

FEDERAL COURT OF AUSTRALIA

Australian Securities and Investments Commission v Australian Fiduciaries Limited [2025] FCA 1099

File number(s): QUD 371 of 2025

Judgment of: **DOWNES J**

Date of judgment: 4 September 2025

Date of publication of reasons: 8 September 2025

Catchwords: **CORPORATIONS** – interlocutory application by ASIC for appointment of receivers and managers under s1323 of the *Corporations Act 2001* (Cth) to 10th and 11th defendants – nominated receivers were former administrators of majority of defendants with one now the liquidator of those defendants – privately appointed receivers have been appointed to 10th and 11th defendants – director of 10th and 11th defendants given leave to appear and offered undertakings and proposed alternative form of order – interests of investors best served by concurrent appointment of court appointed receivers with associated powers – orders substantially made as sought by ASIC

Legislation: *Corporations Act 2001* (Cth), ss 79, 314, 319, 601FC, 601HG(7), 601JD(1)(b), 912A(1)(aa), 1317E(4), 1323(1)(h)
Federal Court of Australia Act 1976 (Cth), ss 23, 37AF, 37AG
Federal Court (Corporations) Rules 2000 (Cth), r 2.13

Cases cited: *Australian Securities and Investments Commission v Keystone Asset Management Limited* [2024] FCA 1019
Re Richstar Enterprises Proprietary Limited; Australian Securities and Investments Commission v Carey (No 3) (2006) 232 ALR 577; [2006] FCA 433

Division: General Division

Registry: Queensland

National Practice Area: Commercial and Corporations

Sub-area: Corporations and Corporate Insolvency

Number of paragraphs:	49
Date of hearing:	4 September 2025
Counsel for the Applicant:	Mr E Goodwin KC with Ms J Nikolic
Solicitor for the Applicant:	MinterEllison
Counsel for the Tenth Defendant by its receivers and managers:	Mr R McDermott
Solicitor for the Tenth Defendant by its receivers and managers:	Hall & Wilcox
Counsel for the Eleventh Defendant by its receivers and managers:	Mr E Mijo
Solicitor for the for the Eleventh Defendant by its receivers and managers:	Mills Oakley
Counsel for Mr Rushton:	Mr J Hynes
Solicitor for Mr Rushton:	Lander & Rogers

ORDERS

QUD 371 of 2025

BETWEEN: **AUSTRALIAN SECURITIES AND INVESTMENTS
COMMISSION**
Plaintiff

AND: **AUSTRALIAN FIDUCIARIES LIMITED ACN 601 228 844**
First Defendant

GLOBAL ACTIVE PROPERTY PTY LTD ACN 641 974 656
Second Defendant

GLOBAL YIELD INVESTMENTS PTY LTD ACN 641 974 361
(and others named in the Schedule)
Third Defendant

SOLOMONS CAPITAL AUSTRALIA PTY LTD ACN 635
Interested Person

ORDER MADE BY: DOWNES J

DATE OF ORDER: 4 SEPTEMBER 2025

PENAL NOTICE

TO:

**SRI FIDUCIARIES 2 PTY LTD (ACN 647 487 732) AS TRUSTEE FOR SRI
PROPERTY TRUST 2 (ABN 21 691 923 892)**

**SRI FIDUCIARIES 3 PTY LTD (ACN 649 532 025) AS TRUSTEE FOR SRI
PROPERTY TRUST 3 (ABN 23 669 460 463)**

IF YOU (BEING THE PERSON BOUND BY THIS ORDER):

**(A) REFUSE OR NEGLECT TO DO ANY ACT WITHIN THE TIME SPECIFIED
IN THIS ORDER FOR THE DOING OF THE ACT; OR**

**(B) DISOBEY THE ORDER BY DOING AN ACT WHICH THE ORDER
REQUIRES YOU NOT TO DO;**

YOU WILL BE LIABLE TO IMPRISONMENT, SEQUESTRATION OF

PROPERTY OR OTHER PUNISHMENT.

ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS YOU TO BREACH THE TERMS OF THIS ORDER MAY BE SIMILARLY PUNISHED.

THE COURT NOTES THAT:

In these orders:

Books: includes a register, any other record of information, financial reports or financial records however compiled or recorded or stored, a document, papers, records, books of account, ledgers, journals, banking records, computer records, or other documents of any type whatsoever relating to the Business or Property of the Tenth and Eleventh Defendants.

Business: means all activities and arrangements whereby the Defendants, whether by themselves or any of them, or by their servants, agents or employees, elicited or obtained Investor Funds, and any subsequent dealings with, payments or distributions of, or uses made of Investor Funds, including the provision of Investor Funds to other Defendants, and all activities and arrangements whereby those other Defendants dealt with, made payments or distributions of, or otherwise used the Investor Funds received by them.

Corporations Act: means *Corporations Act 2001* (Cth).

Dealing: includes:

- (a) removing, causing, procuring, assisting or permitting any Property in the possession or under the control of the Defendants to be removed from Australia or from the jurisdiction of this Court; and/or
- (b) selling, charging, mortgaging, encumbering, securing,

diminishing, disposing of, parting with possession, making any declaration of trust in relation to, exercising any power to vary or modify any trust deed or any interest under any trust in relation to, any of the Property of any of the Defendants.

