

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 16/04/2020 10:44:55 AM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

### Filing and Hearing Details

Document Lodged:	Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
File Number:	QUD108/2020
File Title:	AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v YOUI PTY LTD ACN 123 074 733
Registry:	QUEENSLAND REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



A handwritten signature in blue ink that reads 'Sia Lagos'.

Dated: 16/04/2020 1:05:58 PM AEST

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 2  
Rule 2.2

## ORIGINATING PROCESS

No. \_\_\_\_\_ of 2020

**Federal Court of Australia**  
**District Registry: Queensland**  
**Division: General**

**IN THE MATTER OF YOUI PTY LTD (ACN 123 074 733)**

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**  
Plaintiff

**YOUI PTY LTD (ACN 123 074 733)**  
Defendant

### A. DETAILS OF APPLICATION

This application is made under s 21 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**), and s 1101B(1)(a)(i) of the *Corporations Act 2001* (Cth) (**Corporations Act**) each as in force with respect to conduct that occurred in the period May 2017 to May 2018, and the inherent or implied jurisdiction of the Court.

The plaintiff, the Australian Securities and Investments Commission (**ASIC**) seeks declarations of contraventions of the *Insurance Contracts Act 1984* (Cth) (**ICA**), and ancillary orders, including costs against the defendant (**Youi**).

In this Originating Process, terms which are defined in the Concise Statement dated 16 April 2020 (**Concise Statement**) have the same meaning as they do in that document.

On the facts stated in the Concise Statement, ASIC claims:

#### Against the Defendant

1. A declaration under s 21 of the FCA Act, s 1101B(1)(a)(i) of the Corporations Act, and the inherent or implied jurisdiction of the Court that from 19 May 2017, 1 June 2017 or 29 September 2017 to in or about late December 2017 or January 2018, Youi failed to take reasonable steps to:
  - (a) inform the Insured of the PA Issues;

Filed on behalf of	Australian Securities and Investments Commission, the Plaintiff		
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- (b) inform the Insured that PA was not a repairer acceptable to Youi and/or a repairer from Youi's network of recommended repairers, for the purposes of, and, as required by, the Recommended Repairer Term of the Policy;
- (c) afford the Insured an opportunity to request the appointment of a repairer (other than PA) from Youi's network of recommended repairers, as required by the Recommended Repairer Term of the Policy; and or
- (d) seek to terminate the PA Engagement, notwithstanding PA Issues and or Youi's obligations pursuant to the Policy,

and thereby breached the requirements of the ICA pursuant to s 13(2) of the ICA, in that it failed to comply with the provision requiring each party to the contract of insurance to act towards the other party, in respect of each matter arising under or in relation to the contract of insurance, with the utmost good faith.

2. A declaration under s 21 of the FCA Act, s 1101B(1)(a)(i) of the Corporations Act, and the inherent or implied jurisdiction of the Court that from 5 May 2017 to on or about 4 October 2017, Youi failed to take reasonable steps to ensure that any builder commenced the repairs to the Property, and thereby breached the requirements of the ICA pursuant to s 13(2) of the ICA, in that it failed to comply with the provision requiring each party to the contract of insurance to act towards the other party, in respect of each matter arising under or in relation to the contract of insurance, with the utmost good faith.
3. A declaration under s 21 of the FCA Act, s 1101B(1)(a)(i) of the Corporations Act, and the inherent or implied jurisdiction of the Court that from on or about 4 October 2017 to at least 17 November 2017, Youi failed to take reasonable steps to effect make safe works to the Property, and thereby breached the requirements of the ICA pursuant to s 13(2) of the ICA, in that it failed to comply with the provision requiring each party to the contract of insurance to act towards the other party, in respect of each matter arising under or in relation to the contract of insurance, with the utmost good faith.
4. A declaration under s 21 of the FCA Act, s 1101B(1)(a)(i) of the Corporations Act, and the inherent or implied jurisdiction of the Court that from 2 November 2017 to at least 18 May 2018, Youi failed to take reasonable steps to consider and respond to the formal complaint made by the Insured on 2 November 2017, and thereby breached the requirements of the ICA pursuant to s 13(2) of the ICA, in that it failed to comply with the provision requiring each party to the contract of insurance to act towards the other party, in respect of each matter arising under or in relation to the contract of insurance, with the utmost good faith.
5. A declaration under s 21 of the FCA Act, s 1101B(1)(a)(i) of the Corporations Act, and the inherent or implied jurisdiction of the Court that from 20 February 2018 to 5 April 2018, Youi failed to take reasonable steps to respond to the email the Insured sent to Youi on 20 February 2018 thereby further delaying the completion of the repairs, and thereby breached the requirements of the ICA pursuant to s 13(2) of the ICA, in that it failed to comply with the provision requiring each party to the contract of insurance to act towards the other party, in



respect of each matter arising under or in relation to the contract of insurance, with the utmost good faith.

6. Alternatively, a declaration under s 21 of the FCA Act, s 1101B(1)(a)(i) of the Corporations Act, and the inherent or implied jurisdiction of the Court that from 5 May 2017 to 18 May 2018, by the failures referred to in paragraphs 1 to 5 above, Youi breached the requirements of the ICA pursuant to s 13(2) of the ICA, in that it failed to comply with the provision requiring each party to the contract of insurance to act towards the other party, in respect of each matter arising under or in relation to the contract of insurance, with the utmost good faith.

### **Other Orders**

7. An order that Youi pay ASIC's costs of and incidental to the proceeding.
8. Such further or other orders as the Court considers appropriate.

Date: 16 April 2020

*(Electronic) Signature of plaintiff's legal practitioner*

This application will be heard by ..... at the Federal Court of Australia, Level 6, Harry Gibbs Commonwealth Law Courts Building, 119 North Quay, Brisbane Qld 4000 at ..... am/pm on .....

### **B. NOTICE TO DEFENDANT**

TO:

**YOUI PTY LTD (ACN 123 074 733)**

2 Smart Drive

Sippy Downs QLD 4556

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.



Before appearing before the Court, you must file notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff.

*Note* Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

**C. FILING**

Date of filing:

.....

*Registrar*

This originating process is filed by Johnson Winter & Slattery for the Plaintiff.

**D. SERVICE**

The plaintiff's address for service is c/- Johnson Winter & Slattery, Level 29, 111 Eagle Street, Brisbane QLD 4000.

It is intended to serve a copy of this originating process on the defendant.