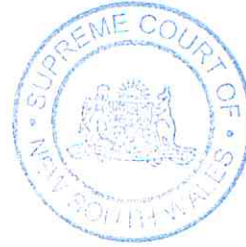


FILED

- 1 DEC 2014



NOTICE OF MOTION

COURT DETAILS

Court Supreme Court of New South Wales
Division Equity
List Corporations List
Registry Sydney
Case number 2014/63700

TITLE OF PROCEEDINGS

Plaintiff **Provident Capital Limited (Receivers & Managers Appointed)(In Liquidation)**
ACN 082 735 573

First Defendant **Michael Roger O'Sullivan**

Number of Defendants 4

FILING DETAILS

Person seeking orders **Provident Capital Limited (Receivers & Managers Appointed)(In Liquidation), plaintiff**

Legal representative Craig Ensor

Legal representative reference CXE/MRC/3130204-240

Contact name and telephone Michael Catchpoole
02 9947 6286

Contact email michael.catchpoole@hdy.com.au

PERSON AFFECTED BY ORDERS SOUGHT

The Defendants

HEARING DETAILS

This motion is listed at 10:00am on 10 February 2015 before his Honour Justice Black.

ORDERS SOUGHT

- 1 That pursuant to section 64(1)(b) of the Civil Procedure Act 2005 (NSW) the plaintiff be granted leave to file and serve the Amended Statement of Claim in the form annexed and marked with the letter "B" to the affidavit of Craig Ensor sworn on 1 December 2014.
- 2 Costs.
- 3 Such further or other order as the Court deems necessary.

SIGNATURE

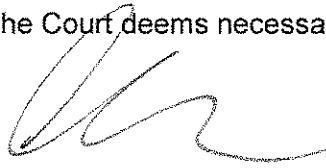
Signature of legal representative

Capacity

Date of signature

Solicitor

1 December 2014



NOTICE TO PERSON AFFECTED BY ORDERS SOUGHT

If you do not attend, the court may hear the motion and make orders, including orders for costs, in your absence.

REGISTRY ADDRESS

Street address	Supreme Court of NSW Law Courts Building, Queen's Square 184 Phillip Street Sydney NSW 2000
Postal address	Supreme Court of NSW GPO Box 3 Sydney NSW 2001
Telephone	1300 679 272

FILED

- 1 DEC 2014



**AFFIDAVIT OF CRAIG ENSOR
SWORN 1 DECEMBER 2014**

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	Corporations List
Registry	Sydney
Case number	2014/637000

TITLE OF PROCEEDINGS

Plaintiff	Provident Capital Limited (Receivers and Managers Appointed)(In Liquidation) ACN 082 735 573
First Defendant	Michael Roger O'Sullivan
Number of Defendants	4

FILING DETAILS

Filed for	Provident Capital Limited (Receivers and Managers Appointed)(In Liquidation), the plaintiff
Legal representative	Craig Ensor Henry Davis York
Legal representative reference	CXE/MRC/GLL/3130204-240
Contact name and telephone	Michael Catchpoole 02 9947 6286
Contact email	michael.catchpoole@hdy.com.au

AFFIDAVIT

Name Craig Ensor
Address 44 Martin Place, Sydney, NSW, 2000
Occupation Solicitor
Date 1 December 2014

I say on oath:

1. I am a partner of Henry Davis York Lawyers and the solicitor on the record for the plaintiff in this proceeding, Provident Capital Limited (receivers and managers appointed) (in liquidation) (**Provident**).
2. Anthony Milton Sims and Marcus William Ayres of PPB Advisory (**Receivers**) were appointed receivers and managers of Provident:
 - (a) by order of the Federal Court of Australia on 29 June 2012 (with effect from 3 July 2012); and
 - (b) by Australian Executor Trustees Limited on 10 July 2012.
3. I am instructed in these proceedings by the Receivers.
4. I swear this affidavit from my own knowledge or otherwise from instructions provided to me by the Receivers.
5. The business of Provident included, amongst other things, the issuing of debenture securities to retail investors and the operation of a debenture-funded loan portfolio secured by first ranking mortgages.
6. At about the time of the Receivers' appointment, Provident was thought to have a net tangible asset deficiency of approximately \$28 million. Since the appointment, and following further investigations, it has become clear that the deficiency in Provident's assets (excluding any litigation recoveries) is more likely to be in the order of \$50 million.
7. At present, the Receivers anticipate that Provident's book of first ranking mortgages will realise less than 20 cents in the dollar for retail investors in its debenture program, of which there are approximately 3,000. The total amount of debenture funds that were invested (where a 20 cent return is expected) equates to approximately \$130 million. A large number of debenture holders are self-funded retirees.
8. As a result of investigations carried out in 2013 and early 2014, this proceeding was commenced against the former directors of Provident by way of a Statement of Claim filed on 28 February 2014 (**Statement of Claim**). The Statement of Claim alleges breaches of directors' duties by the defendants.



Signature of deponent

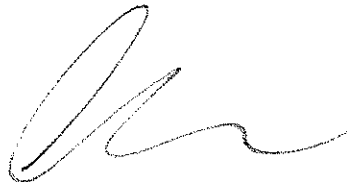


Signature of witness

9. The Statement of Claim was filed on 28 February 2014 to ensure that a particular claim was not subject to being statute barred.
10. Following the filing of the Statement of Claim, further investigations and work was undertaken in relation to the subject matter of the Statement of Claim. This further work was particularly necessary for the purpose of providing particulars in relation to a number of the allegations made in the Statement of Claim.
11. The Statement of Claim was served on the defendants on 27 August 2014. Annexed to this affidavit and marked with the letter "A" is a copy of the covering letters serving the Statement of Claim on the defendants.
12. On 27 September 2014 this Court made orders requiring Provident to bring any amendment application in relation to the Statement of Claim by 1 December 2014.
13. I swear this affidavit in support of Provident's application for an order that the plaintiff be granted leave to file and serve an amended statement of claim in the form annexed to this affidavit and marked with the letter "B".

Sworn at Sydney

Signature of deponent



Craig Ensor

Certificate of witness

I certify the following matters concerning the person who made this affidavit (the deponent):

1. * I saw the face of the deponent; and
2. * I have known the deponent for at least 12 months:

Signature of witness

Identification document relied on (may be original or certified copy)



Solicitor

Name: Gemma Louise Lardner
Address: 44 Martin Place, Sydney
Occupation: Solicitor

"A"

HENRY DAVIS YORK

27 August 2014

Our Ref CXE/MRC/GLL/3130204-240

BY HAND
Reaymond McGuinness
Watson Mangioni
Level 13
50 Carrington Street
Sydney NSW 2000

THIS AND THE FOLLOWING 3 PAGES IS
THE ANNEXURE MARKED "A" REFERRED
TO IN THE AFFIDAVIT OF Craig Emsor
SWORN THIS 1st DAY OF December 2014
BEFORE ME


SOLICITOR/JUSTICE OF THE PEACE

Dear Sir,

Provident Capital Ltd (Receivers and Managers Appointed)(In Liquidation) v Michael Roger O'Sullivan & Ors, Supreme Court of New South Wales proceeding number 2014/63700 (Proceeding)

As you are aware, we act for the receivers and managers (Receivers) of Provident Capital Limited (Receivers and Managers Appointed)(In Liquidation)(Provident) and refer to your email of 20 August 2014, in which you confirmed your instructions to accept service on behalf of each of Mr Malcolm Bersten, Mr Trevor Seymour and Mr John Sweeney.

Accordingly, we enclose, by way of service, a statement of claim filed on behalf of Provident which names your clients as the second to fourth defendants (**Statement of Claim**).

The Statement of claim is subject to a proposed significant amendment. That amendment will substantially expand the claim and refine the existing pleading. As such, the Statement of Claim is served on the basis that:

1. at the time of filing the Statement of Claim and due to the state of the books and records of Provident, the Receivers did not have sufficient information to fully plead and particularise the claims against the defendants;
2. the Statement of Claim is currently subject to significant amendment and the Receivers propose to serve an amended statement of claim in the near future;
3. the Statement of Claim is being served on your clients at this time in order to comply with rule 6.2(4) of the Uniform Civil Procedure Rules 2005 (NSW);
4. the Receivers sought an extension of time to serve the statement of claim to minimise the risk to your clients of incurring unnecessary costs prior to service of the amended statement of claim, however his Honour Brereton J declined to grant the requested extension on the basis that your clients should be aware of the proceedings.

The Proceeding is listed for directions before the Corporations List judge at 10:00am on Monday 29 September 2014. At that time, the Receivers propose to seek orders for the filing of Provident's amended statement of claim.

Our client will not require your clients to file defences or take any steps ahead of that directions hearing (and possibly longer depending upon the timing of filing and serving the amended statement of claim).

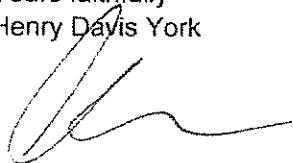
In light of the substantial anticipated amendments to the Statement of Claim, we strongly suggest that it is in the best interests of the parties (from a cost and case management efficiency perspective) that your clients refrain from taking any steps in response to the Statement of Claim and wait to respond to the amended statement of claim (once it is filed and served).

In the meantime, we anticipate that your clients may make requests for access to the books and records of Provident. Provided those requests are made with an appropriate lawful basis, our clients are happy to progress those matters in the interim.

The Receivers intend to rely on this letter on the subject of costs.

If you have any questions, please contact us.

Yours faithfully
Henry Davis York



Craig Ensor
Partner
Tel No +61 2 9947 6445
Email craig.ensor@hdy.com.au

Michael Catchpoole
Senior Associate
Tel No +61 2 9947 6286
Email michael.catchpoole@hdy.com.au

HENRY DAVIS YORK

27 August 2014

Our Ref CXE/MRC/GLL/3130204-240

BY HAND

Steven Glass & Asia Lenard
Gilbert + Tobin Lawyers
2 Park Street
Sydney NSW 2000

Dear Mr Glass and Ms Lenard

Provident Capital Ltd (Receivers and Managers Appointed)(In Liquidation) v Michael Roger O'Sullivan & Ors, Supreme Court of New South Wales proceeding number 2014/63700 (Proceeding)

As you are aware, we act for the receivers and managers (**Receivers**) of Provident Capital Limited (Receivers and Managers Appointed)(In Liquidation)(**Provident**) and refer to your email of 20 August 2014, in which you confirmed your instructions to accept service on behalf of Michael O'Sullivan.

Accordingly, we enclose, by way of service, a statement of claim filed on behalf of Provident which names your client as the first defendant (**Statement of Claim**).

The Statement of claim is subject to a proposed significant amendment. That amendment will substantially expand the claim and refine the existing pleading. As such, the Statement of Claim is served on the basis that:

1. at the time of filing the Statement of Claim and due to the state of the books and records of Provident, the Receivers did not have sufficient information to fully plead and particularise the claims against the defendants;
2. the Statement of Claim is currently subject to significant amendment and the Receivers propose to serve an amended statement of claim in the near future;
3. the Statement of Claim is being served on your client at this time in order to comply with rule 6.2(4) of the Uniform Civil Procedure Rules 2005 (NSW);
4. the Receivers sought an extension of time to serve the statement of claim to minimise the risk to your client of incurring unnecessary costs prior to service of the amended statement of claim, however his Honour Brereton J declined to grant the requested extension on the basis that your client should be aware of the proceedings.

The Proceeding is listed for directions before the Corporations List judge at 10:00am on Monday 29 September 2014. At that time, the Receivers propose to seek orders for the filing of Provident's amended statement of claim.

Our client will not require your client to file a defence or take any steps ahead of that directions hearing (and possibly longer depending upon the timing of filing and serving the amended statement of claim).

In light of the substantial anticipated amendments to the Statement of Claim, we strongly suggest that it is in the best interests of the parties (from a cost and case management efficiency perspective) that your client refrain from taking any steps in response to the Statement of Claim and wait to respond to the amended statement of claim (once it is filed and served).

In the meantime, we anticipate that your client may make requests for access to the books and records of Provident. Provided those requests are made with an appropriate lawful basis, our clients are happy to progress those matters in the interim.

The Receivers intend to rely on this letter on the subject of costs.

If you have any questions, please contact us.

Yours faithfully
Henry Davis York



Craig Ensor
Partner
+61 2 9947 6445
craig.ensor@hdy.com.au

Michael Catchpoole
Senior Associate
+61 2 9947 6286
michael.catchpoole@hdy.com.au

"B"

THIS AND THE FOLLOWING 122 PAGES IS
THE ANNEXURE MARKED "B" REFERRED
TO IN THE AFFIDAVIT OF Craig Ensor
SWORN THIS 1st DAY OF December 2014
BEFORE ME

Form 3A (version 5)
UCPR 6.2


SOLICITOR/JUSTICE OF THE PEACE

AMENDED STATEMENT OF CLAIM

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	Corporations List
Registry	Sydney
Case number	2014/63700

TITLE OF PROCEEDINGS

Plaintiff	Provident Capital Limited (Receivers & Managers Appointed) (In Liquidation) ACN 082 735 573
First Defendant	Michael Roger O'Sullivan
Number of Defendants	4

FILING DETAILS

Filed for	Provident Capital Limited (Receivers and Managers Appointed) (In Liquidation), the plaintiff
Legal representative	Craig Ensor Henry Davis York
Legal representative reference	CXE/MRC/3130204-240
Contact name and telephone	Michael Catchpoole 9947 6286
Contact email	michael_catchpoole@hdy.com.au

TYPE OF CLAIM

Directors' Duties – Corporations

RELIEF CLAIMED

1. A declaration under section 1317E of the Corporations Act 2001 (Cth) that the defendants have breached section 180(1) of the Corporations Act 2001 (Cth).
2. An order that the defendants pay the plaintiff compensation pursuant to section 1317H of the Corporations Act 2001 (Cth).
3. An order that the defendants pay the plaintiff damages.
4. Such further or other orders as the Court considers fit.
5. Interest.
6. Costs.

PLEADINGS AND PARTICULARS

Contents

The Parties	4
The Debenture Trust Deed	7
Directors' Duties	11
Provident's Statutory Requirements	11
Provident's Policy Requirements	14
Adelaide Bank Facility	17
Dividends	30
Provident Loans	30
Burleigh Views	31
Chrysalis Pty Limited	41
Delta Dawn and Yarraman	48
Unique Castle	59
Pritchett and MLA/MLI	68
Paul Vincent Hanna	74
MJ Server	79
Cleveland	85
System Failings	94
Provisioning in Relation to Loans	99
Trust Deed Breaches - Impermissible Uses of Debenture Funds	103
PCLH/ABL Transactions	105
Further Trust Deed Breaches	107
Failure to Report	108
Defendants' Breaches	110
Loss and Damage	117
Relief Claimed	118

The Parties

1. The plaintiff, Provident Capital Limited (in liquidation) (receivers and managers appointed) (**Provident**):
 - (a) was incorporated on 25 May 1998;
 - (b) since the time of its incorporation, had its registered office in the State of New South Wales;
 - (c) was at all relevant times:
 - (i) a corporation for the purposes of the *Corporations Act 2001* (Cth) (**Corporations Act**);
 - (ii) an unlisted public company;
 - (iii) the holder of an Australian Financial Services Licence numbered 225172 pursuant to Chapter 7 of the Corporations Act; and
 - (iv) an issuer of debentures to the public;
 - (d) was placed into receivership on 29 June 2012 by Court order stayed until 3 July 2012 and was released from the stay on that day;
 - (e) entered voluntary administration on 18 September 2012;
 - (f) entered into liquidation pursuant to a creditors voluntary winding up on 24 October 2012.
2. At all material times, the principal business conducted by Provident was the issuing of debentures and the provision of finance facilities supported by first mortgage security.
3. In the course of its business, Provident issued debenture certificates on certain terms and conditions, in exchange for which it received debenture funds from debenture holders.
4. The first defendant, Michael Roger O'Sullivan (**O'Sullivan**):
 - (a) was an executive director of Provident since its incorporation on 25 May 1998;

- (b) was the managing director of Provident from 25 May 1998;
- (c) was a member of the board of directors of Provident at all material times;
- (d) was responsible for:
 - (i) preparing and/or settling all reports to the trustee and the Australian Securities and Investments Commission (ASIC) (referred to in paragraphs 19 and 24 below);
 - (ii) preparing and/or settling all disclosure documents issued by Provident;
 - (iii) supervising the credit control and loan approval process;
 - (iv) advising the board of directors of Provident (Board) in relation to the status of the loans advanced to borrowers;
 - (v) settling and approving all board pack documentation and material for provision to the Board including, but not limited to loan arrears reports;
 - (vi) making provisioning recommendations to the Board in relation to impaired loans;
 - (vii) managing enforcement action in respect of certain defaulting loans;
 - (viii) as a member of the Board, approving all reports to the trustee, ASIC and all financial reports and prospectuses issued by Provident.

5. The second defendant, Malcolm Phillip Bersten (**Bersten**):

- (a) was a non-executive director of Provident from 1 July 2000;
- (b) was an executive director of Provident from July 2007;
- (c) was Provident's legal general counsel from July 2007;
- (d) was a member of the Board at all material times;
- (e) was at all material times an Australian Legal Practitioner within the meaning of the *Legal Profession Act 2004* (NSW);

- (f) was a member of the Audit and Compliance Committee of Provident between at least March 2006 and November 2008;
- (g) was responsible:
 - (i) with O'Sullivan, for preparing and settling all reports to the trustee and ASIC (referred to in paragraph 19 and 24 below);
 - (ii) with O'Sullivan, for preparing and settling all disclosure documents issued by Provident;
 - (iii) as a member of the Board, for approving all reports to the trustee, ASIC and all financial reports and prospectuses issued by Provident.

6. The third defendant, John Patrick Sweeney (**Sweeney**):

- (a) was, as the term is defined in section 9 of the Corporations Act, an officer of Provident from about June 2007, being a person who made, or participated in making decisions that affected the whole or a substantial part of the business of Provident or who had the capacity to affect significantly the entity's financial standing;
- (b) was a non-executive director of Provident from 30 July 2008;
- (c) was a member of the Board from 30 July 2008;
- (d) was a fellow of the Institute of Certified Public Accountants, Financial Services Institute of Australia, Australian Institute of Company Directors and the Australian Institute of Management;
- (e) was a member of the Audit and Compliance Committee of Provident from December 2008;
- (f) was responsible, as a member of the Board, for approving all reports to the trustee, ASIC and all financial reports and prospectuses issued by Provident.

7. The fourth defendant, John Trevor Seymour (**Seymour**):

- (a) was a non-executive director of Provident from 25 May 1998;
- (b) was member of the Board at all material times;

- (c) was at all material times an accountant in public practice;
- (d) was at all material times, a partner of the accounting firm Brentnalls NSW;
- (e) was a member of the the Audit and Compliance Committee of Provident from at least March 2008;
- (f) was responsible, as a member of the Board, for approving all reports to the trustee, ASIC and all financial reports and prospectuses issued by Provident.

The Debenture Trust Deed

- 8. Provident was required, for the purpose of section 260FA of the then *Corporations Law*, to enter into a trust deed that complied with section 260FB of the then *Corporations Law* and appoint a trustee that complied with section 260FC of the then *Corporations Law* before it made offers of and issued debentures to the public.
- 9. In complying with the requirements of the then *Corporations Law*, on or about 11 December 1998, Provident as borrower entered into a Debenture Trust Deed with I.O.O.F. Australia Trustees (NSW) Limited (IOOF) as trustee which was amended from time to time (Trust Deed).

Particulars

Deed of Amendment dated 23 December 1999

Deed of Amendment dated December 2005

Deed of Amendment dated January 2006

Deed of Amendment dated 31 January 2011

- 10. By reason of the operation of Chapter 10 (Transition Provisions) of the *Corporations Act 2001* (Cth), and particularly sections 1404 and 1405, the Trust Deed and IOOF were taken to be a trust deed and a trustee for the purpose of Chapter 2L and sections 283AA, 283AB, 283AC of the *Corporations Act*.
- 11. On 19 November 2004, IOOF retired and Australian Executor Trustees Limited (AET) was appointed the trustee under the Trust Deed.
- 12. At all relevant times, under the terms of the Trust Deed from December 2005:

- (a) Provident could only deal with debenture funds pursuant to clause 2.9 of the Trust Deed, by holding an application amount in trust for the applicant until the debenture certificate was issued for the application amount or the application amount was returned to the applicant at the request of the applicant;
- (b) Provident could only deal with debenture funds pursuant to clause 5.1 of the Trust Deed, by using debenture funds principally to provide finance facilities to other people, including any related corporation, on the security and terms permitted under the Trust Deed including but not limited pursuant to clause 5.2 of the Trust Deed, by complying with particular accommodation criteria including:
 - (i) adhering to loan to value ratios (LVR) in amounts prescribed by the Trust Deed;
 - (ii) securing the finance facility by a first ranking registered mortgage over the primary facility security;
 - (iii) accruing interest on the amounts made available under the finance facility at rates determined by the company;
 - (iv) ensuring that any one finance facility did not exceed 20% of the total of the debenture funds;
- (c) pursuant to clause 5.2 of the Trust Deed, Provident could only make advances available to borrowers where the offered security met a prescribed LVR , namely:
 - (i) 85% in respect of land for use for residential purposes;
 - (ii) 75% in respect of land for use for commercial purposes;
 - (iii) 75% in respect of land for use for industrial purposes;
 - (iv) 70% in respect of land for use for rural purposes;
 - (v) 70% of the "as if complete" value in respect of land for construction or development where the finance facility is to fund that construction or development;

- (d) Provident could only deal with debenture funds pursuant to clause 5.7 of the Trust Deed, pending drawdown in accommodation transactions, by investing debenture funds in any one or more or combination of authorised investments as the company determines appropriate within the meaning of clauses 1.1.3 to 1.1.9;
- (e) Provident could only deal with debenture funds pursuant to clause 5.8 of the Trust Deed, by using debenture funds to pay expenses incurred in connection with the exercise of any of the company's rights under any of the facility securities or for the protection of any of the facility securities and money secured by them, including work of a capital nature to the property the subject of the facility security, or fees for services in managing the property the subject of the facility security;
- (f) pursuant to clause 6 of the Trust Deed, Provident covenanted that it would:
 - (i) strive to carry on and conduct its business in a proper and efficient manner;
 - (ii) keep or cause to be kept proper books of account and enter in those books of account full particulars of all dealings and transactions in relation to the company's business;
 - (iii) give written notice to AET as soon as it becomes aware of, amongst other things:
 - (A) any potential event of default or event of default under the Trust Deed;
 - (B) anything which might result, or has resulted, in a material adverse change in the:
 - (1) financial condition or operations of the company; or
 - (2) the ability of the Company to perform its obligations under the Trust Deed.

