

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged:	Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
Court of Filing:	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	29/04/2024 9:46:21 AM AEST
Date Accepted for Filing:	29/04/2024 9:56:31 AM AEST
File Number:	VID336/2024
File Title:	AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v MAGNIS ENERGY TECHNOLOGIES LIMITED ACN 115 111 763 & ANOR
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.

Form 2
(Rule 2.2)

ORIGINATING PROCESS

No. of 2024

Federal Court of Australia
District Registry:
Division: General

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

MAGNIS ENERGY TECHNOLOGIES LIMITED (ACN 115 111 763) AND ANOTHER

Defendants

A. DETAILS OF APPLICATION

This application is made under section 21 of the *Federal Court of Australia Act 1976* (Cth) (**Federal Court Act**) and sections 206C(1), 206E(1), 1317E and 1317G(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**).

The Plaintiff seeks declarations of contraventions of the Corporations Act and the *Australian Securities and Investments Commission 2001* (Cth) (**ASIC Act**), pecuniary penalty orders, disqualification orders and costs.

In this Originating Process, terms which are defined in the Concise Statement dated 29 April 2024 have the same meaning in this document.

On the facts stated in the accompanying Concise Statement, the Plaintiff seeks:

MAGNIS ENERGY TECHNOLOGIES LIMITED

Fully-Funded Production Contraventions

Continuous Disclosure

1 A declaration:

- (a) pursuant to section 1317E of the Corporations Act, that Magnis Energy Technologies Limited (**Magnis**) contravened section 674A(2) of the Corporations Act, on and from 25 January 2023, by failing to notify the ASX that, in order for the iM3NY Facility to achieve 1 GWh plant output or production rate by the end of 2023 or at all, iM3NY would require up to US\$60m further funding (the **Further Funding Requirement**), in circumstances where:
- (i) Magnis was aware of the Further Funding Requirement;
- (ii) Magnis was, by rule 3.1 of the ASX Listing Rules (**Rule 3.1**), required to notify the Further Funding Requirement to the ASX;

Filed on behalf of (name & role of party)	Australian Securities and Investments Commission, Plaintiff
Prepared by (name of person/lawyer)	Tom Jarvis
Law firm (if applicable)	Johnson Winter Slattery
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Email tom.jarvis@jws.com.au	
Address for service (include state and postcode)	Level 34, 55 Collins Street MELBOURNE VIC 3000

- (iii) the information was not generally available;
 - (iv) the Further Funding Requirement comprised information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Magnis shares, within the meaning of section 674A(2) and section 677(2) of the Act; and
 - (v) Magnis knew, or was reckless or negligent with respect to whether, the Further Funding Requirement would, if it were generally available, have a material effect on the price or value of the fully paid ordinary shares in Magnis;
- (b) that the contraventions referred to in subparagraph (a):
- (i) materially prejudiced the interests of acquirers or disposers of shares in Magnis within the meaning of section 1317G(1)(c)(i) of the Corporations Act;
 - (ii) further or alternatively, were serious within the meaning of section 1317G(1)(c)(iii) of the Corporations Act.

Misleading or Deceptive Conduct Contraventions

- 2 A declaration pursuant to section 21 of the Federal Court Act that Magnis, by:
- (a) representing, on and from 27 January 2023, that iM3NY sought or received funding to expand — from 1 GWh — its annual production capacity (and thereby impliedly repeating the Fully Funded Representations, which had been made since 19 April 2021);
 - (b) failing to disclose, on and from 27 January 2023:
 - (i) the Further Funding Requirement (despite being aware of this requirement since at least 25 January 2023); and/or
 - (ii) that iM3NY — which was producing battery cells at an annual rate significantly less than 1 GWh — required funding to avoid a net cash balance of zero within 2-4 months (again, despite being aware of this matter since at least 25 January 2023),
- engaged in conduct on and from 27 January 2023:
- (c) in this jurisdiction, in relation to a financial product or a financial service, that is misleading or deceptive or is likely to mislead or deceive, in contravention of section 1041H(1) of the Corporations Act; and/or
 - (d) in trade or commerce, in relation to financial services, that is misleading or deceptive or is likely to mislead or deceive, in contravention of section 12DA(1) of the ASIC Act.
- 3 A declaration pursuant to section 21 of the Federal Court Act that Magnis:
- (a) by making the Operates at Scale Representation on and from 27 January 2023;
 - (b) in circumstances where, in fact, iM3NY did not operate a gigawatt scale battery manufacturing plant or alternatively could only do so if the Further Funding Requirement was satisfied,

engaged in conduct on and from 27 January 2023:

- (c) in this jurisdiction, in relation to a financial product or a financial service, that is misleading or deceptive or is likely to mislead or deceive, in contravention of section 1041H(1) of the Corporations Act; and/or
- (d) in trade or commerce, in relation to financial services, that is misleading or deceptive or is likely to mislead or deceive, in contravention of section 12DA(1) of the ASIC Act.

