

# FEDERAL COURT OF AUSTRALIA

## Australian Securities and Investments Commission v ALAMMC Developments Pty Ltd (No 1) [2024] FCA 1275

File number(s): QUD 532 of 2024

Judgment of: O'SULLIVAN J

Date of judgment: 22 October 2024

Date of publication of reasons: 4 November 2024

Catchwords: **CORPORATIONS** — application for the appointment of receivers to the property of the 14<sup>th</sup> and 15<sup>th</sup> defendants pursuant to s 1323 of the *Corporations Act 2001* (Cth) — where investigations are being carried out under the Act, the *Australian Securities and Investments Act 2001* (Cth) and the *Criminal Code Act 1899* (Qld) — where the 14<sup>th</sup> and 15<sup>th</sup> defendants may become liable to pay money in respect of a debt — whether the Court considers it necessary or desirable to make orders for the purpose of protecting the interests of investors — application granted

**CORPORATIONS** — application for extension of order restricting travel of the 14<sup>th</sup> defendant — where investigation is at an early stage and the 14<sup>th</sup> defendant is central to the investigation, such that it cannot be properly or effectively conducted in his absence — where the character of the potential offences is such to warrant the continuation of the travel restraint — where examinations of the 14<sup>th</sup> defendant is likely to improve the chances of aggrieved persons retrieving their money — where the 14<sup>th</sup> defendant has strong ties to Australia – extension granted

Legislation: *Australian Securities and Investments Commission Act 2001* (Cth), Part 3, Div 3, Div 3A, 12DA, 12DB  
*Corporations Act 2001* (Cth), ss 9, 79, 79(C)182, 184, 420(2), 601ED, 911A(1), 1041E, 1041G, 1041H, 1323(1)(a), (h), (2A) & (3)  
*Evidence Act 1995* (Cth), s 75, 135

*Criminal Code Act 1899* (Qld), s 408C, 408C(1) & (2A)

Cases cited: *ASIC v Adler* (2001) 38 ACSR 266; [2001] NSWSC 451  
*ASIC v Burke* [2000] NSWSC 694

*ASIC v Johnston* [2009] FCA 1276  
*ASIC v Krecichwost* [2007] NSWSC 948; (2007) 213 FLR 314  
*ASIC v MyWealth Financial Manager Services Pty Ltd (No 2)* [2019] FCA 2107  
*ASIC v Secured Bond Ltd* [2009] NSWSC 1261  
*Corporate Affairs Commission (NSW) v Walker & Ors* (1987) 11 ACLR 884  
*Corporate Affairs Commission (SA) v Lone Star Exploration NL* (1988) SASR 24; 14 ACLR 499  
*Gore v ASIC* [2017] FCAFC 13; (2017) 249 FCR 167  
*Re Richstar Enterprises Pty Ltd, ASIC v Carey (No 3)* 232 ALR 577, [2006] FCA 433  
*Yorke v Lucas* [1985] HCA 65; (1985) 158 CLR 661

Division: General Division

Registry: Queensland

National Practice Area: Commercial and Corporations

Sub-area: Corporations and Corporate Insolvency

Number of paragraphs: 127

Date of last submission/s: 1 November 2024

Date of hearings: 21 October 2024 and 1 November 2024

Counsel for the Plaintiff: Mr M Steele KC with Mr L Freckleton, Ms McLeod and Mr Hall

Solicitor for the Plaintiff: Australian Securities and Investments Commission

Counsel for the Defendants: Mr F Assaf SC

Solicitor for the Defendants: Strategic Legal

# ORDERS

QUD 532 of 2024

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

**AND:**                 **ALAMMC DEVELOPMENTS PTY LTD**  
First Defendant

**ALAMMC DEVELOPMENTS 2 PTY LTD**  
Second Defendant

**ALAMMC DEVELOPMENTS 3 PTY LTD** (and others named in  
the Schedule)  
Third Defendant

**ORDER MADE BY:**   **O'SULLIVAN J**

**DATE OF ORDER:**   **22 OCTOBER 2024**

## THE COURT NOTES THAT:

- A.     “**Books**” includes a register, any other record of information, financial reports or financial records however compiled or recorded or stored, a document, papers, records, books of account, ledgers, journals, banking records, computer records, or other documents of any type whatsoever recording or evidencing any dealings of any of the Fourteenth and Fifteenth Defendants in relation to the Business.
- B.     “**Business**” means all activities and arrangements whereby the Defendants, whether by themselves or any of them, or by their servants, agents or employees, elicited or obtained funds from investors for the ostensible purpose of providing to investors, or arranging for investors to acquire, an interest in a financial product (including, but not limited, to a convertible note) and/or one or more of the Defendants otherwise dealing with such funds for the purpose of providing a return to investors on the funds invested.
- C.     “**Corporations Act**” means the *Corporations Act 2001* (Cth).
- D.     “**Dealing**” includes:
- (a)    removing, causing, procuring, assisting or permitting any Property in the possession or under the control of the Fourteenth and Fifteenth Defendants to be removed from Australia or from the jurisdiction of this Court; and/or

- (b) selling, charging, mortgaging, encumbering, securing, diminishing, disposing of, parting with possession, making any declaration of trust in relation to, exercising any power to vary or modify any trust deed or any interest under any trust in relation to, the Fourteenth and Fifteenth Defendants' Property.
- E. **"Digital Assets"** means any legal or equitable estate or interest (whether present or future, and whether vested or contingent) in personal property in the form of a digital currency, virtual currency, cryptocurrency or similar.
- F. **"Investor Funds"** means monies provided to the Defendants or any of them, whether directly, or through any of the other Defendants, or any of the Defendants' authorised agents, servants and/or representatives, for the actual or ostensible purpose of providing to investors, or arranging for investors to acquire, an interest in a financial product (including, but not limited to, a convertible note) and/or one or more of the Defendants otherwise dealing with such funds for the purpose of providing a return to investors on the funds invested.
- G. **"Property"** means property as defined under section 9 of the Corporations Act, including, by virtue of subsection 1323(2A) of the Corporations Act, any property held otherwise than as sole beneficial owner and, for the avoidance of doubt, includes any Digital Assets, whether within or without the State of Queensland.

## **THE COURT ORDERS THAT:**

### **Receiver Orders**

1. Pursuant to ss 1323(1)(h) and 1323(3) of the Corporations Act, effective on and from 22 October 2024 until further order, Andrew Fielding and Helen Newman of BDO, Level 10, 12 Creek Street, Brisbane QLD 4000 are appointed as joint and several receivers and/or receivers managers (**Receivers**), without security, of the Property of the Fourteenth and Fifteenth Defendants, to:
  - (a) identify, collect, and secure the Property of the Fourteenth and Fifteenth Defendants;
  - (b) ascertain the amount of the Investor Funds received by the Fourteenth and Fifteenth Defendants, whether directly or indirectly;
  - (c) identify any dealings with, payments of, distributions of, or uses made of, the Investor Funds by the Fourteenth and Fifteenth Defendants;
  - (d) identify any Property purchased or acquired with Investor Funds; and

