

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 10/08/2020 10:45:25 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:	VID524/2020
File Title:	AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v M101 NOMINEES PTY LTD & ORS
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	Hearing
Time and date for hearing:	13/08/2020, 10:30 AM
Place:	Court Room Not Assigned, Owen Dixon Commonwealth Law Courts Building Level 7, 305 William Street, Melbourne



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

Dated: 10/08/2020 11:55:18 AM 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.



ORIGINATING PROCESS

Federal Court of Australia

No. of 2020

District Registry: Victoria

Division: Commercial and Corporations

IN THE MATTER OF M101 NOMINEES PTY LTD ACN 636 908 159 & OTHERS

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

M101 NOMINEES PTY LTD ACN 636 908 159 and others named in the Schedule

Defendants

A. **DETAILS OF APPLICATION**

This is an application made under sections 461(1)(k), 462(2)(e), 464(1), 1101B and 1324 of the *Corporations Act 2001* (Cth) (**Act**) and section 23 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**), seeking an order that the First Defendant be wound up on just and equitable grounds, injunctions and other orders as set out below.

On the facts stated in the supporting affidavit of Dayle Buckley affirmed 5 August 2020 and such further and other affidavits as may be filed and read, the Plaintiff claims the following relief:

Winding up

1. An order pursuant to section 461(1)(k) of the Act that the First Defendant be wound up on the ground that it is just and equitable.

Filed on behalf of (name & role of party)	Australian Securities and Investments Commission, the plaintiff
Prepared by (name of person/lawyer)	Hugh Copley, Litigation Counsel
Law firm (if applicable)	
Tel (07) 3867 4892	Fax (07) 3867 4790
Email hugh.copley@asic.gov.au	
Address for service (include state and postcode)	Level 20, 240 Queen Street, Brisbane, QLD 4000 Attention: Hugh Copley



2. An order that Said Jahani and Philip Campbell-Wilson, both of Grant Thornton, Level 17, 383 Kent Street, Sydney NSW 2000, being registered liquidators, be appointed as joint and several liquidators of the First Defendant.
3. An order that the Plaintiff's costs of and incidental to the winding up application be costs in the winding up of the First Defendant (taxed or as agreed) and reimbursed in accordance with section 466(2) of the Act.

Injunctions

4. An order pursuant to sections 1101B(1) and 1324(1) of the Act and/or section 23 of the FCA, that the Second Defendant, by himself, his servants, agents, employees and any company of which he is an officer or member, be restrained from:
 - a. Receiving or soliciting funds in connection with any financial product, including but not limited to products known as the M Core Fixed Income Notes, M+ Fixed Income Notes and Australian Property Bonds;
 - b. Advertising, promoting or marketing any financial product, including but not limited to products known as the M Core Fixed Income Notes, M+ Fixed Income Notes and Australian Property Bonds; and
 - c. Removing or transferring from Australia any assets acquired directly or indirectly with funds received in connection with any financial product, including but not limited to products known as the M Core Fixed Income Notes, M+ Fixed Income Notes and Australian Property Bonds.
5. Such further or other orders as the Court thinks fit.

Claim for interlocutory relief

The Plaintiff also claims interlocutory relief under sections 472(2), 1101B(1), 1101B(5), 1323(1), 1323(3), 1324(1) and 1324(4) of the *Corporations Act 2001 (Act)*, and section 23 of the *Federal Court of Australia Act 1976 (Cth) (FCA Act)*, seeking the appointment of provisional liquidators to the First Defendant, travel restraint orders against the Second Defendant, injunctions and ancillary orders.



Ex parte and short service orders

1. An order that upon the Plaintiff's undertaking to pay the usual filing fees, the Plaintiff has leave to file in Court this Originating Process and the affidavit of Dayle Buckley affirmed 5 August 2020.
2. An order that, in the first instance, service of this Originating Process be dispensed with.
3. An order that, in the first instance, this Originating Process be returnable instanter.
4. An order that time for service of this Originating Process be abridged to 5.00pm on _____ 2020.
5. An order that this Originating Process be returnable before Justice _____ at _____ am/pm on _____ 2020.

Provisional liquidators

6. An order pursuant to section 472(2) of the Act that Said Jahani and Philip Campbell-Wilson, both of Grant Thornton, Level 17, 383 Kent Street, Sydney NSW 2000, being registered liquidators, be appointed as joint and several provisional liquidators of the First Defendant.
7. The provisional liquidators shall, within 42 days of their appointment, provide to the Court and to the parties, a report as to the provisional liquidation of the First Defendant, including:
 - a. the identification of the assets and liabilities of the First Defendant;
 - b. an opinion as to the solvency of the First Defendant;
 - c. an opinion as to the value of the assets of the First Defendant;
 - d. an opinion as to the likely return to creditors, if the First Defendant is wound up;
 - e. an opinion as to whether the First Defendant has proper financial records;



- f. any other information necessary to enable the financial position of the First Defendant to be assessed;
- g. any suspected contraventions of the Act by the First Defendant; and
- h. any suspected contraventions of the Act by the director of the First Defendant.