4 A declaration pursuant to section 21 of the Federal Court Act that, on 31 March 2023, Magnis:

- (a) by making the Capacity Increase Funding Representation;
- (b) in circumstances where, in fact, Magnis funded iM3NY in order to permit it to continue in operation while producing battery cells at an annual capacity significantly less than 1 GWh,

engaged in conduct:

- (c) in this jurisdiction, in relation to a financial product or a financial service, that is misleading or deceptive or is likely to mislead or deceive, in contravention of section 1041H(1) of the Corporations Act; and/or
- (d) in trade or commerce, in relation to financial services, that is misleading or deceptive or is likely to mislead or deceive, in contravention of section 12DA(1) of the ASIC Act.

Production Contraventions

Continuous Disclosure Contraventions

5 A declaration:

- (a) pursuant to section 1317E of the Corporations Act that — having impliedly represented on and from at least 12 August 2022 that iM3NY had commenced fully-automated production of lithium-ion battery cells at the iM3NY Facility — Magnis contravened section 674A(2) of the Corporations Act, on and from at least 28 September 2022 or alternatively 25 January 2023 until the date of issue of this proceeding, by failing to notify the ASX that the production process used by iM3NY to assemble cells at the iM3NY Facility was not fully-automated and would not be in the near future (the **No Fully-Automated Production Information**) in circumstances where:
 - (i) Magnis was aware of the No Fully-Automated Production Information;
 - (ii) Magnis was, by Rule 3.1, required to notify the No Fully-Automated Production Information to the ASX;
 - (iii) the No Fully-Automated Production Information was not generally available;
 - (iv) the No Fully-Automated Production Information comprised information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Magnis shares, within the meaning of section 674A(2) and section 677(2) of the Act; and
 - (v) Magnis knew, or was reckless or negligent with respect to whether, the No Fully-Automated Production Information would, if it were generally

available, have a material effect on the price or value of the fully paid ordinary shares in Magnis;

- (b) that the contraventions referred to in subparagraph (a):
 - (i) materially prejudiced the interests of acquirers or disposers of shares in Magnis within the meaning of section 1317G(1)(c)(i) of the Corporations Act;
 - (ii) further or alternatively, were serious within the meaning of section 1317G(1)(c)(iii) of the Corporations Act.

6 A declaration:

- (a) pursuant to section 1317E of the Corporations Act, that Magnis contravened section 674A(2) of the Corporations Act, on and from at least 23 April 2023 by:
 - (i) failing to notify the ASX that, iM3NY:
 - (A) could not, or alternatively did not know whether it could:
 - (1) produce saleable cells at scale; or
 - (2) alternatively, produce defect-free saleable cells at scale;
 - (B) could not, or alternatively did not know whether it could, generate revenue (other than de minimis revenue) from the sale of cells produced at the iM3NY Facility,

(individually or together, the **No Production at Scale Information**),
- in circumstances where:
- (ii) Magnis was aware of the No Production at Scale Information;
 - (iii) Magnis was, by Rule 3.1, required to notify the No Production at Scale Information to the ASX;
 - (iv) the No Production at Scale Information was not generally available;
 - (v) the No Production at Scale Information comprised information that a reasonable person would expect, if it were generally available, to have a material effect on the price or value of Magnis shares, within the meaning of section 674A(2) and section 677(2) of the Act; and
 - (vi) Magnis knew, or was reckless or negligent with respect to whether, the No Production at Scale Information would, if it were generally available, have a material effect on the price or value of the fully paid ordinary shares in Magnis;
- (b) that the contraventions referred to in subparagraph (a):
 - (i) materially prejudiced the interests of acquirers or disposers of shares in Magnis within the meaning of section 1317G(1)(c)(i) of the Corporations Act;
 - (ii) further or alternatively, were serious within the meaning of section 1317G(1)(c)(iii) of the Corporations Act.

Misleading or Deceptive Conduct Contraventions

- 7 A declaration pursuant to section 21 of the Federal Court Act that Magnis, by:
- (a) making the Production Capability Representation on and from 12 August 2022; and
 - (b) failing to disclose the No Production at Scale Information on and from 23 April 2023,
- engaged in conduct on and from 23 April 2023:
- (c) in this jurisdiction, in relation to a financial product or a financial service, that is misleading or deceptive or is likely to mislead or deceive, in contravention of section 1041H(1) of the Corporations Act; and/or
 - (d) in trade or commerce, in relation to financial services, that is misleading or deceptive or is likely to mislead or deceive, in contravention of section 12DA(1) of the ASIC Act.

Other orders

- 8 An order pursuant to section 1317G(1) of the Corporations Act that Magnis pay to the Commonwealth of Australia a pecuniary penalty in such amount as the Court considers appropriate in respect of each of the declared contraventions of section 674A(2) of the Corporations Act.
- 9 An order that Magnis pay the Plaintiff's costs.

MR FRANK POUILLAS

Continuous Disclosure

- 10 A declaration:
- (a) pursuant to section 1317E of the Corporations Act, that Mr Frank Poullas (**Mr Poullas**) was involved in each of the contraventions by Magnis referred to in paragraphs 1, 5 and 6 above and thereby contravened section 674A(3) of the Corporations Act on each occasion; and
 - (b) that the contraventions referred to in subparagraph (a):
 - (i) materially prejudiced the interests of acquirers or disposers of shares in Magnis within the meaning of section 1317G(1)(c)(i) of the Corporations Act;
 - (ii) further or alternatively, were serious within the meaning of section 1317G(1)(c)(iii) of the Corporations Act.