(Trust Deed Obligations).

13. Pursuant to clause 11.1 of the Trust Deed an event of default would occur:

- (a) if Provident fails to pay money within 21 days after the day upon which the payment becomes due and payable;
 - (b) if Provident defaulted in the performance of any obligation under the deed and, where reasonably capable of remedy, that default has not been remedied within 21 days after the Company had received notice of or otherwise become aware of the default;
 - (c) if Provident enters into any arrangement or composition with its creditors or any class of them;
 - (d) if any person claiming a security interest over any of Provident's assets attempts or becomes entitled to take possession of those assets;
 - (e) if a petition is filed for the winding up of the Company and such petition is not withdrawn or dismissed within 21 days;
 - (f) if the company becomes an externally-administered body corporate (as defined in the Corporations Law);
 - (g) if an inspector is appointed under any legislation to investigate all or any part of the officers of the company in relation to a possible breach by the company of that legislation;
 - (h) if Provident grants or allows to come into existence any security interest over any of the company's assets without the trustee's prior written approval.
14. In order to comply with the Trust Deed Obligations, Provident was required to keep debenture funds separate from all other funds of Provident and/or have in place a system for ensuring that debenture funds were only used in accordance with the Trust Deed Obligations.
15. Pursuant to clause 4.1 of the Trust Deed, Provident, as beneficial owner charged in favour of the Trustee all of the company's present and future right, title and interest in and to the company's assets to secure the due and punctual payment of the secured money to debenture holders.
16. Pursuant to clause 4.4 of the Trust Deed, upon the occurrence of an event of default, the charge (referred to in paragraph 15) would automatically crystallise and operate as a fixed charge without the necessity for any action by the Trustee.

17. Pursuant to clause 11.2 of the Trust Deed, following the occurrence of an event of default, the Trustee may:
- (a) declare that all money owing (actually and contingently) on any current debentures is immediately due and payable;
 - (b) take action to enforce the company charge either itself or by the appointment of a receiver;
 - (c) apply to wind up the company; or
 - (d) take proceedings for a judgment against the company for the payment of money or damages.

Directors' Duties

18. Pursuant to section 180(1) of the Corporations Act and under the general law, each of the defendants were required to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise if they:
- (a) were a director or officer of a corporation in the circumstance of Provident;
and
 - (b) occupied the office held by, and had the same responsibilities within the corporation as, the director or officer,
- (Directors' Duties).

Provident's Statutory Requirements

19. At all material times, pursuant to section 283BF of the Corporations Act Provident was required to produce a quarterly report to AET and ASIC containing notification of (amongst other things):
- (a) any failure by Provident to comply with the terms of the debentures or the provisions of the Trust Deed;
 - (b) any event that happened during the quarter that caused or could cause:
 - (i) any amount deposited or lent under the debentures to become immediately payable;

- (ii) the debentures to become immediately enforceable;
 - (iii) any other right or remedy under the terms of the debenture or provisions of the Trust Deed to become immediately enforceable;
- (c) any circumstances that occurred during the quarter that immediately prejudiced:
- (i) Provident, any of its subsidiaries, or any guarantor(s);
 - (ii) any security interest included in or created by the debentures or the Trust Deed;
- (d) any substantial change in the nature of the business of the borrower, any of its subsidiaries, or any of the guarantors;
- (e) any other matters that may materially prejudice any other interests of the debenture holders,

(Section 283BF Reports).

20. At all material times, pursuant to Part 6D.2 and section 710 of the Corporations Act, any prospectus offered by Provident was required to contain:
- (a) all of the information that investors and advisors would require to make an informed assessment of the rights and liabilities attaching to the securities offered;
 - (b) the assets and liabilities, the financial position and performance, profits and losses and prospects of the body that is to issue (or issued) the shares, debentures or interests.
21. At all material times, pursuant to section 728(1)(c) of the Corporations Act, Provident was required to not issue debentures if a new circumstance had arisen since the previous disclosure document had been lodged with ASIC and would have been required by section 710 of the Corporations Act to be included in the disclosure document if it had arisen before the disclosure document was lodged.
22. In ASIC's statutory administering role under section 5B of the Corporations Act, in October 2007 ASIC issued Regulatory Guide 69 "Debentures - Improving Disclosure for Retail Investors" (RG 69).

23. As an issuer of unlisted mortgage debentures, from December 2007 Provident was requested by ASIC to comply with RG 69 and in doing so:

- (a) disclose whether it met benchmarks prescribed by RG 69 (RG 69 Benchmarks); or
- (b) explain in disclosure to the trustee and debenture holders, how and why it deals with the business factors or issues underlying the benchmark in another way.

Particulars

RG 69, paragraphs 69.3 and 69.4 (paragraphs 69.6 and 69.7 from February 2012)

24. Pursuant to RG 69, issuers were required to give disclosure against the RG Benchmarks:

- (a) in the prospectus issued to debenture holders;
- (b) in ongoing disclosures as material changes occur, for example in:
 - (i) a replacement prospectus, supplementary prospectus or continuous disclosure notice;
 - (ii) at least twice a year in quarterly reports to the trustee.

Particulars

RG 69, paragraphs 69.6 and 69.7 (paragraph 69.7 from February 2012)

25. Further pursuant to RG 69, issuers were required to use the following benchmarks:

- (a) whether the issuer had equity capital of 20% or more where more than a minor part of the issuer's activities is property development or lending funds directly or indirectly for property development, the issuer should maintain a minimum equity ratio of 20%;
- (b) whether the issuer had equity capital of 8% or more in all other cases.

Particulars

RG 69, paragraph 69.35 (paragraph 69.31 from February 2012)

26. Further pursuant to RG 69, issuers were required to inform ASIC and the Trustee of matters including:

- (a) the number of loans held and the value of those loans;
- (b) by number and value, what proportion of loans were in default or arrears;
- (c) by number and value, what proportion of the total loan money lent to their largest borrower and the 10 largest borrowers.

Particulars

RG 69, paragraph 69.58 (paragraph 69.50 from February 2012)

27. Further pursuant to RG 69, issuers were required to report in relation to their compliance with the following loan-to-valuation ratios in relation to property-related activities:

- (a) where the loan relates to property development, 70% on the basis of the latest 'as if complete' valuation;
- (b) in all other cases, 80% on the basis of the latest market valuation.

Particulars

RG 69, paragraph 69.77 (paragraph 69.70 from February 2012)

28. Further pursuant to RG 69, issuers were required to disclose the proportion of loans in default, and Provident's approach to such loans.

Particulars

RG 69, paragraph 69.67 (paragraph 69.59 from February 2012)

29. The disclosure requirements referred to in paragraphs 19 to 28 above are hereinafter referred to as the **Statutory Requirements**.

Provident's Policy Requirements

30. Provident maintained written credit and procedure manuals which employees were required to abide by (Policy Requirements) including:

- (a) the Procedure Manual dated 14 August 2007 (2007 Manual);

- (b) the Procedure Manual dated 31 March 2008 (2008 Manual);
 - (c) the Procedure Manual dated 9 September 2009 (2009 Manual).
31. The Policy Requirements included that Provident was only permitted to enter into a development and construction loan, being a loan for the finance of land development, residential, commercial or industrial project construction:
- (a) with an LVR not exceeding between 65% and 66% in respect of the land purchase price;
 - (b) with an LVR not exceeding 70% in respect of the end value of the project on completion;
 - (c) with a term not exceeding two years in duration.

Particulars

2007 Manual, clause 3.5

2008 Manual, clause 3.5

2009 Manual, clause 3.5, 3.27

Provident Platinum Construction & Development Lending Guide
(effective from 15/09/09)

32. The Policy Requirements included that Provident was only permitted to enter into interest only loans:
- (a) with terms not exceeding 60 months;
 - (b) with a LVR not exceeding 85% in respect of residential land;
 - (c) with a LVR not exceeding 75% in respect of industrial and commercial;
 - (d) with a LVR not exceeding 70% in respect of rural land.

Particulars

2007 Manual, clause 3.5

2008 Manual, clause 3.5

2009 Manual, clause 3.5, Appendix 2

33. The Policy Requirements included that all property offered as security for any loan by Provident:

- (a) had been valued by a registered valuer as instructed by Provident;
- (b) had been valued with the valuation being addressed to Provident and stating that "it has been prepared for mortgage purposes under instructions from Provident Capital Limited".

Particulars

2007 Manual, clause 3.15

2008 Manual, clause 3.15

2009 Manual, clause 3.15, Appendix 5

34. The Policy Requirements included that upon default by a borrower of Provident, Provident would commence recovery action promptly.

Particulars

2007 Manual, clause 16.2

2008 Manual, clause 15.12

35. The Policy Requirements included that in relation to any extension of a loan beyond the loan term, the granting of the extension was to be viewed as making a new advance and the Policy Requirements in relation to a new advance were to apply.

Particulars

2007 Manual, clause 3.18, Section 6.

2008 Manual, clause 3.19, Part 6

2009 Manual, clause 3.19

36. The Policy Requirements included that where any roll over of a loan occurs, within the period of the rollover the borrower must make arrangements to either repay the loan or otherwise obtain Provident's agreement to extend the loan.

Particulars

2007 Manual, clause 3.19

2008 Manual, clause 3.20

2009 Manual, clause 3.19

Adelaide Bank Facility

37. By about August 2006, Provident desired a new source of finance in addition to the fixed term debenture interest investments, to improve Provident's short term liquidity.

Particulars

Examination of O'Sullivan 19 April 2013 - T133

38. On or about 26 August 2006, Adelaide and Bendigo Bank Limited (then known as Adelaide Bank Limited) (ABL) offered to provide Provident with a facility to enable drawdowns to a maximum of \$165,000,000 (the ABL Facility).
39. Under the terms of the ABL Facility, Provident would assign the equitable interest in certain loans to ABL Nominees Pty Limited ACN 106 756 521 (ABL Nominees), a subsidiary of ABL, and ABL would be granted a first ranking all asset charge over Provident (Purchased Loans).
40. The terms of the ABL Facility were documented in agreements with Provident including:
- (a) a Fixed Charge dated 15 August 2007 between Provident as chargor and ABL Nominees as chargee (ABL Fixed Charge);
 - (b) the Provident Warehouse Trust Issue Supplement dated 15 August 2007 (Issue Supplement);
 - (c) a Servicing Agreement dated 15 August 2007 between ABL Nominees, Provident and ABL (Servicing Agreement);
 - (d) the Provident Warehouse Trust Subscription Agreement dated 15 August 2007 (Subscription Agreement)
 - (e) a Sale Deed dated 15 August 2007 between ABL Nominees and Provident (Sale Deed).

41. Provident refers to the ABL Facility, Servicing Agreement, Issue Supplement, Subscription Agreement and Sale Deed and Charge (together, ABL Transaction Documents) as if they were set out in full in this statement of claim.
42. The ABL Transaction Documents were executed by Bersten and O'Sullivan as directors of Provident.
43. The ABL Fixed Charge was secured over Provident's right, title and interest in connection with any Purchased Loans and related securities.
43. It was an express term of the ABL Fixed Charge that in the event of an insolvency triggering default under the Trust Deed and ABL Fixed Charge, the money received by Provident would be applied first to AET and thereafter to ABL under the ABL Fixed Charge.

Particulars

Clause 3.4 of ABL Fixed Charge

44. Other terms of the ABL Facility provided that:
- (a) Provident was appointed by ABL Nominees to originate the mortgage loans:

Particulars

Clause 2.1 of the Sale Deed

- (b) Provident could then offer to sell the mortgage loans to ABL Nominees (subject to certain eligibility criteria) in accordance with the terms of the ABL Facility;

Particulars

Clauses 3.1 and 3.2 of the Sale Deed

- (c) an offer by Provident to ABL Nominees was an offer to assign in equity Provident's right, title and interest in the relevant loan and securities, insurance policy and title documents;

Particulars

Clause 3.4 of the Sale Deed

- (d) acceptance of an "Offer to Sell" by ABL Nominees in accordance with the ABL Facility constituted, without any further act or instrument, an immediate assignment to ABL Nominees in equity of Provident's entire right, title and interest;

Particulars

Clause 4.2(b) of the Sale Deed

- (e) any sale, transfer or assignment to ABL Nominees was equitable only;

Particulars

Clause 4.3 of the Sale Deed

- (f) Provident undertook to not do or omit to do anything which might or may cause or contribute to a deterioration in value of any Purchased Loan or related security;

Particulars

Clause 6(g) of the Sale Deed

- (g) Provident agreed to indemnify ABL Nominees against any liability, loss, costs, charges and expenses arising from or incurred in connection with the Purchased Loans.

Particulars

Clause 8 of the Sale Deed

45. Pursuant to the terms of the ABL Facility, loans that were proposed to be Purchased Loans, and loans that became Purchased Loans, were required to meet prescribed eligibility criteria, including on an ongoing basis, namely:

- (a) for the period from 20 February 2009:
- (i) LVR of 75% in respect of land for use for residential purposes;
- (ii) LVR of 65% in respect of land for use for commercial and industrial purposes;

Particulars

Letter dated 20 February 2009 from ABL to Provident and others

(ABL LVR Requirements):

- (h) each Purchased Loan be secured by a first registered real property mortgage and, if applicable, a registered all assets charge and guarantee given by company borrowers:

Particulars

Paragraph (k) of Schedule 3 to the Sale Deed

46. Pursuant to the terms of the Servicing Agreement, Provident undertook to ensure that certain ratio tests were satisfied by each quarter date, being 8 August, November, February and May of each calendar year:
- (a) a Current Test Ratio being greater than 1;
- (b) an Interest Cover Ratio being less than 10;
- (c) a Net Equity of not less than \$2 million,

with such terms being defined in the Servicing Agreement,

(ABL Ratio Requirements).

Particulars

Servicing Agreement, clause 3(r) as amended from time to time

47. Under the terms of the Sale Deed, Provident warranted, amongst other things, that:
- (a) it was the sole legal and beneficial owner of the Mortgage Loan and Related Security and immediately prior to the assignment of the Mortgage Loan and Related Security under the deed;
- (b) other than the Mortgage Loan and the Security Documents, there were no documents entered into between Provident and any other person in relation to the Mortgage Loan and the Related Security which would qualify or vary the terms of the Mortgage Loan and related security;

- (c) Provident had not created, attempted to create or consented to, and is not otherwise aware of the creation or existence of, any Encumbrance over or affecting the Mortgage Loan or Related Security.

(ABL Warranties).

Particulars

Sale Deed clause 5.2(h), 5.2(k), 5.2(l)

48. Under the terms of the Sale Deed, Provident undertook amongst other things:
- (a) not to create, attempt to create or consent to the creation of, any encumbrance in respect of any of the Purchased Loans or purchased related security or hold itself out to any person as having any right or authority to transfer or otherwise dispose of or offer or agree to transfer or otherwise dispose of any Purchased Loans or purchased related security or any interest in them;
- (b) that if it became aware that a Purchased Loan or related security was not an Eligible Mortgage Loan or Eligible Related Security (as applicable), to promptly notify the ABL Nominees (providing all relevant details) after becoming aware of the relevant information,

(ABL Undertaking).

Particulars

Sale Deed clause 6(f), 6(i)

49. It was an Event of Default under the terms of the ABL Facility if Provident did not comply with any of its obligations under any ABL Transaction Document, which included, but was not limited to, the ABL LVR Requirements and ABL Ratio Requirements, the ABL Warranties and the ABL Undertaking.

Particulars

Issue Supplement, clause 1.2 (Event of Default)

50. Pursuant to the terms of the Servicing Agreement, upon the occurrence of an Event of Default, ABL was entitled to terminate the provision of financial accommodation under the ABL Facility.

Particulars

Issue Supplement, clause 1.2 (Event of Default)

51. Under the terms of the ABL Facility, Provident was required at all material times to maintain a cash collateral account with a balance of \$5 million to \$10 million on a sliding scale according to the portfolio balance (Collateral Account).

Particulars

Issue Supplement, clause 1.2 (Collateral Account Required Balance)

52. Provident was required by the ABL Facility to top up the Collateral Account in the event that:
- (a) a loan was greater than 90 days in arrears; and
 - (b) the loan to value ratio exceeded 75%.

Particulars

Issue Supplement, clause 4

53. Provident was required under the terms of the ABL Facility to repurchase from ABL any Purchased Loan that was found to be:
- (a) ineligible for transfer to ABL Nominees for breach of the requirements set out in Schedule 3 of the Sale Deed; or
 - (b) in excess of 270 days in arrears up to a maximum aggregated value of 5% of all loans funded under the ABL Facility at the time.

Particulars

Clause 7 of the Sale Deed

54. It was a term of the ABL Facility that in the event that Provident did not re-acquire Purchased Loans as required, ABL Nominees was entitled to recoup the value of the Purchased Loans from the Collateral Account.

Provident's Debenture Prospectus and Financial Reports

55. On or about 4 December 2007 Provident lodged with ASIC and issued Debenture Prospectus 10 under which Provident sought investment from the public in its debenture portfolio (DP 10).

Particulars

Provident Debenture Prospectus 10 dated 18 December 2007

56. By 31 December 2007, Provident reported in its interim Financial Report inter alia:
- (a) total assets of \$230,452,740
 - (b) total liabilities of \$214,560,359;
 - (c) total equity of \$15,892,381.

Particulars

Provident Condensed Interim Financial Report for Half Year End 31 December 2007

57. As at 29 February 2008 Provident's Management Accounts inter alia:
- (a) stated a gross profit margin of approximately 5.63%;
 - (b) did not report the top 10 largest loans;
 - (c) stated that 32.28% of Provident's loans were in arrears.

Particulars

Board Report February 2008

58. By 30 June 2008, Provident reported in its Financial Report inter alia:
- (a) total assets of \$239,834,246
 - (b) total liabilities of \$225,358,236;
 - (c) total equity of \$14,476,010.

Particulars

Provident Financial Report for Year End 30 June 2008

59. As at 30 June 2008 Provident's Management Accounts inter alia:
- (a) reported a stated a gross profit margin of 4.7%;
 - (b) did not report the top 10 largest loans;
 - (c) stated that "around 27%" of Provident's loans were in arrears.

Particulars

Board Report July 2008

60. By 30 June 2008, Provident's loan portfolios were recorded in the company's books and records as stating:
- (a) interest arrears carried a net value comprising 70.5% of the fixed term investment (FTI) loan portfolio;
 - (b) interest arrears carried a net value comprising 26.4% of the ABL loan portfolio;
 - (c) those loans of the FTI portfolio whose terms had expired comprising 25.4% of the total FTI portfolio.

Particulars

PCL Monthly Reports\2008\08 06 June\06-2008 Reconciliations\1-1130 Loan Advances and 1-3130 Loan Advances - ABL Carl.xlsx

PCL Monthly Reports\2008\08 06 June\06-2008 Reconciliations\1-1130 & 1-3130 Loan Interest Receivable.xlsx

PCL Monthly Reports\2008\08 06 June\06-2008 Reconciliations\1-1131 PCF - Loan Advances.xlsx

PCL Monthly Reports\2008\08 06 June\06-2008 Reconciliations\1-1164 PCF Loan Interest receivable.xlsx

Statutory Accounts\2008, 30 June\loan provisions 30 june 2008.xlsx

Statutory Accounts\2008, 30 June\trialbalance 270808.xls

Statutory Accounts\2008, 30 June\Annual Financial Report 2008 Signed.pdf

61. By 31 December 2008, Provident's loan portfolios were recorded in the company's books and records as stating inter alia:

- (a) interest arrears carried a net value comprising 75.5% of the FTI loan portfolio;
- (b) interest arrears carried a net value comprising 37.1% of the ABL loan portfolio;
- (c) the loans in the total FTI portfolio whose term had expired comprised 47.8% of the total FTI portfolio.

