



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD864/2021

**GUY ABRAHAMS & KIM ABRAHAMS AS TRUSTEE FOR THE GUY & KIM
ABRAHAMS FAMILY TRUST**

Plaintiffs

COMMONWEALTH BANK OF AUSTRALIA ACN 123 123 124

Defendant

ORDER

JUDGE: JUSTICE CHEESEMAN

DATE OF ORDER: 04 November 2021

WHERE MADE: Sydney

BY CONSENT, THE COURT ORDERS THAT:

1. Pursuant to section 247A of the *Corporations Act 2001* (Cth) and subject to Orders 2 to 8, the Plaintiffs be authorised to inspect, and to make copies of, the following books:
 - a. All documents created by the Defendant in relation to CBA's Gas Projects and CBA's Further Fossil Fuel Projects (as defined in the Affidavit of Guy Marcel Abrahams affirmed 26 August 2021 (*Mr Abrahams' Affidavit*)), being the:
 - (i) Permian Highway Pipeline to carry natural gas in the USA;
 - (ii) Gaslog Ltd's new LNG vessels;
 - (iii) FLEX LNG Ltd's new LNG vessels;
 - (iv) Energy Infrastructure Investments' Tipton West coal seam gas project in Queensland;
 - (v) Siccar Point Energy E&P Limited's Cambo oil field development;
 - (vi) Euronav NV's very large crude carriers;
 - (vii) Santos Limited's acquisition of the Barossa Gas Field,



(together, the *Projects*) for the purpose of complying with the requirements of the E&S Framework and the E&S Policy (as defined in Mr Abrahams' Affidavit), being:

- (i) all documents created by the Defendant in order to carry out an assessment of the environmental, social and economic impacts of the Projects;
- (ii) all documents created by the Defendant in order to carry out an assessment of whether the Projects are in line with the goals of the Paris Agreement; and
- (iii) all documents created by the Defendant in order to discharge any obligation or responsibility that any unit, division or employee of the defendant has under CBA's Banking and Financing Commitment (as defined in Mr Abrahams' Affidavit),

excluding any communications (including email correspondence) between members of the Defendant's deal teams involved in each of the Projects.

- b. All documents created by the defendant for the purposes of implementing or reporting on the implementation or assessment of CBA's Banking and Financing Commitment (as defined in Mr Abrahams' Affidavit).
- c. All documents created by the Defendant in relation to whether the 2021 Commitments (as defined in Mr Abrahams' Affidavit) should be adopted or implemented by the Defendant, that:
 - (i) were provided to the Defendant's Board or to the Defendant's Executive Leadership Team, including committees of the Defendant's Board or committees of the Defendant's Executive Leadership Team in their capacity as governance forums; or
 - (ii) record decisions of the Defendant's Board or of the Defendant's Executive Leadership Team, including committees of the Defendant's Board or committees of the Defendant's Executive Leadership Team in their capacity as governance forums,

as set out in the letter from Allens to Equity Generation Lawyers dated 7 October 2021 and, for 1(b), the letter from Allens to Equity Generation Lawyers dated 20 October 2021.

- 2. Before production of any documents to the Plaintiffs in accordance with Order 1, the Defendant be permitted to redact:



- a. From any documents responsive to Order 1.a – any material that is commercial/financial information or the contractual terms of financing provided, except to the extent that that material relates to the environmental and social impacts of the Projects or alignment with the goals of the Paris Agreement;
 - b. From any documents responsive to Order 1.b - any material that is commercial/financial information except to the extent that the material relates to the specific categories set out in paragraphs 16(a) to (e) of the letter from Allens to Equity Generation Lawyers dated 7 October 2021 and paragraph 17 of the letter from Allens to Equity Generation Lawyers dated 20 October 2021;
 - c. From any documents responsive to Order 1.c – any material that is commercial/financial information except to the extent that the material relates to whether the 2021 Commitments should be adopted or implemented by the Defendant; and
 - d. From any documents responsive to Order 1 – any material that is legally privileged.
3. The Plaintiffs have liberty to apply, following production and inspection of the Documents referred to in Order 1 (the **Order 1 Documents**) for: (a) access to documents which are within the scope of the Originating Process which are additional to the Order 1 Documents; and/or (b) access to any part of the Order 1 Documents which has been redacted in accordance with order 2 above.
 4. By 25 November 2021, any third parties whose information is contained in the documents responsive to Order 1.a and who have been provided with copies of those documents by the Defendant (*Third Parties*) are to apply for leave to be heard in the proceedings for the purpose of seeking any confidentiality orders relating to the inspection, copying or use of those documents.
 5. Subject to Order 4, the Order 1 Documents shall be provided electronically by the Defendant to the Plaintiffs in tranches on the following dates:
 - a. 9 December 2021; and
 - b. 10 February 2022.
 6. If any Third Party makes an application under Order 4, inspection and copying of documents by the Plaintiffs of those documents referred to in Order 1.a which are subject to that application is not to occur until that application (and any associated application for confidentiality orders made by that Third Party) has been determined by the Court.



7. Subject to Orders 4 and 6, and until further order of the Court, the Order 1 Documents, and any information contained in those documents, may be disclosed only to:
 - a. the Plaintiffs;
 - b. the solicitors for the Plaintiffs; or
 - c. counsel and any experts for the Plaintiffs.
8. The Plaintiffs and any other person who is authorised to inspect, and to make copies of, the documents responsive to Order 1 as set out in Order 7, are, subject to any further order, to keep the information obtained during the inspection confidential.
9. The matter be listed for case management hearing on 10 March 2022 at a time to be advised by the Associate to Justice Cheeseman.
10. Liberty to restore on 4 days' notice.

Date that entry is stamped: 4 November 2021

Sia Lagos
Registrar