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Details of Filing

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File Title: APPLICATION IN THE MATTER OF VIRGIN AUSTRALIA HOLDINGS LTD (ADMINISTRATORS APPOINTED) ACN 100 686 226 & ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Dated: 20/05/2020 12:13:44 AM AEST

Registrar

Important Information

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Form 59
Rule 29.02(1)

Affidavit

No. NSD 464 of 2020

Federal Court of Australia
District Registry: New South Wales
Division: Commercial and Corporations List

IN THE MATTER OF VIRGIN AUSTRALIA HOLDINGS LTD (ADMINISTRATORS APPOINTED) ACN 100 686 226 & ORS

VAUGHAN STRAWBRIDGE, SALVATORE ALGERI, JOHN GREIG AND RICHARD HUGHES, IN THEIR CAPACITY AS JOINT AND SEVERAL VOLUNTARY ADMINISTRATORS OF VIRGIN AUSTRALIA HOLDINGS LTD (ADMINISTRATORS APPOINTED) AND THE THIRD TO FORTIETH PLAINTIFFS NAMED IN SCHEDULE 1

First Plaintiffs

AND OTHERS NAMED IN THE SCHEDULE

Plaintiffs

Affidavit of: Elizma Bolt
Address: Grosvenor Place, 225 George Street, Sydney NSW 2000
Occupation: Taxation Advisor
Date: 19 May 2020

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1.	Affidavit of Elizma Bolt in support of application for orders under sections, 447A of the <i>Corporations Act 2001</i> (Cth) and section 90-15 of Schedule 2 - the Insolvency Practice Schedule (Corporations) sworn on 19 May 2020.	All	1 - 12

Filed on behalf of (name & role of party) The Plaintiffs
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[Version 3 form approved 02/05/2019]

I, Elizma Bolt, of Deloitte Touche Tohmatsu (of which Deloitte Financial Advisory Pty Ltd is a wholly owned subsidiary) (**Deloitte**), at Level 9 Grosvenor Place, 225 George Street, Sydney, New South Wales, Taxation Advisor, say on oath:

1. I am a partner in the professional services firm trading as Deloitte. I am a qualified lawyer and registered tax agent. I have practised for more than 26 years as tax advisor and currently lead Deloitte's National Employment Taxes practice. I advise clients on employment taxes related matters (including Fringe Benefits Tax (FBT), Pay as you go (PAYG) Tax, Payroll Tax, Superannuation Guarantee, Workers Compensation and JobKeeper).
2. I am assisting Mr Vaughan Strawbridge, Mr Salvatore Algeri, Mr John Greig and Mr Richard Hughes (together, the **Administrators** and each an **Administrator**) in respect of taxation and employment issues, including with respect to the JobKeeper scheme as it applies to the Virgin Companies.
3. I am authorised by Mr Strawbridge, Mr Algeri, Mr Greig and Mr Hughes to make this affidavit on behalf of the Administrators.
4. I have read the affidavits of Vaughan Neil Strawbridge dated 23 April 2020 (**First Affidavit**), 11 May 2020 (**Second Affidavit**), 11 May 2020 (**Supplementary Affidavit**) and 15 May 2020 (**Fourth Affidavit**) filed in the Proceeding (together, **the Strawbridge Affidavits**). Defined terms used in the Strawbridge Affidavits apply to this affidavit unless stated otherwise.
5. Unless otherwise stated, I make this affidavit based on my own knowledge and belief and from information I and staff members at Deloitte have obtained through my role as a partner of Deloitte and providing assistance to the Administrators of the Virgin Companies, which I believe to be true.
6. I make this affidavit in support of the relief sought by the First Plaintiffs in paragraph 18 of the Interlocutory Process filed in these proceedings on 11 May 2020, namely, orders under section 447A of the *Corporations Act 2001* (Cth) (**Corporations Act**) that seek to limit the personal liability of the Administrators with respect to debts incurred in connection with any JobKeeper application made by any of the Virgin Companies or any JobKeeper payment made to any of the Virgin Companies pursuant to the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020* (Cth), the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020* (Cth) and the *Coronavirus Economic Response Package (Payments and Benefits) Amendment Rules (No 2) 2020* (Cth), and which occur during the administration period.

