

IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

No. S276 of 2014

BETWEEN: FORTRESS CREDIT CORPORATION (AUSTRALIA) II PTY LIMITED

First Appellant

FORTRESS INVESTMENT GROUP (AUSTRALIA) PTY LIMITED

Second Appellant

and

WILLIAM JOHN FLETCHER AND KATHERINE BARNET AS LIQUIDATORS OF
OCTAVIAR LIMITED (RECEIVER AND MANAGERS APPOINTED) (IN
LIQUIDATION) AND OCTAVIAR ADMINISTRATION PTY LIMITED

First Respondent

OCTAVIAR LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN
LIQUIDATION)

Second Respondent

OCTAVIAR ADMINISTRATION PTY LIMITED (IN LIQUIDATION)

Third Respondent

APPELLANTS' CHRONOLOGY

Part I:

The Appellants certify that this chronology is in a form suitable for publication on the internet.

Filed on behalf of the appellants

Baker & McKenzie, Solicitors
Level 27, AMP Centre, 50 Bridge Street
Sydney NSW 2000
Contact: David James Walter

Dated: 07/11/2014

DX: 218, Sydney
Tel: (02) 9225 0200
Fax: (02) 9225 1595
Ref: 2388454-v1\SYDDMS

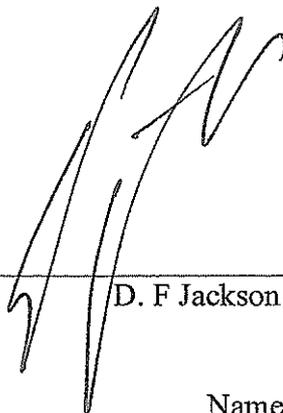
Part II:

No.	Date	Event	Reference
1.	09.09.2009	By order of the Supreme Court of Queensland, the First Respondents (the Liquidators) were appointed joint and several liquidators of the Second Respondent Octaviar Limited (receivers and managers appointed) (in liquidation) (OL) and the Third Respondent Octaviar Administration Pty Ltd (in liquidation) (OA): <i>Re Octaviar Ltd (No 1)</i> (2009) 73 ACSR 139.	
2.	10.05.2011	The Liquidators, as liquidators of OL filed an Originating Process under s 588FF(3)(b) of the <i>Corporations Act 2001</i> (Cth) (Act) seeking various orders, including an order to extend the time for OL to make an application under s 588FF(1) to 03.10.2011.	
3.	30.05.2011	Pursuant to orders made by his Honour Hammerschlag J in relation to the Originating Process filed on 10.05.2011, the time for OL to make an application under s 588FF(1) of the Act was extended to 03.10.2011	
4.	08.09.2011	The Liquidators as liquidators of OA and OL filed an Interlocutory Process under s 588FF(3)(b) of the Act seeking various orders, including an order to extend the time for OA to make an application under s 588FF(1) of the Act to 03.04.2012.	
5.	19.09.2011	<p>The Liquidators as liquidators of OA and OL filed an Amended Originating Process under s 588FF(3)(b) of the Act seeking various orders, including an order to extend the time for OA to make an application under s 588FF(1) of the Act to 03.04.2012.</p> <p>Pursuant to orders made by her Honour Ward J (as she was at the time) in relation to the Amended Originating Process filed on 19.09.2011 and the Interlocutory Application filed on 08.09.2011, the time for the making of the application in respect of OA under s 588FF(3)(b) of the Act was extended to 03.04.2012 (OA Extension Order).</p>	

No.	Date	Event	Reference
6.	30.03.2012	<p>The Liquidators as liquidators of OA and OL filed an Interlocutory Process seeking various orders, including an order to vary the orders made by Ward J on 19.09.2011, namely to extend the time for OA to make an application under s 588FF(1) of the Act in relation to Octaviar Investment Notes Limited (in liquidation) (OIN) and Octaviar Investment Bonds Limited (in liquidation) (OIB) to 03.04.2013.</p> <p>Pursuant to orders made by Hammerschlag J in relation to the Interlocutory Process filed 30.03.2012, the orders of Ward J made on 19.09.2011 were varied to extend the time for OA to make an application under s 588FF(1) of the Act in relation to OIN and OIB to 03.04.2013.</p>	
7.	03.04.2012	<p>The Liquidators as liquidators of OA, and OL, together commenced proceeding number 3135 of 2012 in the Supreme Court of Queensland (the OA Proceeding). The Appellants are the First and Second Defendants to the OA Proceedings.</p> <p>In the OA Proceedings, the Liquidators seek relief against the Appellants, <i>inter alia</i>, pursuant to s 588FF(1) of the Act.</p> <p>At [77] of the Second Further Amended Second Statement of Claim filed on or about 13 May 2013 in the OA Proceedings, it is alleged that the "relation-back day" (as contemplated by Part 5.6 of the Act) for the winding up of OA is 3 October 2008.</p>	
8.	03.05.2012	The Appellants by Interlocutory Process applied <i>inter alia</i> to set aside the OA Extension Order.	
9.	08.06.2012	The Liquidators filed an Interlocutory Process seeking various orders in relation to the OA Extension Order (the Liquidators' IP).	
10.	23.07.2012	The Appellants filed a Further Amended Interlocutory Process in relation to the OA Extension Order (the Appellants' IP).	
11.	22.10.2012 to 24.10.2012	The Appellants' IP and the Liquidators' IP were heard together before his Honour Black J. Black J reserved his decision	

No.	Date	Event	Reference
12.	30.11.2012	Black J published his judgment in respect of the Appellants' IP and the Liquidators' IP (the Primary Judgment), and directed the parties to bring in draft orders giving effect to the Primary Judgment.	
13.	17.12.2012	Black J made orders giving effect to the Primary Judgment (the Primary Orders) in chambers without the parties appearing.	
14.	20.12.2012	The Appellants filed with the Supreme Court of New South Wales, Court of Appeal a Notice of Intention to Appeal the Primary Orders.	
15.	28.02.2013	The Appellants filed with the Supreme Court of New South Wales, Court of Appeal, Summons seeking Leave to Appeal, Summary of Argument and the White Book.	
16.	02.09.2013	The Appellants filed a Notice of Motion and the affidavit of David James Walter sworn on 30.08.2013 in support of the Notice of Motion.	
17.	14.05.14	The Supreme Court of New South Wales, Court of Appeal (comprising Bathurst CJ, Beazley P, Macfarlan JA, Barrett JA and Gleeson JA) published its reasons (the Court of Appeal Judgment).	
		The Supreme Court of New South Wales, Court of Appeal made orders giving effect to the Court of Appeal Judgement (the Court of Appeal Orders)	
18.	21.05.14	The Appellants filed an Amended Notice of Appeal in the Supreme Court of New South Wales, Court of Appeal.	
19.	11.06.14	The Appellants filed an Application for Special Leave to Appeal the Court of Appeal Orders in the High Court of Australia.	
20.	17.10.14	Special Leave to Appeal was granted by the High Court of Australia (comprising Crennan J and Gageler J).	

Date: 07 November 2014.



D. F Jackson QC

Name: D.F. Jackson QC
Telephone: 02 8224 3009
Facsimile: 02 9233 1850
Email: jacksonqc@newchambers.com.au



R.C.A Higgins

Name: R.C.A Higgins
Telephone: 02 9376 0602
Facsimile: 02 9335 3542
Email: ruth.higgins@banco.net.au