



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD464/2020

**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 THE SECOND TO THIRTY-NINTH  
PLAINTIFFS** and others named in the schedule  
Plaintiff

**ORDER**

**JUDGE:** JUSTICE MIDDLETON

**DATE OF ORDER:** 02 July 2020

**WHERE MADE:** Melbourne

**THE COURT ORDERS THAT:**

1. The Interlocutory Process filed on 1 July 2020 be made returnable at 10.20am on 2 July 2020.
2. Until further order, and until no later than 30 June 2021, pursuant to sections 37AF(1)(b)(i) and (ii) of the *Federal Court of Australia Act 1976* (Cth), on the ground stated in section 37AG(1)(a), being that the order is necessary to prevent prejudice to the proper administration of justice, the:
  - (a) Affidavit of Vaughan Neil Strawbridge sworn on 1 July 2020 and the Exhibit VNS-5 to that affidavit;
  - (b) the submissions dated 1 July 2020; and
  - (c) Exhibit VNS-5 to the Affidavit of Vaughan Neil Strawbridge sworn 2 July 2020,

be kept confidential and be prohibited from disclosure to any person other than the Judge hearing the Interlocutory Process filed on 1 July 2020, the Judge's staff and assistants, the Plaintiffs and their legal representatives, Bain Capital Private Equity



LP, Bain Capital Credit LP and their affiliates and related entities (including their legal representatives), and ASIC.

3. Pursuant to section 447A(1) of the *Corporations Act 2001* (Cth) (the ‘**Corporations Act**’), Part 5.3A of the Corporations Act is to operate in relation to the Plaintiffs as if section 443A(1) of the Corporations Act provides that, subject to order 4 below:

(a) the liabilities of the First Plaintiffs incurred with respect to any obligations arising out of, or in connection with the Administrators' Funding Agreement dated 26 June 2020 between, among others, the First Plaintiffs, the Tenth Plaintiff and BC Hart Aggregator, L.P., including monies borrowed, interest incurred in respect of monies borrowed and borrowing costs, are in the nature of debts incurred by the First Plaintiffs in the performance and exercise of their functions as joint and several administrators of the Second to Fortieth Plaintiffs; and

(b) notwithstanding that the liabilities in subparagraph (a) are debts incurred by the First Plaintiffs in the performance and exercise of their functions as joint and several administrators of the Second to Fortieth Plaintiffs, if the property and assets of the Second to Fortieth Plaintiffs (where relevant) are insufficient to satisfy these debts and liabilities, such that the indemnity that exists under section 443D of the Corporations Act is insufficient to meet any amount for which the First Plaintiffs may be liable, then the First Plaintiffs will not be personally liable to repay such debts or satisfy such liabilities to the extent of that insufficiency.

4. Pursuant to section 447A(1) of the Corporations Act, Part 5.3A of the Corporations Act is to operate in relation to the Plaintiffs as if section 443A(1) of the Corporations Act provides as follows:

(a) to the extent that the First Plaintiffs incur any liability under section 443A(1) of the Corporations Act for a debt or debts incurred to BC Hart Aggregator, L.P (or its nominee) upon the termination of the Sale and Implementation Deed dated 26 June 2020 between the Plaintiffs, BC Hart Aggregator, L.P. and BC Hart Aggregator (Australia) Pty Ltd, due to the breach by, or failure of, any of the Plaintiffs;



- (b) then:
- (i) those are liabilities in the nature of debts incurred by the First Plaintiffs in the performance and exercise of their functions as joint and several administrators of each of the Second to Fortieth Plaintiffs; and
  - (ii) notwithstanding that the liabilities in subparagraph (b)(i) are debts incurred by the First Plaintiffs in the performance and exercise of their functions as joint and several administrators of the Second to Fortieth Plaintiffs, if the property and assets of the Second to Fortieth Plaintiffs (where relevant) are insufficient to satisfy these debts and liabilities, such that the indemnity that exists under section 443D of the Corporations Act is insufficient to meet any amount for which the First Plaintiffs may be liable, then the First Plaintiffs will not be personally liable to repay such debts or satisfy such liabilities to the extent of that insufficiency.

5. Pursuant to section 588FM of the Corporations Act that, in respect of any security interests created by or in connection with:

- (a) the General Security Agreement dated 26 June 2020 between the First Plaintiffs, the Second to Tenth Plaintiffs, the Thirteenth Plaintiff, the Nineteenth to Twenty-Fourth Plaintiffs, the Fortieth Plaintiff, and Global Loan Agency Services Australia Nominees Pty Ltd; and
- (b) the Charge Over Shares dated 26 June 2020 between the First Plaintiffs, the Seventh Plaintiff, and Global Loan Agency Services Australia Nominees Pty Ltd,

the time for registration of the security interests in respect of the collateral is fixed to be, for the purposes of section 588FL(2)(b)(iv) of the Corporations Act, 24 July 2020 (being the time that is the end of 20 business days after the date that the documents that gives rise to the security interests came into force).

6. The First Plaintiffs take all reasonable steps to cause notice of the Court's orders to be given, within one (1) business day of the making of the orders, to:

- (a) the creditors (including persons or entities claiming to be creditors) of each of the Second to the Fortieth Plaintiffs, in the following manner:



- (i) where the First Plaintiffs have an email address for a creditor, by notifying each such creditor, via email, of the making of the orders and providing a link to a website where the creditor may download the orders and the Interlocutory Process;
    - (ii) where the First Plaintiffs do not have an email address for a creditor but have a postal address for that creditor (or have received notification of non-delivery of a notice sent by email in accordance with subparagraph (a)(i) above), by notifying each such creditor, via post, of the making of the orders and providing a link to a website where the creditor may download the orders and the Interlocutory Process; and
    - (iii) placing scanned, sealed copies of the Interlocutory Process and the orders on the website maintained by the First Plaintiffs at <https://www2.deloitte.com/au/en/pages/finance/articles/virgin-australiaholdings-limited-subidiaries.html>; and
  - (b) the Australian Securities and Investments Commission.
7. Any person who can demonstrate a sufficient interest has liberty to apply, within five (5) business days of notice having been provided to that person under order 6, to vary or discharge any orders made pursuant to paragraphs 1 to 5 above, on giving written notice to the Plaintiffs and to the Associate to Justice Middleton.
  8. The Plaintiffs have liberty to apply on one (1) business day's written notice to the Court in relation to any variation or discharge of the Court's orders.
  9. The Plaintiffs' costs of the application be treated as costs in the administrations of each of the Second to Fortieth Plaintiffs, jointly and severally.
  10. These orders be entered forthwith.

Date that entry is stamped: 2 July 2020

  
Registrar



## Schedule

No: NSD464/2020

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Division: General

Interested Person	DEPUTY COMMISSIONER OF TAXATION
Second Plaintiff	VIRGIN AUSTRALIA HOLDINGS LTD (ADMINISTRATORS APPOINTED) ACN 100 686 226
Second Interested Person	COMMONWEALTH OF AUSTRALIA
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

Fortieth Plaintiff TIGER INTERNATIONAL NUMBER 1 PTY LTD (ADMINISTRATORS APPOINTED) ACN 606 131 944