- (e) provide a report to the Court within 28 days in relation to the matters referred to in subparagraphs 1(a) to 1(d) of this Order.
2. The exercise by the Receivers of the power to carry out the function referred to in Order 1(a) above is stayed until 5.00pm (Qld time) | 5.30pm (AEDT) on Wednesday 30 October 2024.
3. The Receivers:
  - (a) have the powers:
    - (i) set out in subsection 420(2)(a), (b), (e), (f), (g), (k), (o), (p), (q), (r) and (t) of the Corporations Act; and
    - (ii) to apply to the Court for directions or further orders;
  - (b) can exercise the powers set out in Order 3(a) above in respect of the Property of the Fourteenth and Fifteenth Defendants as if, in the case of the Fourteenth and Fifteenth Defendants, the parties were a corporation; and
  - (c) Save that the Receivers will not exercise the power in s 420(2)(a) of the Corporations Act to enter into possession of the property known as 6704/9 Hamilton Avenue, Surfers Paradise QLD 4217 to the exclusion of the Fourteenth and/or Fifteenth Defendants and their dependents, nor exercise any power of sale over that property, without first obtaining an order from the Court to do so.
4. The Fourteenth and Fifteenth Defendants shall immediately deliver up to the Receivers all the books, records and other papers (including, but not limited to, all files, computer records and data) in their possession, custody or control which relate to the Business or to the Property of the Fourteenth and Fifteenth Defendants.
5. The Plaintiff shall provide the Receivers with copies of such books, records and things concerning the Business or the Property of the Fourteenth and Fifteenth Defendants which have been obtained by the Plaintiff under Part 3, Division 3 and/or Division 3A of the *Australian Securities and Investments Commission Act 2001* (Cth) that the Receivers may reasonably request in writing.
6. The Plaintiff shall, upon the request of the Receivers, deliver up to the Receivers copies of the documents filed in this proceeding.
7. The Receivers' reasonable costs and expenses be payable from the Property of the Fourteenth and Fifteenth Defendants.

### **General orders**

8. Costs are reserved.
9. The parties have liberty to apply to the Commercial and Corporations List Judge on three days notice.
10. Order 16 of the orders made by Justice Yates on 11 September 2024 be varied to include the Receivers.

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

## ORDERS

QUD 532 of 2024

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

**AND:**                **ALAMMC DEVELOPMENTS PTY LTD**  
First Defendant

**ALAMMC DEVELOPMENTS 2 PTY LTD**  
Second Defendant

**ALAMMC DEVELOPMENTS 3 PTY LTD** (and others named in  
the Schedule)  
Third Defendant

**ORDER MADE BY:** **O’SULLIVAN J**

**DATE OF ORDER:** **4 NOVEMBER 2024**

### THE COURT ORDERS THAT:

1. The date in order 16 of the orders made on 1 November 2024 is varied until 5.00pm (AEST) on 1 July 2025.

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

## REASONS FOR JUDGMENT

### O’SULLIVAN J:

1 There are 15 defendants named in this matter.

2 On 10 September 2024, the Australian Securities and Investments Commission filed an  
originating process in which it applied *ex parte* for, amongst other things, orders pursuant to  
ss 1323(1) and (3) of the *Corporations Act 2001* (Cth) for asset preservation orders and  
disclosure orders against all of the defendants. It also sought a travel restraint order against  
Mr McWilliams.

3 Paragraphs 6 to 11 of the originating process seek the appointment of Receivers and/or  
Receivers/Managers (**Receivers**) of the property of the defendants.

4 These reasons concern that part of the originating process seeking the appointment of Receivers  
insofar as it concerns the property of the 14<sup>th</sup> defendant, David George **McWilliams**, and the  
15<sup>th</sup> defendant, Laura Mary **Fullarton**, pursuant to s 1323 of the Act.

5 Mr McWilliams and Ms Fullarton are husband and wife.

6 Mr McWilliams is the Sole Director of each of the 1<sup>st</sup> to 13<sup>th</sup> defendants, save for the 12<sup>th</sup>  
defendant, **Coral Coast** Mutual Pty Ltd, in which he is a Co-Director with his son, Mr Bailey  
McWilliams.

7 On 11 September 2024, the Court made a number of orders including the asset preservation  
and disclosure orders sought by ASIC, as well as the travel restraint order against  
Mr McWilliams (**11 September orders**).

8 On 16 September 2024, the Court varied parts of the 11 September orders and listed the  
application for the appointment of Receivers, insofar as it related to Mr McWilliams and  
Ms Fullarton, for hearing on 27 September 2024 (**16 September orders**).

9 Subsequently, that hearing was relisted before me on Monday 21 October 2024.

10 At the conclusion of the hearing on Monday 21 October 2024, I adjourned the matter to  
Tuesday 22 October 2024 at which time I made orders appointing Receivers of the property of  
Mr McWilliams and Ms Fullarton.



11 When the orders were made, I indicated I would publish reasons for doing so. These are those reasons.

12 On 1 November 2024, a further hearing in this matter was held at which I ordered the appointment of Receivers to the 1<sup>st</sup> to 13<sup>th</sup> defendants. As part of that hearing, an issue arose as to the travel restrictions ordered by the Court on 11 September 2024, by orders 8, 10 and 11.

13 After hearing argument on that issue, I reserved my decision and indicated I would provide my decision and the reasons for it as part of these reasons.

14 Pending my decision on that issue, order 16 of the orders made 1 November 2024 provides:

16 The date in Orders 8, 10 and 11 of the Order of Yates J dated 11 September 2024 (as varied by Stewart J on 16 September 2024) be extended until 5:00pm AEDT on 1 November 2025.

15 It is for the reasons which follow that order 16 of the orders made on 1 November 2024 will be varied by reducing the time in order 16 to 1 July 2025.

#### **Documents read**

16 ASIC read a number of affidavits, including the affidavit of Gregory James MacCallum Cleary, affirmed 10 September 2024 (**first Cleary affidavit**).

17 The 14<sup>th</sup> and 15<sup>th</sup> defendants objected to the receipt into evidence of Tab 2 to annexure GJC-1 of the first Cleary affidavit, which annexes a report from the **Queensland Office of Liquor and Gaming Regulation** in relation to Mr McWilliams' gambling activities. Objection was also made to [26] and [27] of the first Cleary affidavit which also deals with this topic.

18 The first ground of objection relied on s 75 of the *Evidence Act 1995* (Cth). The 14<sup>th</sup> and 15<sup>th</sup> defendants submitted the evidence from the QOLGR is hearsay and although this hearing is interlocutory, the source of the evidence was not adduced.

19 I do not accept that submission. Although the individual within the QOLGR was not identified, there was no suggestion that the documentation did not come from QOLGR or the documentation was not authentic.

20 The second ground of objection relied on s 135 of the Evidence Act, which is the general discretion to exclude evidence because, amongst other things, it is unfairly prejudicial and its probative value is outweighed by the prejudice.

21 As to that submission, ASIC submitted that the evidence could not be unfairly prejudicial  
because it simply sets out the facts. Those facts reveal that very significant sums of money  
were turned over in the Casino over some 17 months. The lowest monthly amount turned over  
was just short of \$0.5 million and the greatest amount turned over in excess of \$5 million. In  
each month, there was a net loss.

22 ASIC submitted further that there is no objection to [25] of the affidavit which refers to the  
receipt of the information from the QOLGR.