Private Receivers: means:

- (a) in respect of the Tenth Defendant, any receivers and managers appointed by PrivateInvest Capital Securities Limited (ACN 611 892 249) as trustee for the PrivateInvest First Mortgage Income Fund (ABN 40 229 793 964) (**PrivateInvest**); and
- (b) in respect of the Eleventh Defendant, any receivers and managers appointed by HMC Private Credit Funds Management Pty Ltd (ACN 107 613 258) (formerly Payton Funds Management Pty Ltd) as trustee for the HMC Private Credit CRE Select Investment Fund No. 2 (ABN 84 391 832 664) (formerly Payton Select Investment Fund No. 2) (**HMC Private**).

Investor Funds: means monies provided to any of the Defendants, whether directly, or through any of the other Defendants, or any of the Defendants' authorised agents, servants and/or representatives, for the actual or ostensible purpose of providing to investors, or arranging for investors to acquire, an interest in a financial product (including, but not limited to, a convertible note) and/or one or more of the Defendants otherwise using such funds for the purpose of providing a return to investors on the funds invested.

Property: means all real or personal property, assets or interests in property or assets of any kind, including any assets or property held by a trustee on behalf of beneficiaries as at the date of this originating

application filed 13 June 2025 (**Originating Application**), or in the future, within or outside Australia including choses in action and, by virtue of subsection 1323(2A) of the *Corporations Act*, any property held otherwise than as sole beneficial owner.

THE COURT ORDERS:

Appointment of Receivers

1. Pursuant to sections 1323(1)(h) and (3) of the *Corporations Act*, Matthew Charles Hudson and Terry van der Velde of SV Partners of 22 Market Street, Brisbane City QLD 4000 are appointed receivers and managers (**Receivers**), without security, of the Property of the Tenth and Eleventh Defendants, to:
 - (a) identify and, subject to the rights of the Private Receivers who shall at all times have priority, secure the Property of the Tenth and Eleventh Defendants;
 - (b) ascertain the amount of the Investor Funds received by the Tenth and Eleventh Defendants, including from any of the other Defendants;
 - (c) identify any dealings with, payments or distributions of, or uses made by the Tenth and Eleventh Defendants of the Investor Funds received by them;
 - (d) identify any Property purchased or acquired by the Tenth and Eleventh Defendants with Investor Funds received by them;
 - (e) subject to the rights of the Private Receivers who shall at all times have priority, recover Investor Funds received by the Tenth and Eleventh Defendants; and
 - (f) provide a report to the Court within 45 days in relation to:
 - (i) the matters referred to in subparagraphs 11(a) to 11(e) of this order;
 - (ii) an opinion as to the solvency of the Tenth and Eleventh Defendants; and
 - (iii) an opinion as to the likely return to creditors and investors in the event that each of the Tenth and Eleventh Defendants were to:
 - A. continue operating; and
 - B. be wound up.
2. The Receivers shall have the following powers:
 - (a) the powers set out in subsections 420(1) and (2)(a), (b), (e), (f), (g), (h), (k), (n), (o), (p), (q), (r), (t) and (u) of the *Corporations Act*;

- (b) the power to apply to the Court for directions or further orders; and
 - (c) the power to investigate and report on the matters set out in paragraph 11(f) above.
- 3. The Private Receivers shall permit the Receivers, at the Receivers' costs, to inspect and copy all the Books concerning the Business or the Property of the Tenth and Eleventh Defendants in their possession, custody or control.
- 4. The Plaintiff shall provide the Receivers with copies of all Books concerning the Business or the Property of the Tenth and Eleventh Defendants which have been or are obtained by the Plaintiff under Part 3, Division 3 and/or Division 3A of the *Australian Securities and Investments Commission Act 2001* (Cth) that the Receivers may reasonably request in writing.
- 5. The Plaintiff shall, upon the request of the Receivers, deliver up to the Receivers copies of the affidavits filed by the Plaintiff in support of the Originating Application.
- 6. The Plaintiff shall have liberty to apply to the Court on reasonable notice to Lee Rushton, in his capacity as director of the Tenth and Eleventh Defendant, for an order that the reasonable remuneration and reasonable costs and expenses properly incurred by the Receivers in the performance of their duties be payable from the Property of the Tenth and Eleventh Defendants.

Asset Preservation

- 7. Subject to paragraph 8 below, pursuant to section 1323(1) of the *Corporations Act*, until further order, the Tenth and Eleventh Defendants, by themselves and their servants, agents, and employees, are restrained until further order, from:
 - (a) removing, or causing, procuring, assisting or permitting to be removed, from Australia or from the jurisdiction of this Court, any of the Property of any of the Tenth and Eleventh Defendants;
 - (b) selling, charging, mortgaging, encumbering, securing, disposing of, diminishing the value of, or otherwise Dealing with, any of the Property of any of the Tenth and Eleventh Defendants;
 - (c) causing or permitting to be sold, charged, mortgaged, encumbered, secured, disposed of, diminished in value, or otherwise dealt with, any of the Property of any of the Tenth and Eleventh Defendants;

