

From: [REDACTED]
To: [AFCA Review](#)
Subject: D.R & L.M. Hodge Submission.
Date: Friday, 26 March 2021 6:59:14 PM
Attachments: [REDACTED]

Good Afternoon,

Firstly, we thank you for accepting our email. It is a lot to read and understand and has taken many hours to compile.

We are a married couple who feel we have not been able to convey our case to the court system over many years.

We owned an Automotive Spare Parts business in Mackay. We bought the business and the property it traded from in late 1998 from the estate of Davids father who had started the business in 1946. In hindsight we probably over committed ourselves doing this, but it was our passion to keep the family business going. David, the eldest was the only sibling to work in the business and ironically was the only sibling who was left no inheritance from his father after being made many verbal promises after supplying financial support and working tirelessly for a basic income. His father took his own life in late 1997. He had dementia in his last years. We started with only Davids 35% of shares in the business and had to buy out the other siblings and buy the property.

Our only intention over the many years that followed was to keep the family

business going for our next generation and keep the dedicated staff employed.

We now live under the shadow of being bankrupt and living on the age pension. We had spent every dollar available fighting for our cause. Not the retirement we had envisaged for ourselves.

Our circumstances have given us time to research this material in the enclosed package and we feel we have discovered important facts that were never used to help our case in the court.

We ask you to please take the time to look at our case and help us get some justice for the mental stress and financial loss.

We would like-

1. Our Property returned.
2. A financial penalty be paid for our loss based on the penalties Austrak use.
3. We are paid to reinstate our business up to where it can again get an insurance cover for \$1M interruption to business supply.

We believe this massive penalty is the only way you can chastise these types of people as their safety net is their insurance cover and if it is shown that they could be liable to huge compensation payouts it could be difficult for these evil people to afford insurance cover and the court should show this to support they won't tolerate this again.

David Ross Hodge & Lynette Margaret Hodge.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

EXHIBIT V. Supreme Court of Queensland. 4288 of 2014. Perpetual Trustee Co Ltd V David Ross & Lynette Margaret Hodge. 8 pages.

Claim 26 & 27 September 2017. Order judgement for the plaintiff. page 2, para 2, line 11&12. Page 3, lines 1 & 2.

The basis for the defendants seeking adjournment of the trial amounted to two matters. First, to enable them to seek to source alternative finance to enable them to engage in some settlement negotiations with the plaintiff, secondly, to engage legal representation.

We rebut this statement because we had finance negotiations in place and where would we get a new solicitor who would know anything about our case.

Page 3 para 3 and continued page 4 and page 4 para 4.

{3} After I refused the adjournment, counsel for the plaintiff opened the plaintiff's case and tendered the documentation and affidavits which comprised the evidence in the plaintiff's case. I then adjourned the proceeding overnight to give the defendants an opportunity to review that documentation. Towards the end of the hearing on the first day, I was asked by the male defendant whether there was any reason why the defendants had to return to Court the next day because they "don't really have anything to offer the case". I told the defendants that it was a matter for them whether they appeared on the following day, and that I would be proceeding with the case whether they were there or not.

{4} When the matter resumed the next day, there was no appearance by the defendants. Accordingly, I proceeded to hear submissions from counsel for the plaintiff and reserved to consider this judgement.

WE REBUTT THESE STATEMENTS

REFER TO PAGE 17 OUR TRUE FACTS OF COURT CASE

We had been waiting on an AUSCRIPT of 4288 of 2014 for a very long time. We again phoned to be advised we wouldn't get it for at least another two weeks. They don't respond to emails.

Page 5 para 10 lines 1 & 2.

I should note in passing that by the time of the trial there was no dispute between the parties with respect to these documents.

We rebut this statement because documents were in circulation between us, our Solicitor, and our MP and the Ombudsman. How did [REDACTED] know about the guarantee dispute and not mention the unconditional loan?

Page 5 para 12 lines 3-6.

“It is abundantly clear on the material before me that this new company MSP was operated by the defendants and simply assumed the complete operation of the business which had previously been conducted in the name of Trading. I accept the admission by counsel for the plaintiff”. [REDACTED] is stating he believes the details supplied to the court by [REDACTED] that the business was sold for a significant under value of \$300K where no documentation by qualified accountants exist to support the submission whereas we have rebutted these submissions with the support of two qualified accountants.

Why would [REDACTED] accept this submission that was made by a liquidator whose company went bankrupt and he went to jail for fraud and ASIC deregistered him from being a liquidator? Would [REDACTED], believe a jury would agree with his acceptance to our qualified accountants rebutting this claim?

Page 5 para 12 lines 7 & 8.

MSP bore all the hallmarks of what is colloquially known as “phoenix activity”.

Mackay Spare Parts businesses as classic “phoenix activity” we rebut this statement with the support of ASIC statement, **EXHIBIT W** and Dr John Purcell FCPA, CPA Australia's policy advisor. **EXHIBIT X**.

EXHIBIT W. ASIC Illegal Phoenix Activity. 1 Page. Lines 17-24

WHAT IS ILLEGAL PHOENIX ACTIVITY?

The directors transfer the Company assets to another company with the same or similar name (and for no or little value) before handing the company over to an external manager (registered liquidator), in this way the directors seek to avoid paying any creditors including employees through the failed company.

1. We did use a similar name.

2. We paid fair value for the company as per our accountant's reports.

EXHIBIT QQ page 2 lines 3 & 4.

3. We paid all Trade Creditors, loans and all employee entitlements.

EXHIBIT X. UNBLURRING THE LINES. 1 Page.

██████████ CPA Australia's policy advisor – corporate regulator, says that with the new insolvent trading provisions in the corporation act, which took effect January 2018 the line between rescue and illegal phoenixing is becoming much clearer.

“The Government has made reforms to the insolvent trading provisions to pursuit those strategies easier and more clear cut for directors that can demonstrate they’re exercising a turnaround STRATEGY” he says. We believe we have always used a turnaround STRATEGY.

EXHIBIT V. Supreme Court of Qld. 4288/2014. page 6 para 14 lines 1-4

It is also apparent that no one on the defendant's side of the equitation informed the lender of the mortgage about the liquidation of Trading and the effective takeover of the busines by MSP. Rather as I have said MSP simply continued trading and continued to meet the obligations under the loan facility.

EXHIBIT Y. MSP letter 9 March 2004. 1 page.

This letter advised Challenger Mortgage Management Ltd of MSP bank account. Does this letter reinforce ██████████ statement before the court hearing that Challengers paperwork was sloppy and they desperately wanted to do a deal? Notice MSP was a Quality Assured Company. QA was a way of preventing mistakes and defects. It is not easy to get QA. M.S.P was also a Quality Assured Supplier Qld Government.

EXHIBIT Z. MSP fax 23/03/07. 1 Page.

This is a fax we sent to ██████████, Wright & Condie supplying a copy of the letter we had sent Challenger on 9 March 2004.

EXHIBIT V. Supreme Court of Qld. 4288/2014. Order page 10 para 30

Daubney J has omitted we supplied details of the unconditional loan we had **EXHIBIT AA.** for \$1,267M to payout the \$1M loan. [REDACTED] has also omitted to advise this loan was to DR & LM Hodge.

EXHIBIT V. Supreme Court of Qld 4288/2014. page 10 para 31

[REDACTED] has omitted to advise that **WE** closed MSP.

Page 10 para 33 lines 4-6

Moreover, on 24 January 2014, the defendants signed a direct debit authority in relation to a higher interest payment as a consequence of default under the facility. [REDACTED] has not supplied this document and we are unable to locate it. In our **EXHIBIT BB.** payment statement 26/08/2015 does not show this higher interest payment as being made.

EXHIBIT V. Supreme Court of Qld 4288/2014. page 11 lines 1-6

Provided loan administration service to PTCL in its capacity as trustee to Argyle Capital Management Trust No 1. That email stated.

We have received advice that you have taken over our loan 12754 with Howard. The loan we have has passed its expiry date and we want to refinance it with you if possible.

Why had [REDACTED], not mentioned we sent 2 emails and many phone calls to Argyle as per our **EXHIBIT CC & CC1.**

EXHIBIT V. Supreme Court of Qld 4288/2014. page 14. Para 46. DISPOSITION for the reasons.

- a. There will be judgment for the plaintiff. The defendants under the Deed of Guarantee and Indemnity dated 21 November 2000.
- b. There will be an order for the plaintiff to recover possession of the property pursuant to the mortgage

Not mentioned are that when our loan came up for renewal after 15 years Howard advised they were not doing loans anymore and we had to get a new lender. We had difficulty getting this loan as our business had been harmed by road works in both Streets in front of the two premises that took over 3 years. We had an insurance policy for \$1M to cover interruption to business caused by

roadworks. When we made our claim it was rejected because they stated that the interruption to business supply caused by roadworks that they offered us didn't cover roadworks done by main roads or local council (no one has shown us where this is in the policy) only floods, cyclones or fire. We also sent it to the Financial Ombudsman Case No 446357. We declined to join a joint action group against Mackay Regional Council for financial harm caused by the roadworks. We intended to do our own negotiations with the Council for compensation to offset rates.

Howard took legal action for not paying the loan out. **EXHIBIT DD** Supreme Court of Queensland 4288/14. 3 pages.

We knew their guarantee was not correct. **EXHIBIT EE**. Deed of loan 21 Nov 2000. Challenger – Lender. Mackay Spare Parts (Trading) Pty Ltd – Borrower. The loan was for \$504K.

1. Challenger Managed Investments Ltd ACN 002 835 592 of 25 level 31, 50 Bridge Street, Sydney in its capacity as Trustee of the Howard Mortgage Trust (ABN 090 464 074) LENDER. NOTE The LENDER is not PERPETUAL TRUSTEE COMPANY who is making the claim.
2. Mackay Spare Parts (Trading) Pty Ltd incorporated in State of Queensland of 21-25 Sydney Street, Mackay, Queensland 4740 (hereinafter with-it successions, administrators and assigns called "the borrower"). How can Mackay Spare Parts (Trading) Pty Ltd be the borrower or mortgage the property when the property is owned by David & Lynette Hodge and they borrowed the money to buy these properties? Mackay Spare Parts (Trading) Pty Ltd was wound up in insolvency on 2 April 2004. We sent these details to the financial Ombudsman asking were the guarantees of this loan lawful. The ombudsman was aware of the Supreme Court 4288/14 claim for \$1,079,539.96 as of 1 May 2014 the defendants were David Ross & Lynette Margaret Hodge. He advised we were using him to stop the legal action. [REDACTED] case no 14394.

EXHIBIT AA. La Trobe Loan. 1 page. Total loan \$1.267M.

We sent these details to the Ombudsman about the unconditional \$1.267M loan to pay out the \$1M loan so he continued with his investigation.

