

# FEDERAL COURT OF AUSTRALIA

## Australian Securities and Investments Commission v Uglii Corporation Ltd

[2016] FCA 1099

File number: VID 640 of 2016

Judge: **DAVIES J**

Date of judgment: 8 September 2016

Catchwords: **CORPORATIONS** – application for appointment of provisional liquidator – principles to be applied when considering whether to appoint provisional liquidator – whether reasonable prospect that winding up order will be made – whether public interest considerations – whether less intrusive measures will address the circumstances – just and equitable ground – whether justifiable lack of confidence in the conduct and management of the company’s affairs

Legislation: *Corporations Act 2001* (Cth), ss 201A, 292, 302, 311, 319, 320, 459B, 461(1)(k), 464, 472(2), 588G, 707(3), 727, 734, 761A, 764A(1)(a), 769C, 1041H  
*Australian Securities and Investments Commission Act 2001* (Cth), ss 30A, 33

Cases cited: *Australian Securities and Investments Commission v Activesuper Pty Ltd and Others (No 2)* (2013) 93 ACSR 189; [2013] FCA 234  
*Australian Securities and Investments Commission v CME Capital Australia Pty Ltd* [2015] FCA 1489  
*Australian Securities and Investments Commission v Solomon* (1996) 19 ACSR 73  
*Australian Securities and Investments Commission v Tax Returns Australia Dot Com Pty Ltd* [2010] FCA 715  
*Australian Securities and Investments Commission v Weerappah (No 2)* [2009] FCA 249  
*Lubavitch Mazal Pty Ltd v Yeshiva Properties No 1 Pty Ltd and Others* (2003) 47 ACSR 197; [2003] NSWSC 535

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Counsel for the Plaintiff:	M R Pearce SC with A Folie
Solicitor for the Plaintiff:	Australian Securities and Investments Commission
Counsel for the First, Second, Third, Fourth, Fifth and Sixth Defendants:	P G Willis SC
Solicitor for the First, Second, Third, Fourth, Fifth and Sixth Defendants:	John Morrow, John Morrow Solicitor

## **ORDERS**

**VID 640 of 2016**

### **IN THE MATTER OF UGLII CORPORATION LIMITED**

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

**AND:**                        **UGLII CORPORATION LIMITED (ACN 085 265 309)**  
First Defendant (and others named in the Schedule)

**JUDGE:**                    **DAVIES J**

**DATE OF ORDER:**    **8 SEPTEMBER 2016**

### **THE COURT ORDERS THAT:**

1. Pursuant to section 472(2) of the *Corporations Act 2001* (Cth) ("**the Act**"), Robyn Lee Erskine and Adrian Hunter, official liquidators, of Brooke Bird of 471 Riversdale Road, Hawthorn East, in the State of Victoria be appointed as joint and several provisional liquidators to each of the defendants.
2. Within 14 days of the date of this order, the provisional liquidators send a notice to each creditor and each member of the defendants at the last known address for each such person as shown in the books and records of the defendants giving notice of:
  - (a) the appointment of the provisional liquidators; and
  - (b) a contact address for the provisional liquidators.
3. The provisional liquidators shall, within 42 days of their appointment, or such other time as the Court orders, provide to the Court and to the Plaintiff a report as to the provisional liquidation of each of the defendants, including:
  - (a) the identification of the assets and liabilities of each of the defendants;
  - (b) an opinion as to the solvency of each of the defendants;
  - (c) an opinion as to the value of the assets of the defendants;
  - (d) the likely return to creditors;
  - (e) an opinion as to whether the defendants have proper financial records;

- (f) any other information necessary to enable the financial position of the defendants to be assessed;
  - (g) an opinion as to whether any of the defendants contravened any provisions of the Act and/or any other legislation; and
  - (h) any suspected contraventions of the Act and/or any other legislation by the current and former directors and officers of the defendants.
4. In addition to the powers conferred on them by the Act, the provisional liquidators will also have the power to investigate into and report on:
- (a) the matters set out in paragraph 3 of this order; and
  - (b) any other matters specified in the affidavits of Gregory Stewart McLeod dated 14 June 2016 and dated 27 July 2016.
5. The parties and the provisional liquidators have liberty to apply.
6. Costs of the Plaintiff's interlocutory application be costs in the cause in the application for final relief.
7. The provisional liquidators shall be entitled to such remuneration as is determined by the Court pursuant to section 473(2) of the Act.
8. The matter otherwise be listed for a directions hearing on 3 November 2016 at 9.30am.

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



## REASONS FOR JUDGMENT

### DAVIES J:

1 The Australian Securities and Investments Commission (“ASIC”) have applied for the appointment of provisional liquidators to each of the six defendants namely Uglii Corporation Limited (“**Uglii Corporation**”), Traralgon Technology Holdings Limited (“**TTH**”), Uglii Find Australia Ltd (“**Uglii Find**”), Bizmio Limited (“**Bizmio**”), Projects Discovery Services Pty Ltd (“**PDS**”) and Uglii Ads System Pty Ltd (“**Uglii Ads**”) (collectively “**the companies**”).

2 Two primary grounds are relied on by ASIC, namely that:

- (a) there is evidence that each of the companies is insolvent; and
- (b) there is also evidence justifying a lack of confidence in the controllers of the companies, and the manner in which they have managed the entities and raised funds from investors.

3 The application is supported by two affidavits sworn by Gregory Stewart McLeod (“**Mr McLeod**”), a senior investigator with ASIC. The companies oppose the application but have not put on evidence responding to ASIC’s claims.

### THE COMPANIES

4 Uglii Corporation, TTH, Bizmio and Uglii Find are all Australian public companies (collectively “**the Uglii public companies**”) and Uglii Ads and PDS are both Australian proprietary companies (collectively “**the Uglii proprietary companies**”).

5 In the most recent set of financial reports lodged with ASIC for Uglii Corporation (which was for the year ended 30 June 2013), Uglii Corporation’s principal business activities were described as:

continued development of its portfolio of intellectual property, including patents, trademarks and copyright, the development of its online spatial global business discovery and directory and search systems, content management systems and spatial marketplace systems and the development of marketing arrangements and materials.

6 In the most recent set of financial reports lodged with ASIC for TTH (which was for the year ended 30 June 2014), TTH’s principal business activity was described as “to hold investments in Uglii Corporation Limited”. It owns shares in both Uglii Corporation and Bizmio.

7 In the most recent set of financial reports lodged with ASIC for Bizmio (which was for the  
year ended 30 June 2013), Bizmio's principal business activity was described as "the sales  
and marketing of the Uglia system to National Partners and affiliates".

