

FEDERAL COURT OF AUSTRALIA

Australian Securities and Investments Commission v ALAMMC Developments Pty Ltd, in the matter of ALAMMC Developments Pty Ltd [2024] FCA 1063

File number: QUD 532 of 2024

Judgment of: **YATES J**

Date of judgment: 11 September 2024

Catchwords: **CORPORATIONS** – ex parte application for interim relief under s 1323 of the *Corporations Act 2001* (Cth)

Legislation: *Australian Securities and Investments Commission Act 2001* (Cth) ss 12DA, 12DB
Corporations Act 2001 (Cth) ss 911A, 1041EE, 1041G, 1041H, 1323
Federal Court of Australia Act 1976 (Cth) s 37AF

Division: General Division

Registry: Queensland

National Practice Area: Commercial and Corporations

Sub-area: Corporations and Corporate Insolvency

Number of paragraphs: 15

Date of hearing: 11 September 2024

Counsel for the Plaintiff: Ms S McLeod

Solicitor for the Plaintiff: Australian Securities and Investments Commission

Counsel for the Defendants: The defendants did not appear

ORDERS

QUD 532 of 2024

IN THE MATTER OF ALAMMC DEVELOPMENTS PTY LTD (ACN 655 336 888)

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

AND: **ALAMMC DEVELOPMENTS PTY LTD (ACN 655 336 888)**
First Defendant

ALAMMC DEVELOPMENTS 2 PTY LTD ACN 657 027 579
Second Defendant

ALAMMC DEVELOPMENTS 3 PTY LTD ACN 657 027 828
(and others named in the Schedule)
Third Defendant

ORDER MADE BY: YATES J

DATE OF ORDER: 11 SEPTEMBER 2024

FOR THE PURPOSE OF THESE ORDERS:

“*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.

“*Gambling Institution*” means any gambling, gaming, or casino business, whether operated from a physical location or online.

“*Property*” means property as defined under section 9 of the *Corporations Act 2001* (Cth) (the **Corporation 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:

1. In the first instance, service of the Originating Process dated 10 September 2024 be dispensed with and the prayers for relief in paragraphs 6 to 26 be made returnable *instanter*.
2. The time for service on the Defendants of:
 - (a) the Originating Process;
 - (b) the affidavits of:
 - (i) Gregory James Mac Callum Cleary affirmed 10 September 2024;
 - (ii) Michael John Spalding affirmed 10 September 2024; and
 - (iii) Gregory James Mac Callum Cleary affirmed 11 September 2024; and
 - (c) the plaintiff's outline of submissions dated 10 September 2024, be abridged to 5.00pm AEST on 12 September 2024.
3. The Originating Process be returnable before the Commercial and Corporations Duty Judge in New South Wales on 16 September 2024 at 10.15 am for case management and for the making of any further orders that are necessary at that time.

Asset Preservation Orders

4. Subject to Order 5, pursuant to s 1323(1) of the *Corporations Act 2001* (Cth) (the **Corporation Act**) and s 23 of the *Federal Court of Australia Act 1976* (Cth) (the **Federal Court Act**), the Defendants, by themselves or their servants, agents, and employees, be restrained until 5.00 pm on 16 September 2024 from:
 - (a) removing, or causing or permitting to be removed, from Australia all or any of the Property of any of the Defendants;
 - (b) selling, charging, mortgaging or otherwise dealing with, disposing of and/or diminishing the value of, all or any of the Property of any of the Defendants;
 - (c) causing or permitting to be sold, charged, mortgaged or otherwise dealt with, disposed of, or diminished in value, all or any of the Property of any of the Defendants;
 - (d) without limiting the terms of subparagraphs (a) to (c) above, incurring liabilities including, without limitation, liabilities incurred either directly or indirectly,

through the use of a credit card, a credit facility, a drawdown facility or a re-draw facility; and

- (e) without limiting the terms of subparagraphs (a) to (d) above, withdrawing, transferring or otherwise disposing of any monies available in any account with:
 - (i) any bank, building society, cryptocurrency exchange or other financial institution; or
 - (ii) any Gambling Institution,

in which any of the Defendants have any legal or equitable interest.