- (d) without limiting the terms of subparagraphs (a) to (c) above, incurring liabilities including, without limitations, liabilities incurred either directly or indirectly, through the use of a credit card, a credit facility, a drawdown facility or a re-draw facility; and
 - (e) without limiting the terms of subparagraphs (a) to (d) above, withdrawing, transferring or otherwise disposing of any monies available in any account with any bank, building society or other financial institution in which any of the Tenth and Eleventh Defendants have any legal or equitable interest.
8. The orders sought in paragraph 7 above do not prevent:
- (a) the Private Receivers from conducting any activity in relation to any of the Property of the Tenth and Eleventh Defendants, in the performance of their duties as receivers and managers of the Tenth and Eleventh Defendants, including but not limited to selling, charging, mortgaging, encumbering, securing, disposing of, diminishing the value of, or otherwise Dealing with, any of the Property of any of the Tenth and Eleventh Defendants in accordance with their appointer's security, their appointment documents and the *Corporations Act*;
 - (b) the Private Receivers from paying:
 - (i) the secured debt owing to their appointors in accordance with their rights under their respective security agreements and mortgages;
 - (ii) any other creditor of the Tenth and Eleventh Defendants that the Private Receivers consider, acting reasonably, require payment in connection with their realisation of the Property of the Tenth and Eleventh Defendants;
 - (iii) their remuneration and expenses and any other amounts payable by them in connection with their appointment as receivers and managers of the Tenth and Eleventh Defendants from the Property of the Tenth and Eleventh Defendants,
 in accordance with their appointer's security, their appointment documents and the *Corporations Act*;
 - (c) the Tenth and Eleventh Defendants from each paying or otherwise incurring a liability for ordinary, bona fide and properly incurred operating expenses;

- (d) the Tenth and Eleventh Defendants from paying or otherwise incurring a liability for costs reasonably incurred in this proceeding; and
- (e) any bank, building society or financial institution from exercising any right of set-off which it may have in respect of a facility afforded by it to the Tenth and Eleventh Defendants prior to the date of this Order.

Notice of orders to Third Parties

9. To the extent necessary, the Plaintiff has leave to give notice of these orders to:
- (a) the relevant authorities (domestic or overseas) that record, control and regulate the ownership of real property and motor vehicles;
 - (b) any bank, building society, cryptocurrency exchange or other financial institution (domestic or overseas) through which, to the best of the Plaintiff's belief, any of the Tenth and Eleventh Defendants operates any account;
 - (c) any other person or entity (domestic or overseas) holding or controlling Property, which, to the best of the Plaintiff's belief, belongs to any of the Tenth and Eleventh Defendants; and
 - (d) the Receivers,
- by delivering a copy of a minute of the orders to that entity or a person and/or any person apparently in the employ of that entity or person.

Other

10. Costs reserved.
11. Mr Lee Rushton be granted leave pursuant to r 2.13 of the *Federal Court (Corporations) Rules 2000* (Cth) to be heard in the proceeding.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

Delivered *ex tempore*, revised from transcript

DOWNES J:

Introduction

- 1 This proceeding concerns about \$167 million in funds invested by approximately 600 Australian investors, in most cases via self-managed superannuation funds, in three registered managed investment schemes operated by the first defendant, Australian Fiduciaries Limited (AFL). The three schemes were Global Diversified Alpha Fund, Global Multi-Strategy Fund and Global All Seasons Fund (together, the **registered schemes** or **Level 1 Entities**).
- 2 By its originating process filed on 13 June 2025, the plaintiff (ASIC) seeks certain orders against AFL and a number of its associated entities (the **defendants**). In particular, by paragraphs 2 to 7, ASIC seeks orders pursuant to s 1323(1)(h) of the *Corporations Act 2001* (Cth) and s 23 of the *Federal Court of Australia Act 1976* (Cth) for the appointment of receivers and managers without security to the Property (as defined) of the defendants and other ancillary orders (the **receiver orders**).
- 3 Further, by paragraphs 8 and 9 of the originating process, ASIC seeks orders pursuant to s 1323 of the *Corporations Act* and s 23 of the *Federal Court Act* restraining the defendants from dealing with their property as defined until further order, save for certain carve outs and without prejudice to any rights of identified third parties (the **asset preservation orders**).
- 4 By paragraph 10 of the originating process, ASIC seeks an order granting leave to ASIC to give notice of the receiver orders and/or asset preservation orders to certain persons and entities (the **notice orders**). ASIC also seeks orders under ss 37AF and 37AG of the *Federal Court Act* prohibiting the publication of certain evidence filed in support of the application but those orders were not pressed today as they have been subsumed by orders made earlier in chambers.
- 5 In support of its application, ASIC filed an affidavit of Mr Scott Purdon, a senior manager in the enforcement and compliance team at ASIC, affirmed on 12 June 2025.
- 6 Due to the appointment of external administrators over 22 of the 31 defendants, the scope of the relief sought by ASIC has narrowed since the originating process was filed.