EXHIBIT FF. Howard Mortgages letter, 28 July 2014. 1 Page, line 3.

Borrower is Mackay Spare Parts Pty Ltd. The Supreme Court 4288/14 has David Ross & Lynette Hodge as defendants but the lender, loan 12754 has Mackay Spare Parts Pty Ltd as the borrower.

Page 1, lines 3 & 4.

Loans of the Howard Mortgage Fund ARSN 090 464 074 ABN 55 443 150 813 (HMF) portfolio have recently been **SOLD**. This letter is intended to give you notice of that sale and to explain the consequences for you.

This means our loan had been sold. Does this mean Howards claim had now been cancelled and the legal action terminated?

EXHIBIT GG. Argyle Capital Managed Trust No1. 26 August 2014. 2 pages

This letter advises Howard Loan 12754 has been taken over by Argyle.

Line 15.

“Howard will no longer be involved in the management of your loan”. Our Solicitor, Financier and we believed Argyle had refinanced our loan. Our financier advised that the La Trobe loan was still in place and we should find out what terms and time Argyle were going to extend this loan for. David phoned Argyle enquiring if this was correct and advised we had a loan in place to pay this loan out if it not correct. They advised it will be presented to their credit department.

EXHIBIT CC. Email to Argyle 19 September 2014.

We again asked by email about the loan with Howard that they had taken over. The reply again was presented to Credit Manager.

EXHIBIT CC1. Email to Argyle 2 Oct 2014.

Asked again by email and same reply.

We believed because they were taking the monthly payments out of our account no problem existed.

David had a phone call from the Ombudsman advising the guarantees were legal and Argyle had not refinanced our loan. David advised him to **contact our**

Solicitor, [REDACTED] of Colwell Wright Solicitors, who would arrange to pay out the loan.

EXHIBIT HH. Notice of appointment of Receiver Manager. 2 Pages.

On 25 June 2015 Receiver Manager arrived at the premises to repossess the property. David asked how the notice could be dated 22 June when the Ombudsman had not contacted us until after that date. The Receiver crossed out 22 and put 25 in front of him shows how much authority people appointed by Norton Rose Solicitors have.

Item 1. Security. Mortgage dated 5 December 2000 given by the Grantor to the Appointor, being mortgage number 704471780 registered with the Queensland Department of Natural Resources and Mines. **EXHIBIT II** shows mortgage no 704471780 8 December 2000 as PERMANENT TRUSTEE AUSTRALIA LIMITED ACN 008 412 913. Not Perpetual.

The Ombudsman did not close the file until after this how could Norton Rose take any action?

How could Norton Rose take any action of appointing Receivers when the original legal action was by Howard and Argyle stated Howard Mortgage will no longer be involved in the management of this loan? Also, in their letter **EXHIBIT GG**, INSURANCE Page 1, lines 24-30

It is an important condition of your loan agreement that the security property be adequately insured at all times. The interested party noted on the certificate of currency for each insurance policy will need to be updated to note the interest of the new mortgagee, Perpetual Trustee Company Limited ACN 000 001 007 in its capacity as trustee for the Argyle Capital Management Trust no 1. It is imperative that the correct mortgagee be noted on the certificate of currency in the event of any loss or damage to the security property. This proves a different company now has this loan.

Can Norton Rose continue this action when Howard is a different company with different ABN number to Argyle?

For this to be lawful should it have gone back to court to get this authority?

Are Norton Rose so powerful they can do all these unlawful actions?

Should their action be taken as serious and deliberate and be reason to have them deregistered?

Are these actions by Argyle/Norton Rose/Receivers dishonest obtaining and unconscionable conduct?

Do these actions by Argyle prove they deliberately tricked and deceived us which is ARTIFICE which is FRAUD which VITIATES JUDGEMENT, CONTRACTS AND ALL TRANSACTIONS WHATSOEVER?

When the receivers came to repossess our properties, the Company had a lease on the properties, and they could not repossess the properties. The receivers then contacted our Solicitor to pay out the loan. This could not be done then because Norton Rose appointing receivers caused the bank to cancel the loan.

EXHIBIT BB. Statement Argyle Capital Management Trust No 1. 2 Pages.

This is our payment schedule. Shows a balance of \$1,028,968.25 on 26/08/15 and the loan we had of \$1,267M as in **EXHIBIT AA.** We would have had a surplus of \$238,031.75. We had never missed a payment in 15 years.

Because of the fraud that has been committed we were told to stop paying this loan and this will cancel this contract. We stopped paying the loan. Eventually a Court hearing was set.

It is not mentioned that we supplied to this court of appeal, FCA1818 an affidavit and 21 annexures as evidence supporting the true facts on the Property dispute which we knew about up to this date. These were never rebutted and under maxim of the law now should be judgement. Again, vital evidence is hidden.

OUR TRUE FACTS OF COURT CASE

It should be mentioned that in 2007 when our loan was increased to \$1M. that the facts are Balmain was the mortgage Manager. David Hodge had recently sold a bloc of land for \$1.5M and our bank account was good and the business, Mackay Spare Parts Pty Ltd was making good profits. We DID NOT ask for the loan to be increased to \$1M. It was offered and we did accept this loan. We believe this loan was increased because of the massive increase in our property value, money in the bank and a profitable business.

Why wouldn't the mortgage manager apply for a larger loan to receive a bigger commission. He also claimed we intended to purchase more property. It was never been our intention to buy more property especially when the market was so high.

In our mediation meeting the Barrister conducting the meeting (we realise this cannot be used but the facts are) advised the settlement figure we offered was fair and reasonable but was rejected. We increased the offer and again it was rejected. The Barrister advised we were wasting our time as they had no intention of doing a deal and only wanted to bankrupt us.

The true facts are that discussions were continuing between our broker and Perpetual and it appeared positive. Our mortgage manager, Mr. [REDACTED], from Balmain stated their paperwork was sloppy and they desperately wanted to do a deal. Our Solicitor advised it looked promising. It appears trickery and deceptions were used again which is ARTIFICE. Fraud VITIATES JUDGEMENT, CONTRACTS AND ALL TRANSACTIONS WHATSOEVER.

Two days before the court case Perpetual rejected the offer. Our Solicitor advised he was not prepared to go to court and he would seek leave and we should seek an adjournment. Our solicitor got his leave, and the Judge refused our adjournment stating "Mr. Hodge you took a gamble a deal would be done, and you lost. Therefore, I am running this two day trial and you will have to use the file Mr. [REDACTED] left". I advised the Judge I have no idea how to run a court case. The Judge went on to state. "Ref the guarantees, Mr Hodge – you borrowed the money, you spent the money, you owe the money." How could the Judge make a statement like this without hearing any evidence? The Perpetual Lawyer advised the court that no defence had been submitted therefore we had no defence. We asked for a brief adjournment where I was advised to tell the Judge we would accept his decision subject to an appeal. When I told the Judge this, he went ballistic stating "Mr. Hodge this is the Supreme Court of Qld and you are threatening me". We advised him as we had previously said we had no idea and now appears we are getting into hotter water so we would leave the court which we did. We sent an email advising the Judge we would not be attending the court the following day. The Judge continued the trial without us the next day. The

details of what happened are different to our VERBATIM DETAILS and again a decision by a jury.

Is the Judgement in favour of Perpetual Trustee Company on 17 November 2017 for payment in the sum of \$1,417,630.89 **lawful?**

EXHIBIT V. Supreme Court OF Qld. Page 14, para 46.

The Judge under DISPOSITION.

(46) For the reason I have given.

- a. There will be judgement for the plaintiff against the defendants under the Deed of Guarantee and indemnity dated 21 November 2000.
- b. There be an order for the plaintiff to recover possession of the property pursuant to Mortgage on 21 November 2000.

EXHIBIT EE. Deed of Loan. 355 of page 6.

This Deed of Loan is between

Challenger Managed Investments Limited ACN 002 835 592 (Lender) and
Mackay Spare Parts (Trading) Pty Ltd (Borrower).

This loan is made on 21 November 2000. 355 of page 6. lines 2-8

1. CHALLENGER MANAGEMENT INVESTMENT LIMITED ACN 002 835 592 of 25 Level31, 50 Bridge Street, Sydney in its capacity as Trustee of the Howard Mortgage Trust (ARSN 090464074) "LENDER" and
2. MACKAY SPARE PARTS (TRADING) PTY LTD incorporated in the State of Queensland of 21-25 Sydney Street, Mackay Qld 4740. (hereinafter) with it successions, administrators and assign called the "BORROWER".

How could Mackay Spare Parts (Trading) Pty Ltd be the borrower when the true facts are David & Lynette Hodge own this property in their names and they required this money to pay for the property? Does this mean the true facts are that the obligation of Mackay Spare Parts (Trading) Pty Ltd was to deliver to the first plaintiff a real property mortgage in favour of **PERMANENT TRUSTEE AUSTRALIA LIMITED ACN 008 412 913** not in favour of **PERPETUAL TRUSTEE COMPANY LIMITED ACN 000 001 007** who took action. Mackay Spare Parts (Trading) Pty Ltd ceased in 2003.

The mortgage secured payment of all money owing to FIDANTE Partners Limited ACN 002 835 592 in its capacity as trustee for Howard Mortgage Fund ARSN 089 708 832.

The guarantee in the Deed of Loan to FIDANTE Limited ABN 002 835 592 the repayment of monies which were or would become owing by Mackay Spare Parts (Trading) Pty Ltd not by Mackay Spare Parts. How could it be possible that Norton Rose and the Judges missed these facts?

EXHIBIT EE. Fifth Schedule Borrower Deed of Loan page 375.

This agreement signed by David Hodge acknowledges that he will be liable for any default on the loan \$504,000 loan as per First Schedule page 372.

We believe as this is page 375 of the 377 page Deed of Loan agreement and as the D.O.L. document is not lawful this is also not lawful.

EXHIBIT EE. Sixth Schedule Mortgagor. Deed of Loan page 376.

This document signed by Lynette Hodge acknowledges that she will be liable for any default of the loan \$504,000 loan as per first schedule page 372.

We believe as this page 376 of this 377 page Deed of Loan document and as the D.O.L. document is not lawful this is also not lawful.

EXHIBIT EE. Deed of Loan. 1 Page. In witness. Page 377.

Whereof the parties have hereunto set their hands and affixed their seals on the day and year first hereinbefore written.

377 Page 28. There is no common seal of Challenger Managed Investments Limited ACN 002 835 592 as Lender was hereunto affixed pursuant to a resolution of the Board of Directors under the hand of

- Director
- Director/Secretary in the presence of an Independent witness.

There is no seal from Challenger.

There is no signature of the Director and Director/Secretary from Challenger.

There is no Independent witness from Challenger.

There is no independent witness from Mackay Spare Parts (Trading) Pty Ltd.