JOBKEEPER - WORK CONDUCTED TO DATE SINCE THE ADMINISTRATORS' APPOINTMENT

Investigations and steps in respect of JobKeeper

7. Since the appointment of the Administrators, staff members of Deloitte (including me) have carried out a wide range of tasks relating to the collection and review of information related to the JobKeeper scheme for the Virgin Companies, including various discussions via conference calls with each or all of the following employees of the Virgin Companies:
 - (a) Scott Wood, Manager - Tax, Virgin Companies (**Mr Wood**);
 - (b) George Cressy, Specialist Advisor - Tax, Virgin Companies;
 - (c) Tanya Riley, Financial Controller, Virgin Companies (**Ms Riley**);
 - (d) Nikki Brown, General Managers People & Culture, Virgin Companies;
 - (e) Stewart Powell, Reward Manager, Virgin Companies,
 - (f) John Baker, Payroll Manager, Virgin Companies;
 - (g) Richard Priest, Leader - HRIS & Payroll, Virgin Companies;
 - (h) Katie Jackson, Payroll Officer, Virgin Companies; and
 - (i) Chris Newman, Manager - Workplace Relations, Virgin Companies,
 (together, the **Management Team**), regarding the overall process adopted with respect to JobKeeper and initial assessments of eligibility (both employer and employee eligibility and also wage condition requirements).

8. The calls with the Management Team involved:
 - (a) discussions relating to through the JobKeeper scheme requirements that the Management Team had considered internally (prior to the Appointment of the Administrators), including:
 - (i) determining employer eligibility;
 - (ii) decline in turnover tests;
 - (iii) employee eligibility (based on the Virgin Companies data to assess employee age, visa status, tenure, and employment status); and
 - (iv) distribution and collation of employee nomination forms and meeting the Job Keeper wage condition; and

- (b) understanding the manner in which the Management Team sought to identify eligible employees of the Virgin Companies in respect of whom JobKeeper payments may be applied for.
9. I am informed by Mr Wood and verily believe to be true that the Management Team undertook the following process (at a high level):
- (a) collated information as to the employment status of the employees of the relevant Virgin Companies, including employee state states, age, visa status and employment tenure of casual employees, in order to determine employees that were eligible for the JobKeeper payments; and
- (b) took appropriate steps to ensure that employees were provided with, completed and returned the required JobKeeper nomination form.
10. I am also informed by Mr Wood and believe that an assessment was undertaken of the Goods and Services Tax (**GST**) decline in turnover tests for each of:
- (i) Tiger Airways Australia Pty Ltd, the Ninth Plaintiff,
 - (ii) Virgin Australia Airlines Pty Ltd, the Tenth Plaintiff;
 - (iii) Virgin Tech Pty Ltd, the Thirteenth Plaintiff,
- (Eligible Entities)**, being each of the eligible employer entities of the Virgin Companies, and that the results of the decline in turnover tests demonstrated that each of the Eligible Entities had met the required threshold.

Deloitte Review

11. Due to the nature, size, and complexity of the Virgin Companies, I have caused my staff at Deloitte to perform a high-level review of the GST decline in turnover test provided by Mr Wood (**Deloitte Review**).
12. The Deloitte Review did not audit or verify the underlying source GST data, Business Activity Statement (**BAS**) data or data used in GST turnover projections. However, it did include an analysis by GST specialists, to test the reasonableness of the GST positions adopted in calculating the turnover projections. I am informed by my staff and verily believe to be true that they materially agreed with the decline in turnover calculations for each of the Eligible Entities that were previously prepared by management personnel within the Virgin Companies.
13. Based on my discussions with Mr Wood and the Deloitte Review, I consider that the Eligible Entities met the relevant requirements of the JobKeeper legislation to be eligible for the JobKeeper payments.