5. Order 4 does not prevent:

- (a) the Fourteenth and Fifteenth Defendants from each paying or otherwise incurring a liability for ordinary, bona fide and properly incurred living and operating expenses up to an amount of eight hundred dollars (\$800) per week;
- (b) the Defendants from paying or otherwise incurring a liability for costs reasonably incurred in these proceedings and any criminal proceedings arising from the Plaintiff's investigations into the affairs of the Defendants; and
- (c) any bank, building society or financial institution from exercising any right of set-off which it may have in respect of a facility afforded by it to the Defendants prior to the date of these orders.

Disclosure Orders

6. Except to the extent that a claim of privilege against self-incrimination or civil penalty privilege is made by the Fourteenth and/or Fifteenth Defendant in accordance with Order 7, each of the Defendants deliver or cause to be delivered to the Plaintiff by 4.00 pm AEST on 26 September 2024, a full and detailed affidavit sworn or affirmed by themselves or a proper officer as the case may be, setting out, to the best of each Defendant's knowledge or belief:

- (a) the name and address of any bank, building society, financial institution, or Gambling Institution at which there is an account in the name of or under the control of the relevant Defendant, together with the number of such accounts, the name of any such account, and the balance of any such account;

- (b) the name and contact details (including address, telephone number and email address, if known) of any person or persons indebted to the relevant Defendant and the amount of the indebtedness;
 - (c) the name and contact details (including address, telephone number and email address, if known) of any clients of the relevant Defendant;
 - (d) an itemised inventory of the relevant Defendant's assets and liabilities;
 - (e) an itemised inventory of any and all Property, whether real or personal, owned or controlled, by the relevant Defendant, or in which the relevant Defendant has any legal or beneficial interest; and
 - (f) in respect of any of the Property of the relevant Defendant which has been given as security for any debt, the details of that Property and the nature of the security and the debt so incurred.
7. In the event that the Fourteenth and/or Fifteenth Defendant wish to object to compliance with Order 6 on the basis that compliance may tend to incriminate the Defendant or make the Defendant liable to a civil penalty, the relevant Defendant must, in accordance with section 128A of the *Evidence Act 1995* (Cth):
- (a) prepare, file and serve on the Plaintiff an affidavit disclosing so much of the information required to be disclosed by Order 6 to which no objection is taken;
 - (b) prepare an affidavit containing so much of the information required to be disclosed by Order 6 to which objection is taken and deliver it to the Court in a sealed envelope; and
 - (c) prepare, file and serve on the Plaintiff a separate affidavit setting out the basis of the objection.

Travel Restraint Orders

8. Pursuant to section 1323(1)(k) of the Corporations Act, until 5.00 pm on 10 October 2024, the Fourteenth Defendant be prohibited from leaving Australia or attempting to leave Australia.
9. Pursuant to section 1323(1)(j) of the Corporations Act, by 4:00pm AEST on 17 September 2024, the Fourteenth Defendant:
- (a) deliver up to the Queensland District Registry of the Court all passports in his name which are in his possession, custody or control; and

- (b) if applicable, discontinue any existing application in his name for a passport or replacement passport and file and serve an affidavit confirming same.
- 10. The documents delivered up to the Queensland District Registry pursuant to Order 9 be held by the Registry until 5.00 pm on 10 October 2024.
- 11. Until 5.00 pm on 10 October 2024, the Fourteenth Defendant be restrained from applying for the issue of an Australian or non-Australian passport or other document permitting international travel.
- 12. In the event that the Fourteenth Defendant cannot locate any passport or other document permitting international travel, he forthwith:
 - (a) give notification to the Australian Passport Office, or other relevant authorities responsible for the issue and control of Australian passports or travel documents, or in the case of a foreign passport or travel document, the relevant authority responsible for the issue and control of such passports or travel documents, confirming that he has lost his passport or travel document; and
 - (b) file and serve an affidavit stating that fact and exhibiting a copy of the above notification sent.

