



Federal Court of Australia

District Registry: Victoria

Division: General

No: VID1620/2018

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION

Plaintiff

ASKK INVESTMENT GROUP PTY LTD

Defendant

ORDER

JUDGE: JUSTICE DAVIES

DATE OF ORDER: 22 November 2019

WHERE MADE: MELBOURNE

THE COURT ORDERS BY CONSENT THAT:

1. The restraints in paragraph 2 of the orders made on 20 December 2018 and extended by orders made 7 February 2019, 14 February 2019, 13 March 2019, 17 April 2019 and 23 May 2019 (**Freezing Orders**) do not prohibit the Defendant from transferring \$97,933.43 from the Bank Accounts to the trust account of its solicitors, Mills Oakley (Mills Oakley Lawyers Law Practice Trust Account BSB: 033003 Account Number 369576) in part payment of unpaid legal invoices rendered to the Defendant by Mills Oakley in the sum of \$163,768.87.
2. The Freezing Orders do not prohibit the Defendant from:
 - (a) executing a loan deed with one or more of the Shareholders of the Defendant a copy of which is annexed to this order as Annexure A (**Loan Deed**); and
 - (b) applying the funds obtained pursuant to the Loan Deed to pay:
 - i) \$65,835.44 in payment of the balance of Mills Oakley's unpaid legal invoices rendered to the Defendant (referred to in paragraph 1 above);



ii) Mills Oakley's anticipated legal fees and disbursements of and incidental to:

1. the Defendant defending this proceeding up to the case management conference on 13 December 2019, in the sum of \$20,042; and
2. the Defendant's interlocutory application for access to restrained funds listed for hearing on 8 November 2019 in the sum of \$8,800; and

iii) Hicks Oakley Chessell Williams' unpaid legal invoice rendered to the Defendant in the sum of \$3,256.

3. Costs of the case management conference on 8 November 2019 are otherwise reserved.
4. Liberty to apply on reasonable notice to the other party.

Date that entry is stamped: 22 November 2019.

Sia Lagos
Registrar



ANNEXURE “A”



Loan Deed

BETWEEN

Askk Investment Group Pty Ltd (ACN 621 924 589)

AND

Ahmad Ayad

AND

Khaled El Turkmani

AND

Khodr El-Badaoui

MILLS OAKLEY

Level 6, 530 Collins Street
MELBOURNE VIC 3000
Telephone: +61 3 9670 9111
Facsimile: +61 3 9605 0933
DX 558, MELBOURNE
www.millsoakley.com.au
Ref: SAHM/5782089



Parties

Askk Investment Group Pty Ltd (ACN 621 924 589)
of 10 Boort Street, Broadmeadows, Victoria 3047

("Borrower")

Ahmad Ayad
of 10 Boort Street, Broadmeadows, Victoria 3047

Khaled El Turkmani
18 Gwilt Street, Westmeadows, Victoria 3049

Khodr El-Badaoui
27 Denys Street, Fawkner, Victoria 3060

("Lenders")

Background

The Lenders have agreed to provide a loan to the Borrower for the Purpose.

The parties agree

1 Definitions and interpretation

1.1 Definition

In this Deed:

Borrower means Askk Investment Group Pty Ltd (ACN 621 924 589);

Insolvent means, in relation to a person, when the person:

- (a) is:
 - (i) insolvent as that term is defined in Section 9 of the Corporations Act; or
 - (ii) the subject of an event described in Sections 459C(2) (a) to (f) or Section 585 of the Corporations Act (or it makes a statement from which another party to this agreement may reasonably deduce it is so subject); or
 - (iii) an insolvent under administration or suffers the appointment of a controller, administrator, liquidator or provisional liquidator as those terms are defined in Section 9 of the Corporations Act; or
 - (iv) dissolved,
- other than to carry out an amalgamation or reconstruction while solvent; or
- (b) enters into any agreement or composition with its creditors or convenes a meeting of its creditors for this purpose;
- (c) is subject to an order or an effective resolution is passed for the liquidation, winding up or dissolution of the person;
- (d) is otherwise unable to pay its debts as and when they become due and payable;
- (e) being a natural person, commits or suffers an act of bankruptcy; or



(f) takes or suffers any similar act under the law of any jurisdiction.

