statement, considered in the context in which it appears in the Offer Documents, was misleading or deceptive; and
 - (ii) there are no matters relevant to the subject to which the statement relates which had been omitted from the Offer Documents,**(Verification Representation)**;

- (f) each of SGH, Grech and Brown had approved the statements in the 30 March Announcement (insofar as they related to Quindell's professional services division) and page 19 of the 30 March Presentation after relying on the Verification Material for those statements, which included the Instinctif Report, and that:
 - (i) those statements, considered in the context in which they appeared in the Offer Documents, were not misleading or deceptive;
 - (ii) there are no matters relevant to the subjects to which those statements relate which had been omitted from the Offer Documents,

(Further Verification Representation);

- (g) each of SGH, Grech and Brown had a reasonable basis for the matters stated in the Verification Representation and the Further Verification Representation;
- (h) the key risk factors in relation to the Quindell acquisition would be set out in the 30 March Investor Presentation (Key Risk Factors Representation);

Particulars

As to (a), the Offer Documents Not Misleading Representation was express and arose from the Grech Sign-Off and/or the Brown Sign-Off.

As to (b), the representation is to be implied from the Offer Documents Not Misleading Representation.

As to (c), the Verified Statements Representation was express and arose from the SGH Verification Confirmation.

As to (d), the representation is to be implied from the terms of the Verified Statements Representation.

As to (e), the Verification Representation was express and arose from the SGH Verification Confirmation.

As to (f), the Verification Representation was express and arose from the SGH Verification Confirmation.

As to (g), the representation is to be implied from the terms of the Verification Representation and the Further Verification Representation.

As to (h), the representation was express and arose from the Due Diligence Response.

- 27 The Key Risks Factor Representation was a representation with respect to a future matter within the meaning of s 4 of the ACL, s 769C of the Corporations Act and s 12BB of the ASIC Act.
- 28 By the Management Statement Confirmation, each of SGH and Grech represented that:
- (a) all statements in the Offer Documents for which the Verification was listed as "Statement" or "Management statement" had been verified for completeness and accuracy by Grech, SGH and its other directors (Management Statement Representation); and
 - (b) each of Grech and SGH had a reasonable basis for the matters stated in the Management Statement Representation.

Particulars

As to (a), the Management Statement Representation was express and arose from the Management Statement Confirmation.

As to (b), the representation is to be implied from the terms of the Management Statement Representation.

D.2. SGH's risk profile and the Cross-Respondents' knowledge of that risk profile

- 29 For the purposes of this cross-claim only and in the alternative to the matters pleaded in the Defence, ABL repeats paragraphs 18 to 35 and 78 to 82 of the Statement of Claim, and further alleges the matters pleaded in paragraphs 30 to 47 below.
- 30 As at 28 March 2015:
- (a) the Reform Risk existed;
 - (b) the Reform Impact Risk existed;
 - (c) PSD was exposed to the Reform Impacts and/or the Reform Impact Risks, or alternatively, was exposed to the Reform Impacts and/or the Reform Impact Risks to a significant degree; and
 - (d) if the acquisition of PSD by SGH proceeded, SGH would be exposed to the Reform Impacts and/or the Reform Impact Risks, or alternatively, would be

exposed to the Reform Impacts and/or the Reform Impact Risks to a significant degree.

Particulars

As to (a), paragraphs 18 to 21 of the Statement of Claim are referred to and relied on.

As to (b), paragraphs 21 to 29 of the Statement of Claim are referred to and relied on.

As to (c), in a report for the SGH Board dated 29 January 2015 prepared by Grech and Ken Fowlie entitled "Project Malta Board Report", it is stated that "RTA claims were PPSD's largest product line, and 99% of the work was below the multi-track threshold of £25,000 in expected damages, and about 95% of PSD's resolved RTA cases had a damage value of less than £5,000" (SGH.601.003.7949).

As to (d), it is recorded in a presentation dated 20 March 2015 entitled "Project Malta Board Information Session" SGH expected that the 50% or more of its EDIDTA in the financial years 2016 to 2018 would be derived from PSD (at slide 46). (SGH.601.004.1242)

31 By reason of the matters pleaded in paragraph 30 above and paragraphs 25 to 35 and 78 to 82 of the Statement of Claim:

- (a) the Offer Documents were not accurate and contained statements that were false, misleading or deceptive (including by way of statements in or omissions from those documents);
- (b) the statements set out in the Verification Schedule for which SGH was responsible (including each statement alleged in paragraphs 42 to 45 of the Statement of Claim):
 - (i) were not accurate;
 - (ii) were misleading or deceptive; and
 - (iii) did not disclose matters ~~relevant~~relevant to the subject to which the statements related which had been omitted from the Offer Documents;
- (c) the statements in the 30 March Announcement and page 19 of the 30 March Presentation were misleading or deceptive and did not disclose matters

relevant to the subjects to which those statements related which had been omitted from the Offer Documents; and

- (d) the 30 March Presentation did not include disclosure of key regulatory risks, being the Reform Risk and/or the Reform Impact Risks.

