

IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY



No. B54 of 2017

BETWEEN:

UBS AG
Appellant

and

SCOTT FRANCIS TYNE AS TRUSTEE OF THE ARGOT TRUST
First respondent

CLARE ELIZABETH MARKS
Second respondent

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APPELLANT'S CHRONOLOGY

20 Part I: Publication on the internet

The appellant certifies that this chronology is in a form suitable for publication on the internet.

Part II: List of principal events

Date	Event	Reference
13 April 2000	Investment Management Deed made between Mr Tyne and Argot as trustee of the Argot Trust, by which Mr Tyne was engaged to manage the Argot Trust's investment portfolio pursuant to the terms of the Deed.	(2016) 236 FCR 1, [2016] FCA 5 at [28]. Amended statement of claim filed 24.3.14 ("ASOC") at [3](d).
3 December 2007	Telesto Investments Limited (" Telesto ") opened a credit facility (Account 116731) with the appellant (" UBS ") in Singapore. Pursuant to cl 19.1 of the account terms and conditions, the account facilities were governed by and construed in accordance with the law of the country in which the account was booked (that is,	Affidavit of Catherine Mary Mills affirmed 15.12.14 at [12]. (2016) 236 FCR 1, [2016] FCA 5 at [211].

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Date	Event	Reference
	Singapore) and Telesto irrevocably and unconditionally submitted to the non-exclusive jurisdiction of the Courts of Singapore.	
From 2007 to 2010	<p>UBS, through its Singapore branch, made credit facilities available to Telesto.</p> <p>The facilities comprised a short-term overdraft facility limited to USD60 million, an exchange traded derivative facility and a further derivative trading facility.</p> <p>Telesto used the funds available to it under the facilities to purchase various investments, including bonds issued by financial institutions located in Kazakhstan, namely Bank Turan-Alem and Astana Finance.</p>	<p>(2016) 236 FCR 1, [2016] FCA 5 at [42]-[44], [158], [167]-[168].</p> <p>Affidavit of Catherine Mary Mills affirmed 15.12.14 at [12].</p> <p>(2016) 236 FCR 1, [2016] FCA 5 at [73].</p>
September 2008	The value of the collateral provided by Telesto declined.	<p>(2016) 236 FCR 1, [2016] FCA 5 at [75], [162].</p> <p>Affidavit of Catherine Mary Mills affirmed 15.12.14 at [20].</p>
26 September 2008	<p>Mr Tyne gave a guarantee and indemnity in favour of UBS in respect of the obligations and liabilities of Telesto to UBS under the facilities (“Guarantee”).</p> <p>Pursuant to the terms of the guarantee given by Mr Tyne (paras 27.1 and 27.2), the guarantee was governed by the laws of Singapore and Mr Tyne submitted to the non-exclusive jurisdiction of the Singapore Courts.</p>	<p>(2016) 236 FCR 1, [2016] FCA 5 at [160], [198], [211].</p> <p>Affidavit of Catherine Mary Mills affirmed 15.12.14 at [20].</p>
28 October 2008	UBS issued a margin call requiring Telesto either to provide additional collateral or to reduce the amount owed under the facilities.	<p>(2016) 236 FCR 1, [2016] FCA 5 at [162].</p> <p>Affidavit of Catherine Mary Mills affirmed 15.12.14 at [20].</p>
Late April 2009	The Kazakh banks (Bank Turan-Alem and Astana Finance) defaulted on their obligations to make payments in respect of the Kazakh bonds.	<p>(2016) 236 FCR 1, [2016] FCA 5 at [132].</p> <p>Affidavit of</p>