8 Uglia Find appears to be dormant.

9 Uglia Ads was renamed Global Ads Systems Pty Ltd in July 2016. According to the Uglia  
Ads website "Uglia Ads is a new service which provides spatial and geographical search and  
discovery processes for all types of classified ads".

10 PDS employs staff for Uglia Corporation.

### ASIC'S INVESTIGATIONS

11 On 17 March 2015, ASIC commenced an investigation into Uglia Corporation, John Knorr  
(a former director of Uglia Corporation, and a current director of each of the other companies)  
and Heather Knorr (a director of Uglia Corporation since 2009) in relation to suspected  
contraventions of the *Corporations Act 2001* (Cth) ("**the Act**"). That investigation  
concluded in April 2015.

12 In January 2016, ASIC commenced a new investigation under s 13(1) of the *Australian  
Securities and Investments Commission Act 2001* (Cth) ("**ASIC Act**") in relation to suspected  
contraventions of ss 319(1), 320(1), 558G, 727, 1041E, 1041F and 1041G of the Act in  
connection with the conduct of the affairs of the Uglia public companies. The investigation  
was later expanded to include contraventions of the Act in connection with the conduct of the  
affairs of the Uglia proprietary companies.

13 For the purposes of the investigation, ASIC obtained various documents in response to  
notices under ss 30A and 33 of the ASIC Act for the production of books and also obtained  
documents on a voluntary basis from a number of sources. The documents obtained included  
documents from KPMG, the current auditors for Uglia Corporation.

14 ASIC also conducted examinations under s 19 of the ASIC Act of Heather Knorr, Cameron  
Roan (a partner of KPMG and the auditor of the Uglia public companies) John Knorr, Ann  
Zhu (the company secretary of each of the companies), and Bruce Dawkins (who was  
appointed a director of Uglia Corporation on 22 March 2016).

15 As a result of those investigations, ASIC has identified various suspected contraventions of  
the Act as follows:



- (a) the breach of ss 319 and 320 of the Act by Uglii Corporation for failure to lodge end of year financial reports and half year financial reports with ASIC;
- (b) the breach of s 319 of the Act by TTH, Bizmio and Uglii Find for their failure to lodge annual financial reports with ASIC;
- (c) Uglii Corporation and certain of its representatives may be in breach of s 1041H of the Act for making false or misleading statements in relation to the sale of shares as part of the Uglii Corporation “fighting fund”;
- (d) Uglii Corporation may be in breach of s 727 and/or s 734 of the Act for offering securities in Uglii Ads for sale, and advertising that offer, without a disclosure document;
- (e) Bizmio and TTH had only two directors registered, in breach of s 201A(2) of the Act, which provides that a public company must have at least three directors; and
- (f) each of the Uglii companies may be trading while insolvent and the directors of the Uglii companies may be contravening s 588G of the Act.

## **THE SUSPECTED CONTRAVENTIONS**

16 Mr McLeod’s affidavits set out the basis for the suspected contraventions.

### **Failure to lodge financial reports: ss 319 and 320 of the Act**

17 Under s 319, it is an offence of strict liability if a company that is not exempt under s 319(2) of the Act does not lodge a report for a financial year that it is required to lodge under Div 1 of Part 2M.3 of the Act. Under s 292 of the Act, a financial report and a directors’ report must be prepared for each financial year by all public companies. Under s 302 of the Act, the Uglii public companies are required to prepare half year financial reports as well. Under s 320, the failure to lodge half year reports with ASIC is an offence of strict liability.

18 On 15 September 2015, KPMG, the auditor of Uglii Corporation, issued a notification to ASIC under s 311 of the Act noting that it was aware that Uglii Corporation may be in breach of ss 319 and 320 of the Act due to delayed lodgement of financial reports for the financial year ended 30 June 2014 and the half year ended 31 December 2013 and 31 December 2014.

19 On 11 December 2015, KPMG issued a further s 311 notification relating to Uglii Corporation, noting that it was aware that Uglii Corporation may be in breach of s 319 of the Act, due to delayed lodgement of financial reports for the financial year ended 30 June 2015.

- 20 ASIC's records as at 14 June 2016 disclosed that Uglia Corporation had not lodged financial reports with ASIC for the financial years ended 30 June 2014 and 30 June 2015 and the half years ended 31 December 2013, 31 December 2014 and 31 December 2015. In his s 19 examination, Mr Knorr said that the delay was because Uglia Corporation had changed auditing firms and that the new auditors, KPMG, had insisted on going over the last three years of reports. In her s 19 examination, Ms Zhu (the company secretary) said that the accounts for the financial year ended 30 June 2014 were with KPMG and she did not know why those accounts had not been completed. She said that the reports for the financial year ended 30 June 2015 could not be completed until the 30 June 2014 reports were complete.
- 21 On 19 January 2016, KPMG (also the auditors of TTH, Bizmio and Uglia Find) issued s 311 notifications relating to those companies as well, noting that it was aware that each of those companies may be in breach of s 319 of the Act, due to delayed lodgement of financial reports for the financial year ended 30 June 2015 by TTH and Uglia Find, and delayed lodgement of financial reports for the financial years ended 30 June 2014 and 30 June 2015 by Bizmio.
- 22 ASIC's records as at 14 June 2016 disclosed that TTH and Uglia Find had not lodged financial reports for the financial year ended 30 June 2015 and Bizmio had not lodged financial reports for the financial years ended 30 June 2014 and 30 June 2015. In his s 19 examination, Mr Knorr said that the reports for Bizmio and Uglia Find had not been lodged because of "simply the workload that's going on at the moment". In her s 19 examination, Ms Zhu (the company secretary of those companies also) said that the TTH, Bizmio and Uglia Find reports could not be finalised until the Uglia Corporation accounts were finalised. In his s 19 examination, Mr Roan said that the valuation of Uglia Corporation shares held by TTH was a significant factor in the audit of TTH and it was not appropriate to progress the audit of TTH until the completion of the audit of the outstanding Uglia Corporation reports. Mr Roan said that the audits of Uglia Find and Bizmio would not be progressed until the finalisation of the outstanding reports for Uglia Corporation.
- 23 The Uglia public companies do not contest that they have failed to lodge financial reports in breach of ss 319 and 320 of the Act.

**False or misleading statements: s 1041H of the Act**

- 24 Section 1041H(1) of the Act provides that:



A person must not, in this jurisdiction, engage in conduct, in relation to a financial product or a financial service, that is misleading or deceptive or is likely to mislead or deceive.