- 7 Because of this, Mr Goodwin KC, who appears for ASIC, provided a draft form of order which related only to the 10th and 11th defendants, and it transpired that the purpose of the order was to obtain interlocutory orders only rather than final relief. In the draft order, ASIC sought orders appointing court appointed receivers to the property of the 10th and 11th defendants, with the nominated receivers being Mr Matthew Hudson and Mr Terry van der Velde of SV Partners, who have provided their consent to act. The asset preservation orders and notice orders were also sought in the draft order.
- 8 On 9 July 2025, I made timetabling orders requiring the defendants to file any affidavit evidence upon which they intended to rely by 1 August 2025. On 16 July 2025, ASIC filed a further affidavit of Mr Purdon affirmed on 16 July 2025 and an affidavit of Ms Melinda Smith, partner at MinterEllison, solicitors for ASIC, sworn 16 July 2025. None of the defendants filed any evidence as required by 1 August 2025. On 14 August 2025, I made orders requiring ASIC to file any further affidavit evidence upon which it intends to rely by 15 August 2025, and that was done when a further affidavit of Ms Smith, sworn 15 August 2025, was filed.
- 9 By interlocutory process which was accepted for filing on 1 September 2025, Mr Lee Rushton applied for leave pursuant to r 2.13 of the *Federal Court (Corporations) Rules 2000* (Cth) to be heard in the proceeding. Mr Rushton is a director of the 10th and 11th defendants and he sought leave to be heard in relation to the form of relief sought by ASIC today. As part of this, he offered an alternative form of order as well as undertakings in the place of the orders sought by ASIC. Leave was not opposed by any party, including ASIC, and so leave was granted to Mr Rushton to be heard.
- 10 Mr Rushton was represented by counsel, and relied upon an affidavit of his solicitor, Mr Keiran Breckenridge dated 29 August 2025.

The schemes operated by AFL

- 11 As at 30 June 2024, the unaudited financial statements for the registered schemes recorded that they had funds under management of approximately \$167 million after applying an impairment of around \$11 million.
- 12 About 97 per cent of the funds invested in the registered schemes were used to purchase units in four unregistered managed investment schemes (described in the hearing as the **Level 2 Entities** or the **unregistered schemes**). Global SRI Proprietary Limited (**GSRI**) was the

investment manager for the registered schemes and unregistered schemes until 31 August 2023. AFL has been the investment manager of the schemes since 1 September 2023.

13 The unregistered schemes invested in several entities, referred to as the **Level 3 Entities** as they received funds after the Level 1 and Level 2 Entities. The Level 3 Entities then invested funds in other entities, called the **Level 4 Entities**, which, in some cases, made further investments in yet more entities, called the **Level 5 Entities**.

14 All of the Level 3 Entities and many of the Level 4 and 5 Entities are defendants to this proceeding. Some of the Level 4 and Level 5 Entities went into liquidation before ASIC filed its originating process and were not joined as defendants.

15 Mr Lee Rushton is a former director, secretary, and the current responsible manager of AFL and is the beneficial owner of AFL through Avenir Fiduciaries Pty Ltd (**Avenir**) and a former director of all of the Level 3 Entities, Level 4 Entities and Level 5 Entities except for the 10th defendant and 11th defendant, of which he remains a current director.

16 The 1st, 2nd, 3rd, 4th, 5th, 7th, 9th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, 22nd, 29th, 30th and 31st defendants each have Ms Leisa Karmen as a director and are referred to in this judgment as the **Karmen Defendants**.

17 On 4 July 2025, Mr Hudson and Mr van der Velde of SV Partners were appointed administrators of each of the Karmen Defendants. On 31 July 2025, SV Partners issued a report to creditors (**Report to Creditors**) stating their view that it would be in the best interests of all creditors and investors to have the AFL group placed into liquidation.

18 On 8 August 2025, the Karmen Defendants were placed into liquidation with Mr Hudson appointed as liquidator.

19 On 17 July 2025, Mr Andrew Hanson and Mr Justin Walsh of EY-Parthenon were appointed receivers and managers over the whole of the assets and undertakings of the 11th defendant. Mr Hanson and Mr Walsh are represented by Mills Oakley and were represented by counsel at the hearing.

20 On 4 August 2025, Mr Philip Campbell-Wilson and Mr Graham Killer of Grant Thornton were appointed receivers and managers over the whole of the assets and undertakings of the 10th defendant. Mr Campbell-Wilson and Mr Killer are represented by Hall & Wilcox and were represented at the hearing.

- 21 The privately appointed receivers and managers of the 10th and 11th defendants neither oppose nor consent to the orders sought by ASIC today.

Legal framework

- 22 Under s 1323(1)(a) of the *Corporations Act*, the Court may make certain orders where (relevantly):

- (a) an investigation is being carried out under the *Australian Securities and Investment Commission Act 2001* (Cth) (**ASIC Act**) or the *Corporations Act* in relation to an act or omission by a person that constitutes or may constitute a contravention of the *Corporations Act*;
- (b) he relevant application has been made by ASIC; and
- (c) there is a person to whom the person who has or may have contravened the *Corporations Act* is or may become liable to pay money, whether in respect of a debt, by way of damages or compensation or otherwise, or to account for financial products or other property (an **aggrieved person**); and
- (d) the Court considers it necessary or desirable to make the orders for the purpose of protecting the interests of an aggrieved person.