Injunctions, asset preservation orders & receiver orders

First Defendant

8. In the alternative to paragraph 6, an order pursuant to sections 1101B(5) and 1324(4) of the Act and/or section 23 of the FCA Act that, until further order, the First Defendant be restrained from:
 - a. issuing or promoting any financial product, including without limitation the M Core Fixed Income Notes;
 - b. receiving, soliciting, transferring or disposing of funds received in connection with the M Core Fixed Income Notes; and
 - c. selling, charging, mortgaging or otherwise dealing with, disposing of and/or diminishing the value of assets acquired directly or indirectly with funds received in connection with the M Core Fixed Income Notes.

Second Defendant

9. An order pursuant to sections 1101B(5) and 1324(4) of the Act and/or section 23 of the FCA Act that, until further order, the Second Defendant, by himself, his servants, agents, employees and any company of which he is an officer or member, be restrained from:
 - a. receiving or soliciting funds in connection with any financial product, including but not limited to products known as the M Core Fixed Income Notes, M+ Fixed Income Notes and Australian Property Bonds;
 - b. advertising, promoting or marketing any financial product, including but not limited to products known as the M Core Fixed Income Notes, M+ Fixed Income Notes and Australian Property Bonds; and



- c. removing or transferring from Australia any assets acquired directly or indirectly with funds received in connection with any financial product, including but not limited to products known as the M Core Fixed Income Notes, M+ Fixed Income Notes and Australian Property Bonds.

Third Defendant

10. An order pursuant to sections 1323(1)(h) and 1323(3) of the Act that, until further order, Said Jahani and Philip Campbell-Wilson, both of Grant Thornton, Level 17, 383 Kent Street, Sydney NSW 2000, being registered liquidators, be appointed as joint and several receivers and managers of the property (as defined in the Act) of the Third Defendant.
11. An order that the receivers and managers have the powers set out in sections 420(2) (a), (b), (e), (f), (g), (k), (n), (p), (q), (r), (t) and (u) of the Act and can exercise these powers in respect of the property (as defined in the Act) of the Third Defendant.
12. An order that the receivers and managers' reasonable costs and expenses be payable from the property (as defined in the Act) of the Third Defendant.
13. In the alternative to paragraph 10, an order pursuant to sections 1323(1) and 1323(3) of the Act and/or section 23 of the FCA Act that, until further order, the Third Defendant, by itself and its servants, agents and employees, be restrained from:
 - a. selling, charging, mortgaging or otherwise dealing with, disposing of and/or diminishing the value of the units in the following trusts (**Units**):
 - i. Mayfair Island Trust
 - ii. Mission Beach Property Trust
 - iii. Mission Beach Property Trust No 2
 - iv. Mission Beach Property Trust No 3
 - v. Mission Beach Property Trust No 4
 - vi. Mission Beach Property Trust No 5



- vii. Mission Beach Property Trust No 6
 - viii. Mission Beach Property Trust No 7
 - ix. Mission Beach Property Trust No 8
 - x. Mission Beach Property Trust No 9
 - xi. Mission Beach Property Trust No 10
 - xii. Mission Beach Property Trust No 11
 - xiii. Mission Beach Property Trust No 12
 - xiv. Jarrah Lodge Unit Trust No 1; and
- b. causing or permitting the Units to be sold, charged, mortgaged or otherwise dealt with, disposed of, or diminished in value.

Travel restraint orders

14. An order pursuant to sections 1323(1)(k) and 1323(3) of the Act that, until further order, the Second Defendant be restrained from leaving or attempting to leave Australia.

Service of orders on third parties

15. To the extent necessary, the Plaintiff has leave to give to:
- a. the relevant authorities that record, control and regulate the ownership of real property;
 - b. the relevant authorities that record, control and regulate the ownership of motor vehicles;
 - c. the relevant authorities that record, control and regulate the ownership of maritime vessels and craft;
 - d. any bank, building society or other financial institution through which, to the best of the Plaintiff's belief, any of the Defendants operates any account;



- e. any other person or entity, holding or controlling property, which, to the best of the Plaintiff's belief, belongs to any of the Defendants; and
- f. the relevant authorities that issue and control of passports,

notice of these orders, by delivering a copy of a minute of the orders to a person apparently in the employ of that entity or person.

Miscellaneous

- 16. Costs.
- 17. Such further or other relief that the Court considers appropriate.

Date: 7 August 2020

.....
 Hugh Copley
 Legal Practitioner for the
 Australian Securities and Investments Commission

This application will be heard by _____ at 305 William Street,
 Melbourne VIC at _____ am/pm on _____ 2020.

B. NOTICE TO DEFENDANTS

TO: **M101 Nominees Pty Ltd**
 Level 27, 35 Collins Street
 Melbourne VIC 3000

James Peter Mawhinney
 73 McIntyres Road
 Park Orchards VIC 3114

**Sunseeker Holdings Pty Ltd**

c/- Pinnacle Group

Level 7, 10 Queens Road

Melbourne VIC 3004

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 a 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 the Plaintiff.

D. SERVICE

The Plaintiff's address for service is: Australian Securities and Investments Commission, Level 20, 240 Queen Street, Brisbane Qld 4000

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

**SCHEDULE**

Federal Court of Australia

No. of 2020

District Registry: Victoria

Division: Commercial and Corporations

IN THE MATTER OF M101 NOMINEES PTY LTD ACN 636 908 159 AND OTHERS**JAMES PETER MAWHINNEY**

Second Defendant

SUNSEEKER HOLDINGS PTY LTD ACN 632 076 469

Third Defendant