25 A “financial product” is defined to include a share: definition of “security”, s 761A and s 764A(1)(a) of the Act.

26 ASIC has claimed that Uglia Corporation contravened s 1041H by representations that it made to its shareholders that were intended to induce them to buy shares held by SISS Incentives Pty Ltd (“**SISS Incentives**”) in Uglia Corporation. SISS Incentives is also part of the Uglia group and is the trustee of the SISS Incentives Trust, the sole named beneficiary of which is Uglia Corporation. Mr and Mrs Knorr are the directors of SISS Incentives.

27 The first representation was said to be contained in a newsletter issued by Uglia Corporation to its shareholders on 11 January 2016. In December 2015, The Age had published articles that were critical of Uglia Corporation and shareholders were told under the heading “Uglia Fighting Fund”:

As mentioned last week Uglia shareholders have suggested an Uglia fighting fund. Those discussions have continued among shareholders, staff, and legal advisers.

The consensus is that a fair bit of damage must have been done by the Age attack on Uglia particularly online and overseas, where Uglia has spent millions of \$ and years of very hard work with governments and potential partners.

The consensus is that Uglia will have to spend a lot to recover from that damage and needs to do so quickly, if we are to meet our earnings objectives. The consensus is that we need to set that fighting fund to \$2.5 million.

Uglia Corporation Limited and I [Mr Knorr], separately, intend to take legal action against Fairfax Media (the Age) and others who are clearly behind these outrageous allegations. We need to minimise the damage as it is very hard to wind back the hurt on the internet. That means Uglia has to become very aggressive online. Our present budget is totally focused in getting our two systems operating, globally, and does not cater for these matters. Our thinking is creative and constructive and we need some professional media managers who will fight back in the nicest and most creative way.

Our Fighting fund will be raised by selling 25 million Uglia shares for 10 cents each on a “first come first served basis” but only to existing shareholders. We have tested that concept with a handful of shareholders around Traralgon and commitments are way above our expectations.

These shares are already issued so there is no dilution of shareholder equity. To pick up these shares call the Uglia office in Traralgon on ... fax...or email ...

28 The second representation was said to be contained in a newsletter issued by Uglia Corporation addressed to its shareholders on 15 February 2016 which stated under the heading “Legal Burn Rate at \$30,000 per week”:

The Uglii burn rate relating to legal costs is about \$30,000 per week at present. It will increase as writs are issued this week but fall away in a month or so. The fighting fund is keeping up with the burn rate. We will review the need for the fighting fund this time next month, as system revenues accelerate. If you want to contribute to the strength of Uglii and buy some shares at never to be repeated prices, now is the time to do it.

- 29 The third representation was said to be contained in the newsletter issued by Uglii Corporation addressed to its shareholders on 29 February 2016. In that newsletter Mr Knorr wrote that:

I am assured by our legal team that the writs will be issued by Friday. We need to keep those Fighting Funds coming in.

- 30 The fourth representation was said to be contained in a newsletter issued by Uglii Corporation addressed to its shareholders on 29 March 2016 where Mr Dawkins stated:

I assume most would know that a “fighting fund” was established to help bear the cost of this litigation. I am advised that approximately 110 out of 3,600 shareholders have taken the opportunity to buy shares that were released from the incentive trust last year. The shares are 10 cents and I would encourage ALL shareholders to take advantage of this opportunity – buy shares extremely cheap and support the “fighting” fund. I reiterate: THIS IS OUR COMPANY!

- 31 Uglii Corporation’s share register records 141 share transfers from “SISS Incentives (Fighting Fund)” in the period January to April 2016. In total 9,340,624 shares were transferred at 10 cents per share for a total consideration of \$934,062.36. ASIC’s investigations disclosed that in the same period, funds totalling \$685,262.36 raised by those share transfers were deposited into the subscription account, together with other amounts totalling in all \$790,962.36.
- 32 ASIC’s investigations also disclosed that in the same period from January to April 2016, an amount of \$780,113.72 was withdrawn from the subscription account. Of this amount, \$738,737 was transferred to the general cheque account, an amount of \$30,000 was transferred to the cash reserve account, an amount of \$10,000 was transferred to Ms Zhu and \$1,376.72 was transferred to Westpac for bank charges/merchant fees.
- 33 Also in that period, an amount of \$881,842.02 was withdrawn from the general account. ASIC has accepted that four of the withdrawals (totalling around \$117,000) are fairly attributable to fighting fund purposes – an amount of \$53,842.74 which was paid to a solicitor for legal costs, an amount of \$40,000 which was paid to “Legal”, an amount of \$14,272 which was paid to “the media team” and an amount of \$10,000 which was



designated “legal fee”. The balance of the withdrawals appeared not to relate to fighting fund purposes but for payment of general expenses and tax liabilities.

- 34 Both Mr Knorr and Ms Zhu admitted in their s 19 examinations that the moneys raised for the fighting fund were used for purposes other than paying legal costs. Mr Knorr stated that the funds had been used for “sustaining the company and doing legal work to issue writs against Fairfax”, stating that:

It was never described as solely for legal action. It was just described as, “yeah, we needed – we need a fund to – we needed to get some money in to do this fund”.

- 35 Ms Zhu in her s 19 examination in the course of being asked questions about various liabilities owed by Uglii Corporation and specifically to Ernst & Young stated that the company has a payment arrangement with Ernst & Young under which it pays the firm about \$2,500 per week and that it is using the funds raised by the sale of the shares for the fighting fund. There was a similar line of questioning about a debt owed to PDS of around \$443,000 for services provided to Uglii Corporation. Ms Zhu stated that some of the \$150,000 that had been raised from the fighting fund was going to be used to pay off that debt to PDS.

- 36 Senior counsel for Uglii Corporation submitted that s 1041H of the Act was not contravened on a fair reading of the newsletters. It was submitted that it was a fair reading that part of the funds raised as the fighting fund would be applied towards general working capital to finish the work necessary to get the product online and into the market so as to answer the allegation in The Age articles and show that the company did have something to produce. I do not accept that submission. Read fairly in context, and reading the newsletters as a whole, it is reasonably apparent that the representation was that the fighting fund would be used essentially for funding the costs of the foreshadowed litigation against Fairfax. Other references in the newsletters are confirmatory.

- 37 In the initial statement under the heading “Legal Burn Rate at \$30,000 per week”, the newsletter stated:

The Uglii burn rate relating to legal costs is about \$30,000 per week. It will increase as writs are issued this week but fall away in a month or so. The fighting fund is keeping up with the burn rate. We will review the need for the fighting fund this time next month as system revenues accelerate.

- 38 In the 29 February newsletter it was stated:

I am assured by our legal team that the writs will be issued by Friday. We need to keep those Fighting Funds coming in.



