

FEDERAL COURT OF AUSTRALIA

Australian Securities and Investments Commission v MWL Financial Services Pty Ltd (in liq) [2026] FCA 199

File number: VID 1483 of 2025

Judgment of: **BENNETT J**

Date of judgment: 5 March 2026

Catchwords: **CORPORATIONS** – whether leave to proceed against the first defendant, a company in liquidation, should be granted pursuant to s 500(2) of the *Corporations Act 2001* (Cth) – public interest in regulators ventilating proceedings – relevance of the requirement that there be further leave before the enforcement of any pecuniary penalty or costs order against the company in liquidation

Legislation: *Australian Securities and Investments Commission Act 2001* (Cth)
Corporations Act 2001 (Cth) s 500(2)
Federal Court Rules 2011 (Cth)

Cases cited: *Australian Competition and Consumer Commission v Australian Institute of Professional Education Pty Ltd (in liq)* [2017] FCA 521
Rusleigh Services Pty Ltd v Forge Group Ltd (In Liq) (Receivers and Managers Appointed); in the Matter of Forge Group Ltd (in Liq) (Receivers and Managers Appointed) [2016] FCA 1471

Division: General Division

Registry: Victoria

National Practice Area: Commercial and Corporations

Sub-area: Corporations and Corporate Insolvency

Number of paragraphs: 23

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Counsel for the Plaintiff: J Shepard SC, S Crosbie, H J Wilesmith

Solicitor for the Plaintiff: HWLE Lawyers

Counsel for the First
Defendant:

The First Defendant did not appear.

Counsel for the Second
Defendant:

The Second Defendant did not appear.

Counsel for the Third
Defendant:

The Third Defendant did not appear.

ORDERS

VID 1483 of 2025

BETWEEN: **AUSTRALIAN SECURITIES AND INVESTMENTS
COMMISSION**
Plaintiff

AND: **MWL FINANCIAL SERVICES PTY LTD (IN LIQUIDATION)**
ACN 095 907 574
First Defendant

IMPERIAL CAPITAL GROUP AUSTRALIA PTY LTD ACN
Second Defendant

NICHOLAS MAIKOUSIS
Third Defendant

ORDER MADE BY: **BENNETT J**

DATE OF ORDER: **5 MARCH 2026**

THE COURT ORDERS THAT:

1. Pursuant to r 8.21(1) of the *Federal Court Rules 2011* (Cth), leave be granted to the Plaintiff to file an amended originating process substantially in the form set out at pages 23 to 26 of Exhibit RJ-1 to the affidavit of Rebecca Caroline Jaffe affirmed on 12 December 2025.
2. Pursuant to s 500(2) of the *Corporations Act 2001* (Cth), leave be granted to the Plaintiff to commence, and proceed with, proceedings against the First Defendant in liquidation by way of:
 - (a) an originating process substantially in the form set out at pages 26 to 32 of Exhibit BJW-1 to the affidavit of Brian James Whittaker sworn on 12 November 2025 (**Whittaker Affidavit**); and
 - (b) a concise statement substantially in the form set out at pages 33 to 78 of Exhibit BJW-1 to the Whittaker Affidavit.
3. The Plaintiff must not enforce any order for pecuniary penalties or costs made against the First Defendant in these proceedings without prior leave of the Court.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

BENNETT J:

INTRODUCTION

1 By originating process dated 12 November 2025, the plaintiff (**ASIC**) sought an order pursuant to section 440D(1)(b) of the *Corporations Act 2001* (Cth) (**Corporations Act**) that leave be granted to ASIC to commence proceedings against the first defendant (**MWL**) by way of an originating process and concise statement substantially in the form exhibited to the supporting affidavit of Brian James Whittaker sworn on 12 November 2025 (**Whittaker Affidavit**).

