



Federal Court of Australia

District Registry: Victoria

Division: General

No: VID820/2017

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION

Plaintiff

REALESTATE EQUITY INVESTMENT TRUST (ARSN 094 623 515) and another
named in the schedule

Defendant

ORDER

JUDGE: JUSTICE MURPHY

DATE OF ORDER: 19 December 2017

WHERE MADE: Melbourne

OTHER MATTERS: A reference to the registered scheme, Realestate Equity Investment Trust (ARSN 094 623 515), in these Orders includes a reference to all sub-trusts associated with REIT, including but not limited to the Lara Property Development Syndicate Trust.

THE COURT ORDERS THAT:

REIT Orders

1. Pursuant to s.601ND(1) of the Corporations Act 2001 (Cth) (the **Act**), Lotus Securities Pty Ltd (ACN 121 418 317)(In liq.) (**Lotus**), in its capacity as the responsible entity for the registered scheme Realestate Equity Investment Trust (ARSN 094 623 515) (**REIT**), is directed to wind up REIT, subject to the orders below.
2. Pursuant to s.601NF(1) of the Act, Nicholas John Martin (**Mr. Martin**) and Andrew Thomas Sallway (**Mr. Sallway**) of BDO Australia, are appointed as persons to take responsibility for ensuring REIT is wound up in accordance with its constitution and these Orders.



3. Pursuant to s.601NF(2) of the Act, Mr. Martin and Mr. Sallway are appointed as receivers of the property of REIT.
4. Pursuant to s.601NF(2) of the Act, Mr. Martin and Mr. Sallway have all the powers in s.420 of the Act, *mutatis mutandis*, in relation to the property of REIT.
5. Without limiting the scope of Order 4 above, Mr. Martin and Mr. Sallway have all powers necessary to carry on the business of REIT for the purpose of winding up REIT, including but not limited to the power:
 - (a) to access the books and records of REIT;
 - (b) to enter into possession, take control of and dispose of the property of REIT;
 - (c) to convert property of REIT into money;
 - (d) to deal with any creditors and third parties with security over the property of REIT;
 - (e) to investigate any claims on behalf of members of REIT; and
 - (f) to execute any document, bring or defend any legal proceeding.
6. Until further ordered, the investigations of Mr. Martin and Mr. Sallway pursuant to the appointments under Orders 2, 3 and 12 herein, are limited to:
 - (a) identifying any assets in REIT and Timeline Project Management Pty Ltd (ACN 145 830 851) (**Timeline**);
 - (b) identifying unit-holders in REIT and verifying the quantum of investments made by those unit-holders;
 - (c) identifying any other creditors of REIT and Timeline;
 - (d) determining the status of the Musharakah Agreement (NMJ-23 to the affidavit of Ms Naomi Johnston sworn 25 July 2017) and the validity and value of any interest of Equitable Financial Solutions Pty Ltd in the land at 490 Flinders Avenue, Lara, Victoria (Certificate of Title Volume 9660 Folio 387) (**Land**);
 - (e) determining whether investors have a claim against Timeline or against REIT or against both;



- (f) determining whether Timeline has any claim against REIT;
 - (g) once the pool of available funds has been determined, calculating the distributions that can be made to unit-holders in REIT and any other creditors; and
 - (h) obtaining any legal advice in relation to the matters in Order 6(a) to (g) above.
7. Mr Martin and Mr Sallway will take all reasonable steps to procure from Equitable Financial Solutions Pty Ltd (**EFSOL**) an enforceable offer for EFSOL to purchase the Land that is open for acceptance for a period of 3 months.
8. By 4.00 pm on 9 March 2018, Mr. Martin and Mr. Sallway are to file a report in respect of the matters in Orders 6(a) to (g) and 7 above.
9. The Plaintiff's taxed costs of and incidental to this application insofar as it relates to the winding up of REIT are to be reimbursed from the property of REIT.
10. Pursuant to s 601NF(2) of the Act, Mr. Martin and Mr. Sallway are directed that their reasonable remuneration and costs and expenses in relation to Orders 6, 7 above, be paid from the property of REIT and, if REIT's property is inadequate, be costs and expenses in the liquidations of Lotus and/or Timeline. Such costs are not to be paid until further ordered.

Timeline Orders

11. Pursuant to s.461(k) of the Act, Timeline be wound up on the ground that it is just and equitable that it be wound up.
12. Pursuant to s 472(1) of the Act, Mr. Martin and Mr. Sallway are appointed joint and several liquidators to Timeline (the **Liquidators**).
13. Pursuant to s.466(2) of the Act, the Liquidators must reimburse the Plaintiff out of the property of Timeline, the Plaintiff's taxed costs of and incidental to this application insofar as those costs relate to the winding up of Timeline.

Asset preservation orders

14. Pursuant to s.1323(1) and (3) of the Corporations Act (2001) or s.23 of the Federal Court Act 1976 (Cth), that until further order, the Defendants by themselves, agents, employees or associates be restrained from:




- (a) selling, charging, mortgaging or otherwise dealing with, disposing of or diminishing the value of the land at 490 Flinders Ave, Lara; and
 - (b) withdrawing, transferring or otherwise dealing with any funds in the Commonwealth Bank account numbered 06 3158 1037 482 8 in the name of Timeline Project Management Pty Ltd.
15. The Plaintiff is granted leave, to the extent necessary, to give notice of these Orders to the Commonwealth Bank of Australia and Land Use Victoria.

Other Orders

16. Subject to further order, pursuant to s.37AF(1) of the Federal Court of Australia Act 1976 (Cth) (FCA) exhibits NMJ-1, NMJ-6 to NMJ-9 to the affidavit of Naomi Margaret Johnson sworn on 17 August 2017 are to remain confidential on the Court file and not to be disclosed or inspected by any person other than the parties to this proceeding and Mr. Martin and Mr. Sallway (and their staff and legal advisors).
17. The order in paragraph 16 above is necessary to prevent prejudice to the proper administration of justice as stipulated in s.37AG(1)(a) of the FCA.
18. Mr. Martin and Mr. Sallway have access to the documents held by the Plaintiff in relation to the First and Second Defendants.
19. There be liberty to apply by the Plaintiff and Mr. Martin and Mr. Sallway.
20. The proceeding be listed for a case management hearing on 20 March 2018 at 9.30 am.

Date that entry is stamped: 19 December 2017


Registrar



Schedule

No: VID820/2017

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Second Defendant: REALESTATE EQUITY INVESTMENT TRUST (ARSN 094 623
515)