39 Then in March 2016, it was stated:

I assume most would know that a “fighting fund” was established to help bear the cost of this litigation.

40 I accept ASIC’s contention that this material shows that people were induced to buy Uglii Corporation’s shares from SISS Incentives on the representation that the moneys raised would go into a fighting fund to be used essentially for the purpose of funding legal action against Fairfax. In so far as the representations were as to a future matter, s 769C of the Act applies and the representations are taken to be misleading unless it can be established that there were reasonable grounds for making them. At least in respect of the last three representations, it would appear most unlikely that Uglii Corporation did have reasonable grounds for making the representations as the evidence indicates that by that stage it was already using the funds raised for the fighting fund for working capital purposes.

41 The state of the material strongly indicates that the company engaged in misleading conduct in relation to a “financial product” in contravention of s 1041H of the Act.

**Disclosure to investors: ss 707(3), 727, 734 of the Act**

42 Uglii Ads was registered in February 2015. Upon its registration all 500,000 shares in Uglii Ads were issued to Uglii Corporation. At the time of issue, Uglii Corporation announced in a letter to shareholders that it intended to sell some of the Uglii Ads shares. Between April 2015 and October 2015 (within 12 months of the share issue), Uglii Corporation transferred 360,000 Uglii Ads shares for a total consideration of \$310,000 to seven shareholders. No prospectus or other disclosure document was lodged with ASIC. In those circumstances, ASIC said, s 707(3) of the Act required disclosure to be made to investors pursuant to Part 6D.2 of the Act.

43 Section 707(3) of the Act provides that an offer of securities for sale within 12 months after their issue needs disclosure to investors under Part 6D.2 if:

- (a) the body issued the securities without disclosure to investors under this Part [Part 6D.2]; and
- (b) either:
  - (i) the body issued the securities with the purpose of the person to whom they were issued selling or transferring the securities, or granting, issuing or transferring interests in, or options over, them; or
  - (ii) the person to whom the securities were issued acquired them with the purpose of selling or transferring the securities, or granting, issuing

or transferring interests in, or options over, them;  
and section 708 or 708A does not say otherwise.

44 Neither Uglia Corporation nor Uglia Ads lodged a prospectus nor any other disclosure document with ASIC. Accordingly, it was said, Uglia Corporation may have contravened s 727 and possibly also s 734 of the Act.

45 Senior counsel for Uglia Corporation did not contest that there was a possible contravention of s 727 or s 734 but stated that the matter has, in a practical sense, been addressed because all those shares were transferred back by the seven shareholders to Uglia Corporation. There appears to be no dispute about that as the transfers are evidenced by a Change to Company form which is an exhibit to Mr McLeod's supplementary affidavit. However there is no evidence to show that the consideration paid for those shares has been returned.

**Minimum number of directors: s 201A of the Act**

46 Section 201A(2) provides that a public company must have at least three directors, two of whom must ordinarily reside in Australia. It is undisputed that Bizmio and TTH, both public companies, had been operating with only two, rather than the required three, directors in contravention of s 201A(2). These irregularities were recently rectified in July 2016.

**Insolvent trading: s 588G of the Act**

47 Section 588G relevantly provides:

(1) This section applies if:

- (a) a person is a director of a company at the time when the company incurs a debt; and
- (b) the company is insolvent at that time, or becomes insolvent by incurring that debt, or by incurring at that time debts including that debt; and
- (c) at that time, there are reasonable grounds for suspecting that the company is insolvent, or would so become insolvent, as the case may be; and
- (d) that time is at or after the commencement of this Act.

...

(2) By failing to prevent the company from incurring the debt, the person contravenes this section if:

- (a) the person is aware at that time that there are such grounds for so suspecting; or
- (b) a reasonable person in a like position in a company in the company's



circumstances would be so aware.

...

48 ASIC submitted that the evidence shows that Uglii Corporation is insolvent. It relies upon:

- (a) material provided by KPMG;
- (b) the financial records of the Uglii companies, and
- (c) the fact that there appears to be little prospect that Uglii Corporation will ever generate any substantial revenue from its services.

***The KPMG material***

49 On 11 December 2015, KPMG issued a s 311 notification to ASIC which stated that:

During the course of our audit of Uglii Corporation Limited for the financial year ended 30 June 2014 we have become aware of circumstances that have given us reasonable grounds to suspect that a contravention of the Act may have occurred. The possible contravention is of s 588G of the Act.

50 On 20 January 2016, KPMG issued s 311 notifications to ASIC which stated that during KPMG's audit of TTH, Bizmio and Uglii Find they had become aware of circumstances that have given them reasonable grounds to suspect that a contravention of s 588G of the Act may have occurred in relation to each of those companies.

51 In response to the s 311 notices, ASIC sought production of various documents from KPMG by notice given under s 30A of the ASIC Act. Included in the documents produced were file notes in relation to Uglii Corporation, TTH, Bizmio and Uglii Find, each containing an assessment of the particular company's ability to continue as a going concern and expressing KPMG's concern over the solvency of each company.

***(i) the Uglii Corporation file note***

52 This file note is headed "Uglii Corporation Limited – Going Concern Analysis" and dated 19 January 2016. The purpose of the file note was stated to be to document a summary of conditions and events which may indicate a reasonable doubt as to the ability of Uglii Corporation to continue as a going concern and to document analysis performed in order to determine the audit opinion to be issued. The file note included the following matters:

**Summary**

Uglii – Estimated consolidated position per unaudited Company TB 12/11/2015

- Current assets – \$1.6m



- Current liabilities – \$6.2m
- Working Capital deficiency – \$4.6m
- Additional liabilities due to additional GMC agreement (not on TB and agreement not verified) – \$8.0m
- Non-current assets – \$23.6m (\$23.2m of which intangible and uncertainty over valuation)
- Non-current liabilities – \$0.3m

Current liabilities include \$4.1m of shareholder loans – which the client has stated are not repayable in the immediate future.

KPMG has requested but not seen any current repayment plans with the \$1.9m reported trade creditors.

From our discussions with the client, it was identified that a further \$8m was owing following the repurchase of 10% of the GMC holding in 2015. The same holding was sold by Uglii for \$360k in 2014. This purchase is not included on the trial balance or in the working capacity deficiency numbers above.

Since the 30 June 2014 year end, c. \$4m of related party debtors due from TTH have been paid and used to fund continuing operations.

Current trade receivables have now reduced to below \$800k. \$743k balance is due from BizMio. This related party debtor has been outstanding for over 2 years. Hence, current recoverability is uncertain. Other receivables include deposits of \$834k. KPMG are uncertain of the nature of this balance and the recoverability of it.