Particulars

PCL Monthly Reports\2009\08 12 Dec\Reconciliations\1-1130 Loan Advances and 1-3130 Loan Advances.xlsx

PCL Monthly Reports\2009\08 12 Dec\Reconciliations\1-1160 & 1-3160 Loan Interest Receivable.xlsx

Statutory Accounts\2008, 31 December\WT final recon to Stat Accounts.pdf

62. As at 31 December 2008, Provident reported in its Interim Financial Report inter alia:

- (a) total assets of \$253,049,449;
- (b) total liabilities of \$236,741,007;
- (c) total equity of \$16,308,442.

Particulars

Provident's Interim Financial Report – For the half-year ended 31 December 2008

63. As at 30 January 2009, Provident reported in its Management Accounts inter alia that:

- (a) a net profit margin of approximately 4% on loans advanced;

- (b) the 10 largest loans comprised \$59,497,267.95 all of which were made using debenture funds;
- (c) all of the 10 largest loans were in arrears;
- (d) the 10 largest loans amounted to 27.15% of the overall portfolio of loans.

Particulars

Board Report January 2009

64. By 30 June 2009 Provident had provisioned an amount of approximately \$3.45 million for non-performing loans (NPLs) in respect of total loans and advances which amounted to approximately \$196 million.

Particulars

Provident Financial Report for year ended 30 June 2009 – Note 8

65. By 30 June 2009, Provident's loan portfolios were recorded in the company's books and records as stating:
- (a) interest arrears carrying a net value comprising 77.9% of the FTI loan portfolio;
 - (b) interest arrears carrying a net value comprising 37.8% of the ABL loan portfolio;
 - (c) those loans of the FTI portfolio whose terms had expired comprised 59.1% of the total FTI portfolio.

Particulars

Statutory Accounts\2009, 30 June\Notes\Reconciliation of Master FS09 Loan Book.xlsx

PCL Monthly Reports\2009\09 06 June\Reconciliation\1-1160 & 1-3160 Loan Interest Receivable.xlsx

Statutory Accounts\2009, 30 June\Notes\Note 4 - 20.xlsx

PCL Monthly Reports\2009\09 06 June\Reconciliation\1-1130 Loan Advances and 1-3130 Loan Advances.xlsx

66. As at 30 June 2009, Provident reported in its Financial Reports inter alia:

- (a) total assets of \$226,626,209;
- (b) total liabilities of \$212,058,841;
- (c) total equity of \$14,567,368.

Particulars

Provident Financial Report for Year End 30 June 2009

67. As at 30 June 2009, Provident reported in its Management Accounts inter alia:

- (a) a net profit margin of approximately 6.36% on loans advanced;
- (b) the 10 largest loans comprised approximately \$61.12 million (\$61,123,107.55) all of which were made using debenture funds;
- (c) all of the 10 largest loans were in arrears;
- (d) the 10 largest loans amounted to 31.8% of the overall FTI portfolio of loans.

Particulars

Board Report January 2009

68. As at 31 December 2009, Provident reported in its Financial Reports inter alia:

- (a) total assets of \$210,811,525;
- (b) total liabilities of \$194,811,066;
- (c) total equity of \$16,000,459.

Particulars

Provident Interim Financial Report - For the half-year ended 31 December 2009

69. By 31 December 2009, Provident's loan portfolios were recorded in the company's books and records as stating:

- (a) interest arrears carried a net value comprising 74.1% of the FTI loan portfolio;

- (b) interest arrears carried a net value comprising 37.8% of the ABL loan portfolio;
- (c) the loans in the FTI portfolio whose terms had expired comprised 42.5% of the total FTI portfolio.

Particulars

Statutory Accounts\2009, 31 December\Notes\Notes Dec 09 -Loan Advances .xlsx

PCL Monthly Reports\2010\09 12 Dec\Reconciliations\1-1160 & 1-3160 Loan Interest Receivable.xlsx

Statutory Accounts\2009, 31 December\TB\TB Dec 09.xlsx

PCL Monthly Reports\2010\09 12 Dec\Reconciliations\1-1130 Loan Advances and 1-3130 Loan Advances.xlsx

- 70. On or about 24 December 2009 Provident lodged with ASIC and issued Debenture Prospectus 11 (DP 11) under which Provident sought investment from the public in its debenture portfolio.

Particulars

Provident Debenture Prospectus 11 dated 24 December 2008

- 71. During the period January 2008 to January 2010, Provident produced and issued the Section 283 Reports and RG 69 reports (RG 69 Reports) to AET and to ASIC (together Regulatory Reports).

Particulars

Section 283 Report – in respect of the financial quarter ending 31 December 2007

RG69 Report – in respect of the financial half-year ending 31 December 2007

Section 283 Report – in respect of the financial quarter ending 31 March 2008

Section 283 Report - in respect of the financial quarter ending 30 June 2008

RG 69 Report – in respect of the financial year ended 30 June 2008

Section 283 Report - in respect of the financial quarter ending 30 September 2008

Section 283 Report - in respect of the financial quarter ending 31 December 2008

RG 69 Report – in respect of the financial half-year ended 31 December 2008

Section 283 Report - in respect of the financial quarter ending 31 March 2009

Section 283 Report - in respect of the financial quarter ending 30 June 2009

RG 69 Report – in respect of the financial year ended 30 June 2009

Section 283 Report – in respect of the financial quarter ending 30 September 2009

Section 283 Report - in respect of the financial quarter ending 31 December 2009

RG 69 Report – in respect of the financial half-year ended 31 December 2009

72. At all material times the defendants were aware of:

- (a) the financial position of Provident as reported in the Financial Reports and Management Accounts as pleaded above;
- (b) the matters and content of DP 10 and DP 11;
- (c) the matters and content of the Regulatory Reports.

(Reported Financial Position).

Particulars

All management accounts and Financial Reports were made available to and approved by the defendants as members of the Board

All Regulatory Reports were made available to and approved by the defendants as members of the Board

Dividends

73. In 2009 and 2010, upon resolutions of the defendants, the following dividends were declared by Provident:

- (a) on 15 April 2009 a dividend of \$1.45 million (April 2009 Dividend);
- (b) on 23 June 2010 a dividend of \$2.5 million (June 2010 Dividend).

Particulars

Provident Board Minutes 15 April 2009

Provident Board Minutes 23 June 2010

Provident Loans

74. During the period 2008 to the date of the appointment of the Receivers, Provident failed to:

- (a) correctly provision for loans including in respect of NPLs;
- (b) regularly obtain valuations in respect of security properties including in respect of NPLs;
- (c) correctly report the status of loans in its books and records,

in relation to loans including those to:

- (d) Burleigh Views Pty Limited (in liquidation);

Particulars

Further particulars are provided in paragraphs 75 to 102 below

- (e) Chrysalis Pty Limited;

Particulars

Further particulars are provided in paragraphs 103 to 126 below

- (f) Delta Dawn Pty Limited and Yarraman Estate Pty Limited;

Particulars

Further particulars are provided in paragraphs 127 to 159 below

- (g) Unique Castle Development Pty Limited;

Particulars

Further particulars are provided in paragraphs 160 to 194 below

- (h) Pritchett Property Group Pty Limited and Medical & Legal Assessments (NSW) Pty Limited and Medical & Legal Imaging (NSW) Pty Limited;

Particulars

Further particulars are provided in paragraphs 195 to 212 below

- (i) Paul Vincent Hanna;

Particulars

Further particulars are provided in paragraphs 213 to 227 below

Particulars

- (j) MJ Server Pty Limited;

Particulars

Further particulars are provided in paragraphs 228 to 253 below;

- (k) Cleveland Corporation Pty Limited;

Further particulars are provided in paragraphs 254 to 290 below

(together referred to as the Loans).

Particulars

Also see the particulars set out in paragraphs 291 to 314 below

Burleigh Views

75. Provident provided financial accommodation by way of a development loan to Construction Management Consultants Pty Limited (later Burleigh Views Pty Ltd (in

liquidation) (controllers appointed)) (Burleigh Views) under the following arrangements:

- (a) by a Loan Agreement dated 21 March 2000, Provident advanced the sum of \$4 million for a period of 12 months (First Burleigh Agreement):
- (b) by a Deed of Variation dated 17 January 2002, Provident advanced the sum of \$4.942 million (drawn down on 20 December 2001), with a date of expiration of 20 December 2002 (Second Burleigh Agreement):
- (c) by a Deed of Variation dated 20 June 2002, Provident advanced the sum of \$5.165 million with a date of expiration of 20 March 2003 (Third Burleigh Agreement):
- (d) by a Deed of Variation dated 24 April 2004, Provident advanced the sum of \$8.89 million with a date of expiration of 30 November 2004 (Fourth Burleigh Agreement):
- (e) by a Letter of Offer dated 3 May 2007, Provident advanced the sum of \$13.5 million with a term of 12 months (Fifth Burleigh Agreement).

(the Burleigh Views Loan).

76. Following 3 May 2008 (being the expiration of the term under the Fifth Burleigh Agreement), the loan balance of the Burleigh Views Loan increased to \$22,040,956 (as at 11 May 2012) by reason of the capitalisation of interest and the debiting of other amounts, including expenses, fees and charges to the loan account.

Particulars

Transaction Statement for period 1 March 2008 to 9 October 2012

77. At all material times, the loans made by Provident to Burleigh Views comprised the largest loan made by Provident to a borrower.
78. As security for the advances under the agreements referred to in paragraph 75 above:
- (a) the borrower granted a real property mortgage over the property located at 4 Fleay Court, Burleigh Views, Queensland (Burleigh Views Property):

Particulars

Mortgage dated 21 March 2000 over lot 9 on survey plan 102655 and registered as dealing numbered 703957797

- (b) the directors of the borrower, Antony John Zarro and Pasqual Zarro (Burleigh Guarantors) granted to Provident a Guarantee and Indemnity in respect of the liabilities of Burleigh Views.

Particulars

Deed of Guarantee and Indemnity dated 21 March 2000

79. Provident obtained the following real property valuations in respect of the Burleigh Views Property:

- (a) a valuation by Gradmont Pty Ltd dated 2 March 2001 (Gradmont Valuation) which provided values of \$5.62 million in respect of stage one (upon completion) and \$1.15 million (residual land value);

- (b) a valuation by PRP Valuers and Consultants dated 23 December 2003 (PRP Valuation) which:

- (i) provided values of \$5.9 million for "as is with Development Approval in place" and \$17.222 million for the gross realisation of the project "on completion";
- (ii) assumed "all relevant information in respect of town planning approvals [had] been provided and the land [was] capable of the proposed development";
- (iii) annexed a copy of the Development Approval;
- (iv) failed to be instructed or otherwise identify that the Burleigh Permit had lapsed.

80. Provident was also provided with and relied upon a real property valuation in relation to the Burleigh Views Property prepared by Colliers International dated 4 September 2007 which:

- (a) was not obtained on the instructions of Provident;
- (b) was not addressed to Provident;

- (c) did not state that it had "been prepared for mortgage purposes under instructions from Provident Capital Limited".

(Colliers Valuation).

Particulars

Valuation Report dated 4 September 2007 addressed to DKR Developments Pty Limited prepared by Colliers International

81. From March 1998, Burleigh Views held a development consent issued by the Gold Coast City Council in respect of the Burleigh Views Property (Burleigh Permit), pursuant to which:
- (a) it was necessary for the use of the Burleigh Views Property, under its approved purpose, to commence prior to 11 March 2002;
- (b) in the event that the use did not commence prior to 11 March 2002, the Burleigh Permit would lapse.

Particulars

Letter from Gold Coast City Council to Randall Barrington Town Planner dated 11 March 1998

82. In the period from 20 March 2001 to 20 December 2001, the First Burleigh Views Loan was in default in that no loan agreement was in place, the loan rolled over from month to month, interest was being capitalised and added to the principal outstanding and no repayments were being made.
83. As a matter of fact and law, the Burleigh Permit lapsed on 11 March 2002 however neither Provident nor as its directors made any or proper inquiries from that date until August 2009 as to the status of the Burleigh Permit.
84. In the period from 20 March 2004 to 24 April 2004, the Third Burleigh Views Loan was in default in that there was no loan agreement in place, the loan rolled over from month to month, interest was being capitalised and added to the principal outstanding and no repayments were being made.
85. Construction works at the Burleigh Views Property commenced in or about August 2004.

Particulars

Letters from Simon Hanau & Associates to Provident dated 20 July 2004

Decision Notice for Operational Works Application dated 22 June 2004

Examination of O'Sullivan 17 April 2013 - T93.44

86. In the period from 30 November 2004 to 2 May 2007, the Fourth Burleigh Views Loan was in default in that there was no loan agreement in place, the loan rolled over from month to month, interest was being capitalised and added to the principal outstanding and no repayments were being made.
87. In May 2006, the Provident board reports erroneously reported in relation to Burleigh Views that the development was complete, that the security presented a low LVR and that there was an expectation of a sale of the Burleigh Views Property occurring soon.

Particulars

Provident Board Minutes - 17 May 2006

88. Between June 2006 and October 2006, the Provident board reports erroneously reported in relation to Burleigh Views that the Burleigh Views Property was under offer and contracts were to be signed (or had been signed) on 18 July 2006.

Particulars

Provident Board Minutes – June, July, August, September, October 2006

89. Between December 2006 and February 2007, the Provident board reports erroneously reported in relation to Burleigh Views that the loans to Burleigh Views were in the process of being refinanced.

Particulars

Provident Board Minutes – December 2006, January 2007 and February 2007

90. At no stage between March 2007 and August 2008 was the status of the loans to Burleigh Views recorded in the Provident board reports.
91. By 3 May 2008 the Fifth Burleigh Loan Agreement had expired on its terms.

92. On 3 May 2007 the Fifth Burleigh Loan Agreement was entered into.
93. In the period from 3 May 2008 and continuing, the Fifth Burleigh Views Loan was in default in that there was no loan agreement in place, the loan rolled over from month to month, interest was being capitalised and added to the principal outstanding and no repayments were being made.
94. On or about 21 August 2008 Burleigh Views was placed into liquidation and Andrew Fielding of BDO Kendalls appointed liquidator.
95. On or about 5 September 2008 Provident appointed O'Sullivan as a controller of the Burleigh Views Property.

Particulars

ASIC Form 504 executed on 9 September 2008

96. In September 2008, the Provident board reports reported in relation to Burleigh Views that the loans to Burleigh Views were in arrears but failed to make any reference to the borrower being in liquidation or a controller having been appointed to the Burleigh Views Property.

Particulars

Provident Board Minutes – September 2008

97. By 20 August 2009 Provident received confirmation from the relevant consent authority, the Gold Coast City Council, that:
- (a) the Burleigh Permit had lapsed;
 - (b) given the lapsing of the Burleigh Permit, the development could not lawfully be completed and occupied,

(Gold Coast City Council Advice).

Particulars

Letter from Gold Coast City Council to Provident dated 13 August 2009
(date stamped 20 August 2009)

98. By 30 October 2009 Provident had received planning advice which confirmed:

- (a) the Burleigh Views Property was "now contained in the open space precinct under the Burleigh Ridge local area plan";
- (b) that it would be difficult to obtain permission to construct more than the 18 units already under construction.

Particulars

Email from Jake Storey to O'Sullivan dated 30 October 2009

99. By 1 April 2010 Provident had received legal advice which confirmed the correctness of the Gold Coast Council Advice (Burleigh Legal Advice).

Particulars

Letter from IPA Law Planning Lawyers to Jake Storey dated 3 December 2009, forwarded to the first defendant by email dated 10 December 2009

Letter from Minter Ellison (Gold Coast) to first defendant dated 1 April 2010

100. At no time following the provision of the Gold Coast City Council Advice or the Burleigh Legal Advice, did Provident obtain a valuation in respect of the Burleigh Views Property which assumed that:
- (a) no development consent existed; and/or
 - (b) a lapsing of the Burleigh Permit had occurred.

101. Notwithstanding the matters pleaded in paragraphs 75 to 100 above:

- (a) financial accommodation continued to be made available to the extent that interest was capitalised each month such that the balance outstanding under the Burleigh Views Loan was \$22,037,771 as at April 2012;

Particulars

Provident Arrears Report - April 2012

- (b) Provident failed to sell the Burleigh Views Property for the purpose of reducing the liability outstanding;
- (c) Provident failed to engage any person with experience in dealing with impaired security assets in the nature of an incomplete construction project;

(d) no new loan documentation was put in place following the expiration of the facility in May 2008.

102. From and following 3 May 2008, the advances to Burleigh Views by Provident, including under the agreements referred to in paragraph 76:

(a) did not satisfy the Policy Requirements.

Particulars

- (i) Provident failed to obtain a valuation in respect of the Burleigh Views Property at the time of the entry into any of the First, Third, Fourth and Fifth Burleigh Agreements;
- (ii) Provident failed to obtain a valuation in respect of the Burleigh Views Property in respect of all rollovers, extensions and further advances to Burleigh Views by Provident;
- (iii) the LVR applicable to the Burleigh Views Property and the loans to Burleigh Views, at all material times failed to comply with the LVR requirements of the Policy Requirements;

Sub-Particulars

The Gradmont Valuation and the PRP Valuation assumed the existence of the Development Consent

The Development Consent had lapsed by March 2002

- (iv) Provident failed to enforce its security after defaults by Burleigh Views or at all;
- (v) Provident failed to take any enforcement action against any of the Burleigh Guarantors;
- (vi) Provident continued to extend or roll over the loan to the borrower, capitalising interest, in the absence of any loan agreement or variation;
- (vii) Provident entered into new loan agreements when the loan was in default;

- (viii) Provident relied upon valuation reports prepared by valuers not instructed by Provident and which were not addressed to Provident

Sub-Particulars

The Colliers Valuation

- (ix) further particulars will be provided following provision of expert evidence;
- (b) did not satisfy the Trust Deed Obligations;

Particulars

- (i) at no material time did the Burleigh View loans comply with the LVR requirements of the Trust Deed;

Sub-particulars

The Gradmont Valuation and the PRP Valuation assumed the existence of the Development Consent

The Development Consent had lapsed by March 2002

- (ii) further particulars will be provided following provision of expert evidence;
- (c) did not satisfy the requirements of a reasonably prudent and diligent lender.

Particulars

- (i) Provident failed to obtain any certified valuation of the Burleigh Views Property in relation to the land alone, and on the basis that there was not any Development Consent in place;
- (ii) Provident failed to monitor the currency of the development approval, notwithstanding that the various valuations were contingent upon having a valid development approval;
- (iii) Provident failed to ascertain the likely development costs of the proposed construction on Burleigh Views;

- (iv) Provident failed to recognise or take into account the physical limitations inherent within the Burleigh Views Property;
- (v) Provident failed to manage the Burleigh Views Property after the commencement of enforcement action;
- (vi) Provident failed to properly take into account that there had been minimal if any at all, repayment by the borrower throughout the life of the financial accommodation provided by Provident to Burleigh Views;
- (vii) Provident failed to engage a suitably qualified and independent project manager after the commencement of enforcement action;
- (viii) Provident failed to have any independent verification of construction costs after the commencement of enforcement action including but not limited to certifications by a duly qualified quantity surveyor with respect to the value of works performed and the subject of the drawdowns under the Burleigh Views Loans;
- (ix) Provident failed to meet the requirement that loans not exceed a limited period, and rather allowed a perpetual rolling over of facilities in default;
- (x) Provident entered into new loan agreements when the prior loans were in default and the borrower had not made any repayments of principal or interest from the time of the entry into the First Burleigh Agreement on 21 March 2000 until the appointment of the Receivers in July 2012;
- (xi) Provident failed to correctly report the status of the Burleigh Views Loans in its books and records, including its status as an arrears loan;
- (xii) Provident repeats paragraphs (a) and (b) above;
- (xiii) further particulars will be provided following provision of expert evidence;

(together, the Burleigh Breaches).

Chrysalis Pty Limited

103. Provident provided financial accommodation to Chrysalis Holdings Pty Limited (Chrysalis), under the following arrangements:

- (a) by a Deed of Loan dated 23 June 2000, Provident advanced the sum of \$1.89 million for a period of 12 months (First Chrysalis Agreement);
- (b) by a Loan Agreement dated 6 March 2003, Provident advanced the sum of \$4.65 million for a period of 12 months (Second Chrysalis Agreement);
- (c) by a Deed of Loan dated 15 June 2006, Provident advanced the sum of \$5.530 million with a repayment date of 31 July 2007 (Third Chrysalis Agreement),

(together Chrysalis Loan Agreements).

104. At all material times, the loans made by Provident to Chrysalis (Chrysalis Loan) comprised one of the 10 largest individual loans made by Provident to a borrower.

105. As security for the advances under the Chrysalis Loan Agreements:

- (a) Chrysalis granted a real property mortgage over the property located at 9 Watt Street, Newcastle, New South Wales (Chrysalis Property);

Particulars

Mortgage dated 23 June 2000 over lot 201/748898 and registered as dealing number 6892976

- (b) Chrysalis charged its assets in favour of Provident;

Particulars

Fixed and floating equitable charge dated 23 June 2000

- (c) Donna Batiste, the director of Chrysalis, provided a guarantee.