JobKeeper Payments

14. In relation to the JobKeeper claims for the initial period in April 2020, I had discussions with Mr Wood in relation to the requirements to complete the claim via the ATO Business Portal. I am informed by Mr Wood and verily believe to be true that:
- (a) Mr Wood lodged the claim on behalf of the Eligible Entities;
 - (b) Mr Wood entered the relevant information into the ATO Business Portal, as per the ATO's requirements; and
 - (c) internal data held by the Virgin Companies was used to finalise and lodge the claim for the eligible employees.
15. I have been privy to the employee and payroll information relevant to this JobKeeper claim (**Deloitte Review**), which involved the following steps:
- (a) information was provided pursuant to a standard data request issued by Deloitte staff which sought to outline the requirements for employee master data and employee payroll data;
 - (b) Mr Wood informed me and I verily believe to be true that the Management Team had conducted an internal process for the collection and management of JobKeeper employee nominations;
 - (c) the Deloitte Review was based on the list of employees who had responded both yes and no to the nominations which was then used to determine their eligibility when matched with other data sets as provided; and
 - (d) on 2 May 2020, I received:
 - (i) a single "Master Data" file via a secure data portal, collated under the direction of Ms Riley, containing employee records for 9,730 employees (**Master Data**). Due to the confidential nature of the Master Data file, I have not annexed it to this affidavit; and
 - (ii) a "Payroll Data" file via a secure data portal which related to payments made to employees during the period from 30 March 2020 to 30 April 2020 (**Payroll Data**). Due to the confidential nature of this document, I have not annexed it to this affidavit.
16. As part of the Deloitte Review, I reviewed or I caused my staff to review:
- (a) details of employees who qualified for the JobKeeper scheme insofar as they met eligibility, nomination and wage condition tests;

- (b) details of employees who met eligibility and nomination but not wage condition tests; and
- (c) details of eligible employees who had provided a positive nomination but had not been paid any amount during the relevant period.

The Payroll Data was reviewed between Deloitte staff and the Management Team, to determine the amount that would make up the payments that were to be included in the wage condition testing process.

17. Deloitte staff then tested for every employee that returned as being both eligible and had received a 'yes' nomination to determine their wage eligibility test results for each fortnight, the combined first two fortnights and month (**Deloitte Eligibility Test**).
18. The results of the Deloitte Eligibility Test were provided to Mr Wood and Ms Riley. They informed me, and I believe to be true, that further reconciliations with the Management Team were conducted to reflect updated nomination forms completed subsequent to the Master Data and Payroll Data being provided to Deloitte and any additional top up payments made and other information as obtained from internal sources.

Payments to Employees

19. I am informed by Mr Wood and verily believe to be true that on 15 May 2020, the ATO confirmed, in respect of:
 - (a) Virgin Tech Pty Ltd, the Thirteenth Plaintiff:
 - (i) the JobKeeper application was processed on 14 May 2020;
 - (ii) the estimated payment date is 19 May 2020;
 - (iii) the number of eligible employees for 30 March 2020 to 26 April 2020, being Period 1 is 514 and Period 2 is 514; and
 - (iv) details of 37 employees were still to be provided via the Single Touch Payroll (**STP**) system, and are required to be provided by 31 May 2020.
 - (b) Virgin Australia Airlines Pty Ltd, the Tenth Plaintiff:
 - (i) the JobKeeper application was processed on 15 May 2020;
 - (ii) the estimated payment date is 20 May 2020;
 - (iii) the number of employees for, 30 March 2020 to 26 April 2020, being Period 1 and Period 2 is 7402 and 7389 respectively; and

(iv) details of 98 employees were still to be provided via the STP system, and are required to be provided by 31 May 2020.

(c) Tiger Airways Aust Pty Ltd, the Ninth Plaintiff:

(i) the JobKeeper application was processed on 14 May 2020;

(ii) the estimated payment date is 19 May 2020;

(iii) the number of employees for 30 March 2020 to 26 April 2020, being Period 1 and Period 2 is 397 and 325 respectively; and

(iv) details of 77 employees were still to be provided via the STP system, and are required to be provided by 31 May 2020.

20. The total of each of the JobKeeper payments that are to be paid by the ATO to the Eligible Entities on 19 and 20 May 2020 were pre-paid to eligible employees, and were paid by the Eligible Entities by 8 May 2020.

