



No: VID407/2015

Federal Court of Australia
District Registry: Victoria
Division: General

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION
Applicant

JAMIE NEVILLE MCINTYRE and others named in the schedule
Respondent

ORDER

JUDGE: JUSTICE MIDDLETON

DATE OF ORDER: 07 October 2015

WHERE MADE: Melbourne

Definitions

“Property” means all real or personal property, assets or interests in property of any kind, within or outside Australia including, by virtue of section 1323(2A) of the Act any property held other than as sole beneficial owner.

“Investor” means a person or entity who has, directly or indirectly, contributed money or money’s worth in respect of any of the Schemes.

“Schemes” means each of the Schemes referred to in Annexure 1.

THE COURT ORDERS BY CONSENT THAT:

1. The service of the Interlocutory Process filed on 3 August 2015 and the Originating Process filed on 3 August 2015 be dispensed with and it be made returnable instanter.
2. The undertakings of the respondents given to the Court on 21 August 2015 be discharged.
3. Pursuant to section 1324 of the Act that until further order the respondents be restrained whether by themselves, their officers, servants, agents, or otherwise howsoever from:
 - (a) further promoting or operating any one of the Schemes as set out in Annexure 1;
 - (b) doing any act in furtherance of or in connection with any of the Schemes;
 - (c) receiving, soliciting or disposing of any funds in connection with the Schemes;



- (d)
- (i) removing from Australia, or causing, procuring, assisting, or permitting to be removed from Australia;
 - (ii) 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 interest under any trust in relation to, removing from their present locations; or
 - (iii) otherwise dealing with or disposing of, or causing or permitting to be sold, charged, mortgaged or otherwise howsoever dealt with or disposed of,

all or any of the respective assets or property of the Schemes, whether such property be in the name of any of the entities referred to in Annexure 1 hereof or jointly with any other person, company or entity or in the names of nominees or trustees of any of the entities referred to in Annexure 1 PROVIDED that this undertaking will not prevent any bank, building society or financial institution from exercising any right under any mortgage registered on the title of any real estate registered before the date of this undertaking in the name of any of the entities referred to in Annexure 1 hereof jointly, severally, or, jointly and severally.

- (e) disposing of, destroying, amending, altering, parting with possession of, removing from their present location, or causing, procuring, assisting or permitting to be disposed of, destroyed, amended, altered, possession parted with or removed from their present location, all and any books, papers, records, books of account, ledgers, journals, banking records, computer records or other documents of any type whatsoever recording or evidencing any dealings in relation to any of the Schemes.
4. Pursuant to s 37AF of *Federal Court Australia Act 1976* (Cth), and on the basis that it is necessary to prevent prejudice to the proper administration of justice, the specific exhibits/annexures to the affidavit of Andrew James Price sworn on 3 August 2015 that are marked "Confidential" are to be kept confidential and are not to be disclosed to other persons without the express consent of all parties, or of the named witnesses, or by order of this Court.

Appointment of Provisional Liquidators

5. Pursuant to s 472(2) of the *Corporations Act 2001* (Cth) (the **Act**), Simon Alexander Wallace-Smith and Robert Scott Woods, of Deloitte, 555 Bourke Street, Melbourne, Victoria be appointed as joint and several provisional liquidators to each of the third to tenth Corporate Respondents inclusive (as defined in Annexure 1 to these Orders) (the **Corporate Respondents**) (the **Provisional Liquidators**).



6. The Provisional Liquidators have the following powers:
- (a) all powers necessary to identify, and secure the Property of each of the Schemes;
 - (b) to enter into possession and take control of all assets (including money) of the Corporate Respondents, including all assets of the Corporate Respondents used in or relating to its operations, together with all books, records, computers, computer disks, and any other papers or records relating thereto;
 - (c) to deal with any moneys held by or on behalf of the Corporate Respondents or its officers, employees or agents or any of them, being moneys received in relation to or employed in the Corporate Respondents' operations;
 - (d) to operate and inspect any account at any bank or other financial institution being an account operated by the Corporate Respondents or their officers, employees or agents or any of them and to withdraw any such moneys and to pay any such moneys into an account or accounts opened or maintained by or for the Provisional Liquidators;
 - (e) to appoint a solicitor, accountant or other professionally qualified person either within or outside Australia to assist the Provisional Liquidators;
 - (f) to delegate to their partners, employees and agents whether within or outside Australia any business or matter that the Provisional Liquidators are unable to do themselves or that can be done more conveniently by those others;
 - (g) to receive any moneys due to the Corporate Respondents relating to their operations;
 - (h) to compromise any calls, liabilities to calls, liabilities capable of resulting in debts and any claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting or supposed to subsist between the Corporate Respondents and a contributory or other debtor or person apprehending liability to the Corporate Respondents, and all question in any way relating to or affecting the property of the Corporate Respondents, on such terms as are agreed, and take any security for the discharge of, and give complete discharge in respect of, any such call, debt, liability or claim;
 - (i) for the purposes of maintaining and securing the assets of the Corporate Respondents to:
 - (i) pay any expense, including for the purposes of insurance;
 - (ii) execute any document;
 - (iii) bring or defend any proceeding;
 - (iv) to carry on business;
 - (v) to obtain credit; and/or
 - (vi) do any other act or thing,in the name of or on behalf of the Corporate Respondents, their officers, employees or agents or any of them;
 - (j) to make any application to any court or regulatory agency for the purposes of exercising the powers in (a)-(i) above;