Particulars

Deed of guarantee dated 23 June 2000

106. Chrysalis purchased the Chrysalis Property for the sum of \$1.32 million on or about 10 April 2000.

Particulars

Transfer dated 23 June 2000 and registered with the LPI as dealing number 6892975

107. Between May 2000 and March 2012, Provident obtained the following real property valuations in respect of the Chrysalis Property:

- (a) a valuation dated 22 May 2000 from Colliers Jardine which:
 - (i) provided an "as is" valuation of \$1.6 million;
 - (ii) provided an "as if complete" valuation of \$2.7 million; and
 - (iii) referred to and assumed the existence of a development consent in respect of "alterations to the façade and internal alterations to the existing club premises";

- (b) a valuation dated 15 February 2003 from J McArthur Pty Ltd which provided:
 - (i) a current market value of \$4.5 million;
 - (ii) a hypothetical land value as a "D/A approved development site" of \$8.44 million;
 - (iii) a "hypothetical current end value of a completed site" of \$26.05 million;
 - (iv) assumed a total development cost to complete 39 units and three shops to be \$10 million.

(2003 Valuation).

- (c) a valuation dated 9 December 2009 from RM Bernsten Associates which provided:
 - (i) a "value as is with DA" in the amount of \$3.32 million;
 - (ii) a recommendation that Provident obtain a current quantity surveyor's report;
 - (iii) a value "as if completed" of \$29.285 million.

(2009 Chrysalis Valuation):

- (d) a revised valuation on 11 March 2010 (being a revision of the 2009 Chrysalis Valuation) from RM Bernsten Associates which:
- (i) provided a "value as is with DA" in the amount of \$7.3 million;
 - (ii) provided a value "as if completed" of \$29.285 million;
 - (iii) referred to revision of the property value by reason of the provision of "new costings supplied by the lender".

(2010 Chrysalis Valuation):

- (e) a valuation dated 9 March 2012 from Diamonds/DPC Valuers Pty Ltd:
- (i) which provided an "as is valuation" of \$7.85 million;
 - (ii) assumed a development approval "as per DA 08/2012".

(2012 Chrysalis Valuation):

108. In the period from 23 June 2001 to 6 March 2003, the First Chrysalis Loan was in default in that there was no loan agreement in place, the loan rolled over from month to month, interest was being capitalised and added to the principal outstanding and no repayments were being made.
109. On 20 December 2002 creditors winding up proceedings were commenced against Chrysalis, which were subsequently discontinued on 3 March 2003.
110. The funds advanced by Provident under the Second Chrysalis Agreement were utilised exclusively to pay arrears under the First Chrysalis Agreement.

Particulars

Chrysalis loan reconciliation prepared 15 June 2006

111. In the period from 6 March 2004 to 15 June 2006, the Second Chrysalis Loan was in default in that there was no loan agreement in place, the loan rolled over from month to month, interest was being capitalised and added to the principal outstanding and no repayments were being made.
112. On 22 July 2004 Chrysalis obtained development approval in respect of the Chrysalis Property.

Particulars

Development Approval issued by City of Newcastle dated 22 July 2004

113. At various times Provident incorrectly recorded in its books and records the realisable value of the Chrysalis Property.

Particulars

- (a) in or about August 2006 Provident increased the realisable value of the Chrysalis Property to \$8.47 million without obtaining or having reference to any updated property valuation
- (b) from about August 2007 until about March 2010 Provident maintained in its books and records the realisable market value of the Chrysalis Property at \$8.47 million without obtaining or having reference to any updated property valuation

Sub-particulars

Provident Management Accounts – August 2006 - August 2007 – March 2010 PCL

114. In the period from 31 July 2007 and continuing thereafter, the Third Chrysalis Loan was in default in that there was no loan agreement in place, the loan rolled over from month to month, interest was being capitalised and added to the principal outstanding and no repayments were being made.
115. On 27 August 2007 ASIC commenced a strike-off action against Chrysalis, which ceased on 4 September 2007.
116. On 25 February 2008 creditors winding up proceedings were commenced against Chrysalis, which were subsequently discontinued on 24 April 2008.
117. On 26 May 2009 creditors winding up proceedings were commenced against Chrysalis, which were subsequently discontinued on 6 August 2009.
118. On 16 July 2009, Provident took possession of the Chrysalis Property as mortgagee in possession.
119. In July 2009 Provident commenced demolition works to the cost of \$470,350.61, notwithstanding that:

- (a) Provident had failed to obtain an updated valuation in respect of the Chrysalis Property for a period of six years;
- (b) the likely total development cost was between \$13.4 million and \$15.617 million;

Particulars

Email from CB Richard Ellis Pty Limited to Provident dated 13 July 2006 and attaching a spreadsheet estimating development costs of \$15.617 million

Quantity surveyor's report dated 3 July 2006 of the Muller Partnership estimating development costs of \$13.4 million exclusive of finance, holding and other costs (Muller Costings)

- (c) the demolition costs were disproportionately large when compared to the actual value of the security property.

- 120. In or about December 2009, Provident instructed RM Bernsten & Associates to prepare the 2009 Chrysalis Valuation on the basis of the Muller Costings and which provided a "value as is with DA" in the amount of \$3.32 million.

Particulars

2009 Chrysalis Valuation, paragraph 6.13

- 121. In or about January 2010, Provident obtained an architect's costings from Oceania Clarke Pty Ltd in respect of the development of the Chrysalis Property which estimated development costs of \$17.7 million exclusive of finance, holding and other costs (Oceania Costings).

- 122. On or about 11 March 2010, Provident obtained costings from CPT Interiors and Constructions Pty Ltd (CPT) in respect of the development of the Chrysalis Property which estimated costings of \$9.5 million (CPT Quotation).

Particulars

2010 Chrysalis Valuation, paragraph 6.12

- 123. The CPT Quotation:

- (a) was supplied by CPT, being a company owned and associated with O'Sullivan's father;
 - (b) was not supplied to Provident on an arm's length basis;
 - (c) failed to provide an accurate quotation of the cost associated with the development of the Chrysalis Property;
 - (d) substantially understated the cost associated with the development of the Chrysalis Property;
 - (e) was not provided with reference to any plans or drawings for the proposed building.
124. On or about 11 March 2010, O'Sullivan instructed RM Bernsten & Associates to prepare the 2010 Chrysalis Valuation on the assumption that construction costs would be in an amount referable to the CPT Quotation and which provided a revised "value as is with DA" in the amount of \$5.9 million.
125. Notwithstanding the matters pleaded in paragraphs 103 to 124 above, Provident:
- (a) failed to realise the Chrysalis Property in accordance with the Policy Requirements prior to the appointment of the Receivers;
 - (b) failed to obtain in respect of the Chrysalis Property an up to date valuation at the time of the Third Chrysalis Agreement in accordance with the Policy Requirements;
 - (c) at all material times until March 2012, failed to update reports to the Board to record the "as is" value of \$3.32 million in respect of the Chrysalis Property, as referred to in the 2009 Chrysalis Valuation.
126. By reason of the advances to Chrysalis by Provident, including under the Chrysalis Loan Agreements, Provident:
- (a) did not satisfy the Policy Requirements;

Particulars

- (i) notwithstanding the construction works undertaken in relation to the Chrysalis Property, Provident recorded the Chrysalis Loan at all material times as a commercial loan;

- (ii) the loan to Chrysalis breached the LVR Requirements for both commercial loans and construction loans;
 - (iii) Provident failed to enforce its security after default by Chrysalis promptly or at all;
 - (iv) Provident failed to realise the Chrysalis Property (at any time), including following its entry into possession of the Chrysalis Property;
 - (v) from the time of the 2009 Chrysalis Valuation and the 2010 Chrysalis Valuation, the Chrysalis Loan was incorrectly treated as a commercial loan because the land value with DA approval did not comply with the Policy Requirements in respect of LVRs for construction loans;
 - (vi) Provident continued to extend or roll over the loan to the borrower, capitalising interest, in the absence of any loan agreement or variation;
 - (vii) further particulars will be provided following provision of expert evidence;
- (b) did not satisfy the requirements of the Trust Deed;

Particulars

- (i) the LVR applicable to land for construction or development and/or commercial purposes;
 - (ii) further particulars will be provided following provision of expert evidence;
- (c) did not satisfy the requirements of a reasonably prudent and diligent lender;

Particulars

- (i) Provident provided inaccurate assumptions to the property valuers engaged to conduct the 2010 Valuation;

- (ii) Provident failed to properly take into account that there had been minimal repayment by the borrower throughout the life of the financial accommodation provided by Provident to Chrysalis;
- (iii) Provident failed to obtain a certified valuation of the Chrysalis Property on the basis of accurate development costs from an independent contractor;
- (iv) Provident repeats paragraphs (a) and (b) above;
- (v) further particulars will be provided following provision of expert evidence.

(together, the Chrysalis Breaches).

Delta Dawn and Yarraman

127. Gary Blom (Blom) was a director of Delta Dawn Pty Limited (Delta Dawn):
- (a) from 3 July 2002 to 6 September 2004;
 - (b) from 28 January 2009 to date.
128. On or about 25 November 2002, Delta Dawn changed its company name to Yarraman Estate Pty Limited.
129. On or about 21 October 2003:
- (a) the company name was changed back to Delta Dawn; and
 - (b) a separate entity, previously called Elliarn Pty Limited, of which Blom was also a director from time to time, was renamed Yarraman Estate Pty Limited (Yarraman).
130. Blom was a director of Yarraman:
- (a) from 3 July 2002 to 6 September 2004; and
 - (b) from 7 February 2008 to date.
131. Provident provided financial accommodation to Delta Dawn as trustee for the Yarraman Road Unit Trust, under the following arrangements:

- (a) by a Deed of Loan dated 24 December 2003, Provident advanced the sum of \$5 million for a term of 3 years from the date of the first advance (First Delta Dawn Agreement);
 - (b) by a Deed of Variation of Loan and Deed of Loan, both dated 16 June 2004, Provident advanced the sum of \$5 million for a period of 2 years and 17 days to 30 June 2006 (Second Delta Dawn Agreement);
 - (c) by a Deed of Variation of Loan dated 9 November 2004, Provident advanced the sum of a further \$506,000 on the same terms as the Second Delta Dawn Agreement (Third Delta Dawn Agreement);
 - (d) by a Finance Agreement dated 24 August 2005, Provident provided to Delta Dawn commercial bills of exchange (Delta Dawn Commercial Finance Agreement) for drawdowns up to a limit of \$500,476.64;
 - (e) by a Deed of Loan dated 21 December 2005 (which expressly superseded the First, Second and Third Delta Dawn Agreements), Provident advanced the sum of \$5 million, repayable on 30 June 2006 (Fourth Delta Dawn Agreement).
132. The terms of the Fourth Delta Dawn Agreement were subsequently further varied by:
- (a) Variation of Finance Agreement dated 29 June 2006, which extended the term of the Fourth Delta Dawn Agreement to 24 December 2006;
 - (b) Letter of Offer dated 31 May 2007, which extended the term of the Fourth Delta Dawn Agreement to 31 December 2007 and provided for an additional \$600,000 in finance to cover interest arrears and progressive drawdowns;
 - (c) Letter of Variation dated 19 December 2007, which extended the term of the Fourth Delta Dawn Agreement to 29 February 2008;
 - (d) Letter of Variation dated 18 March 2008, which extended the term of the Fourth Delta Dawn Agreement to 31 December 2008;
 - (e) Letter of Variation dated 14 January 2009 which extended the term of the Fourth Delta Dawn Agreement to 3 March 2009;

- (f) Letter of Variation dated 3 March 2009, which extended the term of the Fourth Delta Dawn Agreement to 4 May 2009;
- (g) Letter of Variation dated 4 May 2009, which extended the term of the Fourth Delta Dawn Agreement to 6 July 2009;
- (h) Letter of Variation dated 6 July 2009, which extended the term of the Fourth Delta Dawn Agreement to 15 September 2009;
- (i) Letter of Variation dated 14 March 2010, which extended the term of the Fourth Delta Dawn Agreement to 18 May 2010;
- (j) Letter of Variation dated 15 September 2010, which extended the term of the Fourth Delta Dawn Agreement to 15 November 2010;
- (k) Letter of Variation dated 15 November 2010, which extended the term of the Fourth Delta Dawn Agreement to 15 January 2011; and
- (l) Letter of Variation dated 14 January 2011, which extended the term of the Fourth Delta Dawn Agreement to 15 March 2011.

(together, Delta Dawn Extensions).

133. As security for the advances under the First Delta Dawn Agreement, Delta Dawn granted the following securities to Provident:

- (a) a real property mortgage over the property known as Yarraman Estate, 700 Yarraman Road, Wybong, New South Wales being part of auto consol 6788-204 and lots 34, 55, 57 and 100 in DP750969 (Wybong Property);

Particulars

Real property mortgage dated 24 December 2003 over the land at 111/750969, 112/750969, 891/590976, AC6788-204 and AC13584-124 and registered with the NSW LPI as mortgage numbered AA306818 (Wybong Mortgage)

- (b) an unlimited guarantee and indemnity from Blom; and

Particulars

Deed of guarantee and indemnity dated 24 December 2003

- (c) a company charge over Delta Dawn.

Particulars

Deed of Charge dated 24 December 2003 and registered on the ASIC register of company charges on 7 January 2004 as charge number 1009601 (as varied on 16 June 2004 and 21 June 2005) (Delta Dawn Charge)

(together the Delta Dawn Securities).

134. As security for the further advances under the Second Delta Dawn Agreement, Delta Dawn and Yarraman granted the following additional securities (in addition to the already-held Delta Dawn Securities):

- (a) a further guarantee and indemnity from Blom;

Particulars

Deed of guarantee and indemnity between Provident, Blom and Yarraman dated 16 June 2004

- (b) an unlimited guarantee and indemnity from Yarraman;

Particulars

Deed of guarantee and indemnity between Provident, Blom and Yarraman dated 16 June 2004

- (c) a company charge over Yarraman;

Particulars

Deed of Charge dated 16 June 2004 and registered on the ASIC register of company charges on 21 June 2004 as charge number 1053474 (Yarraman Charge)

- (d) a real property mortgage over a property owned by Yarraman known as "Warilla" or the Juigong Vineyard, Warilla, New South Wales and with folio identifiers 8/100247 and 51/1081618 (Juigong Property).

Particulars

Real property mortgage dated 16 June 2004 over the land at 11/875246 and 8/1000247 and registered with the LPI as mortgage numbered AA907810 (Jugiong Mortgage)

(together the Yarraman Securities).

135. Provident refers to the First to Fourth Delta Dawn Agreements and Delta Dawn Extensions as the Delta Dawn Agreements.
136. On or about 24 December 2003, Provident also entered into a deed of priority with Delta Dawn, Bank of Western Australia Limited and Provident Trade Capital Limited in respect of the advances and securities under the First Delta Dawn Agreement (Delta Dawn Priority Deed).
137. It was a term of the Delta Dawn Priority Deed that any funds received by an enforcement of securities provided by Delta Dawn were to be applied:
- (a) first, to Provident up to \$5 million plus interest, fees and expenses;
 - (b) then to Bank of Western Australia Limited up to \$1,120,000 plus interest, fees and expenses; and
 - (c) then to Provident Trade Capital up to \$750,000 plus interest, fees and expenses.

Particulars

Clause 2.1 of Delta Dawn Priority Deed

138. It was a term of the Third Delta Dawn Agreement made on 9 November 2004 that the Yarraman Securities and the Delta Dawn Securities be wholly cross collateralised.
139. No amendment was made to the Delta Dawn Priority Deed following the further advances by Provident under the Third Delta Dawn Agreement and the Delta Dawn Commercial Finance Agreement made on 24 August 2005.
140. Provident also agreed to provide financial accommodation to Yarraman by a Deed of Loan dated 21 December 2005 in the amount of \$5,506,000, repayable on 23 December 2006 (Yarraman Agreement).
141. The terms of the Yarraman Agreement were subsequently varied by:

- (a) Letter of Variation dated 29 August 2006, which extended the term of the Yarraman Agreement to 31 December 2007;
- (b) Letter of Variation dated 19 December 2007, which extended the term of the Yarraman Agreement to 29 February 2008;
- (c) Letter of Variation dated 18 March 2008, which extended the term of the Yarraman Agreement to 31 December 2008;
- (d) Letter of Variation dated 14 January 2009, which extended the term of the Yarraman Agreement to 3 March 2009;
- (e) Letter of Variation dated 3 March 2009, which extended the term of the Yarraman Agreement to 4 May 2009;
- (f) Letter of Variation dated 4 May 2009, which extended the term of the Yarraman Agreement to 6 July 2009;
- (g) Letter of Variation dated 6 July 2009, which extended the term of the Yarraman Agreement to 15 September 2009;
- (h) Letter of Variation dated 14 January 2010, which extended the term of the Yarraman Agreement to 30 June 2010;
- (i) Letter of Variation dated 30 August 2010, which extended the term of the Yarraman Agreement to 30 October 2010;
- (j) Letter of Variation dated 29 October 2010, which extended the term of the Yarraman Agreement to 30 December 2010;
- (k) Letter of Variation dated 5 January 2011, which extended the term of the Yarraman Agreement to 28 February 2011; and
- (l) Letter of Variation dated 28 February 2011, which extended the term of the Yarraman Agreement to 30 April 2011,

(together, Yarraman Extensions).

142. The Yarraman Agreement was secured by the Yarraman Securities and Delta Dawn Securities and a default under the Yarraman Agreement or the Delta Dawn Agreements was a default under the other.

Particulars

Yarraman Agreement, clause 14.1.1, 14.1.4

Delta Dawn Agreements, clause 14.1.1, 14.1.4

143. Between March 2004 and May 2012, Provident obtained the following real property valuations in respect of the Juigong Property:

(a) a valuation dated 17 March 2004 by PRP Valuers & Consultants, which provided a market value of the Jugiong Property of \$7.55 million, comprising:

(i) a market valuation of \$5.7 million in respect of the 153.7 hectare block;

(ii) a market valuation of \$1.85 million in respect of the 122.1 hectare block;

(2004 PRP Valuation);

(b) a letter of variation of valuation dated 27 November 2007 by PRP Valuers & Consultants, which amended their 2004 valuation of the 153.7 hectare block to \$5.15 million (and accordingly reducing the overall value to \$7 million)

(2007 PRP Valuation);

(c) a valuation dated 31 May 2012 by Gaetjens Pickett Valuers, which provided an "in use market value" of \$5 million or \$2.5 million to \$3 million on a forced sale basis (2012 Gaetjens Valuation).

144. Between November 2003 and November 2005, the borrowers provided Provident with the following real property valuations in respect of the Wybong Property:

(a) a valuation dated 12 November 2003 from Dupont Fagan Valuers (Dupont), which provided a market value of the Wybong Property of \$6.7 million "as is"; and

(b) a valuation dated 25 November 2005 from Dupont, which provided a market value of the Wybong Property of \$7.975 million "as is".

(Dupont Valuations).

145. From 30 September 2008, Yarraman was in default of its obligations in respect of paying any interest repayments in reduction of the outstanding debt under the

Yarraman Agreement which constituted a default under the Fourth Delta Dawn Agreement.

146. In or about November 2009, Delta Dawn defaulted in making interest payments under the Delta Dawn Agreements, which comprised a default under by Yarraman under the Yarraman Agreement and the Yarraman Extensions.

Particulars

Email from O'Sullivan to Blom dated 2 November 2009

147. From 18 January 2011, Delta Dawn failed to make any further interest repayments in reduction of the outstanding debt under the Delta Dawn Agreements.
148. On 9 April 2009 Provident's auditors identified to Provident that the testing of impaired loans was critical to the 2009 Financial Year audit, including the loans to Yarraman and Delta Dawn.

Particulars

Letter from Don Walter of WalterTurnbull to John Fulker of Provident dated 17 March 2009

149. As at June 2009 Yarraman and Delta Dawn had failed to pay in excess of \$2 million in respect of higher rate charges and rollover fees due but not paid up to 31 December 2008 (Default Claim).

Particulars

Email from O'Sullivan to Blom dated 4 June 2009

150. On or about June 2009 Provident forgave \$1.95 million of the Default Claim (from \$2 million to \$50,000) for no benefit to Provident.

Particulars

Email from O'Sullivan to Blom dated 4 June 2009

151. In or about June 2009 Provident's auditors identified to Provident that there was no variation in interest rates applied by Provident to the Delta Dawn loan, notwithstanding its default status.

Particulars

WalterTurnbull Review of Arrears Loans Reporting – Draft Report July 2009

152. As at 30 November 2009 the loans to Yarraman and the loans to Delta Dawn were reported:
- (a) as being in default and having a higher default interest rate of 10.49%;
 - (b) the most recent valuation in respect of the Jugiong Property was the 2007 PRP Valuation;
 - (c) the most recent valuation in respect of the Wybong Property was the 2005 Dupont Valuation;
 - (d) with a Net Outstanding value (i.e. a recoverable value) of \$11.007 million;

Particulars

Board Report - All Loan Arrears as at 30 November 2009

153. On or about 12 November 2009, Yarraman provided Provident with its financial accounts for the period to September 2009 which recorded losses exceeding about \$5 million and a net asset deficiency of \$28 million.

Particulars

Email from Ian Long to O'Sullivan dated 12 November 2009

154. As at 30 November 2010 the loans to Yarraman and the loans to Delta Dawn were reported:
- (a) as being in default and having a higher default interest rate of 10.5%;
 - (b) the most recent valuation in respect of the Jugiong Property was the 2007 PRP Valuation;
 - (c) the most recent valuation in respect of the Wybong Property was the 2005 Dupont Valuation;
 - (d) with a Net Outstanding value (i.e. a recoverable value) of \$11.975 million.