Particulars

The Offer Documents contained the 30 March General Regulatory Risk Disclosures (as defined in paragraph 42 of the Statement of Claim) and the Continuous Disclosure Compliance Representation (as defined in paragraph 48 of the Statement of Claim), and omitted disclosure of the Small Claims Track Threshold Reform (as defined in paragraph 18 of the Statement of Claim) and any of the matters pleaded in paragraph 30 above. It was, or was likely to be, materially misleading to publish the Offer Documents containing the 30 March General Regulatory Risk Disclosures without disclosure of the Reform Information and the Reform Impacts Exposure Information, and in the absence of disclosure of the Reform Information and the Reform Impacts Exposure Information, at the time of publishing the Offer Documents, there was information concerning SGH that a reasonable person would expect to have a material effect on the price or value of SGH shares, which SGH had not disclosed to the Affected Market. Further, there were no reasonable grounds to make the Risk Profile Representations.

- 32 By at least 28 March 2015, each of SGH, Grech and Brown knew the matters referred to in paragraph 30 above.

Particulars

As to Grech, it can be inferred that he knew the Reform Risk existed from the following:

- A. The discussion at a Board meeting which the minutes record he attended on 12 July 2011, in which a sensitivity analysis paper was discussed and the risks in the UK in relation to regulatory risk, in particular the impact on the business and the business budgets of future changes in legislation or the regulatory regime (PIP.007.002.0005).
- B. A document dated September 2011, entitled "Project Ark Due Diligence Report: Summary of Findings" (**Ark Paper**) was circulated to the SGH Board in board papers, and noted at a

Board meeting held on 13 September 2011 which record he attended (SGH.601.002.2008). The Ark Paper stated the following, in relation to regulatory risk in the UK market (SGH.601.002.2579 at p 11):

Changes to Regulatory Environment & Impact on Practice

In the short to medium term the writer expects that the commercial environment in the UK PI market will change.

These changes will not eliminate lower value claims but they will place margin pressure on operators seeking to process lower value claims. The winners will be those operators with scale, good systems & processes and a cost effective means of reaching and triaging clients. ...

Higher value or 'multi track' claims will become much more valuable and sought after in the new environment because the same margin pressures will not be present. ...

- C. His involvement in the retaining of Instinctif Partners to prepare the Instinctif Report (as recorded on p 3 of the Instictif Report) (SGH.029.002.0624).
- D. The matters particularised in paragraph 11 of the Annexure to the Defence and, in particular, subparagraphs 11(ba), (bb) and (d). His receipt of and review of the Instinctif Report, which can be inferred from:
 - a. ~~his involvement in retaining Instinctif Partners, his preparation of a Board Information Pack dated 20 March 2015 which refers to and purports to summarise the findings of the Instinctif Report (SGH.029.001.0018 at page 40 ff);~~
 - b. ~~the inclusion of the Instinctif Report as part of the Verification Material for the statements for which SGH was responsible in the Verification Schedule.~~

As to Brown, it can be inferred that he knew the Reform Risk existed from the following:

- E. The discussion at a Board meeting which the minutes record he attended on 12 July 2011, in which a sensitivity analysis paper was discussed and the risks in the UK in relation to regulatory risk, in particular the impact on the business and the business budgets of future changes in legislation or the regulatory regime (PIP.007.002.0005).
- F. A document dated September 2011, entitled "Project Ark Due Diligence Report: Summary of Findings" (**Ark Paper**) was circulated to the SGH Board in board papers, and noted at a Board meeting held on 13 September 2011 which record he attended (SGH.601.002.2008). The Ark Paper stated the following, in relation to regulatory risk in the UK market (SGH.601.002.2579 at p 11):

Changes to Regulatory Environment & Impact on Practice

In the short to medium term the writer expects that the commercial environment in the UK PI market will change.

These changes will not eliminate lower value claims but they will place margin pressure on operators seeking to process lower value claims. The winners will be those operators with scale, good systems & processes and a cost effective means of reaching and triaging clients. ...

Higher value or 'multi track' claims will become much more valuable and sought after in the new environment because the same margin pressures will not be present. ...