- 23 In *Australian Securities and Investments Commission v Keystone Asset Management Limited* [2024] FCA 1019, Moshinsky J stated the following at [17]–[21]:

The purpose of s 1323 is to provide a means by which property, that may in due course represent a source of vindication of the rights of aggrieved persons, is preserved for their benefit: *Australian Securities and Investments Commission v Burnard* [2007] NSWSC 1217; 64 ACSR 360 at [14] per Barrett J. There is no requirement for ASIC to demonstrate a prima facie case of liability under the *Corporations Act*, or general law, on the part of the relevant person or that the person's assets may have been or are about to be dissipated: *Australian Securities and Investments Commission v Carey (No 3)* [2006] FCA 433; 232 ALR 577 (Carey (No 3)) at [26] per French.

With specific reference to s 1323(1)(h) and the appointment of a receiver (or receiver and manager), the touchstone for the exercise of that power is whether it is necessary or desirable in the circumstances: *Australian Securities and Investments Commission v Linchpin Capital Group Ltd* [2018] FCA 1104 (Linchpin Capital) at [61] per Derrington J. This inquiry focuses upon the protection of aggrieved persons: the needs of aggrieved persons, and the threats or risks to those needs: *Australian Securities and Investments Commission v Burke* [2000] NSWSC 694 at [6] per Austin J.

The fact of dissipation supports the exercise of a discretion in favour of appointing a receiver: *Australian Securities and Investments Commission v Adler* [2001] NSWSC 451; 38 ACSR 266 at [7(b)] per Santow J; Linchpin Capital at [62]. The existence of a substantial shortfall between moneys invested in a scheme, and moneys left in a scheme, is also a significant factor: Linchpin Capital at [64].

A receivership pursuant to s 1323(1)(h) allows for flexibility, including as to the receivers' powers: *Carey* (No 3) at [28] per French J.

The interests of the aggrieved persons may be protected not only by orders designed to protect against the dissipation of assets, but also by orders which create an opportunity for the assets of the person under investigation to be ascertained: *Carey* (No 3) at [27] per French J; *Australian Securities and Investments Commission v Secure Investments Pty Ltd* [2020] FCA 639 (Secure Investments) at [27] per Derrington J; *Linchpin Capital* at [61] per Derrington J. Receivers may be appointed for purposes including the identification, preservation, securing and recovery of relevant property: see, eg, *Australian Securities and Investments Commission v Marco* (No 3) [2020] FCA 719; 145 ACSR 265 at order 8; *Secure Investments* at order 10; *MyWealth Management* at order 1.

(Emphasis added.)

24 In *Re Richstar Enterprises Proprietary Limited; Australian Securities and Investments Commission v Carey* (No 3) (2006) 232 ALR 577; [2006] FCA 433, French J, as his Honour then was, stated the following at [24]–[29]:

There is a variety of ways in which the interests of persons, to whom liabilities may be owed, can be protected by orders made under the section. The nature of the protection can vary according to the nature of the risks assessed. As Palmer J said in *Australian Securities and Investments Commission v Mauer-Swisse Securities Ltd* (2002) 20 ACLC 1530; [2002] NSWSC 684 at [37]:

...there may be evidence to suggest that fraud has been perpetrated on a large scale and that many of the victims have no or little information about the extent of the fraud, no or little means for their own investigations, and no or little resources to prosecute their own claims. In such a case, the interests of such persons are protected, within the contemplation of s 1323, by enabling ASIC to conduct an investigation for the purpose of identifying the wrongdoers and exposing them not only to penalties under the Corporations Act and other legislation, but also to claims for compensation from the victims themselves.

The orders that can be made under the section are directed, inter alia, to the preservation of assets against which recovery may be sought in the event that liability to an “aggrieved person” is established on the part of a “relevant person”. The orders are made in circumstances where “an investigation is being carried out”, “a prosecution has been begun” or “a civil proceeding has been begun”. That is to say the orders can be made before liability is established and indeed before the evidence necessary to establish liability has been collected. While an application under the section is not interlocutory in an existing criminal or civil proceeding, it is interlocutory in a wider sense. It preserves the status quo and the assets of the relevant person pending the outcome of the investigation, prosecution or civil proceedings which are on foot — *Corporate Affairs Commission v Lone Star Exploration NL* (No 2) at SASR 30; ACLR 504. At the stage an order is sought the court may not be in a position to identify with precision any particular liability owed by the person the subject of the proposed order. This consideration applies to final orders made under the section as well as to interim orders for which it expressly provides in s 1323(3). The final orders made under the section are necessarily of a temporary or holding character rather than finally disposing of the rights and liabilities of the relevant persons affected by them.

The circumstances in which the court may make orders under s 1323(1) are wide as indicated by the words “necessary or desirable ... for the purpose of protecting the

interests of a person ...”. There is an element of risk assessment and risk management in the judgment the court is called on to make. It follows, and has been accepted, that there is no requirement on the part of ASIC to demonstrate a prima facie case of liability on the part of the relevant person or that the person’s assets have been or are about to be dissipated — *Corporate Affairs Commission v ASC Timber Pty Ltd* (1989) 7 ACLC 467 at 476 (Powell J); *Australian Securities and Investments Commission v Adler* (2001) 38 ACSR 266; [2001] NSWSC 451 at [7] (Santow J).

