



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: 17 December 2019

WHERE MADE: Melbourne

THE COURT NOTES THAT:

For the purposes of this Order, "Interested Shareholders" means the first to thirteenth interested persons who sought leave to be heard on the plaintiff's application for the appointment of a liquidator to the defendant on 20 June 2019.

THE COURT ORDERS THAT:

1. Pursuant to rule 8.21 of the *Federal Court Rules* 2011 (Cth), the plaintiff have leave to amend its originating process by filing and serving an amended originating process in substantially the same form as the draft which is exhibit TT-9 to the affidavit of Tony Tsiavis sworn 22 November 2019.
2. By 4pm on 21 January 2020, any interested party who wishes to be heard in relation to the plaintiff's application for final relief file with the Court and serve on each party to the proceeding an application for leave to be heard.
3. By 4pm on 21 January 2020, the Interested Shareholders and any person who files an application under paragraph 2 (collectively "Interested Parties") file and serve a notice stating whether they oppose the final relief sought by ASIC in the proceeding.
4. If there is no opposition to the final relief sought by ASIC in the proceeding, the matter be listed for final hearing on Tuesday 4 February 2020 and:



- (a) paragraphs 1, 4, 5, 6, 7, 8 and 10 of the Orders made 17 October 2019 be vacated;
and
 - (b) the date for compliance with paragraphs 9 and 11 of the Orders made 17 October 2019 be varied to 31 January 2020.
5. If there is opposition to the final relief sought by ASIC in the proceeding:
- (a) the Interested Parties must by 4pm on 31 January 2020:
 - (i) file and serve any additional material on which they intend to rely on the question of whether the defendant ought to be wound up pursuant to s 459B of the *Corporations Act*; and
 - (ii) deliver to the plaintiff a list of documents they intend to tender at the hearing, which are additional to those identified in paragraphs 3(b), 4(b) and 5(b) of the Orders made 17 October 2019;
 - (b) by 4pm on 7 February 2020, the plaintiff must:
 - (i) file any material on which it intends to rely in response to any material filed by the Interested Parties pursuant to paragraph 2 above; and
 - (ii) deliver to the Interested Parties a list of documents it intends to tender at the hearing, which are additional to those identified in paragraph 5(a)(ii) above and paragraphs 3(b), 4(b) and 5(b) of the Orders made 17 October 2019;
 - (c) paragraph 6 of the Orders made on 17 October 2019 be varied such that, by 14 February 2020, the plaintiff and the Interested Parties must serve a list of objections to evidence (and brief reasons for the objections); and
 - (d) paragraph 7 of the Orders made on 17 October 2019 be varied such that, the plaintiff and the Interested Parties must confer with a view to resolving any evidentiary objections and, on or before 21 February 2020, must file a joint list of any evidentiary objections which remain unresolved.
6. The plaintiff's interlocutory application dated 5 December 2019 be otherwise dismissed.
7. There be liberty to apply on 2 days notice.
8. Costs be reserved.



Date that entry is stamped: 18 December 2019

Sia Lagos
Registrar

This Order has been amended in accordance with Rule 39.05(g) of the *Federal Court Rules* 2011.



Schedule

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Interested Person	CHAYA REICHER
Second Interested Person	MENACHEM REICHER
Third Interested Person	MOSNOW PTY LTD
Fourth Interested Person	RESNIK HOLDINGS PTY LTD
Fifth Interested Person	BETZALEL REICHER
Sixth Interested Person	Y.A.D INVESTMENTS PTY LTD
Seventh Interested Person	MENACHEM ENGEL
Eighth Interested Person	MORDEL INVESTMENTS PTY LTD
Ninth Interested Person	SHOLOM ENGEL
Tenth Interested Person	EMSHAR PTY LTD
Eleventh Interested Person	GERSH PTY LTD
Twelfth Interested Person	INTANTO PTY LTD
Thirteenth Interested Person	M&CS ROTH FAMILY TRUST