- G. His response to the Question 26 of the Underwriters' Questionnaire (the final questionnaire of which dated 29 March 2015), in which he states in response to the Question "Please provide details of any economic or political developments that are expected to have a material adverse impact on the profitability of SGH over the next two years?": "None, apart from general risks... See also annexed due diligence report prepared

by *Instinctif*" (ABL.001.002.8101). While this final form is dated 29 March 2015, it can be inferred that work was undertaken by Brown to respond to the questions (including reading the *Instinctif* Report) from on or around 24 March 2015 (when drafts of the questionnaire were in circulation: ABL.001.001.7170).

- H. The inclusion of the *Instinctif* Report as part of the Verification Material for the statements for which SGH was responsible in the Verification Schedule.

As to SGH, it can be inferred ~~from that~~ it knew from the knowledge of its officers Grech and/or Brown, as set out in subparagraphs A to H above.

D.3. ABL's reliance on the Cross-Respondents to issue the ABL Signed Legal Opinion Letter

33 On 29 March 2015, ABL issued to the SGH Board the ABL Signed Legal Opinion Letter.

34 ABL issued the ABL Signed Legal Opinion Letter in reliance on the accuracy of each of the representations set out in paragraphs 26 to 28 above (together, Representations).

E. THE CROSS-RESPONDENTS' MISLEADING OR DECEPTIVE CONDUCT

35 The conduct pleaded in paragraphs 15 to 23 and 25 above was conduct engaged in by SGH, Grech and Brown:

- (a) in relation to financial products (being SGH Shares) within the meaning of s 1041H of the Corporations Act;
- (b) in trade or commerce, in relation to financial services, within the meaning of s 12DA(1) of the ASIC Act; and/or
- (c) in trade or commerce, within the meaning of s 2 of the ACL.

36 By reason of the matters pleaded in paragraphs 29 to 32 above, each of SGH, Grech and Brown had no reasonable basis for the Offer Documents Not Misleading Representation, the Verified Statements Representation, the Verification Representation and the Further Verification Representation.

37 By reason of the matters pleaded in paragraphs 29 to 32 and 36 above, the Representations were misleading or deceptive, or likely to mislead or deceive.

- 38 By reason of the matters pleaded in paragraph 37 above, each of SGH, Grech and Brown engaged in conduct, in trade or commerce, that was misleading or deceptive or was likely to mislead or deceive, in contravention of s 1041H of the Corporations Act, s 12DA of the ASIC Act and/or s 18 of the ACL (Misleading or Deceptive Conduct).
- 39 In reliance on the Misleading or Deceptive Conduct, ABL made the ABL Legal Opinions and the ABL Legal Opinions Basis Representations.

Particulars

But for the Representations and the Omissions, ABL would not have:

- A. provided the ABL Legal Opinions because it would have identified that the Due Diligence Process had not been implemented, completed or conducted on the part of SGH in accordance with the terms of the DDPM;
 - B. provided the ABL Legal Opinions in respect of the 30 March Publications without disclosure in the Offer Documents of the Reform Information and/or the Reform Impacts Exposure Information;
 - C. provided the ABL Legal Opinions in respect of the 30 March Publications to the extent they contained the Risk Profile Representation;
 - D. provided the ABL Legal Opinions in respect of the 30 March Cleansing Notice unless SGH had disclosed to the Affected Market prior to or with the 30 March Publications the Reform Information and/or the Reform Impacts Exposure Information;
 - E. provided the ABL Legal Opinions unless the due diligence process had identified and resulted in: (1) the disclosure in the Offer Documents, or disclosure to the Affected Market prior to the 30 March Publications, of the Reform Information and/or the Reform Impacts Exposure Information; (2) omission from the Offer Documents of the Risk Profile Representation.
- 40 By reason of the Misleading or Deceptive Conduct, ABL has suffered, alternatively is likely to suffer, loss and damage, and ABL's loss and damage is recoverable from the Cross-Respondents under s 236 of the ACL, s 10414(1) of the Corporations Act and/or s 12GF(1) of the ASIC Act.

Particulars

The loss suffered is:

- A. any liability on the part of ABL to compensate Hall and Group Members in the manner alleged in the Statement of Claim;
- B. costs which ABL has incurred, and continues to incur, in defending the allegations made by Hall and Group Members in the Statement of Claim (whether or not ABL is found liable to compensate Hall and Group Members in the manner alleged in the Statement of Claim).

F. SGH'S BREACH OF RETAINER

41 Grech (on behalf of SGH) failed to complete the Due Diligence Response:

- (a) accurately;
- (b) with the degree of degree of care and diligence that a reasonable person would exercise if they:
 - (i) were a director or officer of a corporation in SGH's circumstances;
 - (ii) occupied the office of Managing Director, and had the same responsibilities within SGH as Grech; and
- (c) with the care and skill that an ordinary prudent person of business would exercise in conducting SGH's business as if it were his own.