We believe this Deed of loan is unlawful because the Mortgage Deed was not signed in the presence of an independent witness under section 52 (1) of the law of property act 1925. The law of mortgages states an agreement must be signed by all parties.

The Deed of loan is not dated by the lender or borrower.

Is it possible that Norton Rose, Ms [REDACTED] and the Judge missed these facts?

We knew the copy of the Deed of Loan we had was not signed correctly and assumed the copy the court acted on would have been signed correctly. In late 2019 we checked the copy the court took action on and it is not signed correctly as per **EXHIBIT EE**. How could these legal people including our Solicitor and Barrister have missed this vital information?

FURTHER EVIDENCE.

NAB bank acquired Challenger Mortgage Management business in 2009 rebadged it Advantage and now earns fees from Challenger for managing its loans including dispute resolution. Why didn't NAB take action did they know it was not a lawful contract. This mortgage was part of a securitisation program. We were never advised this was a securitised loan. Perpetual never told us our signatures and mortgage were to be used in securitisation program where they sell our loan many times.

FRAUD.

Perpetual have never advised a date, payment and book entry of where they paid fair value for this loan.

Therefore. No date – No payment

No payment – No ownership

No ownership – No collection

No collection - No default

No default – No foreclosure.

Perpetual being a securitisation Company they have an insurance that pays out the total loan for default therefore Perpetual has no harm cause to it.

Securitisation insurance is different whereas the insurance on a vehicle write off the insurance company pays the owner of the loan out and the insurance company keeps the vehicle. Under Property securitisation the lender gets the assets. Perpetual has sold this Property. Is this lawful to be paid twice?

We have never been fully informed of ALL aspects of the contract and this concept is known legally as a "Meeting of the mind". The question we have asked is are you holding our certificate of title to our property on a depositor/borrower relationship or on a bailee/bailor relationship? As you would be well aware even if you open a simple savings account, there are copious terms and conditions associated with that account. So, with something as important and significant as the holding of our certificate of title why are there no terms and conditions associated with that transaction, nor even a single reference to it in your copious loan agreement including TRUE origin of the funds, a MEETING OF THE MIND could not have occurred and therefore no legally binding contract/agreement can exist.

EXHIBIT II. Caveat.

After we lost our stay, we only had two days to try and remove the contents of our 2, 72-year-old family businesses. Why was the stay not allowed as our Company had a lease on this property?

We obtained a caveat over these premises so they could not be sold until our appeal No CA13692/17 was held in the Supreme Court. Without our knowledge the caveat was lifted, by our trustee, [REDACTED] of BRI Ferrier of Townsville, Qld and the properties were sold. This action was of no benefit to us as we expected the caveat would protect our purposely built production engine reconditioning workshop that was demolished, and our Spare Parts shop was gutted and the contents disposed of.

How could our Caveats be lawfully removed and appeal CA13692/2017 never held?

V

This annexure marked "V" referred to in the
LYNETTE MARGARET HODGE
DAVID ROSS HODGE 2

(signed) affirmed at ... MACKAY

before me on ... 5...1...3.../2021 principal deed extend to, and are available as security for, the
signed *Antaduelin* indebtedness of the new company under the supplementary
Justice of the Peace (Qual) #. 223 deed

ESTOPPEL – ESTOPPEL BY CONDUCT – GENERAL PRINCIPLES – where the lender entered into the supplementary deed of loan under certain assumptions – where the lender’s assumptions arose from conduct on the defendants’ part – whether it would be unconscionable to permit the defendants to depart from the assumption that the guarantee and the mortgage would be available as collateral security for indebtedness under the supplementary deed

Commonwealth v Verwayen (1990) 170 CLR 394
Mt Bruce Mining Pty Ltd v Wright Prospecting Pty Ltd (2015) 256 CLR 104

COUNSEL: [redacted] for the plaintiff
The defendants appeared on their own behalf

SOLICITORS: [redacted] Australia for the plaintiff
The defendants appeared on their own behalf

- [1] The plaintiff has sued the defendants for:
 - (a) money claimed to be owing to the defendants to the plaintiff under a guarantee; and
 - (b) recovery of possession of properties owned by the defendants and situated at 21 Sydney Street and 8-10 Brisbane Street, Mackay (collectively “the Property”).

- [2] The proceeding was listed for hearing on 26 September 2017. When the matter was called on for trial, the defendants’ lawyers, who had been representing the defendants during all interlocutory stages, including considerable case management under the Case Flow List, sought and were granted leave to withdraw as solicitors on the record, leaving the defendants self-represented. I then stood the matter down to enable the defendants to consult with external advisers and to seek to negotiate with the plaintiff. This was not fruitful, and ultimately the defendants simply sought an adjournment of the hearing. In the *ex tempore* reasons I gave for refusing that adjournment application, I canvassed the history of the matter, and referred to the numerous orders which had been made preparatory for trial. I then said:

“The bases for the defendants seeking an adjournment of the trial amounted to two matters. First, to enable them to seek to source alternative finance to enable them to

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engage in some settlement negotiations with the plaintiff; secondly, to engage legal representation.

I have now stood the matter down on several occasions in the course of the day to enable the defendants both to consult with their finance broker and also to engage in discussions with the legal representatives for the plaintiff. It is now clear that there is no prospect of the matter resolving between the parties today or, indeed, at any time in the near future. That is because I was informed by the defendants from the bar table that the most recent advice from the finance broker with whom they've been dealing was to the effect that the value of the secured property was such that they would simply be unable to obtain sufficient funding to progress a settlement with the plaintiff of the magnitude of the debt claimed in the current proceeding.

The simple reality, as I have sought to point out to the defendants on numerous occasions, is that they have known for months that today is the day when the matter is set for trial. The defendants have confirmed, having consulted again with their former solicitor, that there is no evidence to be led in the case on their behalf and the matter is one of what they described as technical argument about the loan documentation.

Also, as I sought to make plain to the defendants, the fact that the matter has reached this stage is not a matter that is only of concern to them. The plaintiff has retained counsel. The plaintiff has prepared for trial. The plaintiff has incurred the costs associated with preparation for trial and is here ready to run the trial. In other words, to put it colloquially, it's not all about the defendants. I also need to take into account the interests of the plaintiff and also have proper regard to the requirements of rule 5 of the Uniform Civil Procedure Rules, which imposes an undertaking on all parties to litigation to proceed expeditiously and with a minimum of expense.

Were this a case in which I thought there would be any point in granting the defendants an adjournment, then I would certainly have given that appropriate consideration. With the defendants' understanding, as I explained to them in the course of argument, that had I been persuaded to grant them an adjournment, the inevitable cost of that would have been that they would be ordered to pay the plaintiff's costs thrown away by reason of the adjournment. The defendants indicated to me they understood that.

But, as will be clear from what I have said so far, it seems to me, with the very greatest respect, that there is no utility in granting an adjournment. The defendants have had more than ample opportunity to prepare themselves for the trial. The defendants have been on notice for months of today's trial date. The circumstances which lead them to being self-represented at trial are, with the greatest respect to them, of their own making. They, as was confirmed in argument, took a chance on being able to procure a settlement through the intervention of their broker. Unfortunately that didn't work out for them and they have landed in the situation in which they now find themselves, namely, that they are representing themselves in the hearing of this trial. And, as I've said, it seems to me that there is no utility in granting an adjournment and the application for an adjournment is refused."

- [3] After I refused the adjournment, counsel for the plaintiff opened the plaintiff's case and tendered the documentation and affidavits which comprised the evidence in the plaintiff's case. I then adjourned the proceeding overnight to give the defendants an opportunity to review that documentation. Towards the end of the hearing on the first day, I was asked by the male defendant whether there was any reason why the defendants had to return to

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L. M. H.

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Court the next day because they "don't really have anything to offer the case".¹ I told the defendants that it was a matter for them whether they appeared on the following day, and that I would be proceeding with the case whether they were there or not.

- [4] When the matter resumed the next day, there was no appearance by the defendants. Accordingly, I proceeded to hear submissions from counsel for the plaintiff, and reserved to consider this judgment.

The case

- [5] As at November 2000, the defendants were the directors and shareholders of Mackay Spare Parts (Trading) Pty Ltd ("Trading"). Through that company, they conducted a vehicle spare parts business in Mackay.
- [6] In November 2000, Challenger Managed Investments Ltd ("Challenger") agreed to make available to Trading a cash advance facility up to \$504,000. (Challenger subsequently changed its name to Fidante Partners Ltd) This facility was evidenced by a Deed of Loan dated 21 November 2000 between Challenger, as Lender, and Trading as Borrower.
- [7] Clause 10 of the Deed of Loan specified a number of conditions precedent to the first drawdown under the facility, including:
- Execution of a Deed of Guarantee and Indemnity by the defendants, and
 - Execution of a registrable stamped first mortgage over the Property in favour of "the Custodian" for the benefit of the Lender as security for "the Secured Moneys". (The "Custodian" was defined to be Permanent Trustee Australia Ltd.)
- [8] The defendants, as guarantors, executed a Deed of Guarantee and Indemnity dated 21 November 2000 ("the Guarantee") guaranteeing to Challenger the due performance by Trading under the Deed of Loan and agreeing to pay Challenger all moneys owing by Trading under the facility.

¹ T 1-57.

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[9] On that same day, the defendants also executed a mortgage ("the Mortgage") over the Property in favour of Permanent Trustee Australia Ltd ("PTAL"). That mortgage, which was subsequently registered under Dealing No 704471780, was expressed to be for the purpose of:

"... securing to the Lender the payment of all moneys which the Mortgagor and the Guarantor or the Borrower (whether alone or with any other person) is or at any time may become actually or contingently liable to pay to for the account of the Lender (whether alone or with any other person for any reason whatsoever including without ... moneys at any time owing by way of principal, interest, fees, costs, guarantee, indemnities, charges, duties or expenses or payment of liquidated or unliquidated damages under or in connection with, or as a result of any breach of or default under or in connection with, any Transaction Document (as defined in the Facility Agreement or in this Mortgage) or any other document or agreement (the 'Secured Moneys') ..."

[10] I should note in passing that, by the time of trial, there was no dispute between the parties with respect to these documents. Issue had previously been taken on the pleadings on behalf of the defendants because an earlier version of the statement of claim had incorrectly referred to "the plaintiff" as being a party to those agreements when it ought have referred to "Challenger" and "Permanent Trustee Australia Ltd". Those misnomers were corrected in the second amended statement of claim, to which no further amended defence was filed. Accordingly, any such issue as had been raised on behalf of the defendants effectively fell away.

[11] In April 2004, an order was made for the winding up of Trading, on the application of the Deputy Commissioner of Taxation.