The nature and duration of orders made under s 1323(1) can be fashioned by the court to reflect its assessment of any risk of dissipation of the assets of a person under investigation. But their legitimate purposes can go further. *The interests of aggrieved persons may be protected not only by orders designed to protect dissipation of assets, but also by orders which create an opportunity for the assets of the person under investigation to be ascertained.*

The appointment of a receiver may offer a more flexible response to the exigencies of the case presented to the court than the imposition or continuation of a freezing order albeit they are not mutually exclusive remedies. The receiver can be equipped with the powers necessary to enable him or her to identify and locate a relevant person’s assets and to prevent their dissipation or removal from the jurisdiction. The receiver can also ensure, without the necessity of specific applications to the court to vary freezing orders, that bona fide dealings with assets which do not diminish the overall estate of the person under investigation and which allow that person to attend to their legitimate business affairs can be permitted. *While ASIC has investigative powers which can be used to like effect, they do not necessarily give the capacity for short term responses and flexibility of action that a competent receiver armed with suitable powers may have.*

It is not a necessary consequence of an order appointing a receiver that the receiver should deal with or liquidate the assets in question. The interlocutory and protective character of orders made under s 1323 must be borne in mind when defining the powers of the receiver. The appointment of a receiver has rightly been described as “an extraordinary step” — *ASIC v Burke* [2000] NSWSC 694 at [8] (Austin J). However, depending upon the nature of the powers conferred on the receiver it may be less drastic than a freezing order which can only be varied by order of the court. The interlocutory history of this case has already demonstrated that circumstances not contemplated when the original interim freezing orders were made have required their variation from time to time. I accept, with respect, the observation made by Austin J in *Burke* at [8]:

Without wishing to lay down any general rules, it appears to me that the extraordinary step of appointing a receiver may be justified, even though Mareva Orders are in place, in a case where there is real doubt about the existence and location of assets such as investments, and about the number and identity of claimants and the nature of their claims, and additionally the defendants are engaged in business activities which entail that any Mareva Orders must allow assets to be turned over in the course of business. Where these circumstances exist in combination, and especially where there are allegations of serious fraud involved, the Court may conclude ... that the Mareva Orders are not enough to ensure that the assets are preserved and protected, and indeed identified and brought in for the benefit of investors.

(Emphasis added.)

Consideration

- 25 The jurisdictional prerequisites to the making of an order under section 1323(1) are satisfied, and there was no dispute about this.
- 26 In particular, ASIC is investigating suspected contraventions of the *Corporations Act* by AFL. The investigation is also focused on entities that received funds invested in the registered schemes. ASIC's investigation involves suspected contraventions by AFL of several provisions of the *Corporations Act* including ss 314, 319, 601FC, 601HG(7), 601JD(1)(b) and 912A(1)(aa). By their conduct in receiving funds invested in the registered schemes, other defendants may have been involved in those contraventions within the meaning of ss 79 and 1317E(4) of the *Corporations Act*. These defendants include the 10th and 11th defendants.
- 27 The many investors in the registered schemes who have not been repaid their investments fall within the definition of an aggrieved person in s 1323(1), and the evidence showed that some 1,200 complaints about AFL have been made. Finally, as is apparent, ASIC has brought this application.
- 28 Mr Rushton proffered a draft order which included undertakings offered by the 10th and 11th defendants through Mr Rushton and the privately appointed receivers, and it was submitted by Mr Hynes, who appeared for Mr Rushton, that the proposed order is a less drastic remedy which will be less intrusive and achieve the same result at less cost than the order sought by ASIC.
- 29 In particular, Mr Rushton offered to provide emails in his possession and control relating to the affairs of the 10th and 11th defendants after I highlighted a concern raised in a letter dated 15 August 2025 by SV Partners that they did not have access to critical email accounts on the servers held by the AFL group.
- 30 By his counsel, Mr Rushton submitted that the appointment of court appointed receivers is a drastic step and identified the following issues with the appointment of court appointed receivers in addition to the private receivers: (1) the administration of the companies has been removed from the director by reason of the appointment of the privately appointed independent receivers; (2) the proposed appointment will be to property of the companies, but that property is under the control of the privately appointed receivers who are in the process of seeing to its realisation; (3) any property of the companies that exists following the conclusion of the private receiverships will comprise a fund held in an account which Mr Rushton has agreed by undertaking to the court not to access, save for the payment of reasonable legal expenses of the

companies and operating expenses and other identified expenses in the draft order; (4) the situation prevailing is to be contrasted with a trading or asset holding company which might justify the need for a degree of control or oversight for the purpose of preserving the status quo; (5) books and records of the companies held by Mr Rushton are now with and under the control of the privately appointed receivers; (6) the privately appointed receivers and, to the extent necessary, Mr Rushton, will provide such records to ASIC; and (7) many of the matters relied upon by ASIC as to why it is necessary or desirable for receivers to be appointed do not directly concern the 10th and 11th defendants.