Particulars

The Due Diligence Response was inaccurate because the 30 March Presentation did not include disclosure of the Reform Risk. ABL refers to and repeats paragraphs 15, 16, and 29 to 31 above.

42 Brown failed to complete the Due Diligence Response:

- (a) accurately;
- (b) with the degree of degree of care and diligence that a reasonable person would exercise if they:
 - (i) were a director or officer of a corporation in SGH's circumstances;

- (ii) occupied the office of Chief Financial Officer, and had the same responsibilities within SGH as Brown; and
- (c) with the care and skill that an ordinary prudent person of business would exercise in conducting SGH's business as if it were his own.

Particulars

The Due Diligence Response was inaccurate because the key risks in the 30 March Presentation did not include disclosure of the Reform Risk. ABL refers to and repeats paragraphs 15, 16, and 29 to 31 above.

43 Grech (on behalf of SGH) failed to complete the Grech Sign-Off and provide the SGH Verification Confirmation and Management Statement Confirmation:

- (a) accurately;
- (b) with the degree of degree of care and diligence that a reasonable person would exercise if they:
 - (i) were a director or officer of a corporation in SGH's circumstances;
 - (ii) occupied the office of Managing Director, and had the same responsibilities within SGH as Grech;
- (c) with the care and skill that an ordinary prudent person of business would exercise in conducting SGH's business as if it were his own; and
- (d) in a manner that properly:
 - (i) verified the accuracy of all of the statements in the Offer Documents that were the responsibility of SGH to verify; and/or
 - (ii) provided assurance that there were no statements in the Offer Documents that were misleading or deceptive.

Particulars

ABL refers to and repeats paragraphs 29 to 35 above.

44 Brown (on behalf of SGH) failed to complete the Brown Sign-Off and provide the SGH Verification Confirmation:

- (a) accurately;

- (b) with the degree of care and diligence that a reasonable person would exercise if they:
 - (i) were a director or officer of a corporation in SGH's circumstances;
 - (ii) occupied the office of Chief Financial Officer, and had the same responsibilities within SGH as Brown; and
- (c) with the care and skill that an ordinary prudent person of business would exercise in conducting SGH's business as if it were his own; and
- (d) in a manner that properly:
 - (i) verified the accuracy of all of the statements in the Offer Documents that were the responsibility of SGH to verify; and/or
 - (ii) provided assurance that there were no statements in the Offer Documents that were misleading or deceptive.

Particulars

ABL refers to and repeats paragraphs 29 to 35 above.

- 45 By reason of paragraphs 41 to 44 above, SGH breached the following terms of the Retainer (**Breach of Retainer**):
- (a) the Verification Obligation;
 - (b) the Accurate Responses Obligation;
 - (c) the Accurate Sign-Offs Obligation;
 - (d) the Care and Skill Obligation.
- 46 But for the Breach of Retainer, ABL would not have taken the steps set out in the particulars to paragraph 39 above and would therefore not:
- (a) have been exposed to any liability to compensate Hall and Group Members in the manner alleged in the Statement of Claim;
 - (b) further or alternatively, have been exposed to the claims made by Hall and Group Members in the manner alleged in the Statement of Claim (whether such claims are successful or not);

(c) have incurred the costs of defending the allegations made by Hall and Group Members in the Statement of Claim.

47 As a consequence of the Breach of Retainer, ABL has suffered loss in the manner pleaded in paragraph 46 above.

Details of cross-claim

On the grounds stated in this statement of cross-claim, ABL claims:

- 1 Damages.
- 2 An order under s 236 of the ACL, s 1041I(1) of the Corporations Act and/or s 12GF(1) of the ASIC Act, that each of the Cross-Respondents compensate ABL for its loss.
- 3 Interest.
- 4 Costs.
- 5 Such further or other order as the Court deems fit.

Date: ~~11 December 2020~~ 19 August 2021



Signed by Tricia Hobson
Lawyer for the Respondent

This pleading was prepared by Nicholas Bender and Georgie Coleman and settled by Peter M Wood, of Counsel.

Certificate of lawyer

I Tricia Hobson certify to the Court that, in relation to the statement of cross-claim filed on behalf of the Cross-Claimant, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: ~~11 December 2020~~ 19 August 2021



Signed by Tricia Hobson
Lawyer for the Cross-Claimant

Schedule of Parties

No. VID1010 of 2019

Federal Court of Australia
District Registry: Victoria
Division: General

Matthew Hall

Applicant

Arnold Bloch Leibler (a firm)

Respondent

Arnold Bloch Leibler (a firm)

Cross-Claimant

Slater & Gordon Ltd (ACN 097 297 400)

First Cross-Respondent

Andrew Alexander Grech

Second Cross-Respondent

Wayne Brown

Third Cross-Respondent