Service of Orders on Third Parties

- 13. To the extent necessary, the Plaintiff have leave to give notice of these orders to:
 - (a) the relevant authorities that record, control and regulate the ownership of real property;
 - (b) the relevant authorities that record, control and regulate the ownership of motor vehicles;
 - (c) the relevant authorities that record, control and regulate the ownership of maritime vessels and craft;
 - (d) any bank, building society, cryptocurrency exchange or other financial institution through which, to the best of the Plaintiff's belief, any of the Defendants operates any account;
 - (e) any Gambling Institution with which, to the best of the Plaintiff's belief, any of the Defendants holds any account;
 - (f) any other person or entity holding or controlling Property, which, to the best of the Plaintiff's belief, belongs to any of the Defendants;

- (g) the relevant authorities that issue and control passports;
- (h) the Australian Border Force; and
- (i) the Queensland Office of Liquor and Gaming Regulation,

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

Non-Publication Orders

14. Pursuant to sections 37AF(1) of the Federal Court Act, on the ground that the order is necessary to prevent prejudice to the proper administration of justice, the publication or disclosure of the following is prohibited until 5.00 pm AEST on 12 September 2024, except to enable the Plaintiff to serve the Defendants and/or provide copies of the orders to the entities set out in Order 13 for the purpose of enforcing the orders:
 - (a) any ex parte orders obtained by the Plaintiff;
 - (b) the Originating Process;
 - (c) the other documents referred to in Order 2.
15. Pursuant to sections 37AF(1) of the Federal Court Act, on the ground that the order is necessary to prevent prejudice to the proper administration of justice, and subject to further order, the following details of any clients of the First to Fifteenth Defendants referred to in the proceeding be prohibited from publication:
 - (a) their names;
 - (b) their postal or residential addresses;
 - (c) their email addresses;
 - (d) their telephone numbers;
 - (e) their drivers' licence numbers;
 - (f) their dates of birth; and
 - (g) any bank account details associated with them.
16. Pursuant to sections 37AF(1) of the Federal Court Act, on the ground that the order is necessary to prevent prejudice to the proper administration of justice, and subject to further order, Tabs 21, 23, 24 and 25 of Annexure GJC-1 of the Affidavit of Gregory James Mac Callum Cleary affirmed 10 September 2024 be marked 'supressed' on the electronic court file, and not be published (whether electronically or otherwise), or disclosed or accessed by any person other than:

- (a) the Court; and
- (b) the parties and their legal representatives.

General orders

- 17. The Plaintiff provide each Defendant with a copy of the transcript of the interlocutory hearing on 11 September 2024 as soon as reasonably practicable.
- 18. Costs be reserved.
- 19. Until further order, the parties have liberty to apply to the Commercial and Corporations Duty Judge in New South Wales on reasonable notice.

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

REASONS FOR JUDGMENT

Revised from transcript

YATES J:

1 The plaintiff, the Australian Securities and Investments Commission (**ASIC**), applies for interim relief under s 1323(3) of the *Corporations Act 2001* (Cth) (the **Corporations Act**) against a number of defendants associated with the fourteenth defendant, David George McWilliams. Mr McWilliams is the:

- (a) sole director and shareholder of the first to seventh defendants;
- (b) sole director of the remaining corporate defendants other than the twelfth defendant, Coral Coast Mutual Pty Limited (**Coral Coast**);
- (c) co-director of Coral Coast with his son, Bailey Williams; and
- (d) partner of the fifteenth defendant, Laura May Fullerton.

2 On 17 July 2024, ASIC formally commenced an investigation into the conduct of the defendants. It was prompted by receipt of information from the Queensland Office of Liquor and Gaming Regulation about Mr McWilliams's gambling activities, and the fact that he had lost significant sums of money at the Star Casino.

3 ASIC suspects that the gambled funds were sourced from investments made by investors in the business operated by the corporate defendants, or at least a number of them, raising concerns that these funds may have been misappropriated for this purpose. There is evidence of numerous transfers of funds, including potential investor funds, between accounts held by different defendants, as well as the potential use of investor funds to purchase a luxury motor vehicle, and real estate at Surfers Paradise in Queensland.