- (k) to apply for further orders, including the power to realise the assets and pay the liabilities of the Corporate Respondents, and to seek directions as to the disposition of any remaining proceeds; and
 - (l) to receive remuneration on a time basis within the scale of charges approved by the court, such remuneration to be paid from the proceeds of the winding up.
7. On or before 19 November 2015 or such other date as the Court allows, the Provisional Liquidators shall, provide to the court, the plaintiff and the respondents a report as to the Provisional Liquidation for each of the Corporate Respondents (the **Disclosure Reports**), including:
- (a) the identification of the assets and liabilities of the Corporate Respondents;
 - (b) an opinion as to the solvency of the Corporate Respondents;
 - (c) the likely return to creditors of the Corporate Respondents;
 - (d) any other information necessary to enable the financial position of the Corporate Respondents to be assessed;
 - (e) any suspected contravention of the Act by the any directors and or officers of the Corporate Respondents;
 - (f) the nature and identity of the Property of the Schemes;
 - (g) the claims (actual, contingent and other) of third parties in relation to the Property of the Schemes including, but not limited to, whether the Property of the Schemes has been given as security for any debt or liability and if so, the nature of the security and the debt or liability so secured;
 - (h) in relation to the Investors:
 - (i) the identities of the Investors and the nature and extent of their interests;
 - (ii) any payments made to or by Investors in relation to the Schemes;
 - (iii) any money owing to the Investors;
 - (i) the nature and identity of the liabilities of the Schemes including, but not limited to, liabilities to the Investors;
 - (j) the solvency of the Schemes;
 - (k) the most appropriate manner and timing of managing and realising any assets or Property of the Schemes so as to most benefit the Investors; and
 - (l) a recommendation as to the process for recovering all money owing to the Schemes, whether by way of loan or otherwise.
8. The Provisional Liquidators have access to the documents held by the plaintiff (ASIC) in relation to the Schemes (saving all just exceptions).

Other orders

- 9. The matter is referred to a further directions hearing at 10.15am on 4 December 2015.
- 10. All parties have liberty to apply.



11. Costs reserved.

Date that entry is stamped: 7 October 2015

Warrick Soden
Registrar



ANNEXURE 1

SCHEDULE: LIST OF RESPONDENTS AND SCHEMES

No. VID 407 of 2015

Federal Court of Australia
District Registry: Victoria
Division: Melbourne

IN THE MATTER OF PROPERTY TUITION PTY LTD (ACN 129 421 281)

RESPONDENTS

Jamie Neville McIntyre	First Respondent
Dennis McIntyre	Second Respondent
Archery Road Pty Ltd (ACN 162 921 735)	Third Respondent
Secret Valley Estate Pty Ltd (ACN 602 817 532)	Fourth Respondent
Kingsway South Holdings Pty Ltd (ACN 159 230 976)	Fifth Respondent
Bendigo Vineyard Estate Pty Ltd (ACN 600 088 211)	Sixth Respondent
Melbourne Tarniet Estate Pty Ltd (ACN 603 945 393)	Seventh Respondent
Property Tuition Pty Ltd (ACN 129 421 281)	Eighth Respondent
Education Holdings Pty Ltd (ACN 129 551 917)	Ninth Respondent
Sourcing Property Pty Ltd (ACN 602 474 779)	Tenth Respondent

SCHEMES

- the Scheme known as **Botanica** which includes land located at 805 Archer Road, Kialla, Victoria 3631 and involves Archery Road Pty Ltd, Property Tuition Pty Ltd, Education Holdings Pty Ltd and the investors therein.
- the Scheme known as **Secret Valley Estate** which includes land located at 1955 Old Sydney Road, Bylands, Victoria 3762 and involves Secret Valley Estate Pty Ltd, Property Tuition Pty Ltd, Education Holdings Pty Ltd and the investors therein.



- the Scheme known as **Oak Valley Lakes Estate & Resort** which includes land located at 124 Booth Road, Brookhill, Townsville Qld 4816 and involves Kingsway South Holdings Pty Ltd, Sourcing Property Pty Ltd, Property Tuition Pty Ltd, Education Holdings Pty Ltd and the investors therein.
- the Scheme known as **Bendigo Vineyard Estate & Resort** which includes land located at 51 Andrews Road, Bendigo, Victoria 3551 and involves Bendigo Vineyard Estate Pty Ltd, Property Tuition Pty Ltd, Education Holdings Pty Ltd and the investors therein.
- the Scheme known as **Melbourne Grove Estate** which includes land located at 1491 Dohertys Road, Mount Cottrell, Victoria 3024 and involves Melbourne Tarniet Estate Pty Ltd, Property Tuition Pty Ltd, Education Holdings Pty Ltd and the investors therein.