2 The originating process was filed in circumstances where voluntary administrators were appointed to MWL on or about 29 September 2025. On about 21 November 2025, MWL was placed into liquidation following a resolution for voluntary winding up. It follows that leave to proceed against MWL is now required pursuant to s 500(2) of the Corporations Act, rather than s 440D(1)(b).

3 By its interlocutory process dated 12 December 2025, ASIC sought leave under r 8.21 of the *Federal Court Rules 2011* (Cth) to file an amended originating process, which seeks leave under s 500(2) to proceed against MWL, in the form exhibited to the affidavit of Rebecca Jaffe affirmed on 12 December 2025 (the **Jaffe Affidavit**).

4 On 15 December 2025, the Court made orders that the interlocutory process and the originating process be determined together, and permitting any interested person wishing to be heard on the interlocutory process or originating process to file submissions by 20 January 2026.

5 In a second affidavit of Ms Jaffe affirmed on 20 January 2026, evidence is provided to the effect that the orders for the filing of submissions in relation to the applications were provided to the solicitors for the liquidators of MWL and the solicitors for the second defendant on 15 December 2025. The liquidators for MWL have stated that they neither consent to nor oppose the application for leave to commence against MWL, or the application for leave to amend the originating process, and did not seek to be heard on the present applications. This position was taken on the basis that ASIC stated that it would seek an order requiring it to obtain the Court's leave before enforcing against MWL any pecuniary penalty or costs order. No other person has sought to be heard in relation to the proposed orders.

6 For the reasons that I explain below, I have decided it is appropriate to grant leave to amend the originating process, and grant the orders sought in the amended originating process.

BACKGROUND TO THE PROPOSED PROCEEDINGS

7 By its proposed concise statement, ASIC allege that MWL, through its representatives, provided personal financial advice to retail clients, including about superannuation products, under an Australian Financial Services Licence. The third defendant (**Mr Maikousis**) was the managing director of MWL and was on its investment and compliance committees. ASIC alleges that MWL Representatives provided inappropriate financial advice through MWL's business model, which it has referred to as the "Low Cost Advice Project". In effect, the model is said to have involved the investment of MWL clients' superannuation into the Shield Master Fund (**Shield**). The schedule to ASIC's proposed concise statement sets out 566 clients who received investment advice from the MWL representatives and who are alleged to have made initial investments during the period between (no later than) 6 May 2022 and 2 February 2024 (the **Relevant Period**).

8 It is said that almost all of the clients who were referred to the MWL representatives during the Relevant Period until March 2023, and whose superannuation was invested into Shield, were referred by the second defendant (**ICGA**). It is alleged that at various times, ICGA's representatives were also representatives of Shield's responsible entity and, at all times during the Relevant Period, MWL was aware that ICGA had commercial arrangements with Shield related to the MWL referrals.

9 In the proposed proceeding, ASIC alleges:

- (1) contraventions by MWL of ss 912A(1)(a), 912A(1)(aa), 912A(5A), 961K(2) and 961L of the Corporations Act;
- (2) contraventions by ICGA of ss 12DB(1)(a) and 12DB(1)(e) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**);
- (3) involvement by ICGA, within the meaning of s 79 of the Corporations Act, in MWL's contravention of s 912(5A) of the Corporations Act by reason of ICGA's involvement in MWL's contravention of s 912A(1)(a); and
- (4) involvement by Mr Maikousis, within the meaning of s 79 of the Corporations Act, in MWL's contraventions of s 961L and, by reason of his involvement in MWL's contraventions of ss 912A(1)(a) and (aa), 912A(5A) of the Corporations Act.

10 ASIC seeks declarations of contraventions of the Corporations Act and the ASIC Act, disqualification orders, pecuniary penalty orders and ancillary orders, including costs.

PRINCIPLES

11 Section 500(2) of the Corporations Act relevantly provides:

500 Execution and civil proceedings

...

(2) After the passing of the resolution for voluntary winding up, no action or other civil proceeding is to be proceeded with or commenced against the company except by leave of the Court and subject to such terms as the Court imposes.