[12] Prior to that, however, another company called Mackay Spare Parts Pty Ltd ("MSP") was set up. That company was incorporated on 31 October 2003, and the female defendant was its director. It is abundantly clear on the material before me that this new company, MSP, was operated by the defendants and simply assumed the complete operation of the business which had previously been conducted under the name of Trading. I accept the submission by counsel for the plaintiff that this substitution and effective takeover of the business by MSP bore all the hallmarks of what is colloquially known as a "phoenix activity".

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- [13] It is also clear on the evidence before me that this effective transfer of the business from Trading to MSP was accompanied by an assumption by MSP of the ongoing obligations under the loan facility. That this is what occurred is to be readily inferred from the fact that, for years following the replacement of Trading with MSP, that latter company continued to make payments of interest under the facility.
- [14] It is also apparent that no-one on the defendants' side of the equation informed the Lender or the Mortgagee about the liquidation of Trading and the effective takeover of the business by MSP. Rather, as I have said, MSP simply continued trading, and continued to meet the obligations under the loan facility.
- [15] The term of the initial loan facility subsequently expired, and in early 2007 the defendants' finance broker prepared and submitted to Balmain Commercial (the relevant loan administrator) a Credit Submission dated 11 January 2007. This submission on behalf of the defendants named the borrower as MSP and sought a total loan of \$1 million for a term of five years. The purpose of the loan was said to "refinance existing ... loan of \$504,000 and provide funds on Commercial Line of Credit facility for future investment purposes". Under the heading "Applicant Background", the submission stated:
- "David Ross and Lynette Margaret Hodge (Mackay Spare Parts Pty Ltd) have been Balmain Commercial & Challenger Howard clients since 2000. Their Challenger Howard facility (Loan Number MA85) recently expired and they are seeking a further five year term, however would like to convert to the AMAL-managed Challenger facility.
- The Hodge's continue to own and operate their business Mackay Spare Parts, which is the largest provider of automotive and mechanical spare parts in Central Queensland. The business has been operating for over 20 years.
- In this application, the Hodge's are seeking to increase their existing \$504,000 Challenger Howard loan to \$1 million. The balance funds of \$496,000 will be used for future investment purposes available on a Redraw facility."
- [16] This submission on behalf of the defendants also listed as "Proposed Security" a registered first mortgage over the Property and a guarantee and indemnity from the defendants.
- [17] Under the heading "Servicing Risk", the submission stated:

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- [29] On 12 September 2012, a notice of exercise of power of sale under s 84 of the *Property Law Act 1974 (Qld)* was served on the defendants in relation to the Property.
- [30] On 26 August 2013, the defendants each signed a letter under the letterhead of MSP addressed to the solicitors for the mortgagee stating, amongst other things, that they had “formally mandated the Right Angle Group to arrange for the full refinance of the \$1 million facility we currently have with Howard Mortgage Fund (Perpetual Trustee Company Ltd).”
- [31] Then, on 24 January 2014, an order was made for the winding up of MSP on the application of the Deputy Commissioner of Taxation.
- [32] For completeness, I should also record that the evidence discloses that, by a Custody Agreement dated 18 March 2005, Challenger (then called Fidante) appointed Perpetual Trustee Company Ltd (“PTCL”) as Custodian in place of PTAL. By a transfer executed on 20 July 2005, PTAL transferred mortgages, including the mortgage over the Property, to the present plaintiff, PTCL. By a Sale Deed dated 27 June 2014, PTCL as Custodian of the Howard Mortgage Fund, together with Fidante in its capacity as Responsible Entity of the Howard Mortgage Fund, sold assets of the Fund (including the defendants’ facility) to Nomura Special Investments Singapore (“NSIS”). By an Accession Deed dated 28 July 2014 between PTCL and Fidante and NSIS, NSIS assigned to Perpetual, in its capacity as trustee of the Argyle Capital Management Trust No 1, all of the rights of NSIS under the Sale Deed. In short, by this process, all of the rights in respect of the loan originally granted by Challenger and the mortgage originally held by PTAL, now rest in PTCL. The defendants and MSP were notified of the transfer of rights by notices dated 28 July 2014.
- [33] The evidence also discloses that the defendants have repeatedly acknowledged their indebtedness. I have already referred to the letter signed by each of the defendants under MSP letterhead dated 26 August 2013. That letter was relied on by the nominated broker, Right Angle Group, to seek refinance of the facility in 2013. Moreover, on 24 January 2014, the defendants signed a direct debit authority in relation to a higher interest payment as a consequence of default under the facility. In addition, on 19 September 2014, the male defendant sent an email to AMAL Asset Management Ltd, being the entity which

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provided loan administration services to PTCL in its capacity as trustee of the Argyle Capital Management Trust No 1. That email stated:

“We have received advice that you have taken over our loan 12754 with Howard.

The loan we have has passed its expiry date and we want to refinance it with you if possible.”

Discussion

- [34] It is clear from the above chronology that, by the beginning of 2007, MSP had effectively supplanted Trading as the principal debtor to Challenger. So much was obviously the case from the defendants’ perspective – their company Trading had been wound up in 2004, yet they continued to utilise the original facility, and pay interest for the use of that original facility, in operating their business under their new corporate vehicle, MSP.
- [35] The central issues in this case are whether the Guarantee dated 21 November 2000 and the Mortgage granted in November 2000, both executed by the defendants, extend to, and are available as security for, the indebtedness of MSP which arose as a consequence of the refinance in early 2007. Determination of that question calls for a consideration of the ambit of the contract made between the parties in early 2007, and the obligations which arose under that contract.
- [36] It is as well, for that purpose, to recall the following observations by French CJ, Nettle and Gordon JJ in *Mt Bruce Mining Pty Ltd v Wright Prospecting Pty Ltd*²:
- “[46] The rights and liabilities of parties under a provision of a contract are determined objectively, by reference to its text, context (the entire text of the contract as well as any contract, document or statutory provision referred to in the text of the contract) and purpose.
- [47] In determining the meaning of the terms of a commercial contract, it is necessary to ask what a reasonable businessperson would have understood those terms to mean. That inquiry will require consideration of the language used by the parties in the contract, the circumstances addressed by the contract and the commercial purpose or objects to be addressed by the contract.
- [48] Ordinarily, this process of construction is possible by reference to the contract alone. Indeed, if an expression in a contract is unambiguous or susceptible of only one meaning, evidence of surrounding circumstances

² (2015) 256 CLR 104 (omitting footnotes and citations).

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- the Mortgage previously granted by the defendants extended to securing the debt of MSP under the refinance arrangements.

[44] It is also clear that these assumptions were founded on conduct by the defendants:

- The defendants initialled and signed the letter of offer of 16 February 2007 signifying their acceptance of the terms of the refinance arrangement;
- The letter of offer specifically referred to a guarantee and a mortgage;
- The letter of offer was accepted by the defendants expressly in their capacity as "guarantors";
- The defendants also expressly signed the Supplementary Deed as "guarantors";
- The terms of the proposal put on behalf of the defendants in seeking a refinance put beyond doubt the notion that the defendants were seeking to increase the existing facility, would be using the refinanced facility in the ongoing operation of their business and for future investment purposes, and proposed a mortgage over the Property and guarantees and indemnities by the defendants by way of security for the refinance.

[45] It would, in my opinion, have been unconscientious to permit the defendants to depart from the assumption that the Guarantee and the Mortgage would be available as collateral security for the indebtedness under the refinance arrangement.

Disposition

[46] For the reasons I have given:

- (a) There will be judgment for the plaintiff against the defendants under the Deed of Guarantee and Indemnity dated 21 November 2000;
- (b) There will be an order for the plaintiff to recover possession of the Property pursuant to the Mortgage granted on 21 November 2000.

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Home > [About ASIC](#) > [Contact us](#)
 > [How to complain](#) > [Illegal phoenix activity](#)

Illegal phoenix activity

This information sheet (INFO 212) explains what you can do if you are concerned about phoenix activity. It explains:

- [what is phoenix activity?](#)
- [what is illegal phoenix activity?](#)
- ASIC's approach to illegal phoenix activity
- [what you can do if you suspect phoenix](#)

What is illegal phoenix activity?

Illegal (e.g. fraudulent) phoenix activity generally involves company directors **deliberately trying to avoid paying the company's creditors**. For example, directors may have run a company responsibly but, despite this, the company cannot pay its debts. The directors transfer the company's assets to another company with the same or similar name (and for no or little value) **before** handing the company over to an external administrator (registered liquidator). In this way, the directors seek to **avoid paying any creditors** including **employees** through the failed company's liquidation.

Illegal conduct that may relate to phoenix activity – example



This is the annexure marked "W" referred to in the
 Affidavit of **LYNETTE MARGARET HODGE**
DAVID ROSS HODGE
 Sworn/Affirmed at **MACKAY**
 before me on **5 / 3 / 2021**
 Signed **Oh Madduelis**
 Justice of the Peace (Qual) # **223**

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Unblurring the line

Annexure marked "X" referred to in the
LYNETTE MARGARET HODGE
Affidavit of DAVID ROSS HODGE

Sworn/Affirmed at MACKAY

before me on 5/3/2020

Signed *On Madrilis* 223

Dr John Purcell FCPA, CPA Australia's policy
adviser – corporate regulation, says that with
the new insolvent trading provisions in the
Corporations Act, which took effect in January
2018, the line between business rescue and
illegal phoenixing is becoming much clearer.

“The government has made reforms to the
insolvent trading provisions to make pursuit of
those strategies easier and more clear-cut for
directors that can demonstrate they're
executing a turnaround strategy,” he says.

“What the law now does say quite clearly is
that if [your action] is designed to defeat
creditors, then you are operating outside of the
law. If you are seeking to defeat creditors, that
has nothing to do with seeking to turn the
business around.

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MACKAY SPARE PARTS PTY. LTD.

ABN 73 106 883 265

P.O. BOX 85, MACKAY Q 4740.

21 - 25 SYDNEY STREET,
MACKAY, QUEENSLAND, AUSTRALIA.

TELEPHONE: 07 49 576 111

FACSIMILE: 07 49 512 805



9th March, 2004.

[Redacted]

BRISBANE QLD 4001.

Dear Sir,

This is the annexure marked ".Y..." referred to in the
Affidavit of ^{LYNETTE MARGARET HODGE} DAVID ROSS ^{HODGE}
Sworn/Affirmed at ... MACKAY ...
before me on ... 5 ... 3 ... 21 ...
Signed ... *Oneddichs* ...
Justice of the Peace (Qual) # ... 223 ...

Last year we restructured our company for internal accounting purposes and therefore we have a change of name. We advised these new details to [Redacted] of Balmain NB when the loan was rolled over. We also have new banking details.

Please arrange for the direct debit amount of \$3392.17 (current amount) to be debited from the following account effective immediately.

MACKAY SPARE PARTS PTY LTD.

[Redacted]

We thank you for your cooperation.