23 I accepted ASIC's submissions and overruled the objection.

24 There was no objection to the affidavits read by Mr McWilliams and Ms Fullarton.

### **Background**

25 ASIC is in the process of investigating suspected contraventions by the defendants:

- (a) Sections 182, 184, 601ED, 911A(1), 1041E, 1041G and 1041H of the Act;
- (b) Sections 12DA and 12DB of the *Australian Securities and Investments Act 2001* (Cth);  
and
- (c) Section 408C of the *Criminal Code Act 1899* (Qld) (the **Queensland Criminal Code**).

26 ASIC's investigations are at an early stage, however of the 1<sup>st</sup> to 13<sup>th</sup> defendants, the first  
defendant, ALAMMC Developments Pty Ltd (**ALAMMC 1**), second defendant, ALAMMC  
Developments 2 Pty Ltd (**ALAMMC 2**) and fourth defendant, ALAMMC Developments 4 Pty  
Ltd (**ALAMMC 4**), have each issued **Information Memoranda** to investors for the purpose of  
investing in the development of purpose-built properties for **National Disability Insurance  
Scheme** participants who receive Commonwealth Government funding for specialist disability  
accommodation.

27 ASIC's concerns relate to the IMs issued by ALAMMC 1, 2 and 4, and in particular the section  
in each of the IMs, which under the heading "Invitation to invest in Convertible Notes",  
includes paragraphs, or paragraphs to similar effect, in the following terms: first Cleary  
affidavit at [54]:

ALAMMC is managed by experienced property developers who specialise in the  
development of accommodation for disabled persons, where rental payments are made  
on their behalf under the NDIS ...

As the NDIS is an initiative funded by both the Commonwealth and State  
Governments, rental income for specialist disability accommodation funding housing

providers is securely backed, on the condition that the NDIS participant and housing provider remains eligible. This makes specialist disability accommodation an attractive, stable investment for freehold purchasers in comparison to standard residential tenancy accommodation.

Under this Offer, ALAMMC is providing Eligible Investors the opportunity to purchase Notes which entitle them to fixed returns of 10% p.a. (paid monthly), plus the opportunity to obtain a 15% Bonus Payment upon successful completion of the property development project.

ALAMMC's Director has extensive expertise in housing construction, project management and disability care, which in turn provides him with a true understanding of the unique needs of people living with disabilities. Drawing on this understanding, he is confident that there exists a strong need in the market for specialist disability accommodation.

28 Key terms upon which the investment is offered include: first Cleary affidavit [55]-[57]:

- a) The opportunity for investors to purchase Convertible Notes from the Corporation in question which is the issuer of the Notes;
- b) The "Project" involves the purchase of land on which a property development is to be undertaken and its subsequent development into specialist disability accommodation;
- c) The amount invested less any costs in relation to the issuing of the IM will be allocated to the Project;
- d) Investment term is three years with a fixed interest rate of 10% per annum payable monthly and upon successful completion of the Project Noteholders will receive a 15% bonus payment;
- e) Noteholders may elect to convert the investment amount owing on their notes to an interest in "Development Profits" which for all intents and purposes is a share in the profit received by the Corporation in question arising from the sale of the Project site upon successful completion after deduction of costs;
- f) If the Corporation in question commits an event of default (as defined in the IM) an investor may convert their Notes into Securities in the form of shares in that Corporation; and
- g) Investors may pay their application money by electronic funds transfer into identified bank accounts. Each of those accounts are respectively in the name of ALAMMC 1, 2 and 4.

29 ASIC's investigation to this point reveals that since April 2021 investor funds totalling approximately \$69.47 million have been deposited into the bank accounts of the Corporate defendants, and in particular amounts in excess of \$500,000 into the accounts of ALAMMC 1, ALAMMC 2, ALAMMC 3, ALAMMC 4, and the 6<sup>th</sup> defendant, ALAMMC Developments 6 Pty Ltd (ALAMMC 6) and the 8<sup>th</sup> defendant, **Harvey Madison** Capital Pty Ltd. Further, large sums of money have been transferred between the accounts of all the defendants.

30 Financial analysis undertaken by ASIC reveals the deposits into the accounts of ALAMMC 1, 2 and 4 of significant sums of money which ASIC believes were deposited by investors. They also show withdrawal of significant sums and payment to other Corporate defendants, Ms Fullarton, Mr McWilliams and third parties.

31 Further financial analysis undertaken by ASIC for accounts held by ALAMMC 6, the 7<sup>th</sup> defendant, ALAMMC Developments 7 Pty Ltd (**ALAMMC 7**), the 9<sup>th</sup> - 11<sup>th</sup> defendants, SDAMF 2 Pty Ltd, SDAMF 3 Pty Ltd, SDAMF 4 Pty Ltd (**SDAMF 2, 3 and 4** respectively), Harvey Madison, Coral Coast, and the 13<sup>th</sup> defendant, **Mortgage Mutual** Fund Pty Ltd all show instances of numerous deposits into, and withdrawals from, accounts ASIC believes ~~the~~ deposits are investment capital deposited by investors, and returns on those investments being paid to investors: first Cleary affidavit [61]-[67]; affidavit of Michael John Spalding affirmed 10 September 2024 (**first Spalding affidavit**) [10]-[73].

32 A table setting out deposits into and withdrawals from the accounts of the Corporate defendants, as well as Ms Fullarton and Mr McWilliams, are set out in the first Spalding affidavit at [18]-[73].

33 ASIC's belief is based on the deposits being large lump sums (greater than \$20,000) with descriptions for those deposits identifying an individual or entity name, many of which match investor details provided by Mr McWilliams to ASIC on 25 August 2022, and from an unrelated development company. Further, transaction descriptions for withdrawals identify individuals or entities and contain the words "Int", "Inter" or "Interest": first Cleary affidavit [46]-[47], [61].

34 A table setting out the total amount of suspected investor deposits paid into, and suspected investor return payments paid from, the accounts of some of the defendants during the period 6 April 2021 to 15 July 2024 is summarised in a table at [63] of the first Cleary affidavit as set out below. See also [17] of the first Spalding affidavit.

Account holder	Suspected Investor deposits	Suspected Investor returns
ALAMMC 6	\$12,614,995.00	\$34,583.31
ALAMMC 7	\$5,660,000.00	\$327,583.28
SDAMF 2	\$12,823,096.00	\$39,583.22
SDAMF 3	\$3,270,000.00	\$78,331.10
SDAMF 4	\$4,205,000.00	\$39,999.87
Harvey Madison	\$5,209,851.00	-

Coral Coast 1	\$115,000.00	\$21,000.00
Mortgage Mutual	\$3,865,000.00	\$617,497.62

35 Further information obtained in relation to Harvey Madison reveals an offer by it, to what it described as “sophisticated wholesale investors and self-managed super funds seeking to construct a lucrative property investment portfolio”, to invest in NDIS and non-NDIS property developments across Australia.

*Australian Financial Services Licence*

36 ASIC’s searches indicate that of the Corporate defendants, only Harvey Madison has ever held an Australian Financial Services Licence which it has held since 26 November 2019. However, the AFSL only authorises Harvey Madison to, amongst other things:

- (a) Provide general product advice limited to basic product deposits, interests in managed investment schemes and securities; and
- (b) Deal in financial products by issuing, applying for, acquiring, varying or disposing of interests in managed investment schemes: first Cleary affidavit, [40]-[44], annexure GJC-1, Tabs 18, 19.

