

OUTCOME DETAILS

**Supreme Court - Civil
at Supreme Court Sydney
on 22 March 2018**

2017/00193375-001 / Summons: TW McConnell Pty Ltd ACN 000 217 890 as trustee for the McConnell Superannuation Fund v SURFSTITCH GROUP LIMITED

Orders made in chambers in accordance with the Short Minutes of Order, initialled by Stevenson J, dated today and placed with the papers.

SHORT MINUTES OF ORDER:

Plaintiff's notice of motion

1. That the plaintiff's notice of motion filed 9 March 2018 be stood over to 6 April 2018.

ASIC subpoena

2. Subject to orders 3 to 13 below, the Court grants leave to those of the legal representatives of the parties named in Schedule B hereto who give to the Court an undertaking in writing duly signed in the form set out in Schedule C, to inspect the ASIC Subpoena Documents.

3. The Second Defendant (Cameron) have first and exclusive access to such of the ASIC Subpoena Documents that are listed in Schedule A hereto, until 6 April 2018, for the purpose of making any claim restricting the plaintiff's or SurfStitch's access to those documents on the grounds of a claim of privilege over any, or any part of, those documents.

4. SurfStitch have first and exclusive access to such of the ASIC Subpoena Documents that are not listed in Schedule A hereto, until 6 April 2018, for the purpose of making any claim restricting the plaintiff's or Cameron's access to those documents on the grounds of a claim of client legal privilege over any, or any part of those documents.

5. SurfStitch have exclusive access to such of those documents in Schedule A hereto, and over which Cameron:

- (a) does not maintain a claim of privilege; or
- (b) maintains a claim of privilege in part,

from 6 April 2018 to 13 April 2018 for the purpose of making any claim restricting the plaintiff's access to those documents on the grounds of a claim of client legal privilege over any, or any part of those documents.

6. For the purposes of order 5, by 6 April 2018, Cameron must provide to SurfStitch copies of those ASIC Documents that are listed in Schedule A hereto and over which he maintains a claim of privilege in part, in which those parts of the documents over which the claim of privilege is maintained are masked.

7. By 13 April 2018, SurfStitch and Cameron must each file and serve:

- (a) a list of the ASIC Documents over which they maintain a claim of privilege in whole or in part (ASIC Privilege Lists); and
- (b) copies of those of the ASIC documents over which they maintain a claim of privilege in part, in which those parts of the documents over which the claim of privilege is maintained are masked (ASIC Redacted Documents).

8. On 14 April 2018, the legal representatives of the plaintiff set out in Schedule B have leave to access such of the ASIC Subpoena Documents that are not:

- (a) identified in the ASIC Privilege Lists; or
- (b) ASIC Redacted Documents.

KPMG subpoena documents

9. The defendants have access to any documents produced by KPMG pursuant to the subpoena addressed to it dated 9 March 2018 until 20 April 2018 (KPMG Subpoena Documents), for the purpose of making any claim restricting the plaintiff's access to those documents on the grounds of a claim of privilege over any, or any part of, those documents.

10. By 20 April 2018, SurfStitch and Cameron must each file and serve:

- (a) a list of the KPMG Subpoena Documents over which they maintain a claim of privilege in whole or in part (KPMG Privilege Lists); and
- (b) copies of those of the KPMG Documents over which they maintain a claim of privilege in part, in which those parts of the documents over which the claim of privilege is maintained are masked (Redacted Documents).

11. On 21 April 2018, the plaintiff have leave to access such of the KPMG Subpoena Documents that are not:

- (a) identified in the KPMG Privilege Lists; or
- (b) KPMG Redacted Documents.

Privilege applications

12. By 27 April 2018, the defendants file and serve any affidavit in support of any claim of privilege in relation to the ASIC Subpoena Documents or KPMG Subpoena documents that:

- (a) exhibits to the affidavit the Redacted Documents; and
- (b) specifies, with respect to each document over which a claim of privilege is maintained, or in the case of the Redacted Documents those parts of the documents over which a claim of privilege is maintained, the basis or bases of the relevant claim of privilege.

13. By 30 April 2018, the plaintiff file and serve a list of those documents in the ASIC Privilege Lists or KPMG Privilege Lists, or those of the ASIC Redacted Documents or KPMG Redacted Documents, in relation to which it maintains a challenge to the claim for privilege.