21. The ATO JobKeeper timetable is as follows:

JobKeeper Fortnight	Period relating to each JobKeeper Fortnight	Employees are to be paid on or before
3	27 April – 10 May	10 May
4	11 May – 24 May	24 May
5	25 May – 7 June	7 June
6	8 June – 21 June	21 June
7	22 June – 5 July	5 July
8	6 July – 19 July	19 July
9	20 July – 2 August	2 August
10	3 August – 16 August	16 August
11	17 August – 30 August	30 August
12	31 August – 13 September	13 September
13	14 September – 27 September	27 September

22. Consistent with what occurred with respect to the JobKeeper payments that are expected to be received on 19 and 20 May, the manner in which further JobKeeper payments will be received by the Eligible Entities for the various fortnightly periods above, will involve payment by the Virgin Companies to those employees in advance followed by receipt of JobKeeper payments from the ATO about one to two weeks after lodgement of the JobKeeper claim at the end of each month.

ADMINISTRATORS' CONCERNS

23. As set out above, both the Virgin Companies and Deloitte have undertaken a detailed process of seeking to ascertain the eligibility, for the purposes of the JobKeeper Scheme, of the Eligible Entities and the applicable employees of those entities.
24. However, I am informed by Mr Strawbridge and verily believe that the Administrators are concerned that there may be the potential for applications for JobKeeper payments to have been made (and continue to be made) for particular employees of the Virgin Companies who are not eligible employees in respect of such payments. Mr Strawbridge informs me and I verily believe that that concern is the result of the matters he identified in paragraph 116 of the Second Affidavit and as summarised below:
- (a) the fact that applications for JobKeeper payments have been made in respect of over 8,000 employees of the Virgin Companies;
 - (b) the need to rely on the accuracy of the books and records of the Virgin Companies and the input and information from the Management Team; and
 - (c) the fact that the JobKeeper scheme is very new and not something that the Administrators have previously had any experience with before April 2020.
25. Mr Strawbridge also informs me, and I verily believe, that the Administrators are concerned that they would have a potential liability to make any repayments to the ATO after the JobKeeper payments are received and that, as a result, the Administrators may withhold funds that might otherwise be available to be paid to creditors until that time passes.

SWEARING OF THIS AFFIDAVIT

26. I have not been able to swear this affidavit in proper form at the time that I have signed it due to the measures I have taken to minimise the spread of COVID-19.
27. I have been informed by Cassandra Suzann Adams, as the proposed witness to this affidavit, and believe, that the relaxation of formality with respect to the unsworn nature of this affidavit does not diminish the need for me to satisfy myself that the contents of this affidavit are true and correct. I have satisfied myself that that is the case.

28. I will formally swear this affidavit when circumstances allow and will instruct Clayton Utz to file the sworn version with the Court.

Sworn by the deponent
at Sydney
in New South Wales
on 19 May 2020
Before me:

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Signature of deponent

Signature of witness
Kassandra Suzann Adams, solicitor.

SCHEDULE

Federal Court of Australia
District Registry: New South Wales
Division: General

No. NSD 464 of 2020

IN THE MATTER OF VIRGIN AUSTRALIA HOLDINGS LTD (ADMINISTRATORS APPOINTED) ACN 100 686 226 & ORS**Plaintiffs**

- First Plaintiffs: Vaughan Strawbridge, Salvatore Algeri, John Greig and Richard Hughes, in their capacity as joint and several voluntary administrators of each of the Second to Fortieth Plaintiffs
- Second Plaintiff: Virgin Australia Holdings Ltd (Administrators Appointed) ACN 100 686 226
- Third Plaintiff: Virgin Australia International Operations Pty Ltd (Administrators Appointed) ACN 155 859 608
- Fourth Plaintiff: Virgin Australia International Holdings Pty Ltd (Administrators Appointed) ACN 155 860 021
- Fifth Plaintiff: Virgin Australia International Airlines Pty Ltd (Administrators Appointed) ACN 125 580 823
- Sixth Plaintiff: Virgin Australia Airlines (SE Asia) Pty Ltd (Administrators Appointed) ACN 097 892 389
- Seventh Plaintiff: Virgin Australia Airlines Holdings Pty Ltd (Administrators Appointed) ACN 093 924 675
- Eighth Plaintiff: VAH Newco No.1 Pty Ltd (Administrators Appointed) ACN 160 881 345
- Ninth Plaintiff: Tiger Airways Australia Pty Limited (Administrators Appointed) ACN 124 369 008
- Tenth Plaintiff: Virgin Australia Airlines Pty Ltd (Administrators Appointed) ACN 090 670 965
- Eleventh Plaintiff: VA Borrower 2019 No. 1 Pty Ltd (Administrators Appointed) ACN 633 241 059

