

Form 59
Rule 29.02(1)

Affidavit

No. NSD719 of 2020

Federal Court of Australia
District Registry: NSW
Division: General

Etienne Alexiou

Applicant

Australia and New Zealand Banking Group Limited (ACN 005 357 522)

Respondent

Affidavit of: **Richard Bartholomew Santamaria**

Address: [REDACTED]

Occupation: Company Director

Date: 17 November 2023

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Filed on behalf of (name & role of party) Australia and New Zealand Banking Group Limited, the Respondent

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I, Richard Bartholomew Santamaria, of [REDACTED]
Company Director, say on oath:

1. I was employed by the Respondent, Australia and New Zealand Banking Group Limited (ANZ), from 27 August 2007 to 30 September 2019.
2. I make this affidavit from my own knowledge, save where otherwise indicated. Where I depose to matters on the basis of information provided to me by other persons, I believe that information to be true.
3. For the purpose of preparing this affidavit, I have been shown parts of the redacted affidavit of the Applicant affirmed on 21 December 2022 (**Applicant's Affidavit**). In this affidavit, I refer and respond to some of those parts. I do not, however, respond to every matter raised in the Applicant's Affidavit. The absence of a response should not be taken as an indication that I agree with those matters.
4. By making this affidavit, I do not intend to and have no instructions to waive privilege in any communication, or record of communication, that is the subject of privilege. Nothing in this affidavit ought otherwise to be construed as involving a waiver of privilege. To the extent that anything may be construed as a waiver of privilege, I withdraw and do not rely on that part of the affidavit.

Employment history with ANZ

5. Prior to commencing employment at ANZ, I was a Partner of the law firm Allens Arthur Robinson (now Allens).
6. I commenced employment with ANZ in 2007 in the role of Group General Counsel and remained in that role until my retirement on 30 September 2019. My role was classified as Group 1 within ANZ's classification structure.
7. In my role as Group General Counsel, I was responsible for ANZ's global legal function as well as providing advice to the ANZ Board of Directors and the Executive Committee

and its predecessor, the Management Board (**ExCo**). I reported to the Chief Financial Officer until 1 January 2016 when I commenced reporting to the Chief Executive Officer.

ASIC BBSW Investigation and ANZ BBSW Investigation

8. In or around mid-2012, the Australian Securities and Investments Commission (**ASIC**) commenced making enquiries of Bank Bill Swap Rate (**BBSW**) panel bank members in relation to their involvement in the BBSW rate setting process, including ANZ (the **ASIC BBSW Investigation**). In or around 2014, ANZ commenced its own review into its conduct from 2007 to 2014 (the **ANZ BBSW Investigation**).
9. In or around mid-2014, ANZ retained Clayton Utz to assist with the ASIC BBSW Investigation and the ANZ BBSW Investigation.
10. In 2016, ASIC initiated proceedings against ANZ in the Federal Court of Australia.

ASIC interviews

11. On 25 July 2014, I sent an email to three email distribution lists that included employees from Global Markets and Treasury regarding media reports about regulatory investigations in various parts of the world concerning London Inter-Bank Offered Rate (**LIBOR**), foreign exchange (**FX**) and other Markets businesses. In that email, I notified employees that, if they were contacted by an officer of ASIC or other regulatory agency and asked whether they would be prepared to be interviewed by them, ANZ had made available to them an independent lawyer who they could consult with in confidence about ASIC's request (or other agency) and their personal position. Now produced, shown to me and marked '**RBS-1**' is a copy of my email to employees in Global Markets and Treasury dated 25 July 2014. CB 2573
ZNA.001.001.1295
12. On 28 July 2014, the Applicant notified me by email that he had been contacted by, and spoken with, ASIC. Now produced, shown to me and marked '**RBS-2**' is a copy of the Applicant's email to me dated 28 July 2014 and my reply to the Applicant. CB 2574
ZNA.001.001.1296
13. I refer to paragraph 222 of the Applicant's Affidavit, in which the Applicant recounts a conversation that he says took place with me by phone, during which he claims to have told me that Colin Luxford of ASIC asked whether he would voluntarily meet with ASIC with respect to the ASIC BBSW Investigation. I do not recall having this discussion with the Applicant.
14. At some stage in 2014, after the Applicant notified me that he had been contacted by ASIC, I became aware that the Applicant was required to attend a compulsory examination with ASIC. I was not aware of the content of the Applicant's discussions with ASIC at the time.
15. On several occasions, including during our meeting on 23 February 2015 (which I discuss at paragraphs 22 to 26 below), I reminded the Applicant, in words to the effect that he was