Date	Event	Reference
		Catherine Mary Mills affirmed 15.12.14 at [21].
December 2009	<p>Telesto and Mr Tyne requested that UBS not sell the collateral provided by Telesto or make further margin calls in relation to amounts owing under the facilities.</p> <p>UBS agreed not to do so on certain conditions that were contained in a letter dated 14 December 2009 countersigned by Telesto on 31 December 2009 (“Standstill Agreement”).</p> <p>UBS agreed not to liquidate the collateral, or make further margin calls, until the earlier of 31 March 2011 or the occurrence of an Event of Default, subject to the terms and conditions set out in the Standstill Agreement.</p> <p>In the Standstill Agreement, Telesto undertook to procure that ACN 074 971 109 Pty Limited (“ACN 074”), as the then trustee of the Argot Trust, enter into a letter of undertaking in favour of UBS (“Letter of Undertaking”).</p>	<p>(2016) 236 FCR 1, [2016] FCA 5 at [163]-[164].</p> <p>Tender Bundle, Part F, Tab 29, pp 982-983.</p>
31 December 2009	<p>By a “Deed of Assignment by Way of Mortgage” executed by Telesto, ACN 074 (in its own right and as trustee of the Argot Trust) and UBS, ACN 074 assigned to UBS the proceeds of certain Victorian litigation brought against National Mutual Life Association of Australasia Limited.</p>	<p>(2016) 236 FCR 1, [2016] FCA 5 at [180], [198].</p> <p>Affidavit of Catherine Mary Mills affirmed 15.12.14 at [21].</p> <p>Exhibit CMM-1, Tab 8.</p>
28 January 2010	<p>ACN 074, as trustee of the Argot Trust, executed the Letter of Undertaking.</p>	<p>(2016) 236 FCR 1, [2016] FCA 5 at [164], [198], [220].</p> <p>Tender Bundle, Part F, Tab 30, pp 984-985.</p>
By October 2010	<p>The High Court of Singapore found that between 31 December 2009 and October 2010, three events of default occurred under the Standstill Agreement.</p> <p>As a consequence, by notice dated 15 October 2010, UBS terminated the Standstill Agreement.</p>	<p>[2011] SGHC 170 at [32]-[33].</p> <p>(2016) 236 FCR 1, [2016] FCA 5 at [167]-[168].</p>

Date	Event	Reference
	The total liabilities became immediately due and payable. UBS served a demand on Mr Tyne under the Guarantee.	Affidavit of Catherine Mary Mills affirmed 15.12.14 at [26].
15 October 2010	UBS commenced proceedings 801 of 2010 in the High Court of Singapore (“ Singapore 801 proceedings ”) against Telesto, as principal debtor, and Mr Tyne, as guarantor, alleging that Telesto’s account with UBS was in default.	(2016) 236 FCR 1, [2016] FCA 5 at [157], [158]. Tender Bundle, Part D, Tab 11, pp 594-616.
2 November 2010	Mr Tyne (in his personal capacity), ACN 074 as trustee of the Argot Trust and Telesto commenced proceedings no 2010/363808 in the Supreme Court of New South Wales (“ SCNSW proceedings ”) against UBS.	(2016) 236 FCR 1, [2016] FCA 5 at [170]. Affidavit of Catherine Mary Mills affirmed 15.12.14 at [20]. Exhibit CMM-2, Tab 11.
24 November 2010	A Singapore law firm, Tan Kok Quan Partnership (“ TKQP ”), filed a memorandum of appearance on behalf of Telesto in the Singapore 801 proceedings.	(2016) 236 FCR 1, [2016] FCA.5 at [192].
21 February 2011	In proceedings 1160 of 2010 (“ Singapore anti-suit proceedings ”), the High Court of Singapore granted an anti-suit injunction preventing Telesto, Mr Tyne in his personal capacity and the trustee of the Argot Trust from prosecuting the SCNSW proceedings or other proceedings in Australia in relation to the subject matter of the Singapore 801 proceedings. The High Court of Singapore also dismissed applications by Telesto and Mr Tyne for a stay of the Singapore 801 proceedings on the ground of <i>forum non conveniens</i> .	(2016) 236 FCR 1, [2016] FCA 5 at [196]-[201], [401]-[402]. Tender Bundle, Part D, Tab 12, pp 617-625. <i>UBS v Telesto</i> [2011] SGHC 170.
8 March 2011	UBS informed Telesto that, if UBS did not receive payment of the liabilities on Telesto’s account, UBS would take steps to realise the collateral in the account and apply the proceeds towards repayment of those liabilities.	(2016) 236 FCR 1, [2016] FCA 5 at [203]. Affidavit of Catherine Mary Mills affirmed

