



Federal Court of Australia
District Registry: Victoria
Division: General

No: VID505/2019

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION
Plaintiff

MERLIN DIAMONDS LIMITED
Defendant

ORDER

JUDGE: JUSTICE O'BRYAN

DATE OF ORDER: 04 June 2019

WHERE MADE: Melbourne

UPON THE UNDERTAKINGS OF THE DEFENDANT SET OUT IN ANNEXURE A TO THIS ORDER:

AND UPON THE UNDERTAKINGS OF JOSEPH ISAAC GUTNICK, A DIRECTOR OF THE DEFENDANT, SET OUT IN ANNEXURE B TO THIS ORDER:

AND UPON THE UNDERTAKINGS OF MORDECHAI ZEV GUTNICK, A DIRECTOR OF THE DEFENDANT, SET OUT IN ANNEXURE C TO THIS ORDER:

AND UPON THE UNDERTAKINGS OF DAVID STUART TYRWHITT, A DIRECTOR OF THE DEFENDANT, SET OUT IN ANNEXURE D TO THIS ORDER:

AND UPON THE UNDERTAKINGS OF HENRY HERZOG, A DIRECTOR OF THE DEFENDANT, SET OUT IN ANNEXURE E TO THIS ORDER:

THE COURT ORDERS BY CONSENT THAT:

1. The interlocutory application filed by the plaintiff for the appointment of a provisional liquidator to the defendant ("Application") be set down for hearing at 10.15am on 2 September 2019 on an estimate of one to two days.



2. By 4:00pm on 20 June 2019, any interested party who wishes to be heard in relation to the Application (“Interested Party”), file with the Court and serve on each party to the proceeding an application for leave to be heard.
3. By 4:00pm on 1 July 2019, the defendant file and serve on the plaintiff and on any Interested Party any affidavit material upon which it intends to rely at the hearing of the Application.
4. By 4:00pm on 7 July 2019, any Interested Party file with the Court and serve on the parties any affidavit material upon which it intends to rely at the hearing of the Application.
5. By 4:00pm on 22 July 2019, the plaintiff file and serve on the defendant and on any Interested Party any affidavit material upon which it intends to rely (if any) in reply.
6. By 4:00pm on 22 July 2019, the plaintiff file and serve on the defendant and on any Interested Party its outline of submissions.
7. By 4:00pm on 29 July 2019, the defendant file and serve on the plaintiff and on any Interested Party its outline of submissions.
8. By 4:00pm on 5 August 2019, any Interested Party file with the Court and serve on the parties any written submissions which they wish to make in relation to the Application.
9. By 4:00pm on 12 August 2019, the plaintiff file and serve on the defendant and on any Interested Party any submissions in reply.
10. On or before 9 August 2019, the plaintiff serve on the defendant and any Interested Party a list of any objections to evidence (and brief reasons for the objections).
11. On or before 9 August 2019, the defendant serve on the plaintiff and any Interested Party a list of any objections to evidence (and brief reasons for the objections).
12. On or before 9 August 2019, any Interested Party serve on the plaintiff and defendant a list of any objections (and brief reasons for the objections).
13. The parties and any Interested Party confer with a view to resolving any evidentiary objections and, on or before 23 August 2019, file a joint list of any evidentiary objections which remain unresolved.
14. On or before 23 August 2019, the plaintiff file and serve a copy of the Court Book in electronic form, which:



- a. is produced in a text-recognised PDF format;
 - b. is paginated sequentially throughout;
 - c. is divided into volumes such that each volume is contained within a single PDF file and the file name of each PDF file is the volume number; and
 - d. each PDF file contains electronic bookmarks to each document in that file.
15. Liberty to apply.
16. Costs be reserved.

Date that entry is stamped: 4 June 2019

Warrick Soden
Registrar



ANNEXURE A

UNDERTAKING OF MERLIN DIAMONDS LIMITED

DEFINITIONS

In this Undertaking:

“**ASIC**” means Australian Securities and Investments Commission.

“**Loan**” means any loan or advance of money by Merlin Diamonds Limited to:

- a. Axis Consultants Pty Ltd (ACN 006 804 708);
- b. Brocho Investments Pty Ltd (ACN 115 028 521);
- c. Hoydu Nominees Proprietary Limited (ACN 609 971 011);
- d. Chabad Properties Pty Ltd (ACN 107 936 229);
- e. Edensor Holdings Pty Ltd (ACN 094 414 954);
- f. Morzev Pty Ltd (ACN 604 624 535) and/or
- g. any related party of Merlin Diamonds Limited within the meaning of s228 of the *Corporations Act 2001*.