not permitted to discuss the content of his discussions with ASIC with me or anyone else at ANZ because he had obligations of confidentiality to ASIC. I only became aware of the content of the Applicant's compulsory examination when ANZ received a copy of the transcript during the Federal Court of Australia proceeding instituted by ASIC against ANZ, to which I refer at paragraph 10 above.

Engagement of independent legal advisers

16. As stated in paragraph 11 above, employees who were contacted by ASIC were offered the opportunity to engage an independent legal adviser, with the legal fees paid for by ANZ. The Applicant took up this opportunity.
17. I was aware that Clayton Utz was the billing contact for the independent legal advisers engaged by these employees. I do not recall reviewing any of the invoices issued by the Applicant's independent legal advisers, HWL Ebsworth (**HWLE**).

Meeting on 5 December 2014

18. On 5 December 2014, I attended a meeting with Shayne Collins, then Group General Manager, Markets Risk, the Applicant and his legal representatives, Robert Schneider and Alexandra White from HWLE and Peter Silver of counsel. The purpose of this meeting was to check in with the Applicant and update him on the progress of the ASIC BBSW Investigation and the ANZ BBSW Investigation. ANZ's focus was on providing support to the Applicant while he remained stood down and the subject of investigation.
19. At the start of the meeting, I handed the Applicant a letter, which I spoke to during the meeting. Now produced, shown to me and marked '**RBS-3**' is a copy of my letter to the Applicant dated 5 December 2014. CB 3017
ZNA.001.001.0625
20. I prepared a file note of the meeting on 5 December 2014 (the **5 December 2014 File Note**), which is an accurate summary of my recollection of the meeting. The 5 December 2014 File Note is not a verbatim record of the matters discussed. It is a one page document recording the substance of what was said. Now produced, shown to me and marked '**RBS-4**' is a copy of my file note of the meeting on 5 December 2014. CB 3027
ZNA.001.001.1542
21. I do not recall the Applicant's legal representative making the ASIC Request Representation, as defined in the Second Further Amended Statement of Claim.

Meeting on 23 February 2015

22. On 23 February 2015, I attended a meeting with Shayne Collins, the Applicant and Robert Schneider.
23. At paragraph 327 of the Applicant's Affidavit, the Applicant alleges that he said during this meeting that he did not believe the reasons for ANZ's decision to stand him down were

genuine and he pressed for a review of the decision so that he could return to normal duties (referred to as the February 2015 Complaint in the Second Further Amended Statement of Claim). I do not agree with the Applicant's account of this meeting.

24. I prepared a file note of the meeting on 23 February 2015 (the **23 February 2015 File Note**), which is an accurate summary of my recollection of the meeting. The 23 February 2015 File Note is not a verbatim record. Now produced, shown to me and marked '**RBS-5**' is a copy of my file note of the meeting on 23 February 2015.
25. The 23 February 2015 File Note records that the Applicant asked whether ANZ could review his employment status rather than waiting until the completion of the ASIC BBSW Investigation and Shayne Collins and I provided answers to the Applicant's questions.
26. The 23 February 2015 File Note does not record that the Applicant made a statement at the meeting that he did not believe the reasons for ANZ's decision to stand him down were genuine and I do not recall him making this statement. This is a strong statement and, had the Applicant said this at a meeting, I believe I would have recorded it. My usual practice when taking file notes was to record what I regarded as the key statements made by participants at meetings.