37 Mr McWilliams was an authorised representative of Australian Life Insurance Distribution Pty Ltd from 31 July 2008 to 1 February 2012. He has never held an AFSL.

38 Ms Fullarton has never held an AFSL nor has she been appointed as an authorised representative of an AFSL holder.

39 Consequently, ASIC is concerned the defendants may be engaging in, or may have engaged in, the unlicensed conduct of a financial services business contrary to s 911A(1) of the Act.

*Mr McWilliams’ gambling*

40 In February 2024, ASIC received a referral from the QOLGR informing it that between 1 October 2022 and 29 February 2024, Mr McWilliams made bets across all gambling streams at Star Casinos (excluding Keno) totalling \$39,535,728.73 with a total net loss of \$3,874,319.56: first Cleary affidavit, annexure GJC-1, Tab 2.

41 Having traced at least some of the funds provided by investors, ASIC concluded that the \$39 million used for gambling appeared to have been from those funds.

42 On 12 September 2024, a search warrant was executed by Queensland Police Service at the residential address of Ms Fullarton and Mr McWilliams and the business address of ALAMMC 1. Both were present at the time the search was executed.

43 During the course of that search, a locked suitcase was found in the main bedroom of the residential premises. When asked for the key to the suitcase, Mr McWilliams said words to the effect of, “that suitcase is old” and “I’m not sure where the key is”: affidavit of Gregory James MacCallum Cleary affirmed 16 September 2024 (**third Cleary affidavit**) at [4]-[12].

44 Subsequently, Mr McWilliams searched for the key and having located it, opened the suitcase at which time a large amount of cash was located totalling \$112,000, split into bundles of \$50 and \$100 notes. Mr McWilliams stated words to the effect that the cash was “... winnings from the casino”.

45 As to the bank accounts held by Ms Fullarton, analysis by ASIC officers reveals that between 4 June 2021 and 22 July 2024, she received approximately \$3.1 million in deposits from ALAMMC 1, ALAMMC 3, Mr McWilliams, Mortgage Mutual, as well as from other entities. In that same period she withdrew approximately \$2.5 million.

46 Further, it appears that investor funds were used to purchase a luxury vehicle and a unit in the Gold Coast, Queensland (**Gold Coast property**) in the name of Ms Fullarton.

47 As to the bank accounts held by Mr McWilliams, the following deposits and withdrawals were made: first Spalding affidavit at [65]. See also [66]-[68]

Category	Deposits		Withdrawals	
	No.	Value	No.	Value
Investors Deposits	248	\$140,791.45		
Potential Investors Deposits	10	\$8,585.35		
<b>Defendants</b>				
ALAMMC 1 (WBC 3530)	2	\$87,397.54	3	\$261,000.00
ALAMMC 5 (WBC 3901)	3	\$183,553.29		
ALAMMC 6 (WBC 3944)	55	\$4,147,320.23		
Mr B McWilliams (ANZ 1893)			8	\$8,145.00
Ms Fullarton (ANZ 0575)	1	\$352.52		
Ms Fullarton (ANZ 8836)	2	\$160.00	9	\$323,169.26

<b>Other</b>				
ATM – Star Gold Coast			87	\$153,427.50
Card purchases			12507	\$595,818.80
Card purchases – Star Gold Coast			2	\$40,000.00
Cash withdrawals			162	\$86,660.90
Crowne Melbourne			6	\$330,000.00
Deposit – Star Entertainment	1	\$134,658.54		
Deposit – other	69	\$474,427.57		
Direct Debit – Racing			11	\$205.70
Electronic transfers – third party	276	\$3,841,643.58	387	\$493,406.56
International payments			21	\$19,548.29
Investors returns			36	\$162,848.00
Potential intra-account transfers	49	\$42,500.61		
Potential Investors returns			4	\$200,896.00
Racing			1	\$8,510.00
Settlement proceeds	3	\$341,020.77		
Sportsbet	19	\$83,356.00	368	\$234,226.62
The Star			123	\$2,316,893.98
Withdrawals – Star Gold Coast			45	\$3,603,000.00
Withdrawals – Star Sydney			7	\$450,000.00

### **Section 1323 of the Act**

48 Section 1323 of the Act provides, relevantly:

#### **1323 Power of Court to prohibit payment or transfer of money, financial products or other property**

(1) Where:

- (a) an investigation is being carried out under the ASIC Act or this Act in relation to an act or omission by a person, being an act or omission that constitutes or may constitute a contravention of this Act; or
- (b) a prosecution has been begun against a person for a contravention of this Act; or
- (c) a civil proceeding has been begun against a person under this Act;

and the Court considers it necessary or desirable to do so for the purpose of protecting the interests of a person (in this section called an aggrieved person) to whom the person referred to in paragraph (a), (b) or (c), as the case may be, (in this section called the relevant person), is liable, or may be or become liable, to pay money, whether in respect of a debt, by way of damages or compensation or otherwise, or to account for financial products or other property, the Court may, on

application by ASIC or by an aggrieved person, make one or more of the following orders:

...

- (h) an order appointing:
  - (i) if the relevant person is a natural person—a receiver or trustee, having such powers as the Court orders, of the property or of part of the property of that person; or
  - (ii) if the relevant person is a body corporate—a receiver or receiver and manager, having such powers as the Court orders, of the property or of part of the property of that person;

...

- (3) Where an application is made to the Court for an order under subsection (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.
- (4) On an application under subsection (1), the Court must not require the applicant or any other person, as a condition of granting an interim order under subsection (3), to give an undertaking as to damages.
- (5) ...
- (6) An order made under subsection (1) or (2) may be expressed to operate for a specified period or until the order is discharged by a further order under this section.
- (7) Nothing in this section affects the powers that the Court has apart from this section.
- (8) This section has effect subject to the Bankruptcy Act 1966.
- (9) A person must not contravene an order by the Court under this section that is applicable to the person.
- (10) ...

## Principles

49 The principles which apply when considering the appointment of a Receiver pursuant to s 1323(1)(h) are well-settled:

- (a) There are three preconditions:
  - (i) Relevantly for this matter, an investigation is being carried out under the *Australian Securities and Investments Act 2001* (Cth) or the Act in relation to an act or omission by a person (relevant person), being an act or omission that constitutes or may constitute a contravention of the Act;



- (ii) The relevant person is liable, or may be or become liable, to pay money, whether in respect of a debt, by way of damages or compensation or otherwise, or to account for financial products or other property to a person (aggrieved person); and
- (iii) The Court considers it necessary or desirable to make one or more of the orders set out in the section for the purpose of protecting the interests of an aggrieved person.