\$168k of cash is on hand.

### **Balance sheet summary**

Uglii currently has a working capital deficiency. There is limited liquid assets and operating revenue has yet to be achieved. Expenses continue to be incurred (estimated \$5 million spent per annum). Expenses have historically been funded by capital contribution, investment sales and shareholder loans, however the future potential of such cash inflows appear to be diminishing. Given the working capital and potential funding deficiency, there is doubt over the entity's ability to continue as a going concern.

### **Trading position**

Uglii has yet to generate trading income and it does not appear that completion of the system is finalised. Per discussions with John Knorr (CEO) on Friday 11 December 2015, it was stated that core completion of the Uglii system was forecast by the end of January 2016. Trading activity is estimated to begin at this point.

It has been stated by Mr Knorr that there had been significant delays due to design issues within the Uglii system identified in January 2015 and delays in the software platform being built by America Express.

Earlier forecasts of system completion (and consequently revenue generation) have been provided to KPMG and have not materialised.

KPMG understand that initial expectations were that the core completion of the Uglii system would be finalised a number of years ago and there has been continual delays

over time.

**KPMG work performed**

1. Assess the feasibility of the key areas forecasted to generate income in the next 12 months which support management's assessment of the ability of the entity to continue as a going concern.
2. Assess immediate funding options of the entity.

53 The file note stated that the company forecast around \$194 million income from January 2016 to September 2016 "based on completion of the core Uglii system". Six "key income drivers" were included in the company's forecast as follows:

1. Claims against breach of Uglii patents – \$100 million
2. Raising Uglii share capital – \$40 million
3. Sale of Uglii services to Business – \$21 million
4. Uglii Ads system (sale of classified ads discovery) – \$14 million
5. Licensing of Uglii IP (licensing of Uglii directory) – \$12 million
6. Other – \$7 million

54 The file note stated that "the budget appears optimistic and the feasibility of future income is difficult to determine given the lack of historical activity".

55 KPMG expressed concerns about the certainty of each of those "key income drivers" stating:

- (a) in relation to the claims for breach of the Uglii patents – that it was highly uncertain that Uglii will be able to be successful in such claims within the next 12 months and it appeared that no official legal action had yet been taken;
- (b) as to the raising of funds from share capital – that it appeared that no additional capital contributions had been made since 16 November 2015 and KPMG had not seen evidence of willing investors, and a current prospectus or share raising document did not appear to be in place;
- (c) as to the \$21 million revenue forecast in relation to the sale of the Uglii services to business – it was noted that the Uglii system did not appear to be complete and the demand for the service was uncertain;
- (d) as to the \$14 million revenue forecast in relation to the operation of Uglii Ads system – it was noted that the system was not complete and a redevelopment was currently in place following difficulties encountered in September 2015, and that KPMG had not seen evidence of signed contracts or evidence of willing customers;



- (e) as to the licensing of Uglii IP to non-partners forecast of \$12 million – KPMG had not seen evidence of signed licensing agreements or evidence of interested parties, it did not appear that all Uglii’s functions for licensing were complete and there appeared to be no in depth analysis behind the forecasted figure;
- (f) as to the other income forecast of \$7 million – it was noted that this forecast revenue stream again tended to be highly dependent upon the active operation and launch of the Uglii system, the timing of which was uncertain. KPMG had not seen evidence of willing sponsorship parties, and there were no signed agreements or historic revenue analysis to base the projections upon.

56 The file note also recorded as follows:

#### **Client discussion**

KPMG emailed on 7<sup>th</sup> December and then explained on 11<sup>th</sup> December its concerns to John Knorr and Ann Khu in regard to the inherent uncertainty in regard to the income streams, and the resultant uncertainty in regard to the going concern assumption.

It was also stated there was concern in regard to the build-up of creditors and as to how Uglii intended to pay its debts as they fell due, giving rise to the concern that there was a risk that Uglii was trading whilst insolvent.

John Knorr stated on 11<sup>th</sup> December he was extremely positive that the Uglii system would be complete and that revenue generation would initiate in January. It was also stated there was interest from potential investors in regard to capital raising. KPMG questioned management what corrective courses of action would be taken if revenue generation did not initiate as planned.

The following options were provided by the client:

- Further shareholder loans
- Sale of patents

#### **Shareholder loans**

John Knorr stated that he was confident that further loan funding can be provided from shareholders. John has stated that shareholders have continually supported the Company over the previous 15 years. The loan balance outstanding to shareholders as at 30 June 2014 was \$3.5m, (\$4.1m per unaudited Company TB at 12 November 2015). Whilst this may be a viable option to assist cashflows and pay debts – there was no committed funding as at the date of discussion and the receipt of further loan funding is uncertain. The levels of further loan funding required to support the entity over the next 12 months is likely to be significantly higher than current loan balance borrowed.

#### **Patents**

John Knorr has stated that he believes that Uglii’s portfolio of patents and trademarks across various Countries (cost price \$758k as at 30 June 2014) have a fair market value of \$1bn, and as a fall back option – this is an alternative course of action for the



business. The patent types are listed below.

- 1) The searching of business information spatially
- 2) The credentialing of business information spatially
- 3) The spatial marketplace system

As per the intangible valuation work performed, an income-based valuation approach was used to independently value the patents. The patents were independently valued at \$27.6m in February 2015.

Royalty cash projections of \$69m (in the first 3 years from launch) were used in the valuation.

Given the insufficient evidence to support the cashflows (no signed contracts etc), KPMG is unable to reliably test the cashflow projections and subsequently unable to use this valuation as a basis to test the valuation of the patent sets.

As such KPMG is uncertain in regard to the fair value of the patent sets, and it is KPMG's understanding that there has been no recent market offerings by potential acquires in the commercial market.

There is therefore uncertainty in regard to the market value of these patents, the entity's ability to sell these patents in a commercial market offering as well as the timeframe in which this could happen.

### **Going Concern Summary**

The Company appears to have a deficiency in working capital but continues to trade based on their expectation of generating future revenues / cash flows. There is uncertainty in regard to all income streams forecast by the client. The revenue streams identified (both quantity and timing) are based on representations made by Mr Knorr and in most cases cannot be tied to other corroborating evidence, with a number also being contingent on the completion of the Uglii platform which continues to remain incomplete and not achieve completion in the timeframes represented by Mr Knorr. The ability to raise future cash by virtue of a further share issuance / shareholder loans has also been noted, but again this is not certain and cannot be guaranteed particularly given the continued cash outflows within the business, the inability to generate any substantial income to date and the continued delays in completion of the Uglii platform, which all impact on shareholder confidence. As such, at the current time and based on the information made available there is significant uncertainty in regard to the ability of the entity to continue as a going concern and questions remain over how the Company can pay its debts as and when they fall due.