Particulars

Board Report - All Loan Arrears as at 30 November 2010

155. On or about 10 May 2011, voluntary administrators were appointed to Yarraman.
156. As at 30 November 2011 the loans to Yarraman and the loans to Delta Dawn were reported:
- (a) as being in default and having a higher default interest rate of 10.5%;
 - (b) the most recent valuation in respect of the Jugiong Property was the 2007 PRP Valuation;
 - (c) the most recent valuation in respect of the Wybong Property was the 2005 Dupont Valuation;
 - (d) with a Net Outstanding value (i.e. a recoverable value) of \$14.402 million;

Particulars

Board Report - All Loan Arrears as at 30 November 2011

157. As at April 2012, the loan by Provident under:
- (a) the Delta Dawn Agreements were 521 days in arrears; and
 - (b) the Yarraman Agreements were 544 days in arrears.

Particulars

Provident Loan Arrears Report dated April 2012

158. Notwithstanding the matters pleaded in paragraphs 127 to 157, Provident:
- (a) continued to provide the Yarraman Extensions for two years between January 2009 and April 2011;
 - (b) failed to charge default interest at any time in respect of the Delta Dawn or Yarraman loans while they were in default;
 - (c) failed to take any enforcement action against either Delta Dawn or Yarraman;
 - (d) failed to sell the Jugiong Property or the Wybong Property for the purpose of reducing the liability outstanding;

- (e) permitted the liabilities under the loan facilities to increase to the extent that the balances outstanding under the loan facilities were:
 - (i) \$7,444,971.49 owing by Delta Dawn as at April 2012:
 - (ii) \$7,850,977.95 owing by Yarraman as at April 2012.

Particulars

Loan arrears report dated April 2012

159. The advances to Delta Dawn and Yarraman by Provident, including under the agreements referred to in paragraphs 131 to 132:

- (a) did not satisfy Policy Requirements:

Particulars

- (i) notwithstanding that there was a default under both the Yarraman Agreement and the Delta Dawn Agreement (including by reason of their cross-collateralisation) by 30 September 2008, Provident continued to enter into variations and extensions of the principal loan agreements:
 - (ii) Provident failed to obtain valuations:
 - (A) of the Wybong Property at the time of the Delta Dawn Extensions or Yarraman Extensions:
 - (B) of the Yarraman Property at the time of the Fourth Delta Dawn Agreement, Yarraman Agreement, Delta Dawn Extensions or Yarraman Extensions:
 - (iii) Provident failed to enforce its securities following defaults by Yarraman and Delta Dawn promptly, or at all:
 - (iv) Provident failed to charge default interest in respect of the defaulting loan:
 - (v) further particulars will be provided following provision of expert evidence:
- (b) did not satisfy the requirements of the Trust Deed:

Particulars

- (i) Provident failed to comply with the requirement to secure any finance facility with a first ranking registered mortgage;
- (ii) further particulars will be provided following provision of expert evidence;
- (c) further, and/or in the alternative, did not satisfy the requirements of a reasonably prudent and diligent lender;

Particulars

- (i) Provident failed to obtain certified valuations of:
 - (A) the Wybong Property after 2005; or
 - (B) the Jugiong Property for a five year period between 2007 and 2012;
- (ii) Provident continued to book interest as income even though no interest payments were made to Provident after:
 - (A) September 2008 in respect of the Yarraman Agreement;
 - (B) January 2011 in respect of the Delta Dawn Agreement;
- (iii) Provident forgave, for no benefit to the company, the sum of \$1.95 million owing by Yarraman;
- (iv) Provident repeats the matters pleaded in paragraphs (a) and (b) above;
- (v) further particulars will be provided following provision of expert evidence;

(together the Delta and Yarraman Breaches).

Unique Castle

160. Provident provided financial accommodation by way of a residential mortgage loan to Unique Castle Development Pty Ltd (Unique Castle), under the following arrangements:

- (a) by a Letter of Offer dated 27 June 2005 and loan settled on or about 8 July 2005, Provident advanced the sum of \$3.315 million for a period of 12 months (First Unique Castle Agreement);
- (b) by Loan Agreement dated 15 September 2006, Provident advanced the sum of \$3,442,500 for a period of 12 months (Second Unique Castle Agreement).

161. The advances under the First Unique Castle Agreement and Second Unique Castle Agreement (together, Unique Castle Agreements) were secured by:

- (a) a first ranking real property mortgage (Castle Hill Mortgage) over the property located at 161 Castle Hill Road, Castle Hill, New South Wales (Castle Hill Property);

Particulars

Real property mortgage dated 8 July 2005 over the land at 1/525780 and registered with the LPI as mortgage numbered AB616258

- (b) a second ranking real property mortgage (Pennant Hills Mortgage) over the property located at 9 Hoop Pine Place, West Pennant Hills, New South Wales (Pennant Hills Property);

Particulars

Real property mortgage dated 8 July 2005 over the land at 14/1035681 and registered with the LPI as mortgage numbered AB681277

- (c) an unlimited guarantee and indemnity granted by Rohan Lochlan (Lochlan) at the time that the Second Unique Castle Agreement was entered into;

Particulars

Deed of Guarantee and Indemnity between Provident and Rohan Lochlan dated 15 September 2006

- (d) a company charge over the property of Unique Castle (Unique Castle Charge).

Particulars

Deed of Company Charge between Provident and Unique Castle Development Pty Ltd dated 8 July 2005 and registered on the ASIC register of company charges on 13 July 2005 as ASIC charge number 1181629

(together, Unique Castle Securities).

162. On or about 11 July 2005, Provident entered into a Deed of Priority (Unique Castle Deed of Priority) in respect of the Pennant Hills Mortgage with the National Australia Bank (NAB) who held a first registered real property mortgage over the Pennant Hills Property.
163. It was a term of the Unique Castle Deed of Priority that:
- (a) NAB's securities were to have priority over Provident's mortgage over the Pennant Hills Mortgage for the payment of amounts up to the sum of \$1,820,000 plus interest, costs, charges and expenses;
 - (b) each credit provider would keep the other informed on a timely basis about breaches of a Security and any action taken to enforce rights under Security.

Particulars

Unique Castle Deed of Priority, Item 4, clause 1 and clause 5

164. Between June 2005 and June 2007, Provident obtained the following valuations in respect of the Pennant Hills Property:
- (a) a valuation by CD Chenoweth & Associates Ltd dated 29 June 2005 which provided a value of \$2.8 million; and
 - (b) a valuation by PMA Valuations dated 31 October 2006 which provided a value of \$2.9 million.
165. Between June 2005 and January 2012, Provident procured the following valuations in respect of the Castle Hill Property:
- (a) a valuation by CD Chenoweth & Associates Ltd dated 24 June 2005 which provided a value of \$3.9 million, based on a subdivision into 14 lots;
 - (b) a valuation by CD Chenoweth & Associates Ltd dated 15 June 2006 which provided a value of \$4.05 million (without development approval) and \$4.25

million (with development approval) (2006 Castle Hill Valuation) and which assumed:

- (i) that the subdivision would comprise 10 blocks;
 - (ii) the cost of subdividing those 10 blocks would be \$1.1 million plus rates, taxes and fees of \$359,000;
 - (iii) an assumed yield of \$8.3 million;
- (c) a marketing valuation by LJ Hooker, Dural, dated 28 June 2007 which provided a value of \$2.6 to 3.1 million on an "as is" basis;
- (d) sales inspection report by Harvie and Harvie Real Estate, dated 24 October 2007 which provided an estimated value of \$4.5 to \$5 million at auction;
- (e) a valuation report by CD Chenoweth & Associates Ltd dated 20 January 2009 which provided a value of \$4.75 million, with development approval and a gross realisable value of \$8.1 million following the development of the 10 lot subdivision (2009 Castle Hill Valuation);
- (f) a valuation by CD Chenoweth & Associates Ltd dated 30 June 2010 which provided a value of \$4.75 million, with development approval and a gross realisable value of \$8.45 million following development of the 9 lot subdivision (2010 Castle Hill Valuation);
- (g) a valuation by CD Chenoweth & Associates Ltd dated 16 January 2012 which provided a value of \$5.05 million, with development approval and a gross realisable value of \$9.4 million following development of the 9 lot subdivision.
166. In the period from 8 July 2006 to 15 September 2006, the Unique Castle Loan was in default in that there was no loan agreement in place, the loan rolled over from month to month, interest was being capitalised and added to the principal outstanding and no repayments were being made.
167. The advances made under the Second Unique Castle Agreement were used to:
- (a) payment the First Unique Castle Agreement;
 - (b) provide an extra \$127,500 in funds.

Particulars

Provident Loan Summary - 11 July 2006

168. From at least January 2007, Unique Castle was in default of its obligations to Provident under the Second Unique Castle Agreement in failing to pay amounts owing to Provident under those agreements.

Particulars

All Arrears Loans Report – 30 November 2011

169. The Second Unique Castle Agreement expired on 7 July 2007 and was not repaid.

Particulars

Second Unique Castle Agreement, clause 1.1 "Repayment Date"

170. In the period from 8 July 2007 to 5 October 2007, the Unique Castle Loan was in default in that there was no loan agreement in place, the loan rolled over from month to month, interest was being capitalised and added to the principal outstanding and no repayments were being made.
171. On or about 18 September 2007, Provident appointed Murray Godfrey of RMG Partners as receiver and manager of:
- (a) Unique Castle, pursuant to the Unique Castle Charge;
 - (b) the Castle Hill Property, pursuant to the Castle Hill Mortgage.

Particulars

Deed of Appointment

172. As at the date of appointment of Mr Godfrey, Unique Castle owed \$4,027,230.43 to Provident.

Particulars

Letter from RMG Partners to Provident dated 2 October 2007

173. On 5 October 2007, Provident purported to roll or extend the Second Unique Castle Agreement for a period until 3 January 2008 notwithstanding the absence of any written loan or variation agreement.

Particulars

Unique Castle Interest Statement

174. On 11 December 2007, Mr Godfrey advised Provident by letter that:
- (a) Harvie & Harvie Real Estate had been engaged to sell the Castle Hill Property at auction on 15 December 2007;
 - (b) no parties had indicated an interest over \$4 million;
 - (c) the original estimate of value provided by Harvie & Harvie Real Estate may not be achieved in the current market in light of the checkered history of the site.
175. By letter dated 14 December 2007 to Harvie & Harvie Real Estate, Provident confirmed the reserve price for the Castle Hill Property to be \$4,000,000.
176. On 15 December 2007, the Castle Hill Property was passed in at auction.
177. On 3 January 2008, Provident roll over or extend the Second Unique Castle Agreement for a period until 28 February 2008 notwithstanding the absence of a loan or variation agreement.

Particulars

Unique Castle Interest Statement

178. From about March 2008, the Second Unique Castle Agreement was automatically rolled over every 60 days.

Particulars

Unique Castle Interest Statement

179. In or about May 2008, Provident obtained vacant possession of the Pennant Hills Hills Property as mortgagee in possession.
180. On 22 April 2008, Provident sold the Pennant Hills Property for \$1.35 million and on or about 3 October 2008, settlement took place.
181. On or about 3 October 2008, Provident received \$75,733.44 under its second ranking Pennant Hills Mortgage and the Deed of Priority which was applied in reduction of the amounts owing by Unique Castle.

Particulars

Interest Statement dated 14 April 2010 at page 5

182. On 24 March 2009, Geotechnique Pty Ltd provided Provident with the results of a geotechnical investigation into the Castle Hill Property (Geotechnique Report).
183. The Geotechnique Report opined inter alia that the Castle Hill Property was geologically unstable, presented a very high risk of landslide and downslope movements and recommended the implementation of appropriate stabilisation works.

Particulars

Geotechnique Report dated 24 March 2009, pages 9-10

184. In or about July 2009, Provident lodged development application DA174/2010/ZA for subdivision with the Baulkham Hills Council.

Particulars

Letter from Provident to Hills Shire Council dated 8 July 2009, letter from Hills Shire Council to Provident dated 17 July 2009

185. On 2 September 2009, Provident requested that Altus Page Kirkland (Altus) provide an estimate of the cost to develop the Castle Hill Property.

Particulars

Letter from Provident to Stephen Ngai of Altus dated 2 September 2009

186. On 23 September 2009 a sequestration order was made in respect of the estate of Lochlan, who had guaranteed the First and the Second Unique Castle Agreement.

Particulars

Letter from John Melliush of Ferrier Hodgson to creditors of Lochlan dated 16 November 2009

187. On 30 September 2009, Unique Castle resolved that the company be wound up under section 491(1) of the Corporations Act and Richard Alberran and David Anthony Ross of Hall Chadwick were appointed joint and several liquidators of Unique Castle.

Particulars

Report to creditors dated 6 October 2009

188. On 4 November 2009, Stephen Ngai of Altus provided Provident with a feasibility cost estimate in relation to the proposed subdivision and development of the Castle Hill Property (Feasibility Estimate) which estimated the cost of the subdivision and development to be \$3,678,645 excluding GST.

Particulars

Email from Stephen Ngai to O'Sullivan dated 4 November 2009

189. On no occasion did Unique Castle (or other party on its behalf) make any payment to Provident in accordance with the terms of the First Unique Castle Agreement or the Second Unique Castle Agreement including in respect of fees, interest or repayment of principal.
190. As at 30 November 2009 the loan to Unique Castle was reported:
- (a) as being in default and having a higher default interest rate of 16.5%;
 - (b) as having the 2009 Castle Hill Valuation as the most recent valuation;
 - (c) with a Net Outstanding value (i.e. a recoverable value) of \$4.89 million;
 - (d) as in arrears for a period 1,025 days.

Particulars

Board Report - All Loan Arrears as at 30 November 2009

191. As at 30 November 2010 the loan to Unique Castle was reported:
- (a) as being in default and having a higher default interest rate of 16.5%;
 - (b) as having the 2010 Castle Hill Valuation as the most recent valuation;
 - (c) with a Net Outstanding value (i.e. a recoverable value) of \$4.931 million;
 - (d) as in arrears for a period 1,395 days.

Particulars

Board Report - All Loan Arrears as at 30 November 2010

192. As at 30 November 2011 the loan to Unique Castle was reported:

- (a) as being in default and having a higher default interest rate of 16.5%;
- (b) as having the 2010 Castle Hill Valuation as the most recent valuation;
- (c) with a Net Outstanding value (i.e. a recoverable value) of \$5.25 million;
- (d) as in arrears for a period 1,704 days.

Particulars

Board Report - All Loan Arrears as at 30 November 2011

193. Notwithstanding the matters pleaded in paragraphs 160 to 192 above, Provident:
- (a) failed to realise the Unique Castle Property until following the appointment of the Receivers;
 - (b) failed to consider or adopt a recovery strategy appropriate in respect of the loan to Unique Castle.
194. The loan advances to Unique Castle by Provident:
- (a) did not satisfy the Policy Requirements;

Particulars

- (i) Provident failed to promptly enforce its securities or at all following default by Unique Castle Agreement;
- (ii) the Castle Hill Mortgage breached the LVR Requirements at all material times after receipt of the LJ Hooker marketing valuation in June 2007;
- (iii) Provident failed to obtain up to date valuations at each rollover of the First or Second Unique Castle Agreements;
- (iv) Provident continued to extend or roll over the loan to the borrower, capitalising interest, in the absence of any loan agreement or variation;
- (v) Provident did not satisfy Policy Requirements in failing to obtain any updated valuations in respect of the Unique Castle Property having regard to the matters raised in the Geotechnique Report and the Feasibility Estimate;

- (vi) the loan to Unique Castle breached the LVR Requirements for construction loans;
- (vii) the loan to Unique Castle was incorrectly treated as a residential loan rather than a construction loan;
- (viii) further particulars will be provided following provision of expert evidence;
- (b) did not satisfy the Trust Deed Obligations in that at no material time did the Unique Castle loans comply with the LVR requirements of the Trust Deed;
- (c) further, and/or in the alternative, did not satisfy the requirements of a reasonably prudent and diligent lender;

Particulars

- (i) Provident failed to adjust valuation records throughout 2007 and 2008 in light of the reduced property valuations and market appraisals received;
- (ii) Provident failed to take appropriate steps to enforce the loan and realise the Castle Hill Property following:
 - (A) the appointment of receivers to Unique Castle; and/or
 - (B) receipt of the Feasibility Estimate.
- (iii) repeats paragraph (a) and (b) above;
- (iv) further particulars will be provided following provision of expert evidence.

(together, the Unique Castle Breaches).

Pritchett and MLA/MLI

195. On or about 12 May 2008 Provident provided financial accommodation by way of a loan to Pritchett Property Group Pty Limited (Pritchett), in the amount of \$2 million for a period of 12 months (Pritchett Loan).

Particulars

Provident Deed of Loan and Guarantee styled as a Light and Easy Facility dated 12 May 2008

196. As security for the advances under the Pritchett Loan, Pritchett granted to Provident a real property mortgage over a property known as 28 Danalene Parade, Corlette New South Wales, being Lot 45 in Deposited Plan 240169 (Corlette Property).

Particulars

Mortgage dated 12 May 2008 over the land known as 45/240169 and registered as dealing number AD956855

197. On 17 April 2008 Provident obtained a real property valuation in respect of the Corlette Property dated from Fagan Simm Valuers which provided a market valuation of \$2.6 million.
198. Pritchett was in monetary default of its obligations to Provident:
- (a) at all material times following November 2008, by reason of its failure to pay arrears in respect of its interest payment obligations;
 - (b) at all material times following 12 May 2009 by reason of its failure to repay the amount outstanding under the Pritchett Loan.

Particulars

Loan Arrears Report to Board – November 2010

Interest Statement 2011 - recording the last interest payment made in respect of the Pritchett Loan on 6 July 2009

199. On or about 13 March 2009 Provident took vacant possession of the Corlette Property as mortgagee in possession.

Particulars

ASIC Form 504 executed on 3 April 2009, appointing O'Sullivan of Provident as controller of the Corlette Property

200. Provident failed to sell the Corlette Property after separate mortgagee sale campaigns in 2009 and 2010.

Particulars

Impairment Note dated 31 December 2009

201. On or about 5 May 2010 O'Sullivan caused PCL Holdings Pty Limited (a company operated by O'Sullivan) (PCLH) to make a loan available to joint borrowers known as Medical & Legal Assessments (NSW) Pty Limited (MLA) and Medical & Legal Imaging (NSW) Pty Limited (MLI) (together MLA/MLI), in the amount of \$300,000 (PCLH MLA/MLI Loan) for a term of 3 months.

Particulars

Letter dated 5 May 2010 from PCLH to the directors of MLA/MLI

202. In or about March 2010 the Australian Taxation Office commenced winding up proceedings against MLA, which were subsequently discontinued.

Particulars

Email from Jenny Spence to Ken Shepherd dated 21 May 2010

203. On or about 18 August 2010 Provident received a written sales inspection report from Raine and Horne, Port Stephens/Nelsons Bay in relation to the Corlette Property which provided an estimated market value of approximately \$1.6 million.

Particulars

Email from Richard Peel to O'Sullivan dated 18 August 2010

204. On and following June 2011, MLA/MLI were in default of their obligations to PCLH.

Particulars

PCLH Balance Sheet Reconciliation as at 30 June 2011

205. In or about September 2010 the Australian Taxation Office commenced fresh winding up proceedings against MLA.

Particulars

Email from Ken Shepherd to O'Sullivan dated 23 November 2010

206. On or about 23 March 2011 O'Sullivan proposed to the director of MLA/MLI:

- (a) that MLA/MLI acquire the Corlette Property for \$1.05 million;
- (b) that MLA/MLI take an assignment of the debt owing by Pritchett to Provident in the amount of \$1.2 million;
- (c) that MLA/MLI take an assignment of rights to an action against a valuer in respect of the Corlette Property.

Particulars

Email from O'Sullivan to Jenny Spence dated 19 January 2011

Email from O'Sullivan to Ken Shepherd dated 23 March 2011

207. By agreement dated 31 March 2011 Provident agreed with MLA/MLI to:

- (a) advance \$2.25 million to MLA/MLI on the terms and conditions set out in a letter dated 31 March 2011 (PCL MLA/MLI Loan);

Particulars

Letter dated 31 March 2011 from Provident to Jenny Spence

- (b) assign to MLA/MLI for consideration of \$1.2 million all of Provident's right, interest and title in the Pritchett Loan, which at the time exceeded \$2.7 million in principal and capitalised interest;

Particulars

Deed of Assignment dated 31 March 2011

- (c) sell to MLA/MLI as mortgagee in possession the Corlette Property for \$1.05 million;

Particulars

Deed of Loan and Guarantee dated 31 March 2011

- (d) assign to MLA/MLI all rights to an action against a valuer in respect of the Corlette Property.

Particulars

Mortgage dated 15 April 2011 over the land at 45/240169 and registered at the LPI as dealing number AG203132

208. On or about 15 April 2011, MLA/MLI acquired the Corlette Property and granted a real property mortgage over the Corlette Property to Provident.

Particulars

Executed Contract of Sale between Provident as mortgagee in possession and MLA/MLI dated 15 April 2011

209. At all material times following about August 2011 MLA/MLI was in default of its obligations to Provident under the PCL MLA/MLI Loans.

Particulars

Provident Arrears Report 30 August 2011 to April 2012

210. Notwithstanding the default by MLA/MLI of its obligations to Provident, Provident failed to take any enforcement action against MLA/MLI, including by taking possession of and selling the Corlette Property.