4 The present application is supported by:

- (a) two affidavits made by Gregory James Mac Callum Cleary of 10 September 2024 and 11 September 2024;
- (b) an affidavit made by Michael John Spalding of 10 September 2024; and
- (c) detailed written submissions.

5 The orders that are sought include an order pursuant to s 1323(1)(h) of the Corporations Act appointing receivers over the property of the defendants or, alternatively, an order pursuant to

s 1323(1)(h) of the Corporations Act and s 23 of the *Federal Court of Australia Act 1976* (Cth) (the **Federal Court Act**), restraining the defendants from dissipating or otherwise dealing with their property. ASIC also seeks: (a) disclosure orders ancillary to, and in aid of, the previously-mentioned orders; (b) travel restraint orders under s 1323(1)(j) and (k) of the Corporations Act against Mr McWilliams; and (c) associated orders under s 37AF(1) of the Federal Court Act against the disclosure of certain information.

6 ASIC's investigation is at an early stage. To date, it has been conducted covertly. The steps that ASIC now wishes to take will likely bring the investigation to the defendants' attention. Hence, the reason for ASIC seeking relief now. The present application for interim relief has been brought ex parte due to ASIC's concern that, if given advance warning, the defendants may dispose of their assets in some way, and Mr McWilliams may leave the jurisdiction.

7 ASIC's written submissions summarise the relevant statutory framework within which the present application is made. Those submissions also draw attention to the principles discussed in the cases upon which the present application falls to be considered. I will not set out these matters in these reasons except to note the terms in which s 1323 is expressed:

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:

- (d) an order prohibiting a person who is indebted to the relevant person or to an associate of the relevant person from making a payment in total or partial discharge of the debt to, or to another person at the direction or request of, the person to whom the debt is owed;
- (e) an order prohibiting a person holding money, financial products or other property, on behalf of the relevant person, or on behalf of an associate

- of the relevant person, from paying all or any of the money, or transferring, or otherwise parting with possession of, the financial products or other property, to, or to another person at the direction or request of, the person on whose behalf the money, financial products or other property, is or are held;
- (f) an order prohibiting the taking or sending out of this jurisdiction, or out of Australia, by a person of money of the relevant person or of an associate of the relevant person;
 - (g) an order prohibiting the taking, sending or transfer by a person of financial products or other property of the relevant person, or of an associate of the relevant person:
 - (i) from a place in this jurisdiction to a place outside this jurisdiction (including the transfer of financial products from a register in this jurisdiction to a register outside this jurisdiction); or
 - (ii) from a place in Australia to a place outside Australia (including the transfer of financial products from a register in Australia to a register outside Australia);
 - (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;
 - (j) if the relevant person is a natural person—an order requiring that person to deliver up to the Court his or her passport and such other documents as the Court thinks fit;
 - (k) if the relevant person is a natural person—an order prohibiting that person from leaving this jurisdiction, or Australia, without the consent of the Court.
- (2A) A reference in paragraph (1)(g) or (h) to property of a person includes a reference to property that the person holds otherwise than as sole beneficial owner, for example:
- (a) as trustee for, as nominee for, or otherwise on behalf of or on account of, another person; or
 - (b) in a fiduciary capacity.
- (2B) Subsection (2A) is to avoid doubt, is not to limit the generality of anything in subsection (1) and is not to affect by implication the interpretation of any other provision of this Act.
- (2) An order under subsection (1) prohibiting conduct may prohibit the conduct either absolutely or subject to conditions.
- (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) Where the Court has made an order under this section on a person's application, the Court may, on application by that person or by any person affected by the order, make a further order discharging or varying the first-mentioned order.
- (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) An offence based on subsection (9) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

8 Even though ASIC's investigation is at an early stage, the evidence presently before the Court is quite extensive. It supports ASIC's concern that:

- (a) a number of the corporate defendants have, or may have, carried on, and may still be carrying on, a financial service business without holding an Australian financial services licence covering the provision of those services, in contravention of s 911A(1) of the Corporations Act, and that Mr McWilliams may have been, and may still be, involved in such contraventions;
- (b) the first, second and fourth defendants and Mr McWilliams may have engaged in dishonest or fraudulent conduct in contravention of s 1041G of the Corporations Act;
- (c) as a director, Mr McWilliams may have breached his duties imposed by ss 182 and 184 of the Corporations Act; and
- (d) the first defendant, the second defendant, and the fourth defendant may have engaged in misleading or deceptive conduct, or made false or misleading statements, with respect to information memoranda that have been issued by them in contravention of ss 1041E and 1041H of the Corporations Act or ss 12DA and 12DB of the *Australian Securities and Investments Commission Act 2001* (Cth), and that Mr McWilliams may have been engaged in similar

contraventions himself or been involved in the contraventions of the three corporate entities.

9 ASIC has provided a schedule to its written submissions that gives greater detail of the suspected contraventions involving all the defendants.

10 The evidence before me establishes the gateway of s 1323(1)(a). I am satisfied that it is desirable to grant interim relief under s 1323(3). However, as the application before me is made ex parte, that relief should not be, at the present time, as extensive as ASIC seeks.

11 First, while I appreciate the cogency of ASIC's submissions in relation to the appointment of a receiver of the property of the defendants, the better course, at the present time, is to take the less drastic step of making the asset preservation order that ASIC seeks for a limited period. This would be without prejudice to ASIC seeking to extend the asset preservation order or seeking a receivership order at a later time when the defendants can be heard. At the present time, the Court does not know the effect that the appointment of a receiver might have on the defendants, their businesses, and ultimately their creditors, and the defendants should at least have the opportunity to address those questions.

12 Secondly, the travel restraint that ASIC seeks against Mr McWilliams is: (a) for a period of at least 12 months (or until further order of this Court); (b) requires Mr McWilliams to deliver up his passport(s); and (c) restrains him from seeking any other travel document, in circumstances where ASIC acknowledges that there is no objective indicia that he is a flight risk, and there is no evidence that he will depart Australia imminently.

13 Whilst, once again, I appreciate the cogency of ASIC's submissions as to the importance to its investigation of Mr McWilliams's continuing presence in Australia, Mr McWilliams should be afforded the opportunity of addressing the extent of any travel restraint against him. However, at the present time, I am prepared to make limited orders restraining Mr McWilliams from leaving or attempting to leave Australia for a period of approximately one month. I will make these orders without prejudice to ASIC seeking more extensive relief in this regard at a later time.

14 I am prepared to make the disclosure orders that ASIC seeks. Such orders are justified as being ancillary to, and in aid of, the order I propose to make restraining the defendants from disposing of or dealing with their assets.

15 ASIC also seeks orders under s 37AF(1) of the Federal Court Act to prevent the disclosure of certain information on the ground that the order is necessary to prevent prejudice to the proper administration of justice. I am satisfied that orders, substantially as sought by ASIC in that regard, should be made.

I certify that the preceding fifteen (15) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Yates.

Associate:



Dated: 13 September 2024

SCHEDULE OF PARTIES

QUD 532 of 2024

Defendants

Fourth Defendant:	ALAMMC DEVELOPMENTS 4 PTY LTD ACN 658 141 005
Fifth Defendant:	ALAMMC DEVELOPMENTS 5 PTY LTD ACN 658 141 130
Sixth Defendant:	ALAMMC DEVELOPMENTS 6 PTY LTD ACN 658 142 575
Seventh Defendant:	ALAMMC DEVELOPMENTS 7 PTY LTD ACN 658 142 619
Eighth Defendant:	HARVEY MADISON CAPITAL PTY LTD ACN 631 405 386
Ninth Defendant:	SDAMF 2 PTY LTD ACN 650 699 737
Tenth Defendant:	SDAMF 3 PTY LTD ACN 653 109 605
Eleventh Defendant:	SDAMF 4 PTY LTD ACN 655 248 392
Twelfth Defendant:	CORAL COAST MUTUAL PTY LTD ACN 655 338 471
Thirteenth Defendant:	MORTGAGE MUTUAL FUND PTY LTD ACN 620 717 099
Fourteenth Defendant:	DAVID GEORGE MCWILLIAMS
Fifteenth Defendant:	LAURA MARY FULLARTON