Joint Venture and Participation Agreement means the agreement of that name between any person or entity as the First Party (**Joint Venturer**) and the Borrower as the Second Party, substantially in the form contained in Schedule 1, in relation to the Property;

Lenders means Ahmad Ayad, Khaled El Turkmani and Khodr El-Badaoui;

Order means the order made by Davies J on # November 2019 contained in Schedule 2;

Principal Sum means \$97,933.44;

Property means the land known as Lot 2, 615 Old Hume Highway, Beveridge, Victoria 3753 being all of the land comprised in certificate of title volume 10685 folio 976;

Protected Payments means amounts paid to the Borrower under a Joint Venture and Participation Agreement;

Purpose means to assist the Borrower to make the payments set out in sub-paragraph 2(b)(i) to (iii) of the Order;

Repayment Offer means the offer described in clause 2.2(a)(i) of this Deed;

State means the state of Victoria in the Commonwealth of Australia;

1.2 Interpretation

In this Deed:

- (a) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (b) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (c) where the day on which or by which any act, matter or thing is to be done under this Deed is not a business day, that act, matter or thing will be done on the immediately preceding business day;
- (d) "**includes**" in any form is not a word of limitation; and
- (e) a reference to "\$" or "**dollar**" is to Australian currency.

2 The loan

2.1 Loan

The Lenders agree to lend and the Borrower agrees to borrow the Principal Sum for the Purpose.

2.2 Repayment subject to Joint Venture and Participation Agreement

- (a) The Lenders must not seek repayment of the Principal Sum until:
 - (i) The Borrower makes a Repayment Offer (to all Joint Venturers under current Joint Venture and Participation Agreements to repay Protected Payments) and pays Protected Payments to any Joint Venturer who accepts the offer within 30 days of the offer being made; and
 - (ii) If an order for repayment to Joint Venturers is made by the Federal Court of Australia, the order has been complied with; and
 - (iii) The termination of all Joint Venture and Participation Agreements; and



- (iv) If a managed investment scheme is established for the purposes of purchasing the Property, the responsible entity of that scheme considers that repayment of any or all of the Principal Sum would not be materially adverse to the interests of members of that scheme.
- (b) Subject to clause (a), the Borrower must repay the Principal Sum within 14 days of written demand for repayment by the Lenders.

3 No interest

No interest will be payable by the Borrower to the Lenders on the Principal Sum.

4 Default

Subject to clause 5 below, at the option of the Lenders, the outstanding balance of the Principal Sum will become immediately due and payable by the Borrower to the Lenders, despite any previous delay or waiver by the Lenders, if:

- (a) the Borrower becomes Insolvent; or
- (b) the Borrower breaches any provision of this Deed which is not capable of being remedied.

5 Subordination to Joint Venturers

Notwithstanding clause 4 above, the Lenders acknowledge that any and all rights of the Lenders to recover any monies due and payable by the Borrower under this Deed are entirely subordinated to the rights and entitlements of any Joint Venturer:

- (a) to any Protected Payments;
- (b) if the Borrower becomes Insolvent.

6 Costs and expenses

The Borrower agrees to indemnify the Lenders in respect of all legal costs and disbursements incurred by the Lenders in enforcing or attempting to enforce this Deed.

7 Variation

This Deed may only be altered, amended, varied or modified by a written document and executed by the Parties.

8 Severability

If anything in this Deed is unenforceable, illegal or void then it is severed and the rest of this Deed remains in force.

9 Jurisdiction

This Deed is to be governed by and construed in accordance with all applicable laws in force in the State from time to time and the parties submit to the non-exclusive jurisdiction of the courts of the State.



Loan Deed

Execution Page

EXECUTED as a Deed on _____ November 2019

EXECUTED by Askk Investment Group Pty)
Ltd (ACN 621 924 589) in accordance with)
section 127(1) of the Corporations Act 2001

Signature of Director

Signature of Director / Company Secretary
(delete as applicable)

Name of Director
(Please print)

Name of Director / Company Secretary
(Please print)

SIGNED by Ahmad Ayad in the presence of:)

Signature of Witness

Signature of Ahmad Ayad

Name of Witness
(Please print)

SIGNED by Khaled El Turkmani in the)
presence of:

Signature of Witness

Signature of Khaled El Turkmani

Name of Witness
(Please print)

SIGNED by Khodr El-Badaoui in the presence)
of:

Signature of Witness

Signature of Khodr El-Badaoui

Name of Witness
(Please print)



Loan Deed

Schedule 1 Pro Forma Joint Venture and Participation Agreement



Loan Deed

Schedule 2 Order of Davies J dated # November 2019