211. Notwithstanding the matters pleaded in paragraphs 195 to 210 above:

- (a) Provident failed to sell the Corlette Property for the purpose of reducing the liability outstanding in respect of the Pritchett Loan and subsequently the PCL MLA/MLI Loan;
- (b) advances under the PCL MLA/MLI Loan continued to be drawn down to the extent that the net balance outstanding under the loan facility was approximately \$2.3 million (\$2,325,292.95) as at April 2012;
- (c) Provident failed to take any enforcement action in relation to the Provident MLA/MLI Loan.

212. The conduct of the Pritchett Loan and the MLA/MLI Loans by Provident as pleaded in paragraphs 195 to 211:

- (a) in relation to the Pritchett Loan, did not satisfy the Policy Requirements;

Particulars

- (i) in that Provident failed to enforce the security promptly;

- (ii) in that Provident dealt with the default and loss on the Pritchett Loan by creating other rights and/or entering into agreements with MLA/MLI instead of properly realising the security property;
 - (iii) further particulars will be provided following provision of expert evidence;
- (b) in relation to the PCL MLA/MLI Loan, did not satisfy the Policy Requirements;

Particulars

- (i) Provident failed to undertake a proper assessment of the borrower's ability to service and repay the loan;
 - (ii) MLA/MLI would not have satisfied the Policy Requirements given their poor credit standing;
 - (v) Provident failed to enforce the security promptly;
 - (vi) further particulars will be provided following provision of expert evidence;
- (c) did not satisfy the requirements of the Trust Deed;

Particulars

- (i) in the circumstances of Provident funding the payout of the Pritchett Loan, the PCL MLA/MLI Loan did not comprise an authorised use of debenture funds under the Trust Deed;
 - (ii) at all material times the PCL MLA/MLI Loan breached the LVR requirements of the Trust Deed;
 - (iii) Provident failed to obtain a first ranking real property mortgage to secure the whole of the PCL MLA/MLI Loan;
 - (iv) further particulars will be provided following provision of expert evidence;
- (d) did not satisfy the requirements of a reasonably prudent and diligent lender;

Particulars

- (i) Provident lent money to effectively refinance the Pritchett Loan in circumstances where the only reasonable decision was to realise the security and crystallise any loss;
- (ii) Provident continued to recognise interest as income even though no interest payments were ever made to Provident in respect of the PCL MLA/MLI Loan;
- (iii) Provident repeats paragraphs (a) to (c) above;
- (iv) further particulars will be provided following provision of expert evidence.

(together, MLA/MLI Breaches).

Paul Vincent Hanna

- 213. Provident provided financial accommodation under a residential mortgage loan to Paul Vincent Hanna (Mr Hanna) in the sum of \$4.68 million by Loan Agreement dated on or about 21 December 2006, for a period of 12 months (Hanna Agreement).
- 214. As security for the advances under the Hanna Agreement on or about 21 December 2006, the borrower granted to Provident a real property mortgage over the property located at 27 Murphy Street, Port Douglas, Queensland (Hanna Property).

Particulars

Real property mortgage dated 20 December 2006 over Lot 2 on CP PTD2095 and registered in the Queensland Land Registry as dealing number 710251397 (Hanna Mortgage)

- 215. Between November 2006 and March 2012, Provident procured the following valuations in respect of the Hanna Property:
 - (a) a valuation of Cairns Regional Valuers dated 23 November 2006 which estimated a market value of \$5.4 million "as is" and \$5.85 million "with Development approval";

- (b) a valuation by Cairns Regional Valuers dated 24 September 2007 which estimated a value of \$6 million, assuming a 6 month marketing and sale period (September 2007 Valuation);
 - (c) a market appraisal by Century 21 (Port Douglas) dated 23 April 2008 which estimated a value of \$4.5 to \$5 million;
 - (d) a market appraisal by Ray White (Port Douglas) dated April 2008 which estimated a market value in the range of \$3.6 to \$4.1 million;
 - (e) a letter from Cairns Regional Valuers dated 27 May 2008 confirming that the market had slowed and weakened considerably since their \$6 million valuation of 14 September 2007 (May 2008 Letter);
 - (f) a valuation by Bevan Conroy & Associates Valuers dated 18 September 2009 which estimated a value of \$6 million (18 September 2009 Valuation);
 - (g) a valuation by Australian Property Research Consultants dated 5 March 2012 which estimated a value (as at 18 February 2012) of \$3.5 million.
216. On or about 21 September 2007, Mr Hanna failed to pay interest to Provident in the amount of \$42,129.18 which amounted to a default under clause 5 of the Hanna Agreement, and which default continued.

Particulars

Notice of Exercise of Power of Sale dated 3 December 2007

217. In the period from 21 December 2007 and continuing, the Hanna Loan remained in default, the agreement having expired, interest was being capitalised and added to the principal outstanding and no repayments were being made.

Particulars

Provident Loan Interest Statement - 11 May 2009

218. On 27 April 2009 Michael Jones of Jones Partners was appointed as the Controlling Trustee of the estate of Mr Hanna following Mr Hanna's entry into a personal insolvency agreement under section 188 of the *Bankruptcy Act 1966* (Cth).

Particulars

Letter from Jones Partners to Provident dated 11 May 2009

219. On or about 26 May 2009, Provident lodged a proof of debt in the bankrupt estate of Mr Hanna for \$2.092 million (Hanna Proof of Debt), being:
- (a) the total outstanding debt of \$6.092 million owing by Mr Hanna to Provident;
 - (b) less the estimated value of the Hanna Property of \$4 million.
220. On or about 4 June 2009, Mr Hanna entered bankruptcy by the presentation of a debtor's petition pursuant to section 55 of the *Bankruptcy Act 1966* (Cth).

Particulars

Email from David Shannon of Jones Partners to O'Sullivan dated 26 June 2010

221. As at 10 September 2009 Provident was notified that the Hanna Property was damaged and in a bad state of repair.

Particulars

Email from Century 21 Port Douglas to Provident dated 10 September 2009 attaching photographic images

222. The 18 September 2009 Valuation could not reasonably be relied upon given that:
- (a) the Hanna Property was referred to as being in of a "very solid construction" and being in a "very good condition with no obvious faults of (sic) damage";
and
 - (b) it contained the same photographic images of the Hanna Property as were contained in the September 2007 Valuation.

Particulars

Clause 4.1 and Annexure F of the 2009 Valuation

Email from Provident to Bevan Conroy Valuers on 18 September 2009 attaching photographs

223. On or about 16 August 2010 Provident was advised by the real estate agents engaged by Provident in respect of the Hanna Property that the Hanna Property "fitted the price range of \$3.5m to \$4m".

Particulars

Letter from Century 21 Port Douglas to O'Sullivan dated 16 August 2010

224. In or about September 2010 Provident was notified that the value of the Hanna Property was likely to be worth as little as \$1.5 million, albeit in the context of an increasing market.

Particulars

Oral conversation between O'Sullivan and Soula Kazkis of Century 21 Port Douglas in or about September 2010

225. As at April 2012, the Hanna Agreement was 1,498 days and approximately \$3.67 million (\$3,639,731.27) in arrears.

Particulars

Provident Arrears Report dated April 2012

226. Notwithstanding the matters referred to in paragraphs 213 to 225 above, Provident:
- (a) failed to take appropriate steps to enforce the Hanna Agreement and/or Hanna Mortgage;
 - (b) failed to sell the Hanna Property following December 2007 for the purpose of reducing the liability outstanding to Provident;
 - (c) allowed advances under the Hanna Agreement to be drawn down to the extent that the gross balance outstanding of the loan as at April 2012 was approximately \$8.79 million (\$8,794,527.89), with a net balance outstanding of approximately \$3.52 million (\$3,516,562.85).

Particulars

Provident Arrears Report dated April 2012

227. The advances to Mr Hanna by Provident:

(a) did not satisfy the Policy Requirements:

Particulars

- (i) Provident failed to enforce the Hanna Agreement and the Hanna Mortgage following the expiration of the Hanna Agreement and the Hanna Extensions, or at all;
- (ii) the Hanna Mortgage breached the LVR Requirements at the time of the 2008 Hanna Extension as the LVR was approximately 100%;
- (iii) purported to extend the term of the Hanna Agreement in circumstances where there were continuing defaults;
- (iv) further particulars will be provided following provision of expert evidence;

(b) did not satisfy the requirements of the Trust Deed;

Particulars

- (i) Hanna Mortgage breached the LVR Requirements at the time of the 2008 Hanna Extension, LVR being approximately 100%;
- (ii) further particulars will be provided following provision of expert evidence;

(c) did not satisfy the requirements of a reasonably prudent and diligent lender;

Particulars

- (i) Provident failed to ensure that the property value was based on the known stated position of the security property;
- (ii) Provident failed to adjust valuation records throughout 2008 and 2009 in light of the reduced property valuations and market appraisals received;
- (iii) Provident failed to take appropriate steps to enforce the loan and realise the Hanna Property following 2009;
- (iv) Provident repeats paragraphs (a) and (b) above;

- (v) further particulars will be provided following provision of expert evidence.

(together, the Hanna Breaches).

MJ Server

228. On or about 13 February 2004, Provident agreed to provide The Empress Development Pty Ltd ACN 093 680 445 (Empress Development) with financial accommodation in the amount of \$14.5 million for a term of 12 months (Empress Development Facility).

229. The Empress Development Facility was secured by:

- (a) a real property mortgage over the property known as Kensington on the Park, at 138-144 High Street, Southport, Queensland (Kensington Property):

Particulars

Real property mortgage dated 24 February 2004 and registered as mortgage number 707517714

- (b) a company charge over Empress Developments:

Particulars

ASIC company charge number 1025341 dated 23 February 2004 and registered on the ASIC register of company charges on 4 March 2004.

- (c) an unlimited guarantee and indemnity by Fang Wu,

Particulars

Deed of Loan and Guarantee dated 13 February 2004

(together, Empress Development Securities).

230. Provident obtained a valuation of the Kensington Property dated 6 October 2003 from Gradmont which valued the Kensington Property at:

- (a) \$3,750,000 "as is", with development approval; and

- (b) \$20,360,000 as if complete.
231. At all material times, the directors of Empress Development were Slobodan Robert Sukic (Sukic) and Fang Wu.
232. In the period from 13 February 2005 to 30 June 2005, the Empress Development Facility was in default in that there was no loan agreement was in place, the loan rolled over from month to month, interest was being capitalised and added to the principal outstanding and no repayments were being made.
233. The Empress Development Facility was varied by:
- (a) deed of variation dated 30 June 2005 which:
- (i) extended the term of the Empress Development Facility to 30 September 2005;
- (ii) reduced the loan amount under the Empress Development Facility to \$2,850,000;
- (iii) released certain parcels of land within the Kensington Property which had been the subject of Provident's securities;
- (b) deed of variation dated 30 June 2006, which provided for further security being a guarantee and indemnity of Jasmina Sukic (the daughter of Sukic), and mortgage granted by Jasmina Sukic (Second Deed of Variation); and
- (c) deed of variation dated 28 August 2006 (Third Deed of Variation).
234. Neither the Second Deed of Variation nor the Third of Variation provided for any term in relation to the loan, and accordingly the Empress Development Facility was in default following 30 September 2005 given the absence of any agreed extension period.
235. On or about 16 May 2006, Unit 66 of the Kensington Property was sold to Jasmina Sukic for the sum of \$300,000.

Particulars

Transfer dated 16 May 2006

236. In or about September 2006, Provident approached Sukic and offered to provide Sukic with finance to purchase the Kensington Property and discharge the defaulting Empress Development Facility.

Particulars

Examination of O'Sullivan 26 June 2013 - T42, 43 and 46

237. On 26 September 2006:
- (a) MJ Server Pty Ltd ACN 121 916 890 (MJ Server) was incorporated;
 - (b) Michael John Bloss became the sole director and secretary of MJ Server.
238. Richard William Spencer and Silvana Perovich, the directors of Neo East No. 1 Pty Limited (Neo East), were at all material times, the controlling minds of MJ Server.

Particulars

Email from Richard Spencer to O'Sullivan dated 31 March 2008

Email from Richard Spencer to O'Sullivan dated 16 July 2008

Email from Richard Spencer to O'Sullivan dated 23 April 2009

239. By loan agreement dated 1 November 2006, Provident advanced \$3.85 million to MJ Server for a term of 12 months, by way of a mortgage loan (MJ Server Facility) for the purpose of purchasing the 15 remaining apartments comprising the Kensington Property.
240. The MJ Server Facility was secured by:
- (a) a real property mortgage over the Kensington Property;
 - (b) a company charge by MJ Server;
 - (c) guarantee and indemnity by Richard William Spencer, Silvana Perovich (the former directors of Neo East) and Tafers Pty Ltd ACN 121 050 606 as trustee for the Brereton Trust (Tafers Pty Ltd).

(together, MJ Server Securities).

241. At no time prior to or at the time of entry into the MJ Server Facility, did Provident obtain or verify:
- (a) a completed loan application form from MJ Server;
 - (b) a certified up to date valuation of the Kensington Property;
 - (c) possession of a valid insurance policy;
 - (d) verification by a solicitor that Provident would receive a good first mortgage.

Particulars

Examination of O'Sullivan 26 June 2013 - T50

(together, MJ Server Loan Checklist Documents).

242. At no time did Provident undertake an assessment of MJ Server's ability to repay the MJ Server Loan.
243. On 18 October 2006, the Kensington Property was transferred from Empress Development to MJ Server in consideration for:
- (a) \$3.5 million paid to Empress Development by Provident;

Particulars

Transfer dated 18 October 2006 and registered with the LPI as document numbered 710077753 in consideration for \$1.66 million.

Transfer dated 18 October 2006 and registered with the LPI as document numbered 710077733 in consideration for \$1.8 million.

- (b) \$1.6 million paid by PCLH.

Particulars

Mortgage dated 3 November 2006 and registered with the LPI as document numbered 710011827 in consideration for \$1.6 million.

244. The Empress Development Securities were released by Provident in consideration for payment of \$3,335,329.85.

245. On 17 July 2007 Robert William Hutson and John Richard Park of Korda Mentha were appointed as voluntary administrators of Empress Development.
246. Empress Development was wound up by creditor's voluntary winding up on 13 August 2007.
247. Paul Desmond Sweeney was appointed as trustee to the bankrupt estate of:
- (a) Silvana Perovich on 20 August 2007; and
 - (b) Richard Spencer on 24 August 2007.
248. Provident lodged proofs of debt in the estates of Perovich and Spencer on 28 October 2010.
249. MJ Server failed to repay the MJ Server Facility when it expired on 31 October 2007.
250. On and from 31 October 2007, MJ Server was in default of its obligations to Provident and continued being in default thereafter.

Particulars

Provident arrears report dated October 2007

251. On or about 15 October 2009, Unit 16 of the Kensington Property was sold to Liyan Wang for the sum of \$345,000.
252. Notwithstanding the matters pleaded in paragraphs 228 to 251 above, Provident:
- (a) permitted the balance under the MJ Server Facility to increase to the extent that the gross arrears owing under MJ Server Facility were approximately \$7.05 million (\$7,054,062.80) as at April 2012;

Particulars

Loan Arrears Report dated April 2012

- (b) failed to take any enforcement action following the bankruptcy of the guarantors of the MJ Server Loan in August 2007;
- (c) failed to take any enforcement action against either MJ Server or Sukic as guarantor upon expiry of the MJ Server Facility in October 2007;

- (d) failed to sell the Kensington Property for the purpose of reducing the liability outstanding.

253. The conduct of the loans to MJ Server by Provident:

- (a) did not satisfy the requirements of the Policy Requirements;

Particulars

- (i) Provident failed to obtain the MJ Server Loan Checklist Documents or otherwise assess MJ Server's ability to repay the loan prior to entering into the MJ Server Facility;
 - (ii) Provident failed to obtain a valuation of the Kensington Property at the time of entry into the MJ Server Facility or at all;
 - (iii) Provident failed to enforce its securities following defaults by MJ Server promptly, or at all;
 - (iv) Provident continued to extend or roll over the loan to the borrower, capitalising interest, in the absence of any loan agreement or variation;
 - (v) did not comply with the requirement of a new loan for each roll over or extension;
 - (vi) further particulars will be provided following provision of expert evidence;
- (b) did not satisfy the requirements of the Trust Deed;

Particulars

- (i) Provident failed to obtain an independent certified valuation of the of the Kensington Property at the time of entry into the MJ Server Facility or any time thereafter;
- (ii) Provident was unable at all material times to ascertain compliance with the LVR Requirements of the Trust Deed;
- (iii) Provident funding the payout of one loan did not comprise an authorised use of debenture funds under the Trust Deed;

- (iv) further particulars will be provided following provision of expert evidence;
- (c) further, and/or in the alternative, did not satisfy the requirements of a reasonably prudent and diligent lender;

Particulars

- (i) Provident failed to obtain any further certified valuation of the Kensington Property after 2003;
- (ii) Provident failed to take steps to enforce the Empress Development Loan, the Empress Development Securities, the MJ Server Loan or the MJ Server Securities;
- (iii) Provident sustained the Empress Development Shortfall instead of passing on any shortfall to the second mortgagee who was paid out in full;
- (iv) Provident repeats paragraphs (a) and (b) above;
- (v) further particulars will be provided following provision of expert evidence.

(together, MJ Server Breaches).

Cleveland

- 254. On or about 17 December 2003, Provident entered into a loan agreement with Neo East, pursuant to which Provident agreed to provide Neo East with financial accommodation in the amount of \$4.5 million for a term of 12 months (Neo East Facility).
- 255. The directors of Neo East were, at all material times, Richard William Spencer and Silvana Perovich.
- 256. The Neo East Facility was secured by:
 - (a) a real property mortgage over the property at 55-63 Shore Street, Cleveland, Queensland 4163 (Cleveland Property);

Particulars

Real property mortgages dated on or about December 2003 and registered with the LPI as mortgages numbered 707324197

- (b) a company charge over Neo East;

Particulars

ASIC company charge number 1006176 dated 17 December 2003 and registered on the ASIC register of company charges on 22 December 2003

- (c) an unlimited guarantee and indemnity granted by Richard William Spencer and Silvana Perovich,

Particulars

Deed of guarantee and indemnity between Provident, Richard William Spencer and Silvana Perovich dated 15 December 2003

(together, Neo East Securities).

257. Neo East was in default of its obligations under the Neo East Facility at all material times following 15 July 2004.

Particulars

Interest Statement 27 October 2005

258. On or about 12 November 2004, Provident obtained vacant possession of the Cleveland Property from Neo East following:

- (a) the issue of a notice of exercise of power of sale to Neo East on 13 September 2004;
- (b) the issue of a notice to mortgagee requiring possession to Neo East on 19 October 2004.

Particulars

Notice of Exercise of Power of Sale and Notice to Mortgagee dated 13 September 2004 and 19 October 2004 respectively

259. On 5 November 2004, Provident obtained a real property valuation of the Cleveland Property from Taylor Byrne Valuers, which provided a market value of the property of:
- (a) \$5.5 million if sold "in one line", or
 - (b) \$4.81 million if sold on an individual basis.
260. On or about 23 December 2004, provident engaged Ray White Commercial to conduct a mortgagee sale of the Cleveland Property.

Particulars

Agency Agreement executed by Provident on 23 December 2004

261. On 17 March 2005, Ray White Commercial Sales advised Provident that:
- (a) the November 2004 Taylor Byrne valuation was based on maximising the "developability" of the site through securing development approval, however the town plan was only in its early stages so the highest unconditional offer received for the Cleveland Property was \$2.5 million;
 - (b) the offers presented to Provident represent the "true state of the residential development scenario";
 - (c) it may be prudent for Provident to provide fresh valuation instructions, having regard to the overland water flow flooding issue and softening of the market since November 2004.

Particulars

Email from Ray White Commercial to Provident dated 17 March 2005

262. On or about 17 May 2005, O'Sullivan acknowledged that, if sold, the Cleveland Property would likely result in a loss to Provident.

Particulars

Fax from O'Sullivan to Pat Kelly of Burgess Rawson Qld dated 17 May 2005

263. Provident failed to sell the Cleveland Property as mortgage in possession following a marketing and sale process in 2005.

264. In or about September 2006, Sukic agreed to purchase the Cleveland Property from Neo East with finance from Provident which would allow Provident to discharge the defaulting Neo East Facility.

Particulars

Examinations of O'Sullivan 26 June 2013 - T30 - 50

265. On 25 September 2006 the Cleveland Corporation Pty Ltd ACN 121 901 488 (Cleveland Corporation) was incorporated by Sukic.
266. Sukic was, at all material times, the sole director and secretary of the Cleveland Corporation.
267. On 16 October 2006, the Cleveland Property was transferred from Neo East to the Cleveland Corporation in consideration for the payment of \$3.95 million.

Particulars

Transfer dated 16 October 2006 and registered with the LPI as document numbered 710077599 in consideration for \$3.95 million

268. The Neo East Securities were released by Provident (subject to the deed referred to in paragraph 272) for the payment of approximately \$5.58 million (\$5,578,375.29).
269. On or about 25 October 2006, Provident advanced the sum of \$3.95 million to Cleveland Corporation as trustee for the Cleveland Family Trust (Cleveland Facility), for a term of 60 days to 31 December 2006 to enable Cleveland Corporation to purchase the Cleveland Property.

Particulars

Transfer dated 16 October 2006

270. The Cleveland Facility was secured by:
- (a) a real property mortgage over the Cleveland Property:

Particulars

Real property mortgage dated 2 November 2006 and registered on the LPI as dealing number 710077609 (Cleveland Mortgage).