“**Merlin Diamonds Limited**” means Merlin Diamonds Limited (ACN 009 153 119), the defendant to the Proceeding.

“**Proceeding**” means Proceeding No. VID 505 of 2019 brought by ASIC as plaintiff against Merlin Diamonds Limited as defendant.

Until the final hearing and determination of the Application or excused by the Court,

MERLIN DIAMONDS LIMITED undertakes to the Court as follows:

1. Whether through its officers, servants, employees or agents, or otherwise howsoever from:
 - a. making any Loan, including any further Loan pursuant to an existing loan facility or loan agreement; or
 - b. doing any act in furtherance of or in connection with making a Loan, including entering into a loan facility or loan agreement.
2. Other than in the ordinary and proper course of business, to preserve the *status quo* of the affairs of Merlin Diamonds.



ANNEXURE B

UNDERTAKING OF JOSEPH ISAAC GUTNICK

DEFINITIONS

In this Undertaking:

“**ASIC**” means Australian Securities and Investments Commission.

“**Joseph Isaac Gutnick**” means Joseph Isaac Gutnick, 16 Denman Avenue, St Kilda East, Victoria 3183, a director of Merlin Diamonds Limited.

“**Loan**” means any loan or advance of money by Merlin Diamonds Limited to:

- a. Axis Consultants Pty Ltd (ACN 006 804 708);
- b. Brocho Investments Pty Ltd (ACN 115 028 521);
- c. Hoydu Nominees Proprietary Limited (ACN 609 971 011);
- d. Chabad Properties Pty Ltd (ACN 107 936 229);
- e. Edensor Holdings Pty Ltd (ACN 094 414 954);
- f. Morzev Pty Ltd (ACN 604 624 535); and/or
- g. any related party of Merlin Diamonds Limited within the meaning of s228 of the *Corporations Act 2001*.

“**Merlin Diamonds Limited**” means Merlin Diamonds Limited (ACN 009 153 119), the defendant to the Proceeding.

“**Proceeding**” means Proceeding No. VID 505 of 2019 brought by ASIC as plaintiff against Merlin Diamonds Limited as defendant.

Until the final hearing and determination of the Application or excused by the Court I,

JOSEPH ISAAC GUTNICK, undertake to the Court:

1. To refrain, whether by myself or through the officers, servants, employees or agents of Merlin Diamonds Limited, or otherwise howsoever from:
 - a. causing, procuring, assisting or permitting any Loan, including any further Loan pursuant to an existing loan facility or loan agreement; or



- b. doing any act in furtherance of or in connection with making a Loan, including causing, procuring, assisting or permitting Merlin Diamonds Limited to enter into a loan facility or loan agreement.
2. Other than in the ordinary and proper course of business, to preserve the *status quo* of the affairs of Merlin Diamonds.



ANNEXURE C

UNDERTAKING OF MORDECHAI ZEV GUTNICK

DEFINITIONS

In this Undertaking:

“ASIC” means Australian Securities and Investments Commission.

“Loan” means any loan or advance of money by Merlin Diamonds Limited to:

- a. Axis Consultants Pty Ltd (ACN 006 804 708);
- b. Brocho Investments Pty Ltd (ACN 115 028 521);
- c. Hoydu Nominees Proprietary Limited (ACN 609 971 011);
- d. Chabad Properties Pty Ltd (ACN 107 936 229);
- e. Edensor Holdings Pty Ltd (ACN 094 414 954);
- f. Morzev Pty Ltd (ACN 604 624 535); and/or
- g. any related party of Merlin Diamonds Limited within the meaning of s228 of the *Corporations Act 2001*

“Merlin Diamonds Limited” means Merlin Diamonds Limited (ACN 009 153 119), the defendant to the Proceeding.

“Mordechai Zev Gutnick” means Mordechai Zev Gutnick, 43 Halstead Street, Caulfield North, Victoria 3161, a director of Merlin Diamonds Limited.

“Proceeding” means Proceeding No. VID 505 of 2019 brought by ASIC as plaintiff against Merlin Diamonds Limited as defendant.