31 Mr Rushton also points to the costs which will be incurred by the appointment of additional receivers over and above the privately appointed receivers. It was submitted that this will lead to a diminishment of any surplus available after the sale of the property of the companies with the consequence that there will be less return to investors. As to this last point, there is force in the contention that the appointment of court appointed receivers over and above the privately appointed receivers is an additional cost which may not have been necessary in the circumstances. For that reason, I will defer consideration of whether the costs of the court appointed receivers be paid from the assets of the 10th and 11th defendants to a future date. The parties did not oppose such a course, provided Mr Rushton was given notice of any application.

32 Otherwise, I am satisfied that the appointment of receivers and managers is necessary or desirable for the purpose of protecting the interests of investors. I say that for the following reasons and having regard to the various matters identified above and below.

33 AFL has not provided any information to investors as to the value of their investments since about May 2024. Further, AFL has not lodged audited financial reports or compliance plan audit reports for each of the registered schemes for the financial year ended 30 June 2024 such that the financial position of the schemes is not able to be ascertained.

34 On the whole, there appears to be a substantial shortfall between the funds invested in the registered schemes and the asset values of the registered schemes.

35 Only limited distributions have been paid to investors and many investors in the registered schemes have been unable to withdraw their funds.

36 Dividends were paid to Avenir, being the company wholly owned by Mr Rushton, with Mr Rushton also being involved in calculating the net tangible assets of AFL which appears to have been the key integer for the payment of dividends.

- 37 Approximately \$9.66 million has been transferred from Mr Rushton’s personal account with the National Australia Bank to overseas bank accounts including bank accounts in Malaysia, where Mr Rushton now resides and has resided for the past two years. As to this, it would appear that Mr Rushton is (in truth) the sole director of the 10th and 11th defendants and there is no Australian based director, at present, of these companies as is required under the *Corporations Act*.
- 38 Based on its investigations, ASIC considers the source of the funds sent to Mr Rushton included management and contribution fees earned by GSRI and dividends paid to Avenir by AFL.
- 39 Further, on 16 February 2024, Mr Rushton made a payment of just shy of \$600,000 to AGS Brisbane Proprietary Limited, the registered owner of business names including Bentley Brisbane, Audi Centre Brisbane, and Lamborghini Brisbane. Based on an initial funds tracing analysis, ASIC considers the source of these funds to include transfers from Avenir.
- 40 External administrators have been appointed to AFL, being the investment manager for the schemes, all of the Level 3 Entities, and most of the Level 4 and Level 5 Entities, with the consequence that it is highly unlikely that investors will recover significant amounts of their funds invested in the registered schemes. There has been a failure to make books and records available, suggesting a failure to maintain proper records and books of account. There is also some evidence that books and records may have been destroyed, which is of particular concern.
- 41 While SV Partners has had access to at least some of the books and records of the Karmen Defendants in their role as administrators, their appointment to the 10th and 11th defendants would enable further identification by them of what has been done with investor funds, the taking of steps to recover investor funds, and the preparation of a report to the Court that will enable a decision about what further steps should be taken including whether the 10th and 11th defendants should be wound up. Relevantly, the Report to Creditors notes that the financial performance and positions of the entities in the AFL group cannot be separately analysed due to the complex, entwined nature of their operations.
- 42 In these circumstances, there is no justification for a delay in the appointment of SV Partners as receivers and managers to the property of the 10th and 11th defendants (for example, to a time when then the privately appointed receivers are no longer acting). I consider that appointing them now rather than later will enable them with more ready access to the books and records of more companies within the AFL group, rather than relying upon Mr Rushton

and the privately appointed receivers to provide access, along with other powers which they are able to exercise to investigate the affairs of the 10th and 11th defendants. Such a course could increase the prospects of a higher return to investors and is therefore worthwhile. This is especially as the Karmen Defendants represent the majority of the defendants in the proceeding, and the proposed court appointed receivers have existing knowledge about those defendants and the AFL group which will assist with investigations into the affairs of the 10th and 11th defendants.

43 The appointment of external administrators by secured creditors serves different purposes than those served by the appointment of receivers by the court under s 1323(1)(h). In particular, the primary purpose of privately appointed receivers is commercial. They will realise the secured assets for the benefit of the secured creditors and then retire at whatever time they are able to do so. The purpose to be served by court appointed receivers is protective. It is not just to preserve assets but, in this instance, it will enable important investigations to be conducted across the companies in the AFL group, the affairs of which are regarded as “complex” and “entwined”.

44 It was submitted by Mr Hynes on behalf of Mr Rushton that the appointment of court appointed receivers will be intrusive. However, the 10th and 11th defendants do not operate a business and, as I understand it, they each own real property which is in the process of being either sold or developed and sold such that its business operations are not complex. Thus, I do not accept that the appointment of the court appointed receivers would be intrusive having regard to the limited affairs of these two companies.

45 For those reasons, I will make orders as proposed by ASIC in its draft order other than, as indicated, the order relating to the costs of the court appointed receivers but giving ASIC liberty to apply for such an order at a future date, on reasonable notice to Mr Rushton.