Date	Event	Reference
		15.12.14 at [34].
16 May 2011	<p>Justice Chong in the High Court of Singapore heard an appeal brought by Telesto, Mr Tyne and ACN 074 as trustee of the Argot Trust from the grant of the anti-suit injunction.</p> <p>At this time, the total liabilities owed by Telesto to UBS were in excess of US\$5 million.</p>	<p>(2016) 236 FCR 1, [2016] FCA 5 at [204]-[219].</p> <p>Affidavit of Catherine Mary Mills affirmed 15.12.14 at [35].</p>
14 July 2011	<p>Justice Chong dismissed the appeal by Telesto, Mr Tyne and ACN 074 as trustee of the Argot Trust from the grant of the anti-suit injunction.</p> <p>By this time, UBS had realised the collateral securing Telesto's account and applied the proceeds to extinguish Telesto's liabilities to UBS.</p> <p>That left extant UBS's claims in the Singapore 801 proceedings for declaratory relief and costs.</p>	<p>(2016) 236 FCR 1, [2016] FCA 5 at [204]-[205].</p> <p>Affidavit of Catherine Mary Mills affirmed 15.12.14 at [35].</p> <p><i>UBS v Telesto</i> [2011] SGHC 170.</p>
5 August 2011	TKQP discharged themselves as solicitors for Telesto, Mr Tyne and ACN 074 in Singapore.	<p>(2016) 236 FCR 1, [2016] FCA 5 at [222].</p> <p>Affidavit of Catherine Mary Mills affirmed 15.12.14 at [37].</p>
16 September 2011	Justice Chong heard an application for leave to appeal from his Honour's decision of 14 July 2011. No appearance was made by, or on behalf of, Telesto, Mr Tyne or ACN 074. The application for leave to appeal was dismissed.	<p>(2016) 236 FCR 1, [2016] FCA 5 at [223].</p> <p>Affidavit of Catherine Mary Mills affirmed 15.12.14 at [39].</p>
7 February 2012	In the SCNSW proceedings, Ward J delivered reasons for judgment in support of a temporary stay of the SCNSW proceedings pending the final determination of the Singapore 801 proceedings.	<p>(2016) 236 FCR 1, [2016] FCA 5 at [225]-[232].</p> <p><i>Telesto v UBS</i> (2012) 262 FLR 119, [2012] NSWSC 44.</p> <p>Exhibit CMM-1, Tab 2.</p>

Date	Event	Reference
21 February 2012	In the SCNSW proceedings, Ward J granted leave to the plaintiffs to amend their pleading.	(2016) 236 FCR 1, [2016] FCA 5 at [233]-[238]. (2012) 262 FLR 119, [2012] NSWSC 44 at [4]-[5], [224]. Tender Bundle, Part E, Tab 23, pp 875-876 at [6]; Exhibit CMM-2, Tab 14.
1 March 2012	Telesto and Mr Tyne's Australian solicitors wrote to UBS's solicitors indicating that they did not intend to file an appearance in the Singapore 801 proceedings and that they were not instructed to accept service on behalf of any party in respect of those proceedings.	(2016) 236 FCR 1, [2016] FCA 5 at [244]. Affidavit of Catherine Mary Mills affirmed 15.12.14 at [49].
6 March 2012	Telesto filed an amended summons and further amended commercial list statement in the SCNSW proceedings pursuant to the leave granted by Ward J (by order 2 made on 21 February 2012). The effect of the amendments was that, without objection from UBS and with the leave of the Court, Mr Tyne and ACN 074 as trustee of the Argot Trust withdrew as plaintiffs and discontinued their claims in the SCNSW proceedings, leaving Telesto as the sole plaintiff in those proceedings.	(2016) 236 FCR 1, [2016] FCA 5 at [181]-[182], [225]-[238], [378]. Tender Bundle, Part E, Tab 22, pp 840-873.
8 March 2012	UBS filed an application to amend its pleadings in the Singapore 801 proceedings.	(2016) 236 FCR 1, [2016] FCA 5 at [246]. Affidavit of Catherine Mary Mills affirmed 15.12.14 at [50].
12 April 2012	Telesto's Australian solicitors and Mr Tyne sent correspondence to UBS stating that neither party would contest the Singapore 801	(2016) 236 FCR 1, [2016] FCA 5 at [246].