Yours faithfully,
MACKAY SPARE PARTS PTY LTD.

[Redacted]

DIRECTOR.

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Z MACKAY SPARE PARTS PTY. LTD.

P.O. BOX 85, MACKAY Q 4740.

21 - 25 SYDNEY STREET,
MACKAY, QUEENSLAND, AUSTRALIA.

TELEPHONE: 07 49 576 111

FACSIMILE: 07 49 512 805



TO: [REDACTED]	DATE 23/03/07
FAX NO: 49514099	FROM: DAVID & LYN HODGE
ATTENTION: DAVID WRIGHT	PAGE 1 OF 2 PAGES

DAVID,

FOLLOWING IS COPY OF A LETTER I HAVE ON FILE THAT WAS SENT TO
CHALLENGER
ADVISING THE CHANGE OF COMPANY NAME.

THANKS

LYN

This is the annexure marked "...Z..." referred to in the
Affidavit of LYNETTE MARGARET HODGE
DAVID ROSS HODGE
Sworn/Affirmed at MACKAY
before me on 5.1.3.12021
Signed [Signature]
Justice of the Peace (Qual) # 223

DRH

L. [Signature]

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La Trobe Financial Services Pty Limited • ACN 006 479 527
La Trobe Financial Asset Management Limited • ACN 007 332 363

Appraisal 1169
Date of Offer 7 August 2014
This is the original and referred to in the Affidavit of LYNETTE MARGARET HODGE DAVID ROSS
Sworn/Affirmed at MACKAY
before me on 5/3/2014
Signed [Signature]
Justice of the Peace (Qual) # 223

Mr D & Mrs L Hodge,



Dear Mr D & Mrs L Hodge,

APPLICATION FOR FINANCE - LETTER OF OFFER

We are pleased to advise that your Application for Mortgage Finance has been approved and is now offered to you by La Trobe Financial (Lender's representative) on the terms set out below.

Before you sign, read this Letter of Offer, so that you know exactly what contract you are entering into and what you will have to do under the contract. Once you have signed this Letter of Offer you are bound by it. You must not give false or misleading information to obtain credit.

- Borrower(s) Name:** David Ross Hodge & Lynette Margaret Hodge
- Guarantor(s) Name:** MSP Engines (QLD) Pty Ltd IIOR and ATF MSP Engines Family Trust
- Total Loan:** \$1,267,000.00 which is not to exceed 70.00% of sworn independent valuation confirming satisfactory mortgage purpose security.
- Loan Purpose:** Refinance with debt consolidation **National Credit Code: NO**
- Loan End Date (Expiry):** Two (2) year(s) ("The Term")
- Annual Percentage Rate:** 7.99% per annum Variable. The rate can be varied at any time. This rate includes a standard Loan Management Fee.
- Late Payment Fee:** 5.00% p.a. calculated as per Related Charges Schedule herein.
- Proposed Security Property:** Registered First (Real Estate) Mortgage over 21 Sydney Street MACKAY QLD 4740 Title Reference: 21217072
- Repayments:**

Interest Only Repayment	\$ 8,436.11
Account Service Fee	\$ 15.00
Total Monthly Loan Repayment	\$ 8,451.11
Due Monthly in Arrears	

If you choose to take insurances with La Trobe Financial, the relevant premiums will be added to the above Loan Repayment.

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BB

Argyle Capital Management Trust No.1

This is the annexure marked "BB" referred to in the
 Affidavit of **LYNETTE MARGARET HODGE**
DAVID ROSS HODGE

Sworn/Affirmed at **MACKAY**

before me on **5.1.3.12021**

Signed **Chendrickes**

Justice of the Peace (Qual) # **223** 120110

The Directors
 Mackay Spare Parts Pty Ltd
 C/- AMAL ASSET MANAGEMENT
 SYDNEY NSW 2000

Loan Number 120110
Issue Date 26/08/2015
Settlement Date 17/04/2007
Maturity Date 1/05/2012
Statement From 28/07/2014
Statement To 26/08/2015

Lender PTCL ATF Argyle Capital Management Trust No.1

Account Name Mackay Spare Parts Pty Ltd

Opening Balance	\$1,022,795.35	Arrears/Advance	\$128,454.90
Loan Advances	\$0.00	Current Interest Rate:	4.3% p.a
Payment Credits	\$40,536.11	Current Loan Repayment	\$3,687.14
Interest Debits	\$92,049.23	Current Loan Repayment Frequency	Monthly
Fee Debits	\$6,282.90		
Closing Balance	\$1,028,968.25		

Date	Transactions	Debit	Credit	Balance
28/07/2014	Opening Balance	\$1,022,795.35		\$1,022,795.35
31/07/2014	Interest	\$3,734.18		\$1,022,795.35
31/07/2014	Higher Rate Interest Charge	\$3,473.66		\$1,022,795.35
01/08/2014	Repayment		\$3,734.18	\$1,022,795.35
08/08/2014	Legal Fees	\$2,322.90		\$1,025,118.25
31/08/2014	Interest	\$3,741.87		\$1,025,118.25
31/08/2014	Higher Rate Interest Charge	\$3,480.81		\$1,025,118.25
01/09/2014	Repayment		\$3,741.87	\$1,025,118.25
30/09/2014	Interest	\$3,673.34		\$1,025,118.25
30/09/2014	Higher Rate Interest Charge	\$3,370.25		\$1,025,118.25
01/10/2014	Repayment		\$3,673.34	\$1,025,118.25
31/10/2014	Interest	\$3,673.34		\$1,025,118.25
31/10/2014	Higher Rate Interest Charge	\$3,370.25		\$1,025,118.25
01/11/2014	Repayment		\$3,673.34	\$1,025,118.25
30/11/2014	Interest	\$3,673.34		\$1,025,118.25
30/11/2014	Higher Rate Interest Charge	\$3,370.25		\$1,025,118.25
01/12/2014	Repayment		\$3,673.34	\$1,025,118.25

Please be aware that the loan balance is not a payout figure and exit fees and other charges may apply.

Page 1 of 2

Perpetual Trustee Company Limited ABN 42 000 001 007 as trustee of the Argyle Capital Management Trust No. 1

Loan administration provided by AMAL Asset Management Limited (ABN 21 085 914 918) under an outsourcing agreement

A Level 9, 9 Castlereagh Street, Sydney NSW 2000 T 1300 780 271 E ArgyleTeam@amal.com.au

1 of 2

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Date	Transactions	Debit	Credit	Balance
31/12/2014	Interest	\$3,673.34		\$1,025,118.25
31/12/2014	Higher Rate Interest Charge	\$3,370.25		\$1,025,118.25
01/01/2015	Repayment		\$3,673.34	\$1,025,118.25
31/01/2015	Interest	\$3,673.34		\$1,025,118.25
31/01/2015	Higher Rate Interest Charge	\$3,370.25		\$1,025,118.25
01/02/2015	Repayment		\$3,673.34	\$1,025,118.25
28/02/2015	Interest	\$3,673.34		\$1,025,118.25
28/02/2015	Higher Rate Interest Charge	\$3,145.57		\$1,025,118.25
01/03/2015	Repayment		\$3,673.34	\$1,025,118.25
31/03/2015	Interest	\$3,673.34		\$1,025,118.25
31/03/2015	Higher Rate Interest Charge	\$3,482.59		\$1,025,118.25
01/04/2015	Repayment		\$3,673.34	\$1,025,118.25
30/04/2015	Interest	\$3,673.34		\$1,025,118.25
30/04/2015	Higher Rate Interest Charge	\$3,370.25		\$1,025,118.25
01/05/2015	Repayment		\$3,673.34	\$1,025,118.25
31/05/2015	Interest	\$3,673.34		\$1,025,118.25
31/05/2015	Higher Rate Interest Charge	\$3,482.59		\$1,025,118.25
01/06/2015	Repayment		\$3,673.34	\$1,025,118.25
30/06/2015	Interest	\$3,673.34		\$1,025,118.25
30/06/2015	Higher Rate Interest Charge	\$3,370.25		\$1,025,118.25
01/07/2015	Repayment		\$3,673.34	\$1,025,118.25
01/07/2015	Repayment (Dishonour)	\$3,673.34		\$1,025,118.25
01/07/2015	Dishonour Fee	\$55.00		\$1,025,118.25
01/07/2015	Legal Fees	\$3,850.00		\$1,028,968.25
31/07/2015	Interest	\$3,687.14		\$1,028,968.25
31/07/2015	Higher Rate Interest Charge	\$3,495.67		\$1,028,968.25
01/08/2015	Repayment		\$3,687.14	\$1,028,968.25
01/08/2015	Repayment (Dishonour)	\$3,687.14		\$1,028,968.25
01/08/2015	Dishonour Fee	\$55.00		\$1,028,968.25
26/08/2015	Closing Balance			\$1,028,968.25

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Please be aware that the loan balance is not a payout figure and exit fees and other charges may apply.

2 of 2
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This is the annexure marked "CC" referred to in the
Affidavit of ... **LYNETTE MARGARET HODGE** ...
DAVID ROSS ...
Sworn/Affirmed at ... **MACKAY** ...
before me on ... **5.13.2021** ...
Signed ... *[Signature]* ...
Justice of the Peace (Qual) # ... **223** ...

From: ArgyleTeam@amal.com.au
To: davlyn379@hotmail.com
Hi David,

We have received your email and have presented it to the credit manager accordingly.

Thank you

[Redacted]

Team Leader
Argyle Capital Management Trust No.1
Loan administration is provided by AMAL Asset Management Ltd (ABN 31 065 914 918) under an outsourcing agreement.

Level 6, 9 Castlereagh Street
Sydney NSW 2000
T 1300 789 271
E argyleteam@amal.com.au

From: Lyn Hodge [Redacted]
Sent: Friday, 19 September 2014 4:10 PM
To: Argyle Team
Subject: Hodge/Howard Loan ID12754

Good afternoon,

We have received advice that you have taken over our loan 12754 with Howard.

The Loan we have has passed its expiry date and we want to refinance it with you if possible.

Thanks

David Hodge

DRN

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1 of 1
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CCI

Lyn

From: Lyn Hodge [REDACTED]
Sent: Friday, 10 October 2014 12:00 PM
To: David; Lyn
Subject: FW: Hodge/Howard Loan ID12754

This is the annexure marked "CCI" referred to in the Affidavit of **LYNETTE MARGARET HODGE** of **DAVID ROSS HODGE**.
Sworn/Affirmed at **MACKAY**
before me on **5.1.3.120.21**
Signed **[Signature]**
Justice of the Peace (Qual) # **223**

Subject: RE: Hodge/Howard Loan ID12754
Date: Thu, 2 Oct 2014 11:41:01 +1000
From: ArgyleTeam@amal.com.au
To: davlyn379@hotmail.com

Thank you for your email David. I'm very sorry for the delay.
I have followed up the Credit Manager accordingly, based on your email.