46 In relation to the asset preservation orders which are sought by ASIC and notwithstanding that undertakings were offered by Mr Rushton, which are in substantially, but not the same detailed form as the ASIC orders, ASIC submits it is necessary to make the asset preservation orders in addition to the receiver orders. Taking into account the matters which I have identified above, including, in particular, the unexplained transfer of significant funds overseas, Mr Rushton’s departure from Australia two years ago (and his continued residence overseas) and the expenditure on what appears to be luxury cars by Mr Rushton, I am persuaded that it would be appropriate to make the asset preservation orders sought by ASIC.

- 47 This is especially as the court appointed receivers and managers may not be in a position to identify all of the property of the 10th and 11th defendants, and there may be delays in them obtaining control over some of the assets of the 10th and 11th defendants.
- 48 The asset preservation orders are therefore necessary or desirable to protect the interests of investors for the same reasons as I have made the orders in relation to the receivers and also to prevent any unauthorised dealings with property of the 10th and 11th defendants. For that reason, I will make the asset preservation orders sought by ASIC.
- 49 Finally, in relation to the notice order, there was no objection taken to this order. Such an order is appropriate as it will enable ASIC to the extent necessary to give notice of the asset preservation orders to the relevant authorities that record, control and regulate the ownership of real property and motor vehicles, any financial institution through which ASIC believes either the 10th or 11th defendants operate accounts, and any person or entity holding or controlling property that ASIC believes belongs to the 10th or 11th defendants.

I certify that the preceding forty-nine (49) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Downes.

Associate:

Dated: 4 September 2025

SCHEDULE OF PARTIES

QUD 371 of 2025

Defendants

Fourth Defendant:	IMPACT FIDUCIARIES PTY LTD ACN 633 621 682 AS TRUSTEE FOR SOCIAL IMPACT TRUST ABN 34 221 385 991
Fifth Defendant:	GLOBAL PRIVATE EQUITY PTY LTD ACN 641 023 547
Sixth Defendant:	ALTON ENTERPRISES PTY LTD ACN 634 568 111
Seventh Defendant:	ELC FIDUCIARIES PTY LTD ACN 643 570 996 AS TRUSTEE FOR EARLY LEARNING PROPERTY TRUST
Eighth Defendant:	EDUCATION FIDUCIARIES PTY LTD ACN 642 177 080
Ninth Defendant:	SRI FIDUCIARIES PTY LTD ACN 634072 325 AS TRUSTEE FOR SRI PROPERTY TRUST ABN 61 412 567 086
Tenth Defendant:	SRI FIDUCIARIES 2 PTY LTD ACN 647 487 732 AS
Eleventh Defendant:	SRI FIDUCIARIES 3 PTY LTD ACN 649 532 025 AS
Twelfth Defendant:	SDA PROPERTY NOMINEES PTY LTD ACN 634 072 030
Thirteenth Defendant:	SDA FIDUCIARIES PTY LTD ACN 633 632 283 AS TRUSTEE FOR SDA PROPERTY TRUST ABN 16 727 323
Fourteenth Defendant:	SDA FIDUCIARIES 2 PTY LTD ACN 633 792 711
Fifteenth Defendant:	SDA FIDUCIARIES 3 PTY LTD ACN 634 665 008 AS
Sixteenth Defendant:	SDA FIDUCIARIES 4 PTY LTD ACN 634 665 044 AS
Seventeenth Defendant:	SDA FIDUCIARIES 5 PTY LTD ACN 641 715 237 AS
Eighteenth Defendant:	SDA FIDUCIARIES 6 PTY LTD ACN 641 715 246 AS
Nineteenth Defendant:	SDA FIDUCIARIES 7 PTY LTD ACN 642 131 968 AS
Twentieth Defendant:	SDA FIDUCIARIES 8 PTY LTD ACN 642 132 009 AS

Twenty First Defendant:	PROGRESSIVE EARLY EDUCATION CENTRES PTY LTD ACN 636 113 721
Twenty Second Defendant:	GLOBAL MULTIMEDIA PTY LTD ACN 643 569 975 AS TRUSTEE FOR GLOBAL MULTIMEDIA TRUST
Twenty Third Defendant:	GLOBAL EDUCATION INNOVATIONS PTY LTD ACN 650 365 021
Twenty Fourth Defendant:	VIOLETT PRODUCTION PTY LTD ACN 648 746 534
Twenty Fifth Defendant:	NEXUS FILES DEVELOPMENTS PTY LTD ACN 643 550 609
Twenty Sixth Defendant:	THE POSSESSED PTY LTD ACN 643 305 668
Twenty Seventh Defendant:	E3 DESIGN & BUILD PTY LTD ACN 635 558 959
Twenty Eighth Defendant:	E3 DESIGN & BUILD NSW PTY LTD ACN 636 046 136
Twenty Ninth Defendant:	EMPORIO FIDUCIARIES PTY LTD ACN 651 713 487 AS TRUSTEE FOR EMPORIO TRUST ABN 29 196 718 834
Thirtieth Defendant:	CHIRN PARK FIDUCIARIES PTY LTD ACN 643 570 236 AS TRUSTEE FOR CHIRN PARK ELC TRUST ABN 35 854 772 948
Thirty First Defendant:	POINT FIDUCIARIES PTY LTD ACN 649 961 053 AS TRUSTEE FOR PARADISE POINT TRUST ABN 50 577 352 584