Misleading or Deceptive Conduct

- 11 A declaration pursuant to section 21 of the Federal Court Act that, by:
- (a) contributing to the drafting, approving the contents and/or authorising or directing the transmission to the ASX (for the purpose of publication by the ASX) of the announcements which gave rise to the representations referred to in paragraphs 2(a), 3(a), 4(a) and 7(a); and
 - (b) failing to qualify, withdraw or correct the announcements or representations referred to in paragraph 2(a) (on and from 27 January 2023), 3(a) (on and from 27 January 2023), 4(a) (on 31 March 2023) and 7(a) (on and from 23 April 2023) and/or disclose the information referred to in paragraphs 2(b), 3(b), 4(b) and 7(b) above, despite being aware of the information,

Mr Poullas personally:

- (c) in this jurisdiction, engaged in conduct in relation to a financial product or a financial service, that is misleading or deceptive or is likely to mislead or deceive, in contravention of section 1041H(1) of the Corporations Act; and/or
- (d) in trade or commerce, engaged in conduct in relation to financial services that is misleading or deceptive or is likely to mislead or deceive, in contravention of section 12DA(1) of the ASIC Act.

Directors' Duties

12 A declaration:

- (a) pursuant to section 1317E of the Corporations Act, that from at least 25 January 2023, Mr Poullas contravened section 180(1) of the Corporations Act by failing to exercise his powers and discharge his duties to Magnis with the degree of care and diligence that a reasonable person would exercise — if they were a director of a corporation in Magnis' circumstances and occupied the office held by him, and had the same responsibilities within the corporation — by failing to take all reasonable steps to:
 - (i) mitigate the risk that any announcement or other document he drafted, approved or authorised for submission to the ASX was misleading, or likely to mislead;
 - (ii) qualify, withdraw or correct any existing announcement or document submitted to the ASX to mitigate the risk that such announcements or documents were misleading;
 - (iii) mitigate the risk that material information concerning Magnis was not disclosed to the ASX; and
- (b) that the contraventions referred to in subparagraph (a):
 - (i) materially prejudiced the interests of Magnis within the meaning of section 1317G(1)(b)(i) of the Corporations Act;
 - (ii) further or alternatively, were serious within the meaning of section 1317G(1)(b)(iii) of the Corporations Act.

13 A declaration:

- (a) pursuant to section 1317E of the Corporations Act, that on and from 25 January 2023, Mr Poullas contravened section 180(1) of the Corporations Act by causing or permitting Magnis to contravene:
 - (i) section 674A(2) of the Corporations Act;
 - (ii) further or alternatively section 1041H(1) of the Corporations Act;
 - (iii) further or alternatively, section 12DA(1) of the ASIC Act,thereby exposing Magnis to the risk of legal proceedings, including declarations of contravention and civil pecuniary penalties; and
- (b) that the contraventions referred to in subparagraph (a):
 - (i) materially prejudiced the interests of Magnis within the meaning of section 1317G(1)(b)(i) of the Corporations Act;

- (ii) further or alternatively, were serious within the meaning of section 1317G(1)(b)(iii) of the Corporations Act.

Other Orders

- 14 An order pursuant to section 1317G(1) of the Corporations Act that Mr Poullas pay to the Commonwealth of Australia, a pecuniary penalty in such amount as the Court considers appropriate, in respect of each of the declared contraventions of section 674A(3) of the Corporations Act.
- 15 An order pursuant to section 1317G(1) of the Corporations Act that Mr Poullas pay to the Commonwealth of Australia, a pecuniary penalty in such amount as the Court considers appropriate, in respect of each of the declared contraventions of section 180(1) of the Corporations Act.
- 16 An order pursuant to section 206C(1) and/or section 206E(1) of the Corporations Act disqualifying Mr Poullas from managing corporations for a period to be determined by the Court.
- 17 An order that Mr Poullas pay the Plaintiff's costs.
- 18 Such further or other orders as the Court considers appropriate.

Date: 29 April 2024

John Witter Slaty

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Signature of Plaintiff's legal practitioner

This application will be heard by at Owen Dixon
Commonwealth Law Courts Building 305 William Street Melbourne VIC 3000 at *am/*pm on
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B. NOTICE TO DEFENDANT(S) (IF ANY)

TO: Magnis Energy Technologies Limited

Suite 11.01, 1 Castlereagh Street
SYDNEY NSW 2000

AND Mr Frank Poullas



If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the Plaintiff.

Note Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

C. FILING

Date of filing: 29 April 2024

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Registrar

This Originating Process is filed by Johnson Winter Slattery, solicitors for the Plaintiff.

D. SERVICE

The Plaintiff's address for service is:

Johnson Winter Slattery
Level 34, 55 Collins Street
MELBOURNE VIC 3000

It is intended to serve a copy of this Originating Process on each Defendant