### **Trading whilst insolvent**

KPMG is required in our position as auditors of Uglii Corporation Limited, to notify ASIC if there are *reasonable* grounds to suspect the Company is trading while insolvent and therefore a contravention of the *Corporations Act 2001* (Cth) may have occurred.

Given the uncertainty that remains over the generation of future cash flows and the fact Uglii continues to trade in a deteriorating working capital deficiency position, in a situation it appears to have diminishing levels of immediate income sources and increasing levels of debt – we consider that there are reasonable grounds to suspect the Company is trading while insolvent and a contravention of the Corporations Act

may have occurred. As such, a Section 311 notice was issued to ASIC dated 11<sup>th</sup> December to this effect.

**(ii) the TTH file note**

57 This file note is headed “Traralgon Technology Holdings Limited – Going Concern Analysis” and dated 25 January 2016. The purpose of the file note was stated to be to document a summary of conditions and events which may indicate a reasonable doubt as to the ability of TTH to continue as a going concern. The file note set out KPMG’s current findings of its audit of the going concern assumption as follows:

**Summary of TTH’s estimated unaudited consolidated balance sheet position at 20/1/2015 (sic)**

**Working Capital Deficiency – 12.1m**

Current liabilities include \$2.6m - income tax payable and - \$9.5m balance due to a related party Ruby Red – outstanding in relation to the recent purchase of Uglii Corporation Limited shares.

**KPMG assessment**

TTH currently own over 100m shares in Uglii Corporation Limited (Uglii). Management believe they will be able to sell Uglii shares to support the debt obligations and continuing operations of the entity.

Given KPMG’s concern in regard to the solvency position of Uglii and uncertainty over Uglii’s ability to continue as a going concern – there is uncertainty over TTH’s ability to sell shares in Uglii and generate positive cash flow.

As such there is uncertainty over the solvency position of TTH and uncertainty over TTH’s ability to continue as a going concern. As such, a Section 311 notice was issued to ASIC dated 20<sup>h</sup> [sic] January to this effect.

**(iii) the Bizmio file note**

58 This file note is headed “Bizmio Limited – Going Concern Analysis” and dated 25 January 2016. The purpose of the file note was stated to be to document a summary of conditions and events which may indicate a reasonable doubt as to the ability of Bizmio to continue as a going concern. The file note set out KPMG’s current findings of its audit of the going concern assumption as follows:

**Summary of Bizmio’s unaudited balance sheet position at 20/1/2015 (sic)**

**Working Capital Deficiency – \$4**

**Net liabilities – \$739,749**

Non-current liabilities include \$739,490 of loans from Uglii Corporation Limited – there is no loan agreement that indicates this loan as non-current.



**KPMG assessment**

Bizmio Limited currently only incurs very small expenses year on year. The entity relies on Uglii Corporation Limited (Uglii) to support the payment of these. The entity does not generate revenue, and its ability to generate revenue is dependent on the success of the Uglii system.

Given KPMG's concern in regard to the solvency position of Uglii and uncertainty over Uglii's ability to continue as a going concern – there is a similar concern over the solvency of Bizmio and ability of Bizmio to continue as a going concern. As such, a Section 311 notice was issued to ASIC dated 20<sup>th</sup> January to this effect.

**(iv) the Uglii Find file note**

- 59 This file note is headed “Uglii Find Australia Limited – Going Concern Analysis” and dated 25 January 2016. The purpose of the file note was stated to be to document a summary of conditions and events which may indicate a reasonable doubt as to the ability of Uglii Find to continue as a going concern. The file note set out KPMG's current findings of its audit of the going concern assumption as follows:

**Summary of UFAL's [Uglii Find's] unaudited balance sheet position at 20/1/2015 (sic)**

**Net current liabilities – \$224**

**Net liabilities – \$36,165**

Non-current liabilities include \$35,942 of loans from Uglii Corporation Limited – there is no loan agreement that indicates this loan as non-current.

**KPMG assessment**

UFAL is not trading and currently only incurs very small expenses year on year. The entity relies on Uglii Corporation Limited (Uglii) to support the payment of these. UFAL does not generate revenue

Given KPMG's concern in regard to the solvency position of Uglii and uncertainty over Uglii's ability to continue as a going concern – there is a similar concern over the solvency of UFAL and ability of UFAL to continue as a going concern. As such, a Section 311 notice was issued to ASIC dated 20<sup>th</sup> January to this effect.

- 60 On 31 March 2016, Mr McLeod spoke with Mr Hulme of KPMG who informed him that all of the s 311 notifications remained current and there had been no change to the factors giving rise to those notifications. Again on 24 May 2016, Mr Hulme advised that the s 311 notifications were still current and there had been no progress on the audit of Uglii Corporation, TTH, Bizmio and Uglii Find as KPMG was still waiting on those companies to provide financial statements that could be audited.
- 61 It is relevant to this application that the companies have not adduced any evidence to address the concerns raised by KPMG about their solvency.



***The financial records of the Uglia companies***

62 Mr McLeod also did his own review of the accounting records on the MYOB accounting system database for each of the companies. On his review, Uglia Corporation is yet to generate any revenue from the supply of its services (which appears not to be contentious) and that its main source of revenue for the period 1 July 2015 to 22 April 2016 was from the proceeds of the sale of the 360,000 shares in Uglia Ads (the subject of the possible contravention of s 727 and s 734 of the Act) and the sale of the Uglia Corporation shares held by SISS Incentives to raise capital for the fighting fund. Also on his review, as at 22 April 2016, Uglia Corporation owed trade creditors the sum of \$1,768,690.88 of which \$1,321,405.72 had been outstanding for over 90 days. In respect of the other companies, based upon his review of those companies' financial records, it appears that over the period 1 July 2015 to 22 April 2016 each of those companies has been financially dependent upon Uglia Corporation to meet expenses. The evidence indicates that those companies are reliant upon the ongoing viability of Uglia Corporation. This was not contested by senior counsel for the companies.

***Projected revenue of Uglia Corporation***

63 ASIC contends that there appears little prospect that Uglia Corporation will ever generate any substantial revenue from its services, notwithstanding repeated assurances by Mr Knorr in public statements and correspondence with shareholders.