12 The principles relevant to the exercise of the Court's discretion under s 500(2) are not controversial. They include consideration of various factors, such as:

- (1) the amount and seriousness of the claim;
- (2) the degree of complexity of the legal and factual issues involved; and
- (3) the stage to which the proceedings, if already commenced, have progressed.

13 The relevant principles to be applied to the determination of an application for leave to proceed pursuant to s 500(2) of the Corporations Act were outlined by Foster J in *Rusleigh Services Pty Ltd v Forge Group Ltd (In Liq) (Receivers and Managers Appointed); in the Matter of Forge Group Ltd (In Liq) (Receivers and Managers Appointed)* [2016] FCA 1471 at [15]-[16]:

In *Re Gordon Grant & Grant Pty Ltd* [1983] 2 Qd R 314 at 315-317, McPherson J, when sitting as a judge of the Full Court of the Supreme Court of Queensland, summarised the relevant principles. I extract the following relevant propositions from his Honour's summary:

- (a) A decision granting or refusing leave to proceed against a corporation in liquidation involves the exercise of a judicial discretion;
- (b) The prohibition against commencing or proceeding with an action or other proceeding against a company once a winding up order is made or the company is placed into liquidation is a feature of companies legislation of long standing;
- (c) Without the relevant restriction, a corporation in liquidation would be subjected to a multiplicity of actions which would be both expensive and time-consuming, as well as in some cases completely unnecessary. This explanation has been accepted in a number of Canadian cases and was also accepted by Street J in *Re AJ Benjamin Ltd (In Liq)* [1969] 2 NSW 374 at 376, (1969) WN (Pt 1) (NSW) 107 at 109-110;
- (d) Generally, what is substituted for litigation in the ordinary form is a procedure by which a claimant lodges a verified proof of debt with the

liquidator, who admits or rejects it wholly or in part, and from whom an appeal lies to a judge who determines that appeal *de novo*;

- (e) A claimant should proceed by way of lodgment of a proof of debt unless he or she can demonstrate that there is some good reason why a departure from that procedure is justified in the case of the particular claim in dispute; and
- (f) It is impossible to state in an exhaustive manner all of the circumstances in which leave to proceed may be appropriate. However, in the past, those circumstances have been said to include factors such as the amount and seriousness of the claim, the degree of complexity of the legal and factual issues involved and the stage to which the proceedings, if already commenced, may be progressed.

These remarks of his Honour were approved by the Full Court of this Court (Wilcox, Burchett and Beazley JJ) in *Vagrand Pty Ltd (In Liq) v Fielding* (1993) 41 FCR 550 at 554–555.

14 In *Australian Competition and Consumer Commission v Australian Institute of Professional Education Pty Ltd (in liq)* [2017] FCA 521 at [26], Bromwich J considered factors that might be relevant to the consumer protection role of a regulator – in that case the ACCC, equally applicable to ASIC. His Honour noted at [26] that the public interest factors included:

- (1) the purpose of a civil penalty, and thus of such proceedings, is primarily if not wholly protective in promoting the public interest in compliance, by putting a price on contravention that is sufficiently high to deter repetition by the contravener [not a factor in this case] and by others tempted to contravene: *Commonwealth v Director, Fair Work Building Industry Inspectorate* [2015] HCA 46; (2015) 326 ALR 476 (the CFMEU civil penalty case) at 490 [55], quoting *Trade Practices Commission v CSR Ltd* (1991) ATPR 41–076 at 52,152;
- (2) capacity to pay any penalties imposed was not a proper or relevant consideration: *Australian Competition and Consumer Commission v Leahy (No. 2)* [2005] FCA 254; (2005) 215 ALR 281 at 285 [11];
- (3) even if a company is in liquidation, it may still be appropriate to order that it pay penalties as a measure of the Court’s disapproval of the contraventions and as a measure of the seriousness in which they are regarded, including for the purposes of general deterrence: *Australian Competition and Consumer Commission v SIP Australia Pty Limited* [2003] FCA 336; (2003) ATPR 41-937 at 47,077-8 [59] – it was not suggested that this principle was diminished in a material way by such penalties not ultimately being recoverable by reason of the respondent being in liquidation;
- (4) the ACCC as the body enforcing the civil penalty provisions in question has a real interest in seeking declaratory relief to vindicate a public right that the ACL has been breached: *Australian Competition and Consumer Commission v Goldy Motors Pty Ltd* [2000] FCA 1885; (2001) ATPR 41-801 at 42,630 [30]; *Australian Competition and Consumer Commission v Pacific Dunlop Limited* [2001] FCA 740; (2001) ATPR 41-823 at 43,098-9 [63]-[69] – a point that may be seen to apply equally in respect of the other relief

sought; and

- (5) there is a significant public interest in declarations of contravening conduct and imposition of penalties being on the public record in aid of deterrence, which is not defeated by the fact that the company is in liquidation and unable to pay the penalties: *Secretary, Department of Health and Ageing v Prime Nature Prize Pty Ltd (in liq)* [2010] FCA 597 at [22]-[23].

15 I have considered each of these factors in my analysis, below.

CONSIDERATION

16 Generally, the Court must be satisfied that a departure from the usual procedure of lodging a proof of debt in the litigation is justified in the circumstances of the particular claim in dispute.

17 In the proposed proceedings, ASIC seeks declarations and pecuniary penalties against MWL. Those orders cannot be sought or obtained via the lodgement of a proof of debt in the liquidation.

18 In addition, if made, the grant of final relief would not, of itself, impact creditors, because of the orders that ASIC will not enforce against MWL any penalty or award or any costs order made in its favour, without further leave of the Court. If an application for leave to enforce pecuniary or costs orders is ultimately made, the Court considering that application will be able to consider any impact upon creditors.

19 Further, ASIC self-evidently seeks to bring these proceedings in its capacity as a financial services regulator, and as part of its function of monitoring and promoting market integrity and consumer protection in connection with the Australian financial system (ASIC Act, s 12A(2)).

20 Proceedings ventilating issues such as those in the proposed concise statement promote the public interest including by reflecting the seriousness of the contraventions that are alleged, and the importance that issues of that kind are properly the subject of regulatory review and oversight. That public interest is unaffected by the liquidation.

21 In addition, the matters the subject of the proposed proceedings involved both MWL's own contraventions and the involvement of ICGA and Mr Maikousis in MWL's contraventions. I accept that the granting of leave facilitates judicial consideration of the involvement contraventions alleged against ICGA and Mr Maikousis in the context of the claims against MWL.

22 Finally, the gravity of the subject matter weighs in favour of granting leave. I accept that the proposed proceedings involve serious questions as to MWL's conduct, and permits the

ventilation of serious issues concerning alleged contraventions of the Corporations Act. These matters relate to a matter of public interest both generally, and insofar as they involve a significant number of consumers. In the circumstances, public and regulatory scrutiny is served by the grant of leave, particularly in the broader context of the collapse of the Shield and First Guardian Master Fund managed investment schemes

CONCLUSION

23 Having considered the factors identified above, I consider it is appropriate to:

- (1) grant leave to ASIC to file an amended originating process in the form appearing at pages 23 to 26 of Exhibit RJ-1 to the Jaffe Affidavit;
- (2) grant leave to ASIC to file the originating process and concise statement in the form appearing at pages 26-32 and pages 33 to 78 respectively of Exhibit BJW-1 to the Whittaker Affidavit;

make the order sought by ASIC that it will require leave to enforce any pecuniary penalty or costs order against MWL.

I certify that the preceding twenty-three (23) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Bennett.



Associate:

Dated: 5 March 2026