[REDACTED]

Team Leader
Argyle Capital Management Trust No.1
Loan administration is provided by AMAL Asset Management Ltd (ABN 31 065 914 918) under an outsourcing agreement.
Level 6, 9 Castlereagh Street
Sydney NSW 2000
T 1300 789 271
E argyleteam@amal.com.au

From: Lyn Hodge [REDACTED]
Sent: Thursday, 2 October 2014 10:31 AM
To: Argyle Team
Subject: RE: Hodge/Howard Loan ID12754

Dear [REDACTED]

I refer to your email of 22nd September, 2014 below.
In your email you said that you'd presented our request to refinance to your credit manager. I haven't heard from you since then. Could you please let me know how that has progressed.

Regards
David Hodge

Subject: RE: Hodge/Howard Loan ID12754
Date: Mon, 22 Sep 2014 07:19:32 +1000

29/06/2015

DRN
Lyn

1 of 1
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DD

This is the annexure marked "DD" referred to in the
LYNETTE MARGARET HODGE
Affidavit of DAVID ROSS HODGE
Sworn/Affirmed at MACKAY
before me on 5.1.3.120.21
Signed [Signature]
Justice of the Peace (Qual) # 223

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE
NUMBER: 4288/14

First Plaintiff: FIDANTE PARTNERS LIMITED (ACN 002 835 592)
AND
Second Plaintiff: PERPETUAL TRUSTEE COMPANY LIMITED (ACN 000 001 007)
AND
First Defendant: DAVID ROSS HODGE
AND
Second Defendant: LYNETTE MARGARET HODGE

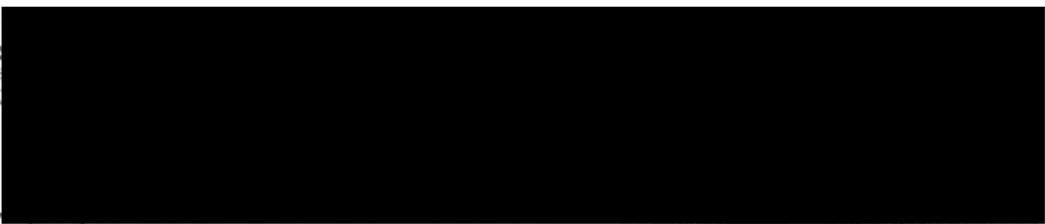
CLAIM

The First Plaintiff claims as against the Defendants:

1. \$1,079,539.96 as at 1 May 2014 as money due and owing under the Guarantee;
2. Interest on the sum of \$1,079,539.96 as at 1 May 2014 at the rates prescribed from time to time under the Facility Agreement, capitalised monthly, or in the alternative, interest on the sum of \$1,079,539.96 calculated at the rate applicable under section 58 of the *Civil Proceedings Act 2011* (Qld) from 1 May 2014; and
3. Costs in accordance with the Facility Agreement.

The Second Plaintiff claims as against the Defendants:

1. Recovery of possession as registered mortgagee under section 78 of the *Land Title Act 1994* (Qld) and under the terms and conditions of registered bill of mortgage number 704471780 given by the Defendants in favour of the Second Plaintiff in respect of the land described in:



CLAIM
Filed on behalf of the Plaintiffs
Form.2.Rule 22

Name: NORTON ROSE FULBRIGHT AUSTRALIA
Address: Level 21, 111 Eagle Street BRISBANE QLD 4000
Phone No: (07) 3414 2939
Fax No: (07) 3414 2989
DX: 114 BRISBANE
Our Ref: 2787849

APAC-#22828031-v3

DRN
[Signature]

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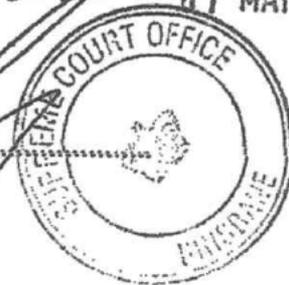
2. Costs in accordance with the Mortgage.

The Plaintiffs make this claim in reliance on the facts alleged in the attached Statement of Claim.

ISSUED WITH THE AUTHORITY OF THE SUPREME COURT OF QUEENSLAND.

And Filed in the Brisbane Registry on 07 MAY 2014 2014

REGISTRAR



TO THE DEFENDANTS:

TAKE NOTICE that you are being sued by the Plaintiffs in the Court.

If you intend to dispute this claim or wish to raise any counterclaim against the Plaintiffs, you must within 28 days of service upon you of this claim file a Notice of Intention to Defend in this Registry. If you do not comply with this requirement, judgment may be given against you for the relief claimed and costs without further notice to you. The Notice should be in Form 6 to the Uniform Civil Procedure Rules.

You must serve a sealed copy of it at the Plaintiffs' address for service shown in the claim as soon as possible.

Address of Registry: Law Courts Complex, 415 George Street, Brisbane

If you assert that this Court does not have jurisdiction in this matter or assert any irregularity you must file a Conditional Notice of Intention to Defend in Form 7 under Rule 144, and apply for an order under Rule 16 within 14 days of filing that Notice.

If you object that these proceedings have not been commenced in the correct district of the Court, that objection must be included in your Notice of Intention to Defend.

PARTICULARS OF THE FIRST PLAINTIFF:

Name:	Fidante Partners Limited ACN 002 835 592
Residential or business address:	Level 15, 255 Pitt Street, Sydney NSW 2000
Solicitor's name:	[REDACTED]
Firm name and address:	Norton Rose Fulbright Australia Level 21, ONE ONE ONE, 111 Eagle Street, Brisbane, QLD, 4001 GPO Box 407, Brisbane Qld 4001 DX 114 Brisbane Telephone: 07 3414 2888 Facsimile: 07 3414 2999

Address for service: As above

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Dx (if any): 114 Brisbane
 Telephone: (07) 3414 2888
 Fax: (07) 3414 2999

PARTICULARS OF THE SECOND PLAINTIFF:

Name: Perpetual Trustee Company Limited ACN 000 001 007
 Residential or business address: Level 12, Angel Place, 123 Pitt Street, Sydney NSW 2000
 Solicitor's name: [REDACTED]
 Firm name and address: Norton Rose Fulbright Australia
 Level 21, ONE ONE ONE, 111 Eagle Street, Brisbane, QLD, 4001
 GPO Box 407, Brisbane Qld 4001
 DX 114 Brisbane
 Telephone: 07 3414 2888
 Facsimile: 07 3414 2999

Address for service: As above
 Dx (if any): 114 Brisbane
 Telephone: (07) 3414 2888
 Fax: (07) 3414 2999



.....
 NORTON ROSE FULBRIGHT AUSTRALIA
 Solicitors for the Plaintiffs

Dated: 7 May 2014

This application is to be served on:
 David Ross Hodge and Lynette Margaret Hodge
 Of: 91 Andergrove Road, Andergrove QLD 4740

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EE

This is the annexure marked "EE" referred to in the Affidavit of LYNETTE MARGARET HODGE DAVID ROSS HODGE Sworn/Affirmed at MACKAY before me on 5/13/2021 Signed [Signature]

DEED OF LOAN Justice of the Peace (Qual) # 223 day of November 2000.

THIS DEED is made on 21

BETWEEN:

- 1. CHALLENGER MANAGED INVESTMENTS LIMITED ACN 002 835 592 of 25 Level 31, 50 Bridge Street, Sydney in its capacity as Trustee of the Howard Mortgage Trust (ARSN 090 464 074) ("Lender"), and
- 2. MACKAY SPARE PARTS (TRADING) PTY LTD incorporated in the State of Queensland of 21-25 Sydney Street, Mackay Qld 4740 (hereinafter with its successors, administrators and assigns called "the Borrower")

WHEREAS:

The Lender may at the request of the Borrower, any Guarantor and any Mortgagor from time to time extend certain credit or other financial accommodation to or for the account of the Borrower on the terms of this Deed.

NOW THIS DEED WITNESSES and it is agreed as follows:

- 1. FACILITY

Subject to the terms of this Deed, the Lender will make available to the Borrower a cash advance facility ("Facility").
- 2. LIMIT

The maximum principal amount of cash advances to be made available under the Facility is the amount set out in Item 1 of the First Schedule, subject to the maximum LVR percentage rate stated in Item 9 of the First Schedule.
- 3. PURPOSE

The Borrower shall use the net proceeds of the Facility for the purpose set out in Item 2 of the First Schedule.
- 4. DRAWINGS
 - (a) Commitment to drawings

Subject to this Deed, the Lender will make available drawings under the Facility by way of cash advances on or after the Commencement Date.
 - (b) Notice of drawings

Prior to any drawing the Lender requires at least five (5) Business Days irrevocable notice in writing specifying the amount of the drawing and the date the Borrower intends to draw (which must be a Business Day).
- 5. REPAYMENT

Subject to Clause 7 the Borrower shall repay the Principal Outstanding together with interest and all other amounts outstanding under the Facility on the Expiry Date or on termination of the Facility, if earlier.
- 6. INTEREST
 - (a) Interest

The Borrower will pay interest on the Secured Money.
 - (b) Interest periods and payment dates
 - (i) Subject to paragraphs (b) and (c) interest shall accrue from day to day and shall be paid in advance on each Interest Payment Date in respect of each Interest

Queensland Stamp Duty Paid \$2,016.00 on the Amount of \$24,000 Duty Code 111/3 13A:ENE:16/1 Transaction Number 199/00 Signed: [Signature] 8/12/00

16/11/00 3:48:19 : SACommercial 3\136050\00111600\m2.doc

ORN L. [Signature]

FIRST SCHEDULE

ITEM 1.	(Amount of Facility)	\$504,000.00
ITEM 2.	(Purpose of Facility)	Refinance Investment Property
ITEM 3.	FEES:	
	3.1 (Establishment Fee)	\$554.40
	3.2 (Annual Administration Fee)	An annual fee equal to 0.22% of the principal sum, payable at the rate of 0.11% every six (6) months.
ITEM 4.	(Expiry Date)	1 December 2003
ITEM 5.	(Lower Rate of Interest)	9.05%
ITEM 6.	(Guarantors)	David Ross Hodge and Lynette Margaret Hodge
ITEM 7.	(Corporations providing Equitable Mortgages)	Not Applicable
ITEM 8.	(Actual LVR Percentage)	63%
ITEM 9.	(Maximum LVR Percentage)	65%
ITEM 10.	(Retained Monies)	Nil

SECOND SCHEDULE

Column 1
Mortgagor

Column 2
Relevant Property

David Ross Hodge and Lynette Margaret Hodge

21 Sydney Street Mackay Qld 4740 being Lot 3 in RP 700876 County of Carlisle Parish of Howard Title Reference 21072226
 8-10 Brisbane Street Mackay Qld 4740 being Lot 153 in Crown Plan M 912 County of Carlisle Parish of Howard Title Reference 21217072 and being Lot 163 in Crown Plan M912 County of Carlisle Parish of Howard Title Reference 20944037