64 ASIC led expert evidence from Michael Joseph, an IT expert, who opined that Uglia Corporation is unlikely to be able to compete with existing providers of similar services. The questions asked of Mr Joseph and his answers were summarised by him in a table as follows:

ASIC Question	Response
1. What are the services that are proposed to be offered by Uglia Corporation?	<p>In summary, Uglia Services comprise an Internet based searchable directory of products and services, and a set of technical services that facilitate search of this directory and the maintenance of the data in it.</p> <p>Uglia Corporation summarises these services under the following 10 main offerings:</p> <ul style="list-style-type: none"> <li>• Uglia Taxonomy</li> <li>• Spatial Marketplace</li> <li>• Uglia Gov-Biz Mate</li> </ul>

	<ul style="list-style-type: none"> <li>• Uglii Search</li> <li>• Uglii Find</li> <li>• Uglii Brands System</li> <li>• Uglii Classifieds</li> <li>• Uglii Locator Service</li> <li>• Third Party Credentialing</li> <li>• Uglii Site Cadet</li> <li>• Uglii Globalization</li> </ul>
2. Are the services that are proposed to be offered by Uglii Corporation similar to or the same as other services currently available and offered on other websites or applications by other entities?	<p>Yes.</p> <p>There are thousands of service brokers on the Internet who provide means for consumers to connect with suppliers based on search. These brokers typically, but not necessarily, work within industry verticals, such as supplying electricians, books, air flights, accommodation, or cars.</p>
<p>3. If the answer to (2) is yes:</p> <p>a. which websites or applications and entities provide those other services; and</p> <p>b. how do the services being offered by Uglii Corporation compare to those other services available?</p> <p>In responding to this question, please consider matters including technological advancement, ease of use, ready availability and cost.</p>	<p>There are thousands of websites and apps that currently provide offerings similar to what are proposed to be offered by Uglii Corporation. Some of them offer generic services such as</p> <ul style="list-style-type: none"> <li>• Google Search</li> <li>• Google Maps</li> <li>• Microsoft Bing Search</li> <li>• Microsoft Maps</li> <li>• Apple Maps</li> </ul> <p>Other offer services within a particular industry, such as</p> <ul style="list-style-type: none"> <li>• AirBnb</li> <li>• Uber</li> <li>• Freelancer</li> <li>• Airtasker</li> <li>• Harvey Norman</li> <li>• Ebay</li> </ul> <p>A major differentiator between the services listed in this response to question (3) and those proposed by Uglii Corporation, is that these services all are very active with thousands, tens of thousands or millions of subscribers. By contrast, based on the information provided by the Uglii Corporation website and</p>



	<p>on some simple searches, provisionally there is little evidence that shows that the Uglii Corporation directory has achieved significant adoption.</p> <p>Success in the search space is dependent on there being a critical mass of data in the searchable directory. If consumers are unable to find a representative set of the information that they are looking for, they will not be inclined to use that director nor its attendant search.</p>
4. If the answer to (2) is no, describe the principal differences between the services proposed to be offered by Uglii Corporation and those other services.	
5. In your opinion, would the services proposed to be offered by Uglii Corporation be likely to attract a significant number of users and generate significant revenue for Uglii Corporation? Please provide reasons for your response.	<p>No.</p> <p>There are too many established competing organisations. For the Uglii directory to be useful, it would need to achieve a critical mass of data. It is provisionally assumed that at present this is not the case. With thousands of large service brokers successfully operating in this space, it is difficult to see how Uglii Corporation could successfully compete.</p>
6. If the answer to (5) is no, are there any steps that could be taken by or on behalf of Uglii Corporation to improve the services offered by Uglii Corporation so as to make them competitive with other services currently available on the market? Please provide details for your response.	<p><u>For generic search</u></p> <p>The Uglii Corporation technical approach to registering entities in its directory necessarily makes it much more difficult by comparison to the way that Google and Microsoft Bing register entities in their directories.</p> <p>Google, Microsoft and other organisations also have searchable directories. In the case of Google and Microsoft the way they populate their directories is quite different to how Uglii Corporation populates its directory. Google and Microsoft each have automated processes that scan, classify and register all</p>

	<p>reachable websites in all the major languages of the globe.</p> <p>Uglier Corporation require entities either to register themselves online or to be registered by third parties such as Uglier Corporation affiliates.</p> <p>As at 2013, according to one source Google indexes 30 trillion web pages. Uglier Corporation with its current registration model cannot compete against the likes of Google. Potentially Uglier Corporation could implement a process to automatically scan the world wide web, but that is a serious undertaking. I cannot see how Uglier Corporation could compete with Google or Microsoft who have a many year advantage, and who have massive resources in terms of funds and personnel.</p> <p><u>For targeted industry based search</u></p> <p>Organisations have been developing their own searchable directories, sometimes based on one or other Enterprise Requirement Planning (ERP) or Customer Relationship Management (CRM) system such as SAP or Microsoft Dynamics. Many, if not a majority, of the widely known organisations have already delivered Internet based search, often integrated with mapping.</p> <p>Uglier Corporation has been operating for many years. The fact that too [sic] date provisionally it has not been able to break into this space suggests that it will be difficult to compete in the future.</p>
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65 Senior counsel for the companies submitted that the Court should place little, if any, reliance upon Mr Joseph's report, stating that there is considerable doubt whether he has the relevant expertise to give an assessment of the Uglier system and, furthermore, that the foundation for his assessment was wrong because the Uglier system was not intended to do the same as



Google or Microsoft, as borne out by a “critique” of Mr Joseph’s report by Mr Knorr, the inventor of the Uglii system.

66 Mr Joseph’s report is only based on information that Mr Joseph has been able to obtain by webscans of the Uglii Corporation websites and from the patents. Mr Joseph acknowledged that the websites are not necessarily a complete representation of the Uglii Corporation system, there may be Uglii services discussed on the websites that have not yet been implemented and hence are not available and conversely Uglii services may have capabilities beyond what is detailed by the Uglii Corporation websites. Accordingly I am not persuaded that his report can be relied on as cogent evidence that Uglii Corporation is unlikely to generate substantial revenue from its services. The “critique” of Mr Joseph’s report by Mr Knorr was not in admissible form and was equally unhelpful.

67 That said, the Court has no evidence before it, apart from a valuation of the Uglii system done by a Dr Robert Sanders as at December 2014, to show that the company’s claim that it will generate substantial revenue from its services is well founded. Whilst that valuation indicates that patents for the Uglii system do have considerable value I note, however, that the valuation is based upon cash flow projections provided by the company. KPMG referred to this report in its going concern file note on Uglii Corporation and did not consider that this valuation could be used as a basis to test the valuation of the patents because KPMG had been unable to test the cash flow projections reliably.

68 It is relevant to this application that KPMG has been unable to test the reliability of those cash flow projections and relevant that no evidence has been filed by Uglii Corporation independently verifying its cash flow projections. It would be expected that such evidence would have been adduced by the company, if available.

