



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD1220/2020

**AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION**

Plaintiff

**MELISSA LOUISE CADDICK** and another named in the schedule

Defendant

**ORDER**

**JUDGE:** JUSTICE MARKOVIC

**DATE OF ORDER:** 15 December 2020

**WHERE MADE:** Sydney

For the purposes of these orders:

- “Property” means all real or personal property, assets or interests in property of any kind, within or outside Australia including, by virtue of s 1323(2A) of the *Corporations Act 2001* (Cth) (**Act**), any property held otherwise than as sole beneficial owner.
- “Representative” means the attorney appointed by the first defendant under an Enduring Power of Attorney dated 15 September 2016.

**THE COURT ORDERS THAT:**

**Amended Originating Process**

1. The plaintiff have leave to amend the originating process in the form of the proposed amended originating process being Annexure IA-5 to the affidavit of Isabella Lucy Allen affirmed 25 November 2020 (**Amended Originating Process**).
2. The plaintiff have leave to file the Amended Originating Process, returnable immediately.
3. In the first instance, service of the Amended Originating Process be dispensed with.
4. The costs of the amendment application be costs in the cause.

**Appointment of Receivers**

5. Until further order, pursuant to s 1323(1)(h)(i) of the Act, Bruce Gleeson and Daniel Robert Soire of Jones Partners of Level 13, 189 Kent St, Sydney NSW 2000 be



appointed as joint and several receivers (**Receivers**) of the Property of the first defendant for the purpose of:

- (a) identifying, collecting and securing the Property of the first defendant;
- (b) approving or making the payments from the Property of the first defendant permitted by Order 11 of the Orders made on 10 November 2020 as varied;
- (c) ascertaining the amount of money received by the first defendant from funds paid to the second defendant by investors for investment (**Investor Funds**);
- (d) identifying any Investor Funds held by the first defendant, any Property acquired by the first defendant with Investor Funds and any payments made by the first defendant to third parties with Investor Funds and any other dealings by the first defendant with Investor Funds; and
- (e) ascertaining whether any money was paid directly to the first defendant by investors for investment and identifying the matters set out in paragraph (d) above in relation to any such money.

6. For the purpose of attaining the objectives for which the Receivers are appointed, the Receivers shall have the following powers:

- (a) subject to paragraph (d) below, the powers set out in s 420(1) and s 420(2)(a), (e), (f), (k), (o), (p), (q), and (r) of the Act as if the references to corporation were references to the first defendant;
- (b) the power to investigate and report on the matters set out in Order 7;
- (c) the power to apply to the Court for directions or further orders on two business days' notice;
- (d) any step taken by the Receivers in exercise of the power granted to them under:
  - (i) s 420(1) insofar as it relates to the objective of collecting the property of the first defendant pursuant to Order 5(a); or
  - (ii) s 420(2)(a) of the Act,

in relation to any Property comprising real property assets located at Dover Heights, NSW and Edgecliff, NSW registered in the name of the first defendant, be subject to the Receivers giving the Representative 21 days' prior notice in writing of the taking of any such steps.

7. By 15 February 2021 the Receivers shall provide to the Court and to the plaintiff a report regarding:



- (a) the assets and liabilities of the first defendant;
  - (b) an opinion as to the solvency of the first defendant;
  - (c) the amount of Investor Funds received by the first defendant;
  - (d) any Investor Funds held by the first defendant, any property acquired by the first defendant with Investor Funds and any payments made by the first defendant to third parties with Investor Funds and any other dealings by the first defendant with Investor Funds;
  - (e) any money paid directly to the first defendant by investors for investment and any property acquired, any payments made and any other dealings, by the first defendant with such money; and
  - (f) the Receivers' remuneration, costs and expenses.
8. Costs of the application to appoint the Receivers be costs in the cause.
9. The Receivers' remuneration, costs and expenses shall be capped at \$70,000 or such other amount as the Court subsequently orders, and the Receivers shall make an application to the Court for approval of their reasonable remuneration, costs and expenses and their payment out of the Property of the first defendant, within 14 days following the provision of the report referred to in Order 7.

#### **Appointment of Provisional Liquidators**

10. Pursuant to s 472(2) of the Act, Bruce Gleeson and Daniel Robert Soire of Jones Partners of Level 13, 189 Kent St, Sydney NSW 2000 be appointed as joint and several provisional liquidators (**Provisional Liquidators**) to the second defendant.
11. The Provisional Liquidators have the powers set out in the Act and the power to investigate and report on the matters set out in Order 12.
12. By 15 February 2021 the Provisional Liquidators shall provide to the Court and to the plaintiff a report as to the provisional liquidation of the second defendant, including:
- (a) the persons who have paid money to the second defendant for investment, the amounts they invested, and whether, and to what extent, these amounts have been repaid;
  - (b) identifying any bank accounts in which Investor Funds are held, any Property acquired with Investor Funds or any other dealings with Investor Funds;