CB 3408
ZNA.001.001.1676

Code of Conduct Review

27. In or around 2015, ANZ commenced a review into employee compliance with the ANZ Code of Conduct and Ethics (the **Code of Conduct Review**). I attended the initial meetings with some employees investigated as part of this review where they were notified of the commencement of a disciplinary process by ANZ.
28. On 25 June 2015, I attended a meeting with Shayne Collins, Yoram Finger, General Counsel and Head of Employee Relations and Health & Safety Service, the Applicant and his legal representative, Peter Punch of Carroll & O'Dea.
29. A set of talking points was prepared for use, among others, at the meeting with the Applicant. Now produced, shown to me and marked '**RBS-6**' is a copy of the talking points for the meeting on 25 June 2015.
30. Following the meeting, I prepared a summary of what was discussed at the meeting. Now produced, shown to me and marked '**RBS-7**' is a copy of my email to senior executives employed by ANZ (and other recipients) dated 25 June 2015 which has been redacted to remove an email that is subject to legal professional privilege.
31. Apart from the meeting with the Applicant to which I refer above, I did not attend any other meetings with the Applicant as part of the Code of Conduct Review or the disciplinary process, nor did I make or have any input into the decision to terminate the Applicant's employment.

CB 3732
ZNA.001.001.1769

CB 3734
ZNA.001.001.1771

32. Following the termination of the Applicant's employment, on 2 September 2015, I sent the Applicant an email to confirm that ANZ would continue to support him in the ASIC BBSW Investigation. Now produced, shown to me and marked 'RBS-8' is a copy of my email to the Applicant dated 2 September 2015.

CB 4138
ZNA.001.001.2036

Telephone calls with the Applicant in January 2015

33. I refer to paragraphs 303 to 310 of the Applicant's Affidavit. The correspondence exhibited to the Applicant's Affidavit at pages 1405 – 1408, 1411 – 1412 and 1414 – 1418 shows that ANZ co-operatively engaged with the Applicant in relation to his concerns about the publication of articles in the Australian Financial Review and the Sydney Morning Herald that named him. ANZ did not object to the Applicant sending a letter to the editor of both the Australian Financial Review and the Sydney Morning Herald in response to the publication of those articles. I do not recall speaking to the Applicant regarding the publication of the articles.

CB 3280
ALEX.001.001.0787

CB 3286
ALEX.001.001.0793

CB 3291
ALEX.001.001.0798

CB 3294
ALEX.001.001.0801

[33] underlined words:
Admitted subject to limitation under EA, 136 as evidence only of Mr Santamaria's belief or understanding, rather than as evidence of the truth of the facts about which that belief or understanding is expressed.

Knowledge of alleged complaints and disclosures and involvement in decisions relating to the Applicant's employment

34. Other than the matter the Applicant says that he raised with me in February 2015 (referred to in paragraphs 22 to 26 above), the Applicant did not make any other complaints or disclosures to me, including:
- (a) the October 2011 Complaint;
 - (b) the February 2013 Complaint;
 - (c) the 17 July 2014 Complaint;
 - (d) the 18 July 2014 Complaint;
 - (e) the October 2014 Complaint;
 - (f) the First ASIC Disclosure;
 - (g) the Second ASIC Disclosure; and
 - (h) a complaint or disclosure allegedly made in December 2014,
- as those terms are defined in the Second Further Amended Statement of Claim.
35. There was no action against the Applicant that was, to my knowledge, motivated by any complaints or disclosures he asserts that he made to ANZ or ASIC.

[35]: Admitted subject to a limitation under EA, 136 as evidence only of Mr Santamaria's belief or understanding, rather than as evidence of the truth of the facts about which that belief or understanding is expressed.

36. I did not make the alleged: Standing Down decision; the decision to issue the Press Release (though I was aware of its publication); the decision to commence a Disciplinary Investigation; the Termination decision; the Forfeitures decision; or the Withholding of the 2014 Bonus decision as defined in the Second Further Amended Statement of Claim.

Sworn by the deponent
at Melbourne
in Victoria
on 17 November 2023
Before me:

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[Redacted Signature]

Signature of deponent

[Redacted Signature]

Signature of witness

Name of witness: James David Wintle Sutherland

Qualification of witness: An Australian Legal Practitioner within the meaning of the *Legal Profession Uniform Law (Victoria)*

This document was sworn via audio-visual link. An electronic copy of this document and not the original has been used when completing the jurat requirements under section 27(1) of the *Oaths and Affirmations Act 2018 (Vic)*.

The requirements for witnessing by audio-visual link under section 12 of the *Electronic Transactions (Victoria) Act 2000 (Vic)* have been met.