- (b) a company charge over the Cleveland Corporation;

Particulars

ASIC company charge number 1376329 dated 1 November 2006 and registered on the ASIC register of company charges on 8 November 2006.

- (c) an unlimited guarantee and indemnity granted by Sukic

Particulars

Deed of Guarantee and Indemnity dated 10 November 2006

(together, Cleveland Securities).

271. At no time prior to or at the time of entry into the Cleveland Facility, did Provident:

- (a) obtain a completed loan application form from Cleveland Corporation;
(b) obtain a certified up to date valuation of the Cleveland Property;
(c) verify the existence of a valid insurance policy.

Particulars

Examination of O'Sullivan 26 June 2013 - T30 - 50

(together, Cleveland Loan Checklist Documents).

272. On 31 October 2006, Provident entered into a deed of acknowledgement with Neo East, Richard William Spencer and Silvana Perovich (together, the Neo East Parties), pursuant to which the Neo East Parties acknowledged that:

- (a) Provident advanced a total sum of approximately \$4.23 million (\$4,229,136.30) to Neo East pursuant to the Neo East Facility;
(b) Provident agreed to release the Neo East Securities in consideration for payment of approximately \$5.58 million (\$5,578,375.29);
(c) the Neo East Parties' obligation to pay the balance of \$88,954.32 (Neo East Balance) remained in force notwithstanding the release of the Neo East Securities.

273. The Neo East Balance was never repaid by Neo East.

274. Neo East was deregistered on 12 July 2008 as a result of a strike off action by ASIC.
275. Provident purported to roll over or extend the Cleveland Facility on:
- (a) 26 September 2006 for a period of 90 days to 26 March 2007;
 - (b) 26 May 2007 for a period of 30 days to 24 June 2007;
 - (c) 25 June 2007 for a period of 90 days to 22 September 2007; and
 - (d) 22 September 2007 for a period of 90 days to 21 December 2007,
- (Cleveland Extensions).
276. In the period from 27 March 2007 to 25 May 2007, the Cleveland Facility was in default in that there was no loan agreement in place, interest was being capitalised and added to the principal outstanding and no repayments were being made.
277. On 15 November 2007, Provident obtained a further valuation of the Cleveland Property from Taylor Byrne Valuers, who provided a market value of the property of \$11.4 million, contingent upon development approval having been granted on 14 November 2007 for construction of two, six storey residential towers containing 104 apartments.
278. On 27 November 2007, Provident varied the Cleveland Facility by increasing the financial accommodation to Cleveland to \$4.95 million for a term of 6 months to 31 March 2008, for the purpose of extending the Cleveland Facility and prepaying interest (Second Cleveland Extension).
279. The Second Cleveland Extension was advanced pursuant to the following agreements:
- (a) loan agreement dated 11 December 2007 for \$990,000;
 - (b) loan agreement dated 11 December 2007 for \$990,000;
 - (c) loan agreement dated 11 December 2007 for \$990,000;
 - (d) loan agreement dated 11 December 2007 for \$990,000;
 - (e) loan agreement dated 11 December 2007 for \$990,000 (Cleveland Sub-Loan 5).

(together, Cleveland Sub-Loans).

280. Four of the Cleveland Sub-Loans were sold to ABL Nominees under the terms of the ABL Facility on or about 3 December 2007.

Particulars

Sale Notice dated 3 December 2007

281. The Cleveland Sub-Loan 5 was retained in the FTI portfolio and the funds used to service the interest on the other four Cleveland Sub-Loans in the ABL Portfolio.

Particulars

Examination of O'Sullivan 26 June 2013 - T52

282. At no time did Provident undertake any assessment of Cleveland Corporation's ability to repay the Cleveland Facility or the Cleveland Sub-Loans.
283. On or about 9 July 2008, Provident varied the terms of each of the Cleveland Sub-Loans by further deeds of loan and guarantee which:
- (a) increased the financial accommodation under each of the Cleveland Sub-Loans from \$990,000 to \$1.23 million;
 - (b) increased the total value of Provident's advances to the Cleveland Corporation to \$6.15 million across all five of the Cleveland Sub-Loans; and
 - (c) extended the term of each of the Cleveland Sub-Loans for 6 months to 31 January 2009.
284. On or about 28 September 2010, Provident agreed by letter of variation to increase the financial accommodation to Cleveland under Cleveland Sub-Loan 5 by a further \$100,000 on the condition that:
- (a) the Cleveland Securities be cross collateralised with securities provided to Provident by related entities of Cleveland Corporation and under the direction of Sukic, being Moree Health Spa Pty Ltd, City Pacific Developments Pty Ltd and Kentmain Pty Ltd;
 - (b) certain amounts be paid in reduction of interest arrears.

Particulars

Letter from Provident to Cleveland Corporation dated 28 September 2010 and executed by Sukic on or about 30 September 2010

285. At all material times on and from May 2010, Cleveland Corporation was in arrears and therefore in default of its obligations to Provident under Cleveland Sub-Loan 5.

Particulars

Loan Arrears Report dated May 2010

286. At no time between 2007 and 2012 were any steps taken to realise the Cleveland Property.
287. On 27 June 2012, the Deputy Commissioner of Taxation commenced winding up proceedings against Cleveland Corporation in the Federal Court of Australia.
288. On 27 July 2012, Nick Combis was appointed as a court appointed liquidator of Cleveland Corporation.
289. Notwithstanding the matters pleaded in paragraphs 254 to 288 above, Provident:
- (a) continued to make advances under the Cleveland Facility to the extent that the net outstanding under Cleveland Facility and Cleveland Sub-Loans was approximately \$6.88 million (\$6,877,184.55) as at April 2012;

Particulars

Loan arrears report dated April 2012

- (b) failed to take any enforcement action against Cleveland Corporation or Sukic as guarantor.
290. The conduct of the loans to Cleveland by Provident:
- (a) did not satisfy the Policy Requirements;

Particulars

- (i) Provident failed to obtain the Cleveland Loan Checklist Documents or otherwise assess Cleveland Corporation's ability to repay the loan prior to entering into the Cleveland Facility;
- (ii) Provident failed to obtain a valuation of the Cleveland Property at the time of entry into the Cleveland Facility, the First or Second

Cleveland Extension or subsequent variations and/or extensions of the loan;

(iii) Provident failed to enforce its securities following defaults by Cleveland promptly, or at all;

(iv) further particulars will be provided following provision of expert evidence;

(b) did not satisfy the requirements of the Trust Deed;

Particulars

(i) Provident failed to obtain a certified valuation of the of the Cleveland Property at the time of entry into the Cleveland Facility, the Cleveland Extension or subsequent variations of the loan; and

(ii) by retaining Cleveland Sub-Loan 5 in the FTI Portfolio, Provident used debenture holder funds to pay interest arrears on the Cleveland Sub-Loans that had been transferred to ABL Nominees;

(iii) Provident funding the payout of one loan did not comprise an authorised use of debenture funds under the Trust Deed;

(iv) further particulars will be provided following provision of expert evidence;

(c) further, and/or in the alternative, did not satisfy the requirements of a reasonably prudent and diligent lender;

Particulars

(i) failed to obtain a certified valuation of the Cleveland Property prior to entering into the Cleveland Facility and relied on the 2004 valuation, knowing that the property had failed to sell in the intervening period;

(ii) failed to take adequate steps to enforce the Neo East Facility, the Neo East Securities, the Cleveland Loan or the Cleveland Securities;

- (iii) lent money to refinance the Neo Est Facility in circumstances where the only reasonable decision was to realise the security and crystallise any loss;
- (iv) repeats paragraphs (a) and (b) above;
- (v) further particulars will be provided following provision of expert evidence.

(together the Cleveland Breaches)

System Failings

291. At all material times, Provident suffered from system failings which caused or contributed to a failure by the defendants to monitor the Loans and identify and/or stop the occurrence of the Burleigh Breaches, the Chrysalis Breaches, the Delta Dawn and Yarraman Breaches, the Unique Castle Breaches, the Pritchett Breaches, the MLA/MLI Breaches, the Hanna Breaches, the MJ Server Breaches and the Cleveland Breaches (together the Loan Breaches).

Particulars

- (a) updated valuations should have been but were not obtained every six or 12 months in respect of all of the NPLs, including the Loans and there was no system to monitor the regularity of updated valuations;

Sub-particulars

Email from John Fulker to O'Sullivan dated 11 August 2008 enclosing Impairment of Loans Discussion Paper – Guidance Letter dated 30 June 2008

Letter from WalterTurnbull to Provident dated 17 March 2009

Email from O'Sullivan to Bersten, Seymour and Sweeney dated 28 July 2009 enclosing Loan Arrears Audit Review Post 22 June 2008 Spreadsheet

WalterTurnbull Management Letter to Provident dated 30 November 2009

All of the matters and circumstances pleaded in relation to the Loans

- (b) Provident did not implement or follow a system or procedure of reviewing valuations:
 - (i) to ensure that the assumptions therein were appropriately made and/or accurate;
 - (ii) to determine the currency of the valuations;
 - (iii) to determine whether the valuations were carried out on a consistent basis;
 - (iv) to determine whether the valuation methodology was appropriate;
 - (v) to determine whether the valuer had any conflict of interest in providing valuations to Provident (for instance by reason of having valued the property for the borrower);
- (c) Provident did not implement or follow a system or procedure for determining the holding costs, realisation costs and other costs associated with holding or selling securities with regard to NPLs (including the Loans) and the effect of those costs on Provident's LVR position under the Trust Deed, the Statutory Requirements, the Policy Requirements and the adequacy of provisioning for NPLs;
- (d) Provident did not implement or follow a system or procedure for ensuring that valuations assumed the value of the security on the basis of a mortgagee in possession or distressed sale as was likely to be the case in relation to NPLs including the Loans;
- (e) Provident did not implement or follow a system or procedure for determining:
 - (i) whether a NPL security would be enforced, and if so how;
 - (ii) how long it would take to enforce a NPL security and the associated costs of delaying realisation;
 - (iii) the most appropriate recovery strategy in relation to NPLs;

- (f) the system of reporting to the defendants in respect of the status of NPLs including the Loans, was fundamentally deficient, including that the defendants were provided with inconsistent information in relation to the LVR applicable to the Loans;

Sub-particulars

Management Accounts and Board Arrears Reports between June 2006 and December 2009

- (g) the system of reporting to the defendants on the Loans was deficient in that the form and content of the written reports to the defendants was insufficient to enable the defendants to properly understand:
- (i) all relevant issues relating to provisioning;
- (ii) the assessment of whether interest should have been suspended and the Loans classified as non-accrual;

Sub-particulars

Management Accounts and Board Reports for period June 2006 to December 2009

Board Minutes of 15 July 2009

Email from O'Sullivan to Seymour, Sweeney and Bersten dated 28 July 2009

HLB Mann Judd Management Report for June 2010 audit

- (h) Provident should have been but did not properly assess whether defaulting loans could be recovered within 12 months in that the system allowed for the incorrect classification of non-current assets as current assets;

Sub-particulars

The Loan Circumstances, and all of the matters and circumstances in relation to the Loans

WalterTurnbull Management Report 31 December 2008 dated 4 March 2009

Management Loan Arrears Reports between January 2006 and June 2012

- (i) the system for the information provided to the defendants should have enabled them but was inadequate to enable them to make a proper and adequate determination in relation to the status of NPLs including the Loans;

Sub-particulars

With the exception of O'Sullivan, no valuations were made available to the defendants for their review

No detailed strategy reports were made available to the defendants in relation to the NPLs

Historical information (such as previous arrears reports) in relation to NPLs were not provided to the defendants with new arrears reports

Email from Bersten to O'Sullivan, copying Sweeney and Seymour dated 30 October 2009

- (j) the system for the provision of information in relation to NPLs did not provide the information to the defendants with sufficient time for the defendants to read and familiarise themselves with the contents of those reports;

Sub-particulars

Board and MD Review November 2009

- (k) in assessing the performance of Provident including the status of NPLs, the defendants had no system to allow them to consider historical information that had been provided to the Board (including in relation to NPLs) because they were required to return all board pack material and personal notes following meetings of the Board;

Sub-particulars

Examination of O'Sullivan 26 June 2013 - T58.38

Examination of Bersten 24 April 2013 – T283.21

- (l) the system for the prompt commencement of recovery action in relation to securities associated with NPLs (including the Loans), did not prevent or minimise delay and there was no system for reporting and dealing with delays in recovery;

Sub-particulars

The matters and circumstances in relation to the Loans pleaded above

- (m) the systems of Provident should have identified that the economic market conditions prevailing at the time was a further risk to the company which required robust systems of management and reporting but failed to do so;
- (n) Provident had an inadequate system of internal control which resulted in:
- (i) a high degree of inadequate or incorrect valuations;
 - (ii) Provident's accounting system incorrectly recording interest rates and arrears which resulted in Provident having materially incorrect books and records including its financial accounts;

Sub-particulars

Walter Turnbull Loan Arrears Report June 2009

- (o) Provident had a system which allowed for O'Sullivan to have a major involvement in relation to approving loans, enforcement of NPLs and provisioning for NPLs, without any adequate checks and balances, especially in circumstances where O'Sullivan had directly or indirectly a major financial interest in Provident;
- (p) further particulars will be provided following the issue of subpoenas, discovery, the service of expert evidence and the administration of interrogatories.

(System Failings).

Provisioning in Relation to Loans

292. During the period from 2008 to the date of the appointment of the Receivers, Provident failed to correctly provision, and did not have systems in place to allow for the correct provision of NPLs, including the Loans.

Particulars

- (a) all decisions in relation to provisioning for NPLs (including the Loans) rested with the defendants as directors of Provident;

Sub-particulars

Examination of Sweeney 17 June 2013 - T65.45

Examination of Seymour 18 June 2013 - T71.25

- (b) O'Sullivan was allowed to have a heavy involvement in relation to provisioning for NPLs without any adequate checks and balances, which was unsatisfactory especially in circumstances where O'Sullivan had directly or indirectly a major financial interest in Provident;
- (c) the defendants had a practice of being reluctant and/or averse to making any decision as to provisioning for impaired loans;

Sub-particulars

Email from Lydia Sin to defendants dated 12 November 2009 and a failure of the defendants to correct the assertions made therein

- (d) Provident did not have in place any formal system, procedure and/or policy in respect of provisioning for impaired loans;

Sub-particulars

Examination of O'Sullivan 25 June 2013 - T32.25-40

Examination of Sweeney 17 June 2013 - T65.39

Examination of Seymour 18 June 2013 - T71.10

PricewaterhouseCooper's Management Letter November 2007

Email between O'Sullivan, Sweeney, Seymour and Bersten dated 28 July 2009

- (e) Provident did not have in place a person employed with proper training and expertise in provisioning to advise the company of the adequacy of its loan provisioning levels and processes who had responsibility for making provisioning recommendations;
- (f) any or proper consideration of the value of a security and appropriate provisioning was not made as soon as a loan became a NPL;
- (g) with the exception of the Hanna Loan and the Unique Castle Loan, by June 2009 all loans were supported by valuations which were more than 12 months of age;
- (h) each of the latest valuations held in respect of the Burleigh Views Loan, the Hanna Loan, the Chrysalis Loan, the Unique Castle Loan, the Delta Dawn Loan, and the Yarraman Loan contained assumptions which were relevant to and informed the assessment of the value of the land (Assumptions);

Sub-particulars

In relation to the Burleigh Views Loan, it was assumed inter alia that the Burleigh Views Property was subject to a current Development Approval and would have a cost to complete of no more than \$5 million

In relation to the Hanna Loan, it was assumed inter alia that the Hanna Property was subject to a current Development Approval and was in very good condition with no obvious faults or damage

In relation to the Unique Castle Loan, it was assumed that the Unique Castle Property was capable of subdivision, that the geotechnical issues could be overcome and that cost of the headwork would be approximately \$1.1 million

In relation to the Chrysalis Loan, it was assumed inter alia that the development of the Chrysalis Property was feasible

In relation to the Delta Dawn Loan and the Yarraman Loan, it was assumed inter alia that there was a productive vineyard in sound

condition and that the price of grapes produced by that vineyard were of a certain standard and would command a certain price on the commercial market

- (i) none of the Assumptions were supported by evidence available to Provident;
- (j) substantial provisioning was required but was not made in respect of the Burleigh Views Loan given that:
 - (A) the security property was of a nominal value given the absence of any development approval, the geotechnical difficulties and the cost to complete;
 - (B) the net balance outstanding as at 30 June 2009 was approximately \$15.23 million (\$15,233,277.92)

Sub-particulars

Board Report 30 July 2009

- (C) the net balance outstanding as at 1 December 2009 was approximately \$15.98 million (\$15,977,139)

Sub-particulars

Board Report – Six Monthly Review to December 2009

- (k) substantial provisioning was required but was not made in respect of the Chrysalis Loan given that:
 - (A) the security property was worth \$3.32 million;

Sub-particulars

2009 Chrysalis Valuation

Email from Stewart Clarke to O'Sullivan 17 January 2010

- (B) the loan balance as at 30 June 2009 was \$6,408,067.94

Sub-particulars

Arrears Report as at 30 June 2009

- (C) the loan balance as at 31 December 2009 was \$6,904,338

Sub-particulars

Board Report – Six Monthly Review to December 2009

- (l) substantial provisioning was required but was not made in respect of the Unique Castle Loan given that:

- (A) the security property was worth no more than \$2 million

Sub-particulars

The Feasibility Estimate estimated cost of the subdivision and development to be \$3,678,645 excluding GST and other costs

The 2009 Castle Hill Valuation valued the Castle Hill Property on an *en globo* basis at \$4.75 million assuming development costs of approximately \$1.1 million

- (B) the net balance outstanding as at 30 June 2009 was approximately \$4.88 million (\$4,876,514.31)

Sub-particulars

Arrears Report as at 30 June 2009

- (C) the net balance outstanding as at 31 December 2009 was approximately \$4.9 million (\$4,908,490)

Sub-particulars

Board Report – Six Monthly Review to December 2009

- (m) in relation to all other of the Loans, it was the case and/or highly likely that substantial provisioning was required given:

- (A) their impaired status; and

- (B) the absence of any available and/or recent valuation obtained within the preceding 12 months, or otherwise any reasonable time prior;

- (n) in the event that sufficient provisioning had been made in respect of each of the Loans, Provident would as a consequence have had sufficient provisioning and:
- (A) reported substantial losses;
 - (B) reported a deficiency in its net tangible assets;
 - (C) reported to ASIC and AET a negative equity ratio for the purpose of RG 69;
 - (D) been prevented from issuing further debentures under section 728 of the Corporations Act or otherwise;

Sub-particulars

Particulars will be provided in the form of expert evidence

(Provisioning Failings).

293. As a consequence of the Provisioning Failings, substantial provisioning for NPLs including the Loans should have been made but was not, which rendered the Reported Financial Position of Provident as materially incorrect.

Trust Deed Breaches - Impermissible Uses of Debenture Funds

294. At all material times, Provident did not maintain a system and/or procedure for ensuring that debenture funds were only used in accordance with the Trust Deed Obligations.

Particulars

Examination of O'Sullivan 25 June 2013 - T45.28 to 46.2

Examination of Bersten 22 April 2013 - T293.43

Examination of Seymour 18 June 2013 – T39.5

Examination of Sweeney 17 June 2013 - T23.37

295. At all material times, the systems and/or procedures of Provident did not distinguish between nor facilitate the separation by Provident of funds representing debenture investments and those representing other funds.

296. The defendants were, at all material times, unaware as to whether Provident complied with the Trust Deed Obligations.

Particulars

- (a) At no material time did Provident have any system or procedure in place to:
- (i) monitor Provident's compliance with the Trust Deed Obligations;
 - (ii) ensure that debenture funds would not be used for purposes other than those authorised under the Trust Deed;
 - (iii) report to the defendants from time to time whether Provident was complying with the Trust Deed Obligations;
- (b) At no material time did any of the defendants, or in the alternative did either of the third and fourth defendants, have a sufficient understanding of the requirements of the Trust Deed.

Sub-particulars

Examination of Sweeney 17 June 2013 - T23.37

Examination of Seymour 18 June 2013 - T38.25-T39.41

297. For the period from and after March 2008 Provident applied debenture funds for purposes other than those permitted by the Trust Deed including:

- (a) using debenture funds for the payment of dividends;

Particulars

The April 2009 Dividend and the June 2010 Dividend

- (b) using debenture funds for operating expenses of Provident;
- (c) using debenture funds to meet existing current liabilities of Provident;
- (d) using debenture funds for the payment of interest owing by borrowers to Provident;
- (e) using new debenture funds for the purpose of repaying other debenture holder redemptions in respect of their investments;

- (f) using debenture funds to establish the Collateral Account:
- (g) using debenture funds to fund the obligations of Provident Cashflow Pty Limited under a Receivables Acquisition and Servicing Agreement dated 30 June 2006; BPL.009.001.2960

Particulars of paragraphs (a)-(g)

Particulars will be provided by way of expert evidence

298. By reason of the matters pleaded in paragraph 294 to 297 above, Provident:
- (a) failed to hold and apply debenture funds in accordance with the Trust Deed Obligations;
 - (b) breached the terms of the Trust deed; and
 - (c) as a consequence of the failure to comply with the Trust Deed Obligations, had inadequate funds available to pay debenture holders at the time that the Receivers were appointed to Provident in June 2012,
- (together, the Trust Deed Breaches).