Other matters

14. The proceeding be listed for further directions before Justice Stevenson in the week commencing 30 April 2018.

15. The parties have liberty to apply on 48 hours' notice.

2017/00193375-001 / Summons: TW McConnell Pty Ltd ACN 000 217 890 as trustee for the McConnell Superannuation Fund v SURFSTITCH GROUP LIMITED

This matter is listed for Directions on 30 April 2018 9:30 AM before the Supreme Court - Civil at Supreme Court Sydney.

2017/00193375-009 / Notice of Motion Civil - TW McConnell Pty Ltd ACN 000 217 890 as trustee for the McConnell Superannuation Fund v SURFSTITCH GROUP LIMITED

This matter is listed for Motion on 6 April 2018 9:30 AM before the Supreme Court - Civil at Supreme Court Sydney.

Justice J Stevenson

Signed

Date

Form 43 (version 3)
UCPR 36.11

SHORT MINUTES OF ORDER

COURT DETAILS

Court	Supreme Court
Division	Equity
List	Commercial
Registry	Sydney
Case number	2017/00193375

TITLE OF PROCEEDINGS

Plaintiff	TW McConnell Pty Ltd ACN 000 217 890 as trustee for the McConnell Superannuation Fund
First Defendant	SurfStitch Group Limited (Administrators Appointed) ACN 602 288 004
Second Defendant	Justin Peter Cameron

DATE OF ORDER

Date made or given	23 March 2018
Date entered	

OTHER MATTERS

- A. The Court notes that the Australian Securities and Investments Commission has produced documents to the Court pursuant to a subpoena addressed to it and dated 9 March 2018 (**ASIC Subpoena Documents**).

TERMS OF ORDER MADE BY THE COURT

Plaintiff's notice of motion

1. That the plaintiff's notice of motion be stood over to 6 April 2018.

ASIC subpoena

2. Subject to orders 3 to 13 below, the Court grants leave to those of the legal representatives of the parties named in Schedule B hereto who give to the Court an undertaking in writing duly signed in the form set out in Schedule C, to inspect the ASIC Subpoena Documents.
3. The Second Defendant (**Cameron**) have first and exclusive access to such of the ASIC Subpoena Documents that are listed in Schedule A hereto, until 6 April 2018, for the purpose of

- making any claim restricting the plaintiff's or SurfStitch's access to those documents on the grounds of a claim of privilege over any, or any part of, those documents.
4. SurfStitch have first and exclusive access to such of the ASIC Subpoena Documents that are not listed in Schedule A hereto, until 6 April 2018, for the purpose of making any claim restricting the plaintiff's or Cameron's access to those documents on the grounds of a claim of client legal privilege over any, or any part of those documents.
 5. SurfStitch have exclusive access to such of those documents in Schedule A hereto, and over which Cameron:
 - (a) does not maintain a claim of privilege; or
 - (b) maintains a claim of privilege in part,
 from 6 April 2018 to 13 April 2018 for the purpose of making any claim restricting the plaintiff's access to those documents on the grounds of a claim of client legal privilege over any, or any part of those documents.
 6. For the purposes of order 5, by 6 April 2018, Cameron must provide to SurfStitch copies of those ASIC Documents that are listed in Schedule A hereto and over which he maintains a claim of privilege in part, in which those parts of the documents over which the claim of privilege is maintained are masked.
 7. By 13 April 2018, SurfStitch and Cameron must each file and serve:
 - (a) a list of the ASIC Documents over which they maintain a claim of privilege in whole or in part (**ASIC Privilege Lists**); and
 - (b) copies of those of the ASIC documents over which they maintain a claim of privilege in part, in which those parts of the documents over which the claim of privilege is maintained are masked (**ASIC Redacted Documents**).
 8. On 14 April 2018, the legal representatives of the plaintiff set out in Schedule B have leave to access such of the ASIC Subpoena Documents that are not:
 - (a) identified in the ASIC Privilege Lists; or
 - (b) ASIC Redacted Documents.