*Re Richstar Enterprises Pty Ltd, ASIC v Carey (No 3)* 232 ALR 577, [2006] FCA 433 at [22]-[23] (French J);

- (b) The actual or potential liabilities may arise from a contravention of the Act or under the general law: *Re Richstar* at [23];
- (c) The Court may have regard to known facts and circumstances in assessing their existence and potential existence: *Re Richstar* at [23] citing *Corporate Affairs Commission (SA) v Lone Star Exploration NL* (1988) SASR 24, 31; 14 ACLR 499, 505 (Von Doussa J).
- (d) It is not necessary to establish strong evidence of dissipation of assets nor a *prima facie* case or at least a reasonably persuasive case to enliven the jurisdiction. That is because it is inherent in s 1323 that investigations may be at an early stage and to deny an order under this section because a particular wrongdoing or wrongdoers cannot be identified would act to eviscerate the jurisdiction and the purpose behind the section: *ASIC v Krecichwost* [2007] NSWSC 948; (2007) 213 FLR 314 at [47] (McDougall J);
- (e) Evidence of the dissipation of assets, or at least a reasonably persuasive case, are powerful discretionary considerations affecting the Court's preparedness to make an order and if willing to do so, affecting the scope of the orders justified in the circumstances: *ASIC v Adler* (2001) 38 ACSR 266; [2001] NSWSC 451 at [7(a) and (b)] (Santow J);
- (f) The evidence which is necessary will depend on the circumstances. In the case of an application made early in an investigation, the evidence may be sufficient "... if it establishes the general circumstances, the nature of the investigation and the reason why it is thought that there may be a liability on the part of the relevant person": *Corporate Affairs Commission (NSW) v Walker & Ors* (1987) 11 ACLR 884, 888 (Waddell CJ in Eq);

- (g) The “Appointment of a receiver over a person’s assets is in any circumstances an extraordinary step for the Court to take, though it may be justified when associated with the allegation of misappropriation of property, particularly, though not necessarily exclusively, fraudulent with the overriding concern being the protection of assets for the benefit of those entitled to them: *Adler* at [7(b)] citing Austin J in *ASIC v Burke* [2000] NSWSC 694 at [6];
- (h) Notwithstanding the extraordinary nature of the step, nonetheless the clear legislative intention in providing such a remedy at an early stage, is not only to protect those who have a claim, but those who may have a claim against the relevant person or persons: *Krecichwost* at [40]-[42];
- (i) The necessity or desirability of making an order must consider not just the interest to be protected but also the threats to those interests and the appointment of a receiver may be justified even in the absence of a significant risk of dissipation of assets: *Krecichwost* at [27] -[30];
- (j) Whilst recognising the public interest role ASIC plays, nonetheless given that the orders will intrude upon private rights, the Court is concerned to ensure that the order is proportionate and no more intrusive than necessary: *Adler* at [7 (d)]; and
- (k) The purpose of the section is predicated on protecting the interests of an aggrieved person. That protection may be effected not simply by orders which protect the assets from dissipation but by removing the opportunity for the assets to be dealt with in a manner inconsistent with the interests of an aggrieved person. The Court is concerned to ensure that the assets are preserved and protected, identified and brought in for the benefit of the investors: *Burke* at [8].

50 Further, in *Re Richstar* at [27]-[29], French J observed:

[27] The nature and duration of orders made under s 1323(1) can be fashioned by the court to reflect its assessment of any risk of dissipation of the assets of a person under investigation. But their legitimate purposes can go further. The interests of aggrieved persons may be protected not only by orders designed to protect dissipation of assets, but also by orders which create an opportunity for the assets of the person under investigation to be ascertained.

[28] The appointment of a receiver may offer a more flexible response to the exigencies of the case presented to the court than the imposition or continuation of a freezing order albeit they are not mutually exclusive remedies. The receiver can be

equipped with the powers necessary to enable him or her to identify and locate a relevant person's assets and to prevent their dissipation or removal from the jurisdiction. The receiver can also ensure, without the necessity of specific applications to the court to vary freezing orders, that bona fide dealings with assets which do not diminish the overall estate of the person under investigation and which allow that person to attend to their legitimate business affairs can be permitted. While ASIC has investigative powers which can be used to like effect, they do not necessarily give the capacity for short term responses and flexibility of action that a competent receiver armed with suitable powers may have.

[29] It is not a necessary consequence of an order appointing a receiver that the receiver should deal with or liquidate the assets in question. The interlocutory and protective character of orders made under s 1323 must be borne in mind when defining the powers of the receiver. .... However, depending upon the nature of the powers conferred on the receiver it may be less drastic than a freezing order which can only be varied by order of the court. ... I accept, with respect, the observation made by Austin J in *Burke* at [8]:

[8] Without wishing to lay down any general rules, it appears to me that the extraordinary step of appointing a receiver may be justified, even though Mareva Orders are in place, in a case where there is real doubt about the existence and location of assets such as investments, and about the number and identity of claimants and the nature of their claims, and additionally the defendants are engaged in business activities which entail that any Mareva Orders must allow assets to be turned over in the course of business. Where these circumstances exist in combination, and especially where there are allegations of serious fraud involved, the Court may conclude ... that the Mareva Orders are not enough to ensure that the assets are preserved and protected, and indeed identified and brought in for the benefit of investors.

### **The parties' submissions and consideration**

51 ASIC submits the appointment of receivers to the property of Mr McWilliams and Ms Fullarton is necessary and desirable for the purpose of protecting the interests of investors since:

- (a) The scope of the suspicious conduct identified by ASIC to date suggests that there is, at best, incompetence or carelessness in the management of investor funds and, at worst, serious breaches of trust and possible dishonesty;
- (b) The matter is complex. The amount of investor funds which may have been received by, or applied to the benefit of, Mr McWilliams and Ms Fullarton needs to be ascertained as well as identifying any dealings with those funds. That is particularly so in view of what appears to be the intermingling of funds between the various defendants.

I note ASIC's intention to also seek the appointment of Receivers over the property of the Corporate defendants so that all relevant assets may be considered together. Whether that occurs or not, there is at the very least a significant issue concerning the

amount of investor funds which may have been received by and dealt with by Mr McWilliams and Ms Fullarton to their benefit;

- (c) It is necessary to facilitate, identify, collect, and secure assets for the ultimate benefit of investors in circumstances where apart from the Gold Coast property, there is a realistic possibility of further assets which may have been purchased in the name of, or for the benefit of Mr McWilliams and Ms Fullarton using investor funds;
- (d) To the extent appropriate, it will be necessary for there to be communication in an orderly fashion with investors whose interests may be at risk and the Receivers will be well placed to do that;
- (e) Freeing up ASIC's resources to focus its investigations on potential breaches of the law. I do not consider freeing up ASIC's resources of itself to be a matter of significant weight, although I accept there is a benefit in that it allows ASIC to continue with its investigations as quickly and as efficiently as possible. More to the point, it is the appointment of Receivers with expertise in locating, and if necessary managing, the assets and property of entities (including individuals) to which they have been appointed, which is of greater significance when taken with all the circumstances; and
- (f) There has already been a need to apply for variations to the current asset preservation orders to allow for certain carve outs, being something which could be dealt with more efficiently and flexibly by the Receivers going forward. Again, of itself that is not a reason for the appointment of Receivers, although it may be accepted that once appointed, the Receivers will be well-placed to give consideration to any variation of existing asset preservation orders.

***Ms Fullarton***

52 As an overarching submission, the 14<sup>th</sup> and 15<sup>th</sup> defendants admit that it is neither necessary nor desirable to appoint Receivers to their estates since the assets are protected by the regime put in place by the 11 September orders and 16 September orders. Insofar as information is concerned, there are other ways for ASIC to gather information.