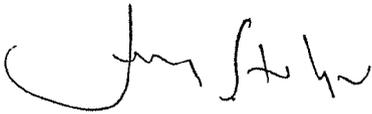
Date	Event	Reference
	proceedings on the merits.	Tender Bundle, Part F, Tab 34, pp 990; Tab 35 pp 991
13 April 2012	The High Court of Singapore heard UBS's application to amend its pleadings in the Singapore 801 proceedings. No appearance was made by, or on behalf of, Mr Tyne or Telesto. Leave to amend was granted.	(2016) 236 FCR 1, [2016] FCA 5 at [247]. Affidavit of Catherine Mary Mills affirmed 15.12.14 at [50].
16 & 18 April 2012	UBS served its further amended statement of claim in the Singapore 801 proceedings on Telesto and Mr Tyne.	(2016) 236 FCR 1, [2016] FCA 5 at [247]. Affidavit of Catherine Mary Mills affirmed 15.12.14 at [50].
19 April 2012	Directions were made in the Singapore 801 proceedings for the filing of Telesto's defence and for the filing of UBS's list of documents.	(2016) 236 FCR 1, [2016] FCA 5 at [247].
17 May 2012	UBS filed its list of documents and verifying affidavit in the Singapore 801 proceedings.	(2016) 236 FCR 1, [2016] FCA 5 at [248]. Affidavit of Catherine Mary Mills affirmed 15.12.14 at [51].
27 July 2012	Justice Lai presided over the final hearing in the Singapore 801 proceedings. Telesto and Mr Tyne did not appear. The hearing proceeded in their absence. At the conclusion of the hearing, Lai J delivered <i>ex tempore</i> reasons and granted final declaratory relief, including the following declaration: [Telesto and Mr Tyne] <i>are estopped from asserting, and/or have compromised, any claims or defences they may have arising out of, or in relation to, the Investments and/or Total Liabilities due and owing to [UBS], including but not limited to, the acquisition or management of the Investments</i>	(2016) 236 FCR 1, [2016] FCA 5 at [250]-[253], [276]-[281]. Tender Bundle, Part D, Tab 16, pp 676-785, and Tab 17, pp 786-789.