Until the final hearing and determination of the Application or excused by the Court I,

MORDECHAI ZEV GUTNICK, undertake to the Court:

1. To refrain, whether by myself or through the officers, servants, employees or agents of Merlin Diamonds Limited, or otherwise howsoever from:
 - a. causing, procuring, assisting or permitting any Loan, including any further Loan pursuant to an existing loan facility or loan agreement; or



- b. doing any act in furtherance of or in connection with making a Loan, including causing, procuring, assisting or permitting Merlin Diamonds Limited to enter into a loan facility or loan agreement.
2. Other than in the ordinary and proper course of business, to preserve the *status quo* of the affairs of Merlin Diamonds.



ANNEXURE D

UNDERTAKING OF DAVID STUART TYRWHITT

DEFINITIONS

In this Undertaking:

“**ASIC**” means Australian Securities and Investments Commission.

“**David Stuart Tyrwhitt**” means David Stuart Tyrwhitt, 120 Barry Street, Romsey, Victoria 3434, a director of Merlin Diamonds Limited.

“**Loan**” means any loan or advance of money by Merlin Diamonds Limited to:

- a. Axis Consultants Pty Ltd (ACN 006 804 708);
- b. Brocho Investments Pty Ltd (ACN 115 028 521);
- c. Hoydu Nominees Proprietary Limited (ACN 609 971 011);
- d. Chabad Properties Pty Ltd (ACN 107 936 229);
- e. Edensor Holdings Pty Ltd (ACN 094 414 954);
- f. Morzev Pty Ltd (ACN 604 624 535); and/or
- g. any related party of Merlin Diamonds Limited within the meaning of s228 of the *Corporations Act 2001*

“**Merlin Diamonds Limited**” means Merlin Diamonds Limited (ACN 009 153 119), the defendant to the Proceeding.

“**Proceeding**” means Proceeding No. VID 505 of 2019 brought by ASIC as plaintiff against Merlin Diamonds Limited as defendant.

Until the final hearing and determination of the Application or excused by the Court I,

DAVID STUART TYRWHITT, undertake to the Court:

1. To refrain, whether by myself or through the officers, servants, employees or agents of Merlin Diamonds Limited, or otherwise howsoever from:
 - a. causing, procuring, assisting or permitting any Loan, including any further Loan pursuant to an existing loan facility or loan agreement; or



- b. doing any act in furtherance of or in connection with making a Loan, including causing, procuring, assisting or permitting Merlin Diamonds Limited to enter into a loan facility or loan agreement.
2. Other than in the ordinary and proper course of business, to preserve the *status quo* of the affairs of Merlin Diamonds.



ANNEXURE E

UNDERTAKING OF HENRY HERZOG

DEFINITIONS

In this Undertaking:

“**ASIC**” means Australian Securities and Investments Commission.

“**Henry Herzog**” means Henry Herzog, 5117 Rubio Avenue, Encino 91436, California, U.S.A., a director of Merlin Diamonds Limited.

“**Loan**” means any loan or advance of money by Merlin Diamonds Limited to:

- a. Axis Consultants Pty Ltd (ACN 006 804 708);
- b. Brocho Investments Pty Ltd (ACN 115 028 521);
- c. Hoydu Nominees Proprietary Limited (ACN 609 971 011);
- d. Chabad Properties Pty Ltd (ACN 107 936 229);
- e. Edensor Holdings Pty Ltd (ACN 094 414 954);
- f. Morzev Pty Ltd (ACN 604 624 535); and/or
- g. any related party of Merlin Diamonds Limited within the meaning of s228 of the *Corporations Act 2001*

“**Merlin Diamonds Limited**” means Merlin Diamonds Limited (ACN 009 153 119), the defendant to the Proceeding.

“**Proceeding**” means Proceeding No. VID 505 of 2019 brought by ASIC as plaintiff against Merlin Diamonds Limited as defendant.

Until the final hearing and determination of the Application or excused by the Court I,

HENRY HERZOG, undertake to the Court:

1. To refrain, whether by myself or through the officers, servants, employees or agents of Merlin Diamonds Limited, or otherwise howsoever from:
 - a. causing, procuring, assisting or permitting any Loan, including any further Loan pursuant to an existing loan facility or loan agreement; or



- b. doing any act in furtherance of or in connection with making a Loan, including causing, procuring, assisting or permitting Merlin Diamonds Limited to enter into a loan facility or loan agreement.
2. Other than in the ordinary and proper course of business, to preserve the *status quo* of the affairs of Merlin Diamonds.



Schedule

No: VID505/2019

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District Registry: Victoria
Division: General

Supporting Creditor ONSITE RENTAL GROUP OPERATIONS PTY LTD ACN 126
102 485