KPMG subpoena documents

9. The defendants have access to any documents produced by KPMG pursuant to the subpoena addressed to it dated 9 March 2018 until 20 April 2018 (**KPMG Subpoena Documents**), for the purpose of making any claim restricting the plaintiff's access to those documents on the grounds of a claim of privilege over any, or any part of, those documents.
10. By 20 April 2018, SurfStitch and Cameron must each file and serve:


- (a) a list of the KPMG Subpoena Documents over which they maintain a claim of privilege in whole or in part (**KPMG Privilege Lists**); and
 - (b) copies of those of the KPMG Documents over which they maintain a claim of privilege in part, in which those parts of the documents over which the claim of privilege is maintained are masked (**Redacted Documents**).
11. On 21 April 2018, the plaintiff have leave to access such of the KPMG Subpoena Documents that are not:
- (a) identified in the KPMG Privilege Lists; or
 - (b) KPMG Redacted Documents.

Privilege applications

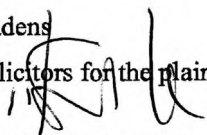
12. By 27 April 2018, the defendants file and serve any affidavit in support of any claim of privilege in relation to the ASIC Subpoena Documents or KPMG Subpoena documents that:
- (a) exhibits to the affidavit the Redacted Documents; and
 - (b) specifies, with respect to each document over which a claim of privilege is maintained, or in the case of the Redacted Documents those parts of the documents over which a claim of privilege is maintained, the basis or bases of the relevant claim of privilege.
13. By 30 April 2018, the plaintiff file and serve a list of those documents in the ASIC Privilege Lists or KPMG Privilege Lists, or those of the ASIC Redacted Documents or KPMG Redacted Documents, in relation to which it maintains a challenge to the claim for privilege.

Other matters

14. The proceeding be listed for further directions before Justice Stevenson in the week commencing 30 April 2018.
15. The parties have liberty to apply on 48 hours' notice.



Gadens
 Solicitors for the plaintiff



 MOIRA SAVILLE
 King & Wood Mallesons

Solicitors for the first defendant

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Arnold Bloch Leibler
 Solicitors for the second defendant

SEAL AND SIGNATURE

Court seal

Signature

Capacity

Date

NOTICE

Subject to limited exceptions, no variation of a judgment or order can occur except on application made within 14 days after entry of the judgment or order.

[Include the following section if the document is to be provided to the Registrar for sealing under UCPR 36.12.]

PERSON PROVIDING DOCUMENT FOR SEALING UNDER UCPR 36.12

Name	TW McConnell Pty Ltd ACN 000 217 890 as trustee for the McConnell Superannuation Fund
Filed in relation to	plaintiff's claim
Legal representative	Gadens
Legal representative reference	GYM:21605811
Contact name and telephone	Glenn McGowan QC (03) 9252 2587
Contact email	<u>Glenn.McGowan@Gadens.com</u>

SCHEDULE A

Doc ID	Type	Main Date	Title
SRF.0019.0001.0123	Email	16-Nov-15	3 Crowns Media
SRF.0019.0001.1666	Electronic File	6-Mar-17	Karen Birner.txt
SRF.0019.0001.1002	Email	9-Mar-16	Confidential
SRF.0019.0001.1159	Email	9-Mar-16	Resignation of positions at SurfStitch
SRF.0019.0001.1666	Electronic File	6-Mar-17	Karen Birner.txt
SRF.0019.0001.1668	Electronic File	6-Mar-17	Lex.txt
SRF.0019.0001.0033	Email	29-Dec-15	3 Crown Media
SRF.0019.0001.0175	Email	17-Nov-15	FW: Executed Confidentiality Agreement Attached
SRF.0019.0001.0350	Email	16-Dec-15	Fwd: Project Snowy: Apps licence
SRF.0019.0001.0650	Email	17-Nov-15	RE: Thanks for lunch
SRF.0019.0001.0033	Email	29-Dec-15	3 Crown Media
SRF.0019.0001.0126	Email	17-Dec-15	Coastalwatch and Mountainwatch
SRF.0019.0001.0127	Email	3-Dec-15	Coastalwatch and mountain watch
SRF.0019.0001.0678	Email	30-Dec-15	Re: 3 Crown Media
SRF.0019.0001.0151	Email	2-Dec-15	FW: Confidential
SRF.0019.0001.0152	Attachment	2-Dec-15	Heads of agreement - IP licences to be granted by SurfStitch.docx
SRF.0019.0001.0155	Attachment	2-Dec-15	Heads of agreement - IP licences to be granted to SurfStitch.docx
SRF.0019.0001.0158	Attachment	2-Dec-15	Heads of agreement - 3CMG Pty Ltd.docx
SRF.0019.0001.0173	Email	17-Dec-15	FW: Discussion
SRF.0019.0001.0195	Email	22-Dec-15	FW: Project Snowy: exchange - documents [CU-Legal.FID1914281]
SRF.0019.0001.0197	Attachment	21-Dec-15	executed HOA surfstitch acquisition 3CMG 211215.pdf
SRF.0019.0001.0202	Attachment	21-Dec-15	executed HOA TCI surfstitch content licences 211215.pdf