Date	Event	Reference
	<p><i>and/or the Total Liabilities.</i></p> <p>No appeal was brought from this decision.</p>	
<p>23 November 2012</p>	<p>Justice Sackar heard UBS's application for a permanent stay of the SCNSW proceedings.</p> <p>Telesto was represented by Senior Counsel at the hearing before Sackar J. During the hearing, an expert witness on Singapore law called by UBS (Professor Tan) was cross-examined.</p> <p>At this time, Telesto was the sole remaining plaintiff in the SCNSW proceedings</p>	<p>(2016) 236 FCR 1, [2016] FCA 5 at [259], [289]-[290].</p> <p>(2013) 94 ACSR 29, [2013] NSWSC 503 at [149].</p> <p>Affidavit of Catherine Mary Mills affirmed 15.12.14 at [57]; Exhibit CMM-1, Tab 3.</p>
<p>9 May 2013</p>	<p>Justice Sackar permanently stayed the SCNSW proceedings on the ground of <i>res judicata</i> and issue estoppel arising from the judgment of Lai J in the Singapore 801 proceedings.</p> <p>At this time, Telesto remained the sole plaintiff in the SCNSW proceedings.</p> <p>No appeal was brought from this decision.</p>	<p>(2016) 236 FCR 1, [2016] FCA 5 at [260], [285]-[304], [410].</p> <p>(2013) 94 ACSR 29, [2013] NSWSC 503 at [185]-[201], [210]-[223], [287].</p> <p>Affidavit of Catherine Mary Mills affirmed 15.12.14 at [57]. Exhibit CMM-1, Tab 3.</p>
<p>9 January 2014</p>	<p>Mr Tyne was appointed the trustee of the Argot Trust.</p>	<p>(2016) 236 FCR 1, [2016] FCA 5 at [5], [414].</p> <p>ASOC at [2].</p>
<p>13 January 2014</p>	<p>The respondents commenced the proceedings below in the Federal Court, raising in substance the same factual matters as those alleged in the SCNSW proceedings.</p>	<p>(2016) 236 FCR 1, [2016] FCA 5 at [25], [156], [185], [417].</p>

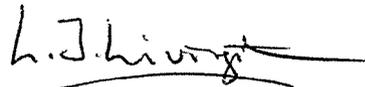
Date	Event	Reference
24 March 2014	The respondents filed an amended statement of claim in the Federal Court proceedings.	(2016) 236 FCR 1, [2016] FCA 5 at [25].
11 June 2014	The second respondent (“ Ms Marks ”) became a bankrupt upon the making of a sequestration order. This was not disclosed to either UBS or the Federal Court. UBS only became aware of this in March 2017 (see below).	[2017] FCA 374 at [1], [6].
13 November 2014	For the reasons published on 3 October 2014, as supplemented by further reasons published on 13 November 2014, Greenwood J refused UBS’s application for security for its costs of defending the Federal Court proceedings.	(2014) 102 ACSR 403, [2014] FCA 1073. [2014] FCA 1228.
8 January 2016	Justice Greenwood ordered that the Federal Court proceedings be permanently stayed as an abuse of process.	(2016) 236 FCR 1, [2016] FCA 5.
1 April 2016	Justice Edelman, then sitting in the Federal Court, granted the respondents leave to appeal from the decision of Greenwood J.	(2016) 338 ALR 624, [2016] FCA 241.
20 January 2017	The Full Court (Jagot and Farrell JJ; Dowsett J dissenting) allowed an appeal from the decision of Greenwood J.	(2017) 341 ALR 415, [2017] FCAFC 5.
March 2017	UBS became aware that Ms Marks had become a bankrupt upon the making of a sequestration order on 11 June 2014.	[2017] FCA 374 at [6].
8 March 2017	UBS notified the trustee of Ms Marks’ bankrupt estate of the Federal Court proceedings and requested that the trustee make an election under s 60(3) of the <i>Bankruptcy Act 1966</i> (Cth) whether to prosecute or discontinue the action on behalf of Ms Marks.	[2017] FCA 374 at [14].
6 April 2017	The trustee in bankruptcy notified the Federal Court that the 28-day election period under s 60(3) had expired, with the consequence that Ms Marks’ proceeding was deemed to have been abandoned.	[2017] FCA 374 at [14].
11 April 2017	Justice Greenwood made orders dismissing, with costs, the proceeding brought by Ms Marks.	[2017] FCA 374 at [15]-[18], [21] and orders 1 and 2.

Date	Event	Reference
15 September 2017	Justices Bell and Keane granted UBS special leave to appeal from the whole of the judgment and order given and made by the Full Court of the Federal Court on 20 January 2017.	
28 September 2017	UBS filed and served its notice of appeal in accordance with the grant of special leave to appeal.	

Dated: 20 October 2017



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