Twelfth Plaintiff:	VA Borrower 2019 No. 2 Pty Ltd (Administrators Appointed) ACN 637 371 343
Thirteenth Plaintiff:	Virgin Tech Pty Ltd (Administrators Appointed) ACN 101 808 879
Fourteenth Plaintiff:	Short Haul 2018 No. 1 Pty Ltd (Administrators Appointed) ACN 622 014 831
Fifteenth Plaintiff:	Short Haul 2017 No. 1 Pty Ltd (Administrators Appointed) ACN 617 644 390
Sixteenth Plaintiff:	Short Haul 2017 No. 2 Pty Ltd (Administrators Appointed) ACN 617 644 443
Seventeenth Plaintiff:	Short Haul 2017 No. 3 Pty Ltd (Administrators Appointed) ACN 622 014 813
Eighteenth Plaintiff:	VBNC5 Pty Ltd (Administrators Appointed) ACN 119 691 502
Nineteenth Plaintiff:	A.C.N. 098 904 262 Pty Ltd (Administrators Appointed) ACN 098 904 262
Twentieth Plaintiff:	Virgin Australia Regional Airlines Pty Ltd (Administrators Appointed) ACN 008 997 662
Twenty-first Plaintiff:	Virgin Australia Holidays Pty Ltd (Administrators Appointed) ACN 118 552 159
Twenty-second Plaintiff:	VB Ventures Pty Ltd (Administrators Appointed) ACN 125 139 004
Twenty-third Plaintiff:	Virgin Australia Cargo Pty Ltd (Administrators Appointed) ACN 600 667 838
Twenty-fourth Plaintiff:	VB Leaseco Pty Ltd (Administrators Appointed) ACN 134 268 741
Twenty-fifth Plaintiff:	VA Hold Co Pty Ltd (Administrators Appointed) ACN 165 507 157
Twenty-sixth Plaintiff:	VA Lease Co Pty Ltd (Administrators Appointed) ACN 165 507 291
Twenty-seventh Plaintiff:	Virgin Australia 2013-1 Issuer Co Pty Ltd (Administrators Appointed) ACN 165 507 326
Twenty-eighth Plaintiff:	737 2012 No.1 Pty. Ltd (Administrators Appointed) ACN 154 201 859

Twenty-ninth Plaintiff: 737 2012 No. 2 Pty Ltd (Administrators Appointed) ACN 154 225 064

Thirtieth Plaintiff: Short Haul 2016 No. 1 Pty Ltd (Administrators Appointed) ACN 612 766 328

Thirty-first Plaintiff: Short Haul 2016 No. 2 Pty Ltd (Administrators Appointed) ACN 612 796 077

Thirty-second Plaintiff: Short Haul 2014 No. 1 Pty Ltd (Administrators Appointed) ACN 600 809 612

Thirty-third Plaintiff: Short Haul 2014 No. 2 Pty Ltd (Administrators Appointed) ACN 600 878 199

Thirty-fourth Plaintiff: VA Regional Leaseco Pty Ltd (Administrators Appointed) ACN 127 491 605

Thirty-fifth Plaintiff: VB 800 2009 Pty Ltd (Administrators Appointed) ACN 135 488 934

Thirty-sixth Plaintiff: VB Leaseco No 2 Pty Ltd (Administrators Appointed) ACN 142 533 319

Thirty-seventh Plaintiff: VB LH 2008 No. 1 Pty Ltd (Administrators Appointed) ACN 134 280 354

Thirty-eighth Plaintiff: VB LH 2008 No. 2 Pty Ltd (Administrators Appointed) ACN 134 288 805

Thirty-ninth Plaintiff: VB PDP 2010-11 Pty Ltd (Administrators Appointed) ACN 140 818 266

Fortieth Plaintiff: Tiger International Number 1 Pty Ltd (Administrators Appointed) ACN 606 131 944