53 In response to an observation that one of the difficulties facing ASIC, and which forms part of the ongoing investigation, is that the extent of the assets is not yet known, Ms Fullarton and Mr McWilliams submitted that the identification of assets can be obtained not just through the disclosure affidavits which have been filed, but for examination to take place on the disclosure affidavits as well as compulsory examinations under s 19 of the Australian Securities and

Investments Commission Act, yet none of that has occurred. Further, approximately 1.3 million documents have been obtained as a result of ASIC executing a search warrant, but not yet examined.

54 It is on that basis that Ms Fullarton submits the application for the appointment of a Receiver is premature.

55 I do not accept that submission. Certainly, the investigation is at an early stage, however there is a proper basis for ASIC's investigation and given the way funds are seemingly transferred in a random fashion, not simply within the Corporate defendants but also to Mr McWilliams, Ms Fullarton and also to third parties, there is a clear necessity to protect the interests of those who appear to have provided investment funds.

56 Although asset preservation orders assist in controlling the flow of funds and the dissipation of assets, the scenario with which ASIC is faced potentially has far more serious consequences which include, at the least, the tracing and recovery of investors' funds, as well as the identification of any assets purchased using investor funds for the benefit Ms Fullarton and Mr McWilliams.

57 Ms Fullarton makes a number of specific submissions that no Receiver should be appointed.

58 First, Ms Fullarton submits she does not come within s 1323(1)(a) because an investigation is not being carried out in relation to an act or omission that constitutes, or may constitute, a contravention of the Act. Ms Fullarton submits the mere possibility of a contravention does not come within the purview of the section.

59 Ms Fullarton refers to [81]-[82] of the first Cleary affidavit which deposes that Mr McWilliams may have:

- (a) Contravened s 182 of the Act by improperly using his position to gain an advantage for himself or someone else or cause detriment to the relevant corporation;
- (b) Committed an offence under s 184(1) of the Act by recklessly or dishonestly failing to exercise his powers and discharge his duties as a Director of the Corporate defendants in good faith, in the best interests of the corporation, and for a proper purpose;
- (c) Committed an offence under s 184(2) of the Act by dishonestly using his position as a Director of the Corporate defendants with the intention of directly or indirectly gaining an advantage for himself; or

(d) Been reckless as to whether such use may result in himself or someone else directly or indirectly gaining an advantage, or in causing detriment to the Corporation, such that ASIC is concerned that, amongst others, Ms Fullarton may have been involved in these contraventions and offences by reason of her receipt, and potential involvement in the improper transfer, of investor funds by Mr McWilliams.

60 Ms Fullarton submits that the only matter deposed to in relation to her, is the receipt of funds which she submits is insufficient to establish knowing involvement within the meaning of s 79(1) of the Act in relation to a breach of director's duties under ss 182 and 184 of the Act.

61 In support of that submission, Ms Fullarton refers to *ASIC v MyWealth Financial Manager Services Pty Ltd (No 2)* [2019] FCA 2107.

62 *MyWealth* concerned, amongst other things, the running of an unregistered managed investment scheme contrary to the provisions of s 601ED of the Act.

63 At [54]-[55], Derrington J observed that there was no evidence put before the Court that two of the recipients of money obtained by the defendants: **Secure Investments Pty Ltd** and **MyWealth Protection Pty Ltd**, had any involvement in the unregistered managed investment scheme. Further, it was not suggested that the transfer of investor funds to either of those two companies was a part of the scheme, such that the circumstances surrounding the receipt of the funds by those two companies did not establish that the receipt may have constituted a contravention of s 601ED. Still further, insufficient facts had been established to show that there existed a reasonable probability or reason or suspicion that the receipt of funds amounted to or could amount to the operation of the unregistered managed investment scheme.

64 At [56] Derrington J referred to ASIC seeking to rely upon s 79 of the Act and the involvement of one or both companies in the contraventions of the other defendants. His Honour found no attempt was made to identify any evidence which suggested that Secure Investments had any knowledge of the acts constituting the operation of the unregistered managed investment scheme or the provision of financial services. His Honour observed that such knowledge would be essential for the making of a successful claim that the company had been "concerned" in the alleged contravention and that such evidence was lacking: *Yorke v Lucas* [1985] HCA 65; (1985) 158 CLR 661; *Gore v ASIC* [2017] FCAFC 13; (2017) 249 FCR 167.

65 It is on that basis that his Honour considered that without more, the mere receipt of funds by either company, or the subsequent disposal of the funds by the companies, was not sufficient for the purposes of constituting a contravention of the Act.

66 Ms Fullarton submitted the same consideration applies to her situation, that is, the only act or omission that has been referred to and relied upon by ASIC is the receipt of funds, and the plaintiff's evidence provides no more than circumstantial suspicion that she has been "involved" within the meaning of s 79(C) of the Act.

67 In answer to that submission, ASIC submits that the difference between the position in this matter and that which Derrington J found in *MyWealth* is that neither Secure Investments nor MyWealth Protection were related to the people under investigation. Neither of those two companies had been a part of the initial investigation and ASIC had not been able to identify any provision of the Act which the two companies may have contravened.

68 It submits that apart from the receipt of funds, Ms Fullarton has been married to Mr McWilliams since 2005, had five children together, they live together, and Ms Fullarton is employed as a clerical assistant by ALAMMC 1.

69 It submits that, unlike the position in *MyWealth*, ASIC is conducting an investigation into, amongst others, Ms Fullarton and on the evidence put before the Court there is a proper basis for the investigation: *Krecichwost* at [47].

70 The evidence put before the Court reveals Ms Fullarton has received significant sums of money from ALAMMC 1 as well as the other Corporate defendants and Mr McWilliams. Utilising those funds she has purchased at least the Gold Coast property. Specifically, ASIC refers to the withdrawal of \$540,000 from the accounts of ALAMMC 2 and transferred to what appears to be a legal firm for the purposes of settling on the Gold Coast property: first Cleary affidavit [75]; first Spalding affidavit, [26], [27].

71 ASIC also refers to other third-party transfers about which ASIC currently has no information and which are unexplained.

72 There are also three other properties owned by Ms Fullarton, one of which at Tallebudgera, on the Gold Coast, which was purchased in April 2024 for \$5.088 million, but which has remained vacant since on or about 2 May 2024. That property is said to be for investment purposes and for rental. The property was purchased with facilities totalling approximately \$6.3 million

from AILV Securities Pty Ltd and Beech Capital 2024 Pty Ltd in the name of Whipz AUD Pty Ltd, a company of which Ms Fullarton is the Sole Director.

73 I deal with that transaction later in these reasons but there is no evidence as to how those loans, which are of short duration, are to be repaid or refinanced.

74 ASIC submits that all is required for the purposes of s 79 of the Act to show an involvement in a contravention is for a person to have aided, abetted, counselled or procured the contravention: s 79(a), or has been in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to the contravention by Mr McWilliams of his duties to one of the Corporate defendants: s 79(c). In particular, ASIC does not need to show a *prima facie* case of knowing involvement, simply that there is some proper basis for the investigation.

75 To that extent, ASIC submits the observations of Derrington J in *MyWealth* do not assist Ms Fullarton.

76 I accept ASIC's submissions. There is evidence before the Court going to a number of deposits from what appears to be investors across the Corporate defendants and a series of transactions involving the transfer of significant sums of money within the Corporate defendants, as well as to Mr McWilliams and Ms Fullarton, and the use of those funds, in the case of Ms Fullarton, for the purchase of various assets, including the Gold Coast property.