SRF.0019.0001.0206	Attachment	21-Dec-15	executed licence garage coastalwatch 211215.pdf
SRF.0019.0001.0218	Attachment	21-Dec-15	executed licence metcentral coastalwatch 211215.pdf
SRF.0019.0001.0230	Attachment	21-Dec-15	executed licence rolling youth usa coastalwatch 211215.pdf
SRF.0019.0001.0242	Attachment	21-Dec-15	executed licence surfstitch pty ltd coastalwatch 211215.pdf
SRF.0019.0001.0254	Attachment	21-Dec-15	executed licence surfstitch usa coastalwatch 211215.pdf
SRF.0019.0001.0266	Attachment	22-Dec-15	executed apps licence tci surfstitch group 211215.pdf
SRF.0019.0001.0772	Email	19-Oct-15	Re: Meet
SRF.0005.0001.0002	Transcript	6/10/16	Transcript of Justin Cameron
TBC	Transcript	2/6/16	Transcript of Justin Cameron

SCHEDULE B

Persons for the plaintiff who will need to see the documents in Schedule A

1. Lachlan Armstrong QC
2. Tim Chalke
3. Glenn McGowan QC
4. Patrick Walsh
5. Phillip O'Brien
6. Matthew Lunney
7. Rebecca Di Rago

Person for the first defendant who will need to see the documents in Schedule A

1. Michael Izzo
2. Moira Saville
3. Tim Klineberg
4. Alison Hammond
5. Carone Huang

SCHEDULE C
CONFIDENTIALITY UNDERTAKING

In this undertaking:

ASIC Subpoena Documents means the documents produced by the Australian Securities Commission to the Court pursuant to a subpoena addressed to it and dated 9 March 2018.

Court means the Supreme Court of New South Wales.

Plaintiff means TW McConnell Pty Limited ACN 000 217 890 as trustee for the McConnell Superannuation Fund.

Proceedings means New South Wales Supreme Court proceedings with plaintiff TW McConnell and defendants SurfStitch Group Limited and Justin Cameron with proceeding number 2017/193375.

Schedule A Documents such of the ASIC Subpoena Documents as appear in Schedule A of the orders made on 23 March 2018.

SurfStitch means the first defendant, SurfStitch Group Limited (Administrators Appointed) (ACN 602 288 004)

1. I, [*name*], of [*address*], undertake to Justin Peter Cameron (**Cameron**) and the Court that, subject to Court order or unless required by law, I will not without the prior written consent of Cameron:
 - (a) make any use of the information in the Schedule A Documents for any purpose other than for the purposes of these proceedings;
 - (b) disclose, directly or indirectly the Schedule A Documents or their contents or substance (**Schedule A Information**) to any person or body other than:
 - (i) those solicitors and counsel acting for the Plaintiff or SurfStitch as are set out in Schedule B to the orders made in this proceeding on 23 March 2018; or
 - (ii) solicitors and counsel for the second defendant; or
 - (iii) an officer of this Court or as otherwise directed by an order of this Court.
2. I further undertake that, within 28 days of the conclusion of the Proceedings (including any appeal), I will destroy all copies of the Schedule A Documents and upon request from Arnold Bloch Leibler provide written confirmation to Arnold Bloch Leibler of the endeavours undertaken by me to destroy the Schedule A Documents.
3. I acknowledge that my obligations under this confidentiality undertaking are in addition to any other obligation, express or implied, that I may have to the Court.

4. The above undertakings and agreement are subject to any Court order and any disclosure required by law.
5. Nothing in this confidentiality undertaking prevents the use of a Schedule A Document or Schedule A Information for the purpose of the Proceedings, provided that it is used in accordance with this Confidentiality Undertaking.

Dated:

Signed:

