



HIGH COURT OF AUSTRALIA

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Details of Filing

File Number: S48/2023
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Important Information

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IN THE HIGH COURT OF AUSTRALIA
 SYDNEY REGISTRY

BETWEEN:

Michael Thomas Potts

Appellant

and

National Australia Bank Limited

(ABN 12 004 044 937)

Respondent

APPELLANT'S CHRONOLOGY

Part I: This chronology is in a form suitable for publication on the internet.

Part II:

Item	Date	Event	References
1.	18 August 2013	DSH Board adopts a benchmark for stock of \$250 million.	PJ[387], CAB 155
2.	April 2014	Mr Abboud (Abboud) releases \$23m of OTB, at least in part to increase "O&A collect".	PJ[82]-[83], CAB 41
3.	June 2014	Abboud releases \$5m of OTB to obtain O&A rebates.	PJ[97], CAB 46
4.	13 August 2014	Mr Borg (Borg) sent an email to Mr Orrock (Orrock), buyers and planners, which was copied to Mr Skellern (Skellern) and Abboud, regarding DSH being overstocked.	PJ[104], CAB 48 - 49

Item	Date	Event	References
5.	25 September 2014	Borg emails Mr Liberto, a DSH buyer, regarding difficulties with emphasis on collection of O&A rebates.	PJ[125]-[126], CAB 59-60
6.	23 October 2014	DSH maintains spreadsheet regarding O&A targets and OTB overspend required to meet targets.	PJ[115], CAB 54
7.	30 October 2014	Abboud sent an email to Orrock, Skellern and others regarding \$15 million additional OTB for the purpose of obtaining an additional \$3 million in O&A.	PJ[113]-[114], CAB 53-54
8.	19 November 2014	Borg sent an email to Orrock and Skellern that acknowledged DSH had over-ordered for the quarter and that “our closing stock is at risk”.	PJ[128], CAB 60
9.	26 November 2014	Borg sent an email to merchandise planners, Skellern and Orrock, among others, regarding the fact that a significant number of purchase orders had been raised to deliver sales budget and drive Ad Sub and O&A, which was leading to a “very untidy closing stock number”.	PJ[129], CAB 61
10.	19 December 2014	Borg sent an email to DSH buyers, copied to Mr Potts (Potts) and Abboud noting a significant number of purchase orders that had been raised to “maximise Dec O&A”.	PJ[130], CAB 61 PJ[411], CAB 164
11.	8 January 2015	Borg emailed the buying team, copied to Abboud and Potts, setting out the current stock on hand and weeks covered by category.	PJ[141]-[142], CAB 67-68

Item	Date	Event	References
		Mr Abboud replied: “The stock reduction is clear. Put the hand break now on the red areas. No otb February March.”	
12.	9 January 2015	Potts emailed Abboud, outlining “key priorities to be worked on” regarding inventory.	PJ[143], CAB 68
13.	14 January 2015	Borg sent an email to Abboud, Potts and Skellern regarding OTB reductions.	PJ[145], CAB 68 - 69
14.	18 January 2015	Borg sent an email to Abboud regarding overcoming a shortfall in O&A rebates.	PJ[146], CAB 69
15.	16 February 2015	DSH Board papers for 16 February 2015 meeting recorded that DSH had an actual net inventory of: (a) \$331.518 million at the end of December 2014; and (b) \$356.7 million at the end of January 2015. Net inventory was forecast to reduce to \$279.606 million to end of June 2015.	PJ[166], CAB 76-77
16.	17 February 2015	DSH Board approves HY15 accounts, together with press release and results briefing, which are published to the ASX.	PJ[171]-[172] and [174], CAB 78-79
17.	20 April 2015	Meeting between Potts, Abboud, Borg, Orrock, Skellern and Mr Bar-Ami (Bar-Ami), among others, to review the position with stock. Potts circulated minutes of the meeting.	PJ[202], CAB 89-90
18.		The Board authorised management to run a competitive tender process for a new debt facility for \$135 million.	PJ[199], CAB 88-89

Item	Date	Event	References
19.	28 April 2015	<p>Potts and Abboud attended an introductory meeting with representatives of NAB (Mr Cohen (Cohen), Mr Clarke (Clarke) and Mr McKissock) and gave a presentation using a generic slide pack.</p> <p>The presentation included a statement that DSH had “improved inventory management”. Abboud also made statements at the presentation regarding inventory management.</p>	PJ [204]-[210], CAB 90-93
20.	30 April 2015	<p>NAB held a DSH “whiteboarding” session at which they analysed broker reports about DSH and the DSH term sheet.</p>	PJ[213]-[214], CAB 94 PJ[227], CAB 98
21.	5 May 2015	<p>Potts provided Clarke and Cohen with DSH’s FY15 monthly profit and loss, balance sheets (including inventory levels) and cash flow statements.</p>	PJ[215], CAB 94
22.	6 May 2015	<p>Potts attended a meeting with representatives of NAB (Mr Taylor (Taylor) and Mr Menzies (Menzies)) at which they asked him questions about DSH’s inventory level in January 2015.</p>	PJ[218], CAB 95
23.	7 May 2015	<p>Mr Shroff, an employee of DSH, emailed NAB a copy of DSH’s projected financial position for FY16.</p>	PJ[228], CAB 98
		<p>Menzies emailed Taylor, Clarke and Cohen the first version of the credit memorandum (which is dated 11 May 2015).</p>	PJ[229], CAB 98-99

Item	Date	Event	References
24.	11/12 May 2015	Menzies had a phone call with Potts regarding inventory, based on which he revised the credit memorandum and then circulated a further fourth version of the credit memorandum.	PJ[229], CAB 98 - 99
25.	20 May 2015	Mr Lin (Lin) obtained trade and working capital information about DSH, including information about DSH's inventory, from Ms Puja, an employee of DSH.	PJ[242], CAB 102-103
		Ms Peter and Mr Johnson approved the provision of a \$75 million facility to DSH on the certain conditions set out in the email confirming approval.	PJ[241], CAB 102
26.	22 May 2015	Lin circulated, by email to Clarke, Cohen and Menzies, an "SCF Support Paper" for a proposed trade facility being offered as part of the loan product to DSH.	PJ[242]-[243], CAB 102-103
27.	25 May 2015	Borg sent an email noting that Abboud had agreed to release an extra \$12 million OTB in June. This additional OTB was increased at some stage thereafter, but prior to 12 June 2015, to an extra \$20 million.	PJ[257]-[258], CAB 107-108
28.	12 June 2015	Bar-Ami sent email to Abboud with an O&A update. From this time on, Bar-Ami sent daily updates to merchandise managers, Borg and Orrock of the amount of rebates obtained from the additional OTB released by Abboud in May/June 2015.	PJ[258], CAB 108

Item	Date	Event	References
29.	22 June 2015	DSH entered into the Syndicated Facility Agreement, Security Trust Deed and General Security Deed with NAB and HSBC.	PJ[252], CAB 105
30.	4 January 2016	Board of DSH resolved to put DSH and its subsidiaries in voluntary administration. NAB and HSBC appointed receivers to DSH.	PJ[334], CAB 133 CA[71], CAB 324

Dated: 8 June 2023



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