77 Accordingly, I do not accept Ms Fullarton's submission that the first of the preconditions in s 1323 is not satisfied insofar as she is concerned.

78 Next, Ms Fullarton submits that the orders sought are unnecessary to protect the interests of potentially aggrieved persons where the amounts the subject of "knowing receipt" comprises three transfers totalling approximately \$1.09 million, \$540,000 of which relates to the Gold Coast property. In particular, the remaining cash component comprising approximately \$551,000 is currently the subject of asset preservation orders. Ms Fullarton submits that the net position is that either the assets or the cash are protected by those orders.

79 I do not accept that submission. First, it assumes that is the extent of the assets when there is a real question as to whether that is in fact the case. By way of example, Ms Fullarton currently owns four properties. The Gold Coast property where she and her family resides appears to have been purchased, at least in part, using investor funds, but the position is not yet clear in relation to the remaining three properties.



80 Second, to the extent there are other assets which may have been purchased with investor funds,  
those assets need to be identified so that they can be protected in the interests of investors.

81 ASIC submits further that the evidence adduced on the application to this point is more than  
sufficient to warrant the appointment of Receivers but that does not mean that will be the limit  
of the investigations. I accept that submission.

82 ASIC also submits that in the circumstances, the appointment of Receivers is both desirable  
and necessary. I accept that submission.

83 Next, Ms Fullarton submits that the orders sought are disproportionate to the risk to potentially  
aggrieved persons when regard is had to the prejudice that Ms Fullarton is likely to suffer if  
the orders were made.

84 I do not accept the first point that the orders sought are disproportionate to the risk to potentially  
aggrieved persons. Notwithstanding the early stage of the investigation, there is the obvious  
potential for very significant sums of money to be involved and multiple investors.

85 As to the second point, the prejudice is said to arise for three reasons.

86 The first reason is that the making of an order appointing a Receiver would constitute an event  
of default under facility agreements in relation to Ms Fullarton's four properties, which could  
lead to the secured parties exercising their power of sale over those properties.

87 I accept the appointment of a Receiver may constitute an event of default under facility  
agreements which has various consequences, including an entitlement to charge interest at a  
higher rate per annum than that which is currently charged, as well as the exercise a power of  
sale.

88 However, it seems to me that the appointment of a Receiver allows for the orderly management  
of Ms Fullarton's estate and the identification of assets. Whereas I accept the appointment of  
Receivers is likely to constitute an event of default, that is a matter to be weighed up in  
considering whether to make orders appointing Receivers.

89 ASIC submits that asset preservation orders already exist in respect of Ms Fullarton's property,  
so that the question is not what prejudice the appointment of a Receiver would cause, but what  
additional prejudice might be occasioned by the appointment of Receivers.

90 ASIC points to Annexure LMF-02 to Ms Fullarton’s affidavit, affirmed 10 October 24, at Tab 3, which is a facility agreement with AILV. Tab 4 to the same annexure contains a facility agreement with Beech. These facilities relate to the Tallebudgera property.

91 Terms of the facility with AILV include:

- (a) The borrower is WHIPZ AUD Pty Ltd, a company of which Ms Fullarton is the Sole Director, with Ms Fullarton named as guarantor;
- (b) The security under the facility is a mortgage over each of Ms Fullarton’s four properties;
- (c) The facility limit is \$5,932,998 commencing on the earlier of 24 April 2024 or the date when the loan is made by the mortgagee. The term of the loan is nine months after the commencement date;
- (d) AILV has retained interest in the sum of \$500,597, which is deducted from the facility limit to pay towards interest owed to it, with a minimum interest payment being three months calculated on the facility limit;
- (e) The interest rate under the agreement is variable with the lender being able to vary the interest rates at any time depending on, amongst other things, the lenders cost of making, funding or maintaining the agreement; and
- (f) A condition subsequent is that the residential property currently occupied by Ms Fullarton and her family is to be placed on the market for sale by no later than month four of the loan term, i.e August/September 2024.

92 ASIC submits further that if a secured party wishes to enforce its rights against Ms Fullarton on the basis of an event of default, that is already open to it. It submits that under both the AILV facility agreement and the Beech facility agreement, an “Event of Default” includes action by any “Government Agency” which “in the Lenders opinion, has or could have a Material Adverse Effect or any circumstance arises which may give rise to any such action, claim, requirement or breach;”: annexure LMF-02, Tab 3 p 119, Tab 4 p 317.

93 “Material Adverse Effect” in both agreements is defined as including the ability of any “Obligor”, which includes Ms Fullarton, to perform her obligations under any finance document to which it is a party: annexure LMF-02, Tab 3 p 83, Tab 4 p 281.

94 To that extent, the appointment of Receivers does not change the current position in so far as the loan agreements with AILV and Beech are concerned.

95 I accept that submission.

96 The second reason is that Receivers could exercise a power of sale over Ms Fullarton's properties, including the Gold Coast property in which Ms Fullarton, Mr McWilliams and their five children reside. There is also a concern on the well-being of Ms Fullarton and her children.

97 The Court is acutely aware of the impact the appointment of Receivers may have on the well-being of individuals. Nonetheless that is not a reason not to make the orders.

98 As to the concern that the Receivers could exercise their power of sale over the Gold Coast property, that concern is something that can be accommodated by appropriate orders, although I note that the property is to be placed on the market under the facility agreement with AILV.

99 The third reason is that appointment of a Receiver would entail significant financial cost ultimately to be borne by Ms Fullarton's estate.

100 ASIC submits that if the matter is as straightforward as suggested by Ms Fullarton and Mr McWilliams in their submissions, there is no reason to suspect that the fees charged by the Receivers would be particularly high. Further, the orders can accommodate any concerns about fees by imposing a practical limit on the Receivership, such that the Receivers are to prepare a report for the Court within a short timeframe.

101 I accept ASIC's submissions about the cost of the Receivership.

***Mr McWilliams***

102 There is no issue that ASIC is investigating Mr McWilliams and that there are aggrieved persons to whom Mr McWilliams, as a relevant person, may be liable to pay money.

103 Apart from the matters raised in relation to Ms Fullarton, Mr McWilliams resists the appointment of the Receivers on five grounds.

104 The first and second grounds are directed to there being no need to appoint a Receiver to protect the few assets that Mr McWilliams has, in circumstances where he has given an undertaking not to dispose of assets and where there are the asset preservation orders.

105 I do not accept that submission for the same reasons as I explained in relation Ms Fullarton. It is not a question of the property that Mr McWilliams has, it is a question of identifying investor funds and what has been done with them as well as what other assets there may be.

106 Added to that is the significant gambling issue Mr McWilliams appears to have. On any measure, gambling in excess of \$39 million without any explanation as to where those funds come from, and in particular in the absence of any assertion that the money used to gamble is private to Mr McWilliams, raises serious concerns.

107 The discovery of over \$100,000 in a locked suitcase during the execution of the search warrant, which according to Mr McWilliams is the proceeds of gambling, but in relation to which Mr McWilliams was not forthcoming initially, engenders little confidence in Mr McWilliams. I stress that in saying Mr McWilliams' conduct does not engender confidence, I form no view as to Mr McWilliams' credibility or honesty, particularly given the stressful circumstances surrounding the execution of a search warrant. Further, ultimately he produced the key to the suitcase and informed the ASIC representatives present as to the origin of the cash.