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FIFTH SCHEDULE
BORROWER
ACKNOWLEDGMENT BY SIGNATORY

The undersigned DAVID HODGE (signatory)
acknowledges that, before I signed them, the loan and security documents bearing my signature and, in particular, the
following matters mentioned in paragraph 5 of the Solicitors' Rule, *Solicitors Advising on Loan or Security Documents*, were
explained to me by: LUCIANA GILBERTO (solicitor)

1. By signing the documents the borrower will be liable for regular payments of interest and repayment of the amount of the loan at the due date;
2. If the borrower fails to make any payment on time, the lender can charge a higher rate of interest, and the lender's costs of rectifying that failure;
3. If the borrower fails to comply with any of the terms and conditions of the loan including the obligations to pay principal or interest, the lender can sue the borrower personally, and the lender may take possession of the borrower's property and, after notice, sell it to recover the amount owing together with interest and other costs including solicitor's costs, the costs of selling the property and the costs of maintaining the property and, if the proceeds of sale of the borrower's property and, if the proceeds of sale of the borrower's property are insufficient to satisfy the debt to the lender, the lender can sue the borrower for the deficit;
4. Where the Consumer Credit Code applies, the extent (if any) to which the advice given by the solicitor requires to be modified, and the remedies that may be available under the Code;
5. The solicitor does not profess any qualifications to give financial (as distinct from legal) advice; and
6. If the borrower has any questions about any financial aspect of the transaction or the documents, the borrower should consult an accountant or other financial counsellor of the borrower's choice before signing the documents.

Dated this 26th day of November, 2000

DR Hodge
Signatory

DRIV

L.H

SIXTH SCHEDULE
MORTGAGOR

ACKNOWLEDGMENT BY SIGNATORY

The undersigned LYNETTE HODGE (signatory)
acknowledges that, before I signed them, the loan and security documents bearing my signature and, in particular, the
following matters mentioned in paragraph 5 of the Solicitors' Rule, Solicitors Advising on Loan or Security Documents, were
explained to me by: LUCIANA SUERNO

- (solicitor)
1. If the borrower fails to make any payment on time, the mortgagor will be liable to remedy that failure, and that could involve the mortgagor in payment to the lender of all amounts owed by the borrower to the lender including principal, interest, default interest and the lender's costs of rectifying that failure;
 2. If the guarantor fails to remedy any failure by the borrower to comply with the terms and conditions of the loan in any way, including the obligations to pay principal, interest, default interest or other charges, the lender can sue the guarantor personally, and can take possession of the guarantor's property secured by the lender and sell it to recover the amount owing together with interest and other costs including solicitor's costs, the costs of selling the property and the costs of maintaining the property and, if the proceeds of sale of the guarantor's property are insufficient to satisfy the debt to the lender, the lender can sue the guarantor for the deficit;
 3. The lender can exercise its rights against the guarantor even if it has not pursued the borrower;
 4. The liability of the guarantor is limited to a specified sum, or is unlimited (whichever is the case);
 5. Where the Consumer Credit Code applies, the extent (if any) to which the advice given by the solicitor requires to be modified, and the remedies that may be available under the Code;
 6. The solicitor does not profess any qualifications to give financial (as distinct from legal) advice; and
 7. If the guarantor has any questions about any financial aspect of the transaction or the documents, the borrower should consult an accountant or other financial counsellor of the guarantor's choice before signing the documents.

Dated this 26th day of November, 2000

L. M. Hodge
Signatory

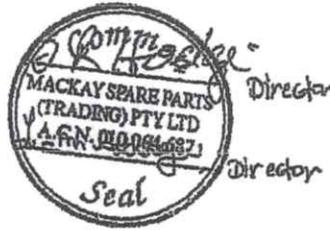
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L.M.H.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and affixed their seals on the day and year first hereinbefore written.

THE COMMON SEAL of)
CHALLENGER)
MANAGED INVESTMENTS)
LIMITED ACN 002 835 592 as Lender)
was hereunto affixed pursuant to a)
resolution of the Board of Directors under)
the hands of)
a Director and)
a Director/Secretary in the presence of:)

An Independent Witness

THE COMMON SEAL of)
Mackay Spare Parts (Trading) Pty Ltd)
as Borrower)
was hereunto affixed pursuant to a)
resolution of the Board of Directors)
under the hands of)
a Director and)
a Director/Secretary in the presence of:)



An Independent Witness

DRIV
L. nH



Argyle Capital Management Trust No.1

26 August, 2014

Mackay Spare Parts Pty Ltd
21 Sydney St
MACKAY
QLD 4740 Australia

This is the annexure marked "G.G." referred to in the
Affidavit of... **LYNETTE MARGARET HODGE**
DAVID ROSS HODGE
Sworn/Affirmed at... **MACKAY**
before me on... **5.1.3.12021**
Signed... **[Signature]**
Justice of the Peace (Qual) #... **223**

**This letter contains important information regarding your loan.
Please read it carefully.**

Dear Sir/Madam

Howard Loan ID: 12754

We refer to the letter dated 28 July 2014 informing you of the transfer of your Loan and Related Securities to Perpetual Trustee Company Limited ACN 000 001 007 in its capacity as trustee of the Argyle Capital Management Trust No.1 (Argyle).

We are pleased to advise that the transition of your Loan to Argyle's platform is scheduled to be completed on or about Monday, 1 September 2014 (the Transition Date). After the Transition Date, **Howard Mortgages will no longer be involved in the management of your loan.**

Do I need to do anything?

As a part of the transition to Argyle, some changes will be necessary to facilitate the future management of your Loan. These changes are outlined below. All other core terms and conditions of your Loan remain unchanged.

Payments

After the Transition Date you may notice a different reference appearing on the bank statement of your nominated bank account. This is because payments will then be collected on behalf of Argyle (APCA ID 474842). For your reference, we have enclosed the Direct Debit Service Agreement outlining the terms of usage of the Argyle direct debit facility.

Insurance

It is an important condition of your loan agreement that the security property be adequately insured at all times. The interested party noted on the certificate of currency for each insurance policy will need to be updated to note the interest of the new mortgagee, Perpetual Trustee Company Limited ACN 000 001 007 in its capacity as trustee for the Argyle Capital Management Trust No.1. It is imperative that the correct mortgagee be noted on the certificate of currency in the event of any loss or damage to the security property.

Perpetual Trustee Company Limited ABN 42 000 001 007 as trustee of the Argyle Capital Management Trust No.1

Loan administration provided by AMAL Asset Management Limited (ABN 31 065 914 918) under an outsourcing agreement

A Level 6, 9 Castlereagh Street, Sydney NSW 2000 T 1300 789 271 E ArgyleTeam@amal.com.au

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Please contact your insurer to arrange for the interested party noted on each insurance policy relating to the security property to be changed to Perpetual Trustee Company Limited ACN 000 001 007 in its capacity as trustee for the Argyle Capital Management Trust No.1 and provide a copy of the updated Certificate of Currency for each policy within 14 days of the date of this letter via one of the following delivery methods:

1. post: Argyle Capital Management Trust No.1, Level 6, 9 Castlereagh Street, Sydney NSW 2000; or
2. email: ArgyleTeam@amal.com.au

Contact details

On and from Monday 1 September 2014, if you have any questions regarding your loan, please use the following contact details:

- + general loan queries: 1300 789 271 or ArgyleTeam@amal.com.au

Yours sincerely,



Perpetual Trustee Company Limited ACN 000 001 007
in its capacity as trustee of the Argyle Capital Management Trust No.1

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HH

This is the annexure marked "HH" referred to in the
LYNETTE MARGARET HODGE
Affidavit of... DAVID ROSS HODGE...
Sworn/Affirmed at... MACKAY...
before me on... 5.../...3.../20...21...
Signed... [Signature]...
Justice of the Peace (Qual) #... 223...

Notice of appointment of receiver and manager

To **David Ross Hodge and Lynette Margaret Hodge**
[Redacted]
(Grantor)

From **Perpetual Trustee Company Limited as trustee of the Argyle Capital Management Trust**
No. 1 ACN 000 001 007
of Level 13, Angel Place, 123 Pitt Street Sydney NSW 2000
(Appointor)

^{2.5} On **22 June 2015** the Appointor, acting under powers contained in the security specified in Item 1 (Security), appointed [Redacted] and [Redacted] (Receivers) as joint and several receivers and managers of the property specified in Item 2 (Property).

The Receivers have all the powers of a duly appointed receiver and manager of the Property under the Security, statute and law.

Schedule

Item 1 **Security**

Mortgage dated 5 December 2000 given by the Grantor to the Appointor, being mortgage number 704471780 registered with the Queensland Department of Natural Resources and Mines.

Item 2 **Property**

The whole of the property of the Grantor charged by the Security, being the Grantor's estate and interest in the land contained in:

- (a) title reference 21072226, being lot 3 on RP 700876, County of Carlisle, Parish of Howard, the postal address of which is 21 Sydney Street, Mackay QLD 4740; and
- (b) title reference 20944037, being lot 163 on CP M912, County of Carlisle, Parish of Howard, and title reference 21217072, being lot 153 on CP M912, County of Carlisle, Parish of Howard, the postal address of both being 8-10 Brisbane Street, Mackay QLD 4740,

and includes all the income of that property.

Dated 22 June 2015

Signed sealed and delivered for and on behalf of **Perpetual Trustee Company Limited** as trustee of the Argyle Capital Management Trust No. 1 ACN 000 001 007 by its attorneys under power of attorney:

Refer Annexure. [Signature] 10

DRH
[Signature]

1 of 2
[Signature]

Annexure to Notice of appointment of receiver and manager

MACKAY SPARE PARTS PTY LTD

Mortgage Number 704471780

Signed in my presence for and on behalf of Perpetual Trustee Company Limited (ACN 000 001 007) by its Attorneys.....

Robert D Cunha Team Leader.....

and..... **EMISE FORD**..... **MANAGER**.....

who are personally known to me and each of whom declares that he/she has been appointed by the Board of Directors of that company as an attorney of the company for the purposes of the Power of Attorney dated..... (Registration No.) and that he/she has no notice of the revocation of his/her powers.....

.....
Signature of Witness

Senay Sevgi J.P.

.....
Full Name of Witness
Reg No: 207050

.....
Signature of Attorney

.....
Signature of Attorney

Level 12 Angel Place
123 Pitt Street Sydney
NSW 2000 (02) 9229 9000

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REGISTRATION CONFIRMATION STATEMENT

NATURAL RESOURCES, MINES AND ENERGY, QUEENSLAND

Title Reference : 21072226

This is the current status of the title as at 11:21 on 26/10/2018

REGISTERED OWNER

Interest

Dealing No: 703019418 20/11/1998

DAVID ROSS HODGE

1/2

LYNETTE MARGARET HODGE

1/2

AS TENANTS IN COMMON

ESTATE AND LAND

Estate in Fee Simple

LOT 3 REGISTERED PLAN 700876
Local Government: MACKAY

EASEMENTS, ENCUMBRANCES AND INTERESTS

1. Rights and interests reserved to the Crown by
Deed of Grant No. 10031036 (ALLOT 14 SEC 32)
2. MORTGAGE No 704471780 08/12/2000 at 11:45
PERMANENT TRUSTEE AUSTRALIA LIMITED A.C.N. 008 412 913
3. TRANSFER No 708879096 05/08/2005 at 11:56
MORTGAGE: 704471780
PERPETUAL TRUSTEE COMPANY LIMITED A.C.N. 000 001 007
4. CAVEAT No 718895459 27/07/2018 at 11:22
DAVID ROSS HODGE
LYNETTE MARGARET HODGE

ADMINISTRATIVE ADVICES - NIL

UNREGISTERED DEALINGS - NIL

CERTIFICATE OF TITLE ISSUED - No

DEALINGS REGISTERED

718895459 CAVEAT

Caution - Charges do not necessarily appear in order of priority

** End of Confirmation Statement **

EV Dann

Registrar of Titles and Registrar of Water Allocations

Lodgement No: 4290068
Office: MACKAY
DAVID ROSS & LYNETTE MARGARET HODGE
81 ANDERGROVE ROAD
MACKAY QLD 4740

This is the annexure marked "II" referred to in the
Affidavit of LYNETTE MARGARET HODGE
DAVID ROSS HODGE
Sworn/Affirmed at MACKAY
before me on 5/3/2021
Signed [Signature]
Justice of the Peace (Qual) # 223

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REGISTRATION CONFIRMATION STATEMENT

NATURAL RESOURCES, MINES AND ENERGY, QUEENSLAND

Title Reference : 21217072

This is the current status of the title as at 11:21 on 26/10/2018

REGISTERED OWNER

Interest

Dealing No: 703019418 20/11/1998

DAVID ROSS HODGE

1/2

LYNETTE MARGARET HODGE

1/2

AS TENANTS IN COMMON

ESTATE AND LAND

Estate in Fee Simple

LOT 153 CROWN PLAN M912
Local Government: MACKAY

EASEMENTS, ENCUMBRANCES AND INTERESTS

1. Rights and interests reserved to the Crown by Deed of Grant No. 10082225 (ALLOT 3 SEC 32)
2. EASEMENT No 601170151 (N29164) 01/12/1902
BENEFITING THE LAND
OVER EASEMENT A ON RP700869
3. MORTGAGE No 704471780 08/12/2000 at 11:45
PERMANENT TRUSTEE AUSTRALIA LIMITED A.C.N. 008 412 913
4. TRANSFER No 708879096 05/08/2005 at 11:56
MORTGAGE: 704471780
PERPETUAL TRUSTEE COMPANY LIMITED A.C.N. 000 001 007
5. CAVEAT No 715574187 31/01/2014 at 14:31
CAPRICORN SOCIETY LTD A.C.N. 008 347 313
against the interest of
LYNETTE MARGARET HODGE
6. CAVEAT No 718895459 27/07/2018 at 11:22
DAVID ROSS HODGE
LYNETTE MARGARET HODGE

ADMINISTRATIVE ADVICES

Dealing	Type	Lodgement Date	Status
715740849	NTCE OF ACTN LAND TITLE ACT 1994	30/04/2014 15:21	CURRENT

UNREGISTERED DEALINGS - NIL

CERTIFICATE OF TITLE ISSUED - No

DEALINGS REGISTERED

718895459 CAVEAT

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REGISTRATION CONFIRMATION STATEMENT

NATURAL RESOURCES, MINES AND ENERGY, QUEENSLAND

Title Reference : 20944037

This is the current status of the title as at 11:21 on 26/10/2018

REGISTERED OWNER	Interest
Dealing No: 703019418 20/11/1998	
DAVID ROSS HODGE	1/2
LYNETTE MARGARET HODGE	1/2

AS TENANTS IN COMMON

ESTATE AND LAND

Estate in Fee Simple

LOT 163 CROWN PLAN M912
Local Government: MACKAY

EASEMENTS, ENCUMBRANCES AND INTERESTS

1. Rights and interests reserved to the Crown by Deed of Grant No. 10324129 (ALLOT 13 SEC 32)
2. MORTGAGE No 704471780 08/12/2000 at 11:45
PERMANENT TRUSTEE AUSTRALIA LIMITED A.C.N. 008 412 913
3. TRANSFER No 708879096 05/08/2005 at 11:56
MORTGAGE: 704471780
PERPETUAL TRUSTEE COMPANY LIMITED A.C.N. 000 001 007
4. CAVEAT No 718895459 27/07/2018 at 11:22
DAVID ROSS HODGE
LYNETTE MARGARET HODGE

ADMINISTRATIVE ADVICES - NIL
UNREGISTERED DEALINGS - NIL

CERTIFICATE OF TITLE ISSUED - No

DEALINGS REGISTERED

718895459 CAVEAT

Caution - Charges do not necessarily appear in order of priority

** End of Confirmation Statement **

EV Dann

Registrar of Titles and Registrar of Water Allocations

Lodgement No: 4290068
Office: MACKAY
DAVID ROSS & LYNETTE MARGARET HODGE
81 ANDERGROVE ROAD
MACKAY QLD 4740

DRN
L. Smith

FF

This is the annexure mark "FF" referred to in the Affidavit of LYNETTE MARGARET HODGE DAVID ROSS HODGE Sworn/Affirmed at MACKAY before me on 5.1.3.12.21 Signed O. Maddala Justice of the Peace (Qual) # 223



Sydney

Level 15, 255 Pitt Street Sydney NSW 2000 Australia GPO Box 3642 Sydney NSW 2001

Telephone 1300 786 552

28 July 2014

Lynette Margaret Hodge PO Box 1050 MACKAY QLD 4740

Notice to Debtors

Loan reference number: 12754 (the Loan) Borrower: Mackay Spare Parts Pty Ltd

Loans of the Howard Mortgage Fund ARSN 090 464 074 ABN 55 443 150 813 (HMF) portfolio have recently been sold. This letter is intended to give you notice of that sale and to explain the consequences for you.

Transfer of the Loan and the Related Securities

We are pleased to give you notice that all of the rights, title and interest of Perpetual Trustee Company Limited ACN 000 001 007 in its capacity as custodian of the HMF and Fidante Partners Limited ABN 94 002 835 592 in its capacity as responsible entity of the HMF in the Loan and the mortgages, guarantees, charges and/or other securities that have been granted by you or any person in relation to the Loan (the Related Securities) have been transferred and assigned absolutely to Perpetual Trustee Company Limited ACN 000 001 007 in its capacity as trustee of the Argyle Capital Management Trust No. 1. (Argyle) with effect from 25 July 2014.

How does this affect you?

The transfer and assignment of the Loan and the Related Securities to Argyle does not alter your current rights and obligations under the Related Securities given by you.

YOU DO NOT NEED TO TAKE ANY FURTHER ACTION IN RELATION TO THIS LETTER.

You are required to continue to make payments in accordance with your current payment arrangements. All communication can be continued through your existing contact person by calling 1300 786 552 or by emailing howardteam@amal.com.au.

Over the coming weeks the Loan and Related Securities will be transitioned to Argyle, who will be in touch directly with updated contact details and payment arrangements.

Yours faithfully

[Redacted signature block]

DRN L. nkt

logi CM

QQ

Bennett Partners

Chartered Accountants



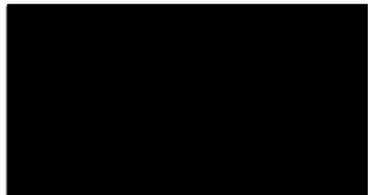
This is the annexure marked "QQ" referred to in the Affidavit of LYNETTE MARGARET HODGE DAVID ROSS HODGE sworn/Affirmed at MACKAY before me on 5/3/2004 Signed [Signature] Justice of the Peace (Qual) # 223

Bennett Partners Pty Ltd
ACN 010 430 314
ABN 21 171 313 411

Partners:
Darryl Camilleri
David Watts
Chris Sammut
Paul Hinton

DEC:PMM-macsp

5th November, 2004



Dear [Redacted]

Re: *Mackay Spare Parts (Trading) Pty Ltd*

I have had difficulty in contacting you and will be away next week. In relation to [Redacted] letter of 27th October 2004, I would like to make the following comments:

1. The bank statement value as at 31st October probably excludes any outstanding cheques; such amounts should either be treated as a liability remaining outstanding at that day if the cheque hadn't cleared or alternatively have the bank balance reduced.
2. I have difficulty with the significance of the 1998 assets value being transcribed into an October 2003 list of assets and liabilities for the company. My understanding was the Directors made it appraisal of the value of the assets on hand at that date.
3. Goodwill \$150,000 "based on turnover and profitability". We are at a disadvantage that we do not have the profitability reports the liquidator must have to support these values. My understanding from the clients was that they have made significant financial support to maintain the company over the last few years and on that basis alone it is unlikely that the company has been profitable for many years.

Accountants have methods of determining the value of businesses that are generally based on their profitability and future opportunities. Whilst turnover may form part of these it, on its own has no significance in relation to determining the value of the business. Given that I seriously doubt the business has been profitable, I have grave concerns of the inclusion of how a figure of \$150,000 could possibly be supported by the liquidators.

1 of 2
[Signature]

DRN
[Signature]

Mackay
First Floor, 147 Wood Street
PO Box 92, Mackay Q 4740

Phone: (07) 4951 1455
Fax: (07) 4951 4824

Brisbane
4/633 Logan Road Greenlopes
PO Box 7, Greenlopes Q 4120

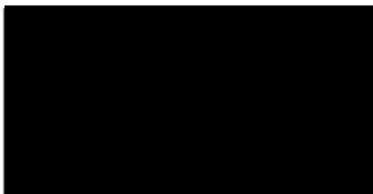
Phone: (07) 3394 9855
Fax: (07) 3394 9373

e-mail: enquiries@bennettpartners.com.au
website: www.bennettpartners.com.au

That being the case and if plant and equipment and goodwill were reduced to the values that have been suggested to the liquidator that would reduce the net sale price down to about \$189,000. My understanding is that the Hodge's have already paid out amounts in excess of that to date.

Should you have any queries in relation to the above, please do not hesitate to contact us.

Yours faithfully,
BENNETT PARTNERS



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2 of 2
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