- (c) the assets and liabilities of the second defendant, including any assets in which the second defendant has any legal or beneficial interest and an estimate of the value of each asset;
  - (d) an opinion as to the solvency of the second defendant;
  - (e) an opinion as to whether the second defendant has proper financial records;
  - (f) an opinion as to the claims that may be available to the Liquidators for the recovery of funds for the benefit of creditors, including claims pursuant to Pt 5.7B of the Act;
  - (g) the likely return to creditors;
  - (h) any other information necessary to enable the financial position of the second defendant to be assessed;
  - (i) an opinion as to whether the second defendant has contravened any provisions of the Act and/or any other legislation; and
  - (j) any suspected contraventions of the Act by any directors or officers of the second defendant.
13. Within 14 days of their appointment, the Provisional Liquidators send a notice to each creditor of the second defendant at the last known address for each such person as shown in the books and records of the second defendant giving notice of:
- (a) the appointment of the Provisional Liquidators; and
  - (b) a contact address for the Provisional Liquidators.
14. The Provisional Liquidators shall be entitled to remuneration as determined by s 60-16 of the *Insolvency Practice Schedule (Corporations) 2016*, being Sch 2 to the Act.
15. The Provisional Liquidators shall have liberty to apply on two business days' notice.
16. The costs of the application to appoint the Provisional Liquidators be costs in the cause.

### **Provision of Information**

17. Order 7 of the Orders made on 10 November 2020 and Order 1 of the Orders made on 10 December 2020 are amended to provide that the plaintiff is permitted to provide the Provisional Liquidators and Receivers with unredacted copies of the affidavits filed by the plaintiff in this proceeding, including the affidavit of Isabella Lucy Allen affirmed 9 November 2020 (92 pages) (**Main Allen Affidavit**) and the affidavit of Isabella Lucy Allen affirmed 9 November 2020 (8 pages) (**Suppression Allen Affidavit**) and Exhibits IA-1, IA-2 and IA-3 to the Main Allen Affidavit.



## Suppression Orders

18. Pursuant to s 37AF(1)(a) and (b) and s 37AG(1)(a) of the *Federal Court of Australia Act 1976* (Cth), until further order, the publication or disclosure (except to the parties and their legal representatives and the Provisional Liquidators and the Receivers) of the following is prohibited:

- (a) the affidavit of Isabella Lucy Allen affirmed 25 November 2020 insofar as it identifies the names or words set out in confidential Annexure IA-4 to the Suppression Allen Affidavit; the entity name, ACN and AFSL number of the entity referred to in paragraph 18(b) of Main Allen Affidavit, the entity name referred to in paragraph 37(e) of that affidavit and the name of the witness referred to in paragraph 26 of that affidavit; and the occupations of witnesses who have spoken with Australian Securities and Investments Commission staff;
- (b) the whole of the affidavit of Isabella Lucy Allen affirmed 7 December 2020 and Exhibit IA-18;
- (c) the affidavit of the Representative sworn 8 December 2020 insofar as it makes reference to the name that appears in paragraphs 12(a), 14(a)(iii), 14(a)(iv), 20, 30 and at the Exhibit AEG1 pages 95, 96, 97, 100 and 103 of that affidavit; the residential address at paragraphs 7(a)), 12(a), 14(a)(iv), 20 and 30(b) and at Exhibit AEG1 pages 94 to 98; matters relating to a minor at paragraphs 14(a)(iv), 20, 30(b) and at Exhibit AEG1 pages 96, 97, 99, 100, 102 and 103; the residential address on page 1 and in paragraph 12(b); the matters in paragraph 6 and the subject of Exhibit AEG1 page 79; the personal information contained in the documents at Exhibit AEG1 pages 87 to 93; and the whole of the document at Exhibit AEG1 pages 17 to 78;
- (d) the affidavit of Anthony Koletti sworn 8 December 2020 insofar as it makes reference to the name that appears in paragraphs 7, 9 and 12 of that affidavit; the residential address at page 1 and paragraph 5; matters relating to a minor at paragraph 9; the matters in paragraph 6; the residential address at Exhibit AMRK1 page 2; and the bank account number at Exhibit AMRK1 pages 2 to 4; and
- (e) the names in paragraph 17 the affidavit of Isabella Lucy Allen affirmed 15 December 2020; the letter from Holding Redlich dated 7 December 2020



annexed to that affidavit; the letter from William James dated 14 December 2020  
annexed to that affidavit; and the investor names and email addresses in  
Annexure IA-23.

**Other orders**

19. Subject to Order 20, the whole of the proceeding be referred to the National Operations Registrar for allocation to a docket judge.
20. Stand the balance of the first defendant's application in relation to variation of the freezing orders made on 10 November 2020 and for access to documents to 9.00 am on 17 December 2020.
21. List the matter for a case management hearing and any further application to vary the freezing orders at 9.30 am on 22 February 2021 or another day that week convenient to the docket judge.
22. Liberty to apply on two business days' notice.

Date that entry is stamped: 15 December 2020

*Sia Lagos*  
Registrar



**Schedule**

No: NSD1220/2020

Federal Court of Australia

District Registry: New South Wales

Division: General

Second Defendant      MALIVER PTY LTD