108 The third ground is there is no need to appoint a Receiver for the purpose of investigating Mr McWilliams affairs and assets because he has now disclosed his assets by way of affidavit: affidavit of David George McWilliams affirmed 4 October 2024.

109 I do not accept that submission. The submission proceeds on the assumption that there has been full disclosure, which in all the circumstances is an assumption which I am not prepared to make.

110 Whether there has been full disclosure is a matter which will be pursued by the Receivers.

111 The fourth ground is that the appointment of Receivers would constitute an event of default under certain loan agreements that some of the Corporate defendants have as borrowers and in which Mr McWilliams is guarantor.

112 That may well be the case. Nonetheless, it is for the same reasons as I have set out in relation to Ms Fullarton that I do not consider an order should not be made because of that consideration, given the overall circumstances.

113 The fifth ground is that any assets Mr McWilliams owns are protected by the asset preservation orders and the costs of appointing Receivers are disproportionate.

114 Is for the same reasons I have set out in relation Ms Fullarton that I do not accept that submission.

## Travel restrictions

115 ASIC seeks an order that the travel restrictions contained in orders 8, 10 and 11 of the  
11 September orders (as varied by the Court on 16 September 2024), be extended until 5.00pm  
(AEDT) on 1 November 2025.

116 ASIC relies upon the observations of Siopis J in *ASIC v Johnston* [2009] FCA 1276 at [9]-[12]  
in relation to the relevant factors:

9. ... the following factors have been identified as among the factors which will be weighed against the right to travel freely.
10. First, the fact that the investigation being carried out cannot be properly or effectively conducted in the absence of the person.
11. Secondly, the importance of the person in the ongoing investigation, the character of the potential offences, the fact that the person has a base overseas and the stage at which the investigation is at.
12. Thirdly, whether there is evidence that by examination of the person (which may be thwarted if the person flees Australia) ASIC is likely to improve the chances of the aggrieved persons retrieving their moneys.

117 Briefly summarised, ASIC submits:

- (a) The investigation is at an early stage and Mr McWilliams is central to the investigation being carried out by ASIC, such that it cannot be properly or effectively conducted in his absence. I accept that submission;
- (b) The character of the potential offences is such as to warrant the travel restraint to be continued. In particular, s 408C(1) and (2A) of the Queensland Criminal Code (fraud), which carries a maximum term of imprisonment of 20 years, and s 184(2) of the Act which is also a criminal offence carrying a maximum term of imprisonment of 15 years. I accept that submission;
- (c) Although there is no suggestion that Mr McWilliams has a base overseas, between September 2022 and August 2024, Mr McWilliams has travelled overseas on 10 occasions variously to the United States of America, Indonesia, Singapore and the United Arab Emirates. That may be so, but it does not lead to the conclusion that Mr McWilliams is a flight risk;
- (d) There is no need for clear evidence of a flight risk given Mr McWilliams centrality to the investigation being carried out by ASIC. I accept that submission;
- (e) Examination of Mr McWilliams by ASIC is likely to improve the chances of aggrieved persons retrieving their moneys. I accept that submission; and

(f) Mr McWilliams does not have strong ties to Australia. I do not accept that submission. His wife, Ms Fullarton, and his five children all live in Australia. True it is that Mr McWilliams may take his family with him should he decide to leave Australia, but I am not prepared to find that Mr McWilliams does not have strong ties to Australia.

118 Mr McWilliams submits that the identification of the factors by Siopis J in *Johnston* is not a code. I accept that submission, but nonetheless they are relevant matters to be taken into account in deciding whether to exercise the Court's discretion to impose travel restraints and his Honour's observation have been followed in a number of cases.

119 Mr McWilliams refers to the overarching approach identified by White J in *ASIC v Secured Bond Ltd* [2009] NSWSC 1261 at [27] and [30], in particular, an order interfering with a person's freedom of movement is not to be made lightly.

120 In *Secured Bond*, the person in question had no proceedings brought against him and no particular charges laid against him which he had the opportunity to answer. White J observed, that under those circumstances, interference with his personal liberty is a serious matter.

121 Mr McWilliams submits that no charges have been laid against him and that he is a very low flight risk. He submits that he has five children, three which are of school-age, has indicated a willingness to cooperate and is prepared to proffer an undertaking in similar terms to that offered in *Secured Bond*. That undertaking involved the person in question, Mr Collard, giving 24 hours' notice to ASIC prior to departing from Australia, including the place to which he proposes to travel, and details of where he can be contacted; will make himself available for examination by ASIC within 14 days after notice is provided by ASIC, and will not travel overseas for more than three weeks at any one time.

122 In reply, ASIC submits that whereas it accepts freedom of movement is an important consideration and that no charges have yet been laid against Mr McWilliams, nonetheless the power in s 1323(1) is predicated upon investigation. ASIC reiterates that Mr McWilliams is central to its investigation, whereas in *Secured Bond* that was not the case with Mr Collard.

123 Ultimately it is a balancing exercise recognising that any restriction on an individual's freedom of movement is a very serious step and a significant intrusion on an individual's rights. Each case will need to be determined on its own particular circumstances.

124 It is readily apparent that Mr McWilliams as the Sole Director of 12 of the 13 Corporate defendants, and a Co-Director with his son of the 13<sup>th</sup> defendant, he is the central character in

this matter and is very likely to play a pivotal role in ASIC's investigation. Further, although not charged, the prospect of being charged with criminal offences assumes significance.

125 In all the circumstances, I am not prepared to continue Mr McWilliams travel restrictions for a full 12 month period, but consider that those restrictions should remain in place until 5.00pm (AEST) on Tuesday 1 July 2025. Should either of the parties see the need to vary the travel restrictions they have liberty to apply.

### **Conclusion**

126 In view of all of these matters, I formed the view the Court should exercise its discretion to appoint Receivers of the estates of Mr McWilliams and Ms Fullarton and in the exercise of its discretion under s 1323, the Court made the orders on 22 October 2024.

127 There will be an order extending the travel restrictions imposed upon Mr McWilliams until 1 July 2025.

I certify that the preceding one hundred and twenty-seven (127) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice O'Sullivan.

Associate:



Dated: 4 November 2024

## SCHEDULE OF PARTIES

QUD 532 of 2024

### Defendants

Fourth Defendant:	ALAMMC DEVELOPMENTS 4 PTY LTD
Fifth Defendant:	ALAMMC DEVELOPMENTS 5 PTY LTD
Sixth Defendant:	ALAMMC DEVELOPMENTS 6 PTY LTD
Seventh Defendant:	ALAMMC DEVELOPMENTS 7 PTY LTD
Eighth Defendant:	HARVEY MADISON CAPITAL PTY LTD
Ninth Defendant:	SDAMF 2 PTY LTD
Tenth Defendant:	SDAMF 3 PTY LTD
Eleventh Defendant:	SDAMF 4 PTY LTD
Twelfth Defendant:	CORAL COAST MUTUAL PTY LTD
Thirteenth Defendant:	MORTGAGE MUTUAL FUND PTY LTD
Fourteenth Defendant:	DAVID GEORGE MCWILLIAMS
Fifteenth Defendant:	LAURA MARY FULLARTON