PCLH/ABL Transactions

299. On 15 April 2009 the defendants:
- (a) approved that Provident declare the April 2009 Dividend;
 - (b) approved PCLH using part of the proceeds of the dividend to assume an interest in the loans to Provident borrowers known as WB Rural, Jarule, French and Mickle.

Particulars

Provident Board Minutes 15 April 2009

300. On or about 19 April 2009, Provident assigned its interest in the loans to WB Rural, French and Mickle to ABL pursuant to the ABL Facility as Purchased Loans (as defined in paragraph 39 above).

Particulars

ABL Sale Notices dated 19 April 2009

301. On about 19 April 2009 Provident and PCLH executed Deeds of Assignment in respect of the loans referred in paragraph 300 above (PCLH Deeds of Assignment).

Particulars

Deeds of Assignment between Provident and PCLH dated 17 April 2009

302. It was a term of the PCLH Deeds of Assignment that:
- (a) Provident would assign to PCLH a portion of Provident's interest in the facilities, the subject of the loans;
 - (b) Provident would have first priority to receive all money in respect of its share of the facilities, the subject of the loans.

Particulars

Deeds of Assignment between Provident and PCLH dated 17 April 2009, clauses 2 and 3

303. In respect of the PCLH Deed of Assignment in relation to the loan to Mickle, on 17 April 2009 Provident and PCLH executed a Transfer of Lease, Mortgage or Charge pursuant to which the mortgage security in respect of the loan to Mickle was transferred to the extent of a 1,508/10,000 share.

Particulars

Transfer of Lease, Mortgage or Charge dated 17 April 2009

304. With effect from 31 August 2009 Provident purported to assign an interest in a loan to a Provident borrower known as Jamsapi which had been assigned to ABL under the ABL Facility.

Particulars

Deed of Assignment dated 20 September 2010

305. With effect from 25 June 2010 Provident purported to assign an interest in a loan to a Provident borrower known as Blom which had been assigned to ABL under the ABL Facility.

Particulars

Deed of Assignment dated 20 September 2010

306. With effect from 25 June 2010 Provident purported to assign an interest in a loan to a Provident borrower known as Kharadjian which had been assigned to ABL under the ABL Facility.

Particulars

Deed of Assignment dated 20 September 2010

307. In respect of each of the purported assigned loans referred to in paragraphs 300 to 306 above, as at the date of the respective purported assignments, each of the loans were NPLs, being in monetary default of the relevant facility terms.
308. With respect to the purported assigned loans, upon and following their purported assignment, Provident did not report in its board reports or otherwise to ABL or AET, the existence of the assignments.
309. In the circumstances pleaded in paragraphs 299 to 308 above, the assignments and dealings with the loans referred to in those paragraphs (including the failure to report referred to in paragraph 308 above) comprised:
- (a) a breach of the ABL Warranties;
 - (b) a breach of the ABL Undertakings.
- (ABL Breaches).

Further Trust Deed Breaches

310. By reason of the circumstances of the Loan Breaches, the System Failings, the Provisioning Failings, Trust Deed Breaches and the ABL Breaches, Provident:
- (a) breached the Trust Deed in failing to carry on and conduct its business in a proper and efficient manner;
 - (b) breached the Trust Deed in failing to keep or causing to be kept proper books of account and enter into those books of account full particulars of all dealings and transactions in relation to Provident's business;
 - (c) had less funds available to pay debenture holders on the redemption of their debenture certificates than if it had complied with the Trust Deed;

- (d) failed to give AET written notice of those circumstances as soon as it became aware of any potential or actual event of default or material adverse change in the company or its ability to perform its obligations under the Trust Deed.

(Further Trust Deed Breaches).

Failure to Report

311. The Trust Deed Breaches, the Loan Breaches, the System Failings, the Provisioning Failings, the ABL Breaches and the Further Trust Deed Breaches were matters which Provident was required under section 283BF of the Act to report to AET and ASIC, being:

- (a) a failure by Provident to comply with the terms of the debentures or the provisions of the Trust Deed;
- (b) events having occurred during the quarter that caused or could cause:
 - (i) any amount deposited or lent under the debentures to become immediately payable;
 - (ii) the debentures to become immediately enforceable;
- (c) circumstances during the quarter that immediately prejudiced:
 - (i) Provident;
 - (ii) security interests included in or created by the debentures or the Trust Deed;
- (d) matters that may materially prejudice any other interests of the debenture holders.

312. In breach of section 283BF of the Act (as pleaded in paragraph 19 above), the Section 283BF Reports by Provident failed to disclose:

- (a) non-compliance by Provident with the provisions of the Trust Deed, namely the Trust Deed Breaches and the Further Trust Deed Breaches;
- (b) events that caused or could cause the Trust Deed to become immediately enforceable, namely:

- (i) the Loan Breaches;
 - (ii) the Provisioning Failings;
 - (iii) the System Failings;
 - (iv) the Trust Deed Breaches;
 - (v) the ABL Breaches; and
 - (vi) the Further Trust Deed Breaches;
- (c) matters that may materially prejudice any other interests of the debenture holders, namely:
- (i) the Loan Breaches;
 - (ii) the Provisioning Failings;
 - (iii) the System Failings;
 - (iv) the Trust Deed Breaches;
 - (v) the ABL Breaches; and
 - (vi) the Further Trust Deed Breaches.

313. The RG 69 Reports by Provident failed to disclose that Provident had failed to meet benchmarks prescribed by RG 69 namely:

- (a) the minimum equity ratio of 20%, by reason of the status of the Burleigh Views Loan;
- (b) an LVR in of 70% in relation to the Burleigh Views Loan, the Chrysalis Loan and the Unique Castle Loan;
- (c) an LVR of 80% in relation to the Loans, other than the Burleigh Views Loan;
- (d) the proportion of loans in default.

314. The DP 10 and the DP 11 failed to disclose, in compliance with section 710 of the Corporations Act, all of the information that investors and their professional advisers would reasonably require to make an informed assessment.

Particulars

The matters pleaded in paragraph 312(a) to (c) above

315. The reporting failures pleaded in paragraphs 311 to 315 above are hereinafter referred to as the Reporting Failures.

Defendants' Breaches

316. The defendants breached the Directors' Duties (Defendants' Breaches) by reason of their causing, permitting or allowing:

- (a) the following acts or omissions;
 - (i) neglecting to ascertain the actual financial position of Provident and failing to inform themselves of relevant matters that could adversely affect Provident;
 - (ii) allowing Provident to enter into transactions that produced no benefit to the company;
 - (iii) allowing Provident to trade in an unreasonable and imprudent manner;
 - (iv) failing to allow Provident to carry on and conduct its business in a proper and efficient manner;
 - (v) failing to take part in the active supervision of Provident's management;
 - (vi) causing Provident to contravene the Trust Deed Obligations;
- (b) the Trust Deed Breaches:

Particulars

- (i) each of the defendants failed to recognise or adequately recognise the matters set out in paragraphs 294 to 298 and failed to take action to prevent the Trust Deed Breaches
- (ii) each of the defendants failed to cause Provident to maintain separate accounts in respect of and/or have a system in place that

enabled Provident to distinguish between debenture funds and all other funds held by Provident

- (iii) each of the defendants failed to cause Provident to have or put in place any system to monitor compliance by Provident at all times with the Trust Deed Obligations
- (iv) each of the defendants failed to take steps that a reasonable director would take in the position of the defendants to familiarise themselves with the requirements of the Trust Deed
- (v) each of the defendants failed to take steps that a reasonable director would take in the position of the defendants, to ascertain or enable them to ascertain whether Provident was complying with the requirements of the Trust Deed and prevent any breaches of the Trust Deed
- (vi) each of the defendants failed to take steps that a reasonable person would take in the position of the defendants, to enable them to guide and monitor effectively the management of Provident
- (vii) each of the defendants were, at all material times, unaware as to whether Provident complied with the Trust Deed Obligations

(c) the Loan Breaches:

Particulars

- (i) each of the defendants failed to recognise or adequately recognise the matters set out in paragraphs 75 to 290 and failed to take action to prevent the Loan Breaches
- (ii) each of the defendants failed to take steps to monitor Provident's compliance with the Policy Requirements and prevent breaches of them
- (iii) each of the defendants failed to take steps to monitor Provident's compliance with the Trust Deed Obligations and ensure there were not breaches of them

- (iv) each of the defendants failed to take steps to monitor Provident's actions in compliance with the requirements of a reasonably prudent lender and prevent Provident from acting as an impudent lender
 - (v) each of the defendants failed to recognise and identify the circumstances relating to the Loans
 - (vi) each of the defendants failed to recognise, identify and prevent the Loan Breaches
 - (vii) each of the defendants failed to take steps to enable them to guide and monitor effectively the management of Provident
- (d) the System Failings:

Particulars

- (i) each of the defendants failed to recognise or adequately recognise the matters set out in paragraph 291 and failed to take action to prevent the System Failings
- (ii) each of the defendants failed to take steps that a reasonable director would take to recognise or appreciate that they could not rely upon the information provided to them in relation to the recoverability of NPLs including the Loans, and ensure there was proper and reliable financial information available
- (iii) each of the defendants failed to take steps that a reasonable director would take to recognise or appreciate that the information provided to them in relation to the recoverability of NPLs (including the Loans) was deficient and/or incorrect, and ensure there was proper and reliable financial information available
- (iv) each of the defendants failed to take steps that a reasonable director would take to recognise or appreciate the risk presented to Provident by reason of:
 - (A) the unreliability of the information provided to them in relation to the recoverability of NPLs including the Loans;
 - (B) the inadequacy of the information provided to them in relation to the recoverability of NPLs including the Loans,

and ensure that there was proper and reliable financial information available.

(v) each of the defendants failed to take steps that a reasonable person would take in the position of the defendants, to ascertain the actual financial position of Provident

(vi) each of the defendants failed to take steps that a reasonable person would take in the position of the defendants, to enable them to guide and monitor effectively the management of Provident

(e) the Provisioning Failings:

Particulars

(i) each of the defendants failed to recognise or adequately recognise the matters set out in paragraphs 292 to 293 and failed to take action to prevent the Provisioning Failings

(ii) each of the defendants failed to take steps that a reasonable director would take to prevent the Provisioning Failings

(iii) each of the defendants failed to ensure that the books and records of Provident included proper and adequate provision for the NPLs including the Loans

(iv) each of the defendants failed to take steps that a reasonable director would take in the position of the defendants, to enable them to guide and monitor effectively the management of Provident

(f) the ABL Breaches:

Particulars

(i) each of the defendants failed to recognise or adequately recognise the matters set out in paragraphs 299 to 309 and failed to take action to prevent the ABL Breaches;

(ii) each of the defendants failed to appreciate the risk to Provident in entering into the transactions pleaded in paragraphs 300 to 306 above

- (iii) each of the defendants failed to appreciate that Provident was in breach of the ABL Facility and that the ABL Facility was liable to be terminated at any time from 19 April 2009, by reason of the ABL Breaches
 - (iv) each of the defendants failed to take steps that a reasonable director would take in the position of the defendants, to enable them to guide and monitor effectively the management of Provident and ensure that there were not the ABL Breaches
- (g) the Further Trust Deed Breaches:

Particulars

- (i) each of the defendants failed to recognise or adequately recognise the matters set out in paragraph 310 and failed to take action to prevent the Further Trust Deed Breaches
 - (ii) each of the defendants failed to cause Provident to have or put in place any system to monitor compliance by Provident at all times with the Trust Deed Obligations
 - (iii) each of the defendants failed to take steps that a reasonable person would take in the position of the defendants to familiarise themselves with the requirements of the Trust Deed
 - (iv) each of the defendants failed to take steps that a reasonable director would take in the position of the defendants, to ascertain or enable them to ascertain whether Provident was complying with the requirements of the Trust Deed and ensure that there were not breaches of the Trust Deed
 - (v) each of the defendants failed to take steps that a reasonable director would take in the position of the defendants, to enable them to guide and monitor effectively the management of Provident
- (h) the Reporting Failures:

Particulars

- (i) each of the defendants failed to recognise or adequately recognise the matters set out in paragraphs 311 to 314 and failed to take action to prevent the Reporting Failures
- (ii) each of the defendants failed to take the steps of a reasonable director in the position of the defendants to cause Provident to correctly and accurately report the matters required to be reported in Section 283BF Reports
- (iii) each of the defendants failed to take the steps of a reasonable director in the position of the defendants to cause Provident to correctly and accurately report the matters required to be reported in the RG 69 Reports
- (iv) each of the defendants failed to take the steps of a reasonable director in the position of the defendants to cause Provident to correctly and accurately report the matters pleaded in paragraphs 311 to 313 in the Reported Financial Position
- (v) each of the defendants failed to take the steps of a reasonable director in the position of the defendants to cause Provident to correctly and accurately report matters required to be reported in its prospectuses
- (vi) each of the defendants failed to take steps of a reasonable director in the position of the defendants, to enable them to guide and monitor effectively the management of Provident
- (vii) each of the defendants failed to cause Provident to report to AET or ASIC any of the Trust Deed Breaches, Loan Breaches, System Failings, Provisioning Failings, ABL Breaches, or Further Trust Deed Breaches

The Cessation of Provident

317. The Defendants' Breaches were continuing breaches from 1 March 2008 until the appointment of the Receivers.
318. The Defendants' Breaches caused, or in the alternative, were a dominant factor in causing Provident to continue trading on and following 1 March 2008 by:

- (a) accepting new debenture funds which were used for no useful or permitted purpose;
- (b) paying interest on funds already borrowed;
- (c) incurring operational costs;
- (d) paying the April 2009 and the August 2010 Dividend in circumstances where Provident's operations could not support such payments;
- (e) maintaining the ABL Facility.

319. Had the Defendants' Breaches not occurred, Provident:

- (a) would have allocated a substantial provision in its books and records and financial statements and reports in respect of the Loans;
- (b) would have reported to AET and ASIC the Trust Deed Breaches, Loan Breaches, System Failings, Provisioning Failings, ABL Breaches or Further Trust Deed Breaches in compliance with the Statutory Requirements;
- (c) would have reported to ABL, ASIC and AET the ABL Breaches;
- (d) should have made the reports (in paragraph (b) above) and caused the Trustee to take steps pursuant to clause 11.2 of the Trust Deed;

Particulars

Upon the provision of sufficient (although not adequate) information to the Trustee in 2012, the Trustee took steps pursuant to clause 11.2 of the Trust Deed including in commencing Federal Court of Australia proceeding NSD 808 of 2012;

- (e) would have withdrawn DP 10;
- (f) would not have issued DP 11;
- (g) would have ceased operating on or following 1 March 2008 (Cessation Date);

Particulars

- (i) either AET, debenture holders, ASIC or the directors of Provident acting in accordance with the Director's Duties would have caused Provident to cease trading;
- (ii) further particulars of which will be provided by way of expert evidence;
- (h) would not have paid interest on debentures issued after the Cessation Date;
- (i) would not have paid the April 2009 Dividend or the August 2010 Dividend;
- (j) would not have delayed in realising securities and enforcing NPLs including the Loans, following the Cessation Date;
- (k) would not have paid interest on the recoverable proceeds of the NPLs following the Cessation Date;
- (l) would not have incurred further operational costs following the Cessation Date;
- (m) would not have accepted new debenture funds after the Cessation Date;
- (n) would not have maintained the ABL Facility after the Cessation Date;
- (o) would not, after the Cessation Date, have paid interest on funds already borrowed.

Loss and Damage

320. By reason of the matters pleaded in paragraphs 317 to 319 above and the Defendants' Breaches, the defendants caused loss and damage to Provident.

Particulars

Particulars of the loss and damage will be provided by way of expert evidence.

321. Further, by reason of the Defendants' Breaches which permitted the Trust Deed Breaches and the Further Trust Deed Breaches, debenture funds were used for a purpose other than one permitted by the Trust Deed, causing those funds to be lost to Provident, and thereby causing loss and damage to Provident in the amount of those funds.

Particulars

Particulars of the loss and damage will be provided by way of expert evidence.

Relief Claimed

1. A declaration under section 1317E of the Corporations Act that the defendants have breached section 180(1) of the Corporations Act 2001 (Cth).
2. An order that the defendants pay the plaintiff compensation pursuant to section 1317H of the Corporations Act 2001 (Cth).
3. An order that the defendants pay the plaintiff damages.
4. Such further or other orders as the Court considers fit.
5. Interest.
6. Costs.

SIGNATURE OF LEGAL REPRESENTATIVE

I certify that under section 347 of the Legal Profession Act 2004 there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in these proceedings has reasonable prospects of success.

I have advised the plaintiff that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature

Capacity

Solicitor on record

Date of signature

NOTICE TO DEFENDANT

If you do not file a defence within 28 days of being served with this statement of claim:

- **You will be in default in these proceedings.**
- **The court may enter judgment against you without any further notice to you.**

The judgment may be for the relief claimed in the statement of claim and for the plaintiff's costs of bringing these proceedings. The court may provide third parties with details of any default judgment entered against you.

HOW TO RESPOND

Please read this statement of claim very carefully. If you have any trouble understanding it or require assistance on how to respond to the claim you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the claim from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

You can respond in one of the following ways:

1. **If you intend to dispute the claim or part of the claim, by filing a defence and/or making a cross claim.**
2. **If money is claimed, and you believe you owe the money claimed, by:**
 - Paying the plaintiff all of the money and interest claimed. If you file a notice of payment under UCPR 6.17 further proceedings against you will be stayed unless the court otherwise orders.
 - Filing an acknowledgment of the claim.

- Applying to the court for further time to pay the claim.
3. If money is claimed, and you believe you owe part of the money claimed, by:
- Paying the plaintiff that part of the money that is claimed.
 - Filing a defence in relation to the part that you do not believe is owed.

Court forms are available on the UCPR website at www.lawlink.nsw.gov.au/ucpr or at any NSW court registry.

REGISTRY ADDRESS

Street address	Supreme Court of NSW Law Courts Building, Queen's Square 184 Phillip Street Sydney NSW 2000
Postal address	Supreme Court of NSW GPO Box 3 Sydney NSW 2001
DX	Supreme Court of NSW DX 829 Sydney
Telephone	1300 679 272

AFFIDAVIT VERIFYING

Name Marcus William Ayers
Address
Occupation Chartered Accountant
Date

I say on oath:

1. Anthony Milton Sims and I (**Receivers**) were appointed as receivers and managers of Provident Capital Limited (receivers and managers appointed) (in liquidation) ACN 082 735 573 (**Provident**) by his Honour Rares J of the Federal Court of Australia on 29 June 2012, having effect from 3 July 2012, and as receivers and managers on 10 July 2012 pursuant to a fixed and floating charge granted by Provident in favour of Australian Executor Trustees Limited.

1. I am authorised to verify this amended statement of claim on behalf of the Receivers.

2. I believe that the allegations of fact in this amended statement of claim are true.

Sworn at Sydney

Signature of deponent

Marcus William Ayers

Certificate of witness

I certify the following matters concerning the person who made this affidavit (the deponent):

[please strike out the option in each paragraph that does not apply]*

1. * I saw the face of the deponent ~~OR * I did not see the face of the deponent because the deponent was wearing a face covering, but I am satisfied that the deponent had a special justification for not removing the covering; and~~

2. * I have known the deponent for at least 12 months ~~OR * I have confirmed the deponent's identity using the following identification document:~~

Identification document relied on (may be original or certified copy)

Signature of witness

Solicitor

44 Martin Place, Sydney, NSW, 2000

PARTY DETAILS

PARTIES TO THE PROCEEDINGS

Plaintiff/s

Provident Capital Limited (Receivers & Managers Appointed) (In Liquidation)
ACN 082 735 573
Plaintiff

Defendant/s

Michael Roger O'Sullivan
First defendant
Trevor John Seymour
Second defendant
Malcolm Phillip Bersten
Third defendant
John Patrick Sweeney
Fourth defendant

FURTHER DETAILS ABOUT PLAINTIFF

Plaintiff

Name	Provident Capital Limited (Receivers & Managers Appointed) (In Liquidation)
ACN	082 735 573
Address	c/- 44 Martin Place, Sydney NSW 2000

Legal representative for plaintiff

Solicitor on the record	Craig Ensor
Practising certificate number	31715
Firm	Henry Davis York
Contact solicitor	Michael Catchpoole
Address	Henry Davis York 44 Martin Place SYDNEY NSW 2000
DX address	173 Sydney
Telephone	+61 2 9947 6000
Fax	+61 2 9947 6999
Email	michael_catchpoole@hdy.com.au
Electronic service address	Not applicable

DETAILS ABOUT DEFENDANTS

First Defendant

Name Michael Roger O'Sullivan
Address c/- Steven Glass
Gilbert & Tobin
2 Park Street
Sydney NSW 2000

Second Defendant

Name Trevor John Seymour
Address c/- Reaymond McGuinness
Watson Mangioni
Level 13, 50 Carrington Street
Sydney NSW 2000

Third Defendant

Name Malcolm Phillip Bersten
Address c/- Reaymond McGuinness
Watson Mangioni
Level 13, 50 Carrington Street
Sydney NSW 2000

Fourth Defendant

Name John Patrick Sweeney
Address c/- Reaymond McGuinness
Watson Mangioni
Level 13, 50 Carrington Street
Sydney NSW 2000