

The Courier ⁽¹⁾

Legal and financial heavyweights to take on Banksia case

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HEAVYWEIGHTS in both commercial law and forensic accounting have been assembled to run a class action legal case against the failed Banksia Securities and Cherry Fund finance companies, the company directors and auditors.

A Melbourne solicitor handling the class action, Mark Elliott, said a writ was lodged with the Victorian Supreme Court on December 24 and involved more than 16,000 investors with Banksia Securities Limited (BSL) and the associated Cherry Fund Limited (CFL).

Mr Elliott said he expected the court to accept an application for Banksia investor Laurence Bolitho of Kyabram to be the lead plaintiff, representing investors in the two companies.

He said investors had the choice to “opt out” of the class action but he did not expect to lose the case.

Mr Elliott said he had received the names of all investors in the two companies from their receivers, McGrathNicol, and would be sending investors a letter outlining the details of the class action. A website would also be set up to give investors more information about the class action.

Mr Elliott said investors who supported the class action would share on a “pro rata” basis in any settlement or court ruling in their favour.

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None of them, apart from the lead plaintiff Mr Bolitho, would bear any costs if they lost the case, he said.

Mr Elliott said he had made “adequate arrangements for any adverse costs orders” but declined to be specific about the arrangements.

“If there are any adverse cost orders, they will be Mr Bolitho’s problem,” he said yesterday.

Mr Elliott has 25 years’ experience as a solicitor and is a former partner in the Australia-based Minter Ellison international law firm.

The class action will be run by leading Melbourne barrister Norman O’Bryan, a senior counsel with extensive experience in commercial law, with the support of “a bevy of lawyers”, Mr Elliott said. A heavyweight international accountancy company, Ferrier Hodgson, has also been retained to provide financial analysis and forensic accountancy services.

Mr Elliott said funding the class action through a litigation fund was among the options being considered.