***Likelihood of insolvency***

69 The evidence furnished by ASIC raises serious questions about the financial viability and solvency of the companies which, significantly for the present application, have not been answered by Uglii Corporation. Moreover, the material before the Court does not enable the view to be formed that the cash flow projections are, or may be, reasonably based or that the patents owned by Uglii Corporation do, or will have, substantial value. The evidence strongly suggests that the companies may not be solvent.

## LEGAL PRINCIPLES

70 The parties were not in dispute concerning the applicable principles for the appointment of a provisional liquidator.

71 The power of the Court to appoint a provisional liquidator is under s 472(2) of the Act, which provides that:

The Court may appoint an official liquidator provisionally at any time after the filing of a winding up application and before the making of a winding up order or, if there is an appeal against a winding up order, before a decision in the appeal is made.

72 The Court's power is wide and the Court may appoint a provisional liquidator on any ground but as the appointment of a provisional liquidator is a drastic intrusion into the affairs of the company, a provisional liquidator will generally not be appointed unless the Court is satisfied that there is a reasonable prospect that a winding up order will be made on the application to wind up and some good reason is shown for placing the affairs of the company under the external control of a provisional liquidator prior to the hearing of the winding up application, such as public interest considerations, to preserve the status quo, or to protect the company's assets or affairs: *Australian Securities and Investments Commission v Solomon* (1996) 19 ACSR 73, 80 (per Tamberlin J) ("**Solomon**"); *Australian Securities and Investments Commission v Weerappah (No 2)* [2009] FCA 249 at [8]-[9]; *Australian Securities and Investments Commission v Tax Returns Australia Dot Com Pty Ltd* [2010] FCA 715 at [73]-[77]. Public interest considerations may include, for example, the need for an independent examination of the state of accounts of the corporation by someone other than the directors, or where the affairs of the company have been carried on without due regard to legal requirements so as to leave the Court with no confidence that the company's affairs are being properly conducted with due regard for the interests of shareholders: *Solomon* at 80.

## CONSIDERATION

73 ASIC has applied to wind up each of the companies pursuant to ss 459B and 464 of the Act (on the basis of insolvency), and alternatively pursuant to s 461(1)(k) of the Act (on the just and equitable ground).

74 Senior counsel for the companies sought to diminish the seriousness of the contraventions of the Act by submitting that, taken alone, those infractions of the Act which the companies do admit would not of themselves justify the winding up of the companies on the just and equitable ground and there was not the level of seriousness that has moved the Court in other



cases to appoint a provisional liquidator, such as gross mismanagement or contempt for obligations. On the matter of solvency, it was submitted that the auditors would be as well placed as a provisional liquidator to look at solvency and that it would be less intrusive into the companies' affairs to allow them to complete their accounts and for the auditors to complete the audits of those accounts. Much weight was placed on the fact no creditor had moved to wind up the companies. Much weight was also placed on what was termed the "intervening effects" of the adverse publicity in December 2015.

- 75 A provisional liquidator should not be appointed if any less intrusive measure will satisfactorily address the circumstances of the case: *Australian Securities and Investments Commission v Tax Returns Australia Dot Com Pty Ltd* [2010] FCA 715 at [86]; *Lubavitch Mazal Pty Ltd v Yeshiva Properties No 1 Pty Ltd and Others* (2003) 47 ACSR 197; [2003] NSWSC 535, [105]. I am not persuaded that there is an alternative measure and for the following reasons, consider it appropriate to appoint a provisional liquidator to each of the companies.
- 76 First, I am satisfied that there is a reasonable prospect that a winding up order will ultimately be made on the ground of insolvency. It is clearly arguable that the companies are all insolvent and the cogent evidence of insolvency has not been answered by the companies.
- 77 Secondly, I also consider that there is a reasonable prospect that a winding up order will ultimately be made on the just and equitable ground. It is well settled that a company may be wound up on the just and equitable ground where there is "a justifiable lack of confidence in the conduct and management of the company's affairs" and thus a risk to the public interest that warrants protection: *Australian Securities and Investments Commission v Activesuper Pty Ltd and Others (No 2)* (2013) 93 ACSR 189; [2013] FCA 234, at [20].-[23]; *Australian Securities and Investments Commission v CME Capital Australia Pty Ltd* [2015] FCA 1489 at [24]. In my view, there is cogent reason to have a lack of confidence in the conduct and management of the affairs of the companies, and a risk to the public interest requiring protection.
- 78 The possible breaches of the Act which ASIC has uncovered involve not just "procedural" lapses. Of serious and immediate concern is that ASIC's investigations have disclosed a strongly arguable case that Uglii Corporation has improperly misused the funds raised from the share sale for the purpose of creating a fighting fund by using those funds as working capital. It is also of considerable concern that the delay in finalising and lodging the

companies' financial reports has meant that the accounts have not been audited and the true financial position of the companies is unknown. An acceptable explanation for failure to lodge returns has not been given and whilst senior counsel for the companies informed the Court that the companies are committed to remedying the failure to lodge returns and acknowledge that they have to do it, they have not done so and have not put on any evidence to explain what steps need to be taken by them to address the breaches, or what steps they have taken towards rectifying the breaches. There is no reason to have confidence that the directors will do what is required to enable the auditors to complete their task. Another matter also of considerable concern is that it appears from the KPMG material that there is a lack of evidence to support the substantial cash flow projections from the Uglii system, which is a matter warranting independent investigation by an external controller. The matters relevant to the just and equitable ground and the matters which weigh in favour of the exercise of the Court's discretion to appoint a provisional liquidator overlap to a considerable extent and I do not accept the submissions that the suspected breaches of the Act are not sufficiently serious to warrant the appointment of a provisional liquidator.

79 Orders will therefore be made appointing provisional liquidators to the companies.

I certify that the preceding seventy-nine (79) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Davies.

Associate:



Dated: 8 September 2016



**SCHEDULE OF PARTIES**

**VID 640 of 2014**

Plaintiff:	AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
First Defendant:	UGLII CORPORATION LIMITED (ACN 085 265 309)
Second Defendant:	TRARALGON TECHNOLOGY HOLDING LIMITED (ACN 130 403 520)
Third Defendant:	UGLII FIND AUSTRALIA LTD (ACN 101 790 505)
Fourth Defendant:	BIZMIO LIMITED (ACN 123 172 412)
Fifth Defendant:	PROJECTS DISCOVERY SERVICES PTY LTD (ACN 112 690 347)
Sixth Defendant:	UGLII ADS SYSTEM PTY LTD (ACN 604 405 263)