

# FEDERAL COURT OF AUSTRALIA

## **Australian Securities and Investments Commission v Remedy Housing Pty Ltd [2021] FCA 673**

File number: VID 319 of 2021

Judgment of: **MOSHINSKY J**

Date of judgment: 17 June 2021

Catchwords: **CORPORATIONS** – *ex parte* application for freezing orders, disclosure orders and travel ban orders – where in the substantive proceeding the Australian Securities and Investments Commission (ASIC) sought a permanent injunction to prevent the conduct of a business which it says is being conducted contrary to the *Corporations Act 2001* (Cth), the *Australian Securities and Investments Commission Act 2001* (Cth) and the *National Consumer Credit Protection Act 2009* (Cth) – where ASIC sought the interlocutory orders under s 1323 of the *Corporations Act*

Legislation: *Australian Securities and Investments Commission Act 2001* (Cth), ss 12DA, 12DB, 12C, 13  
*Corporations Act 2001* (Cth), ss 911A, 1323  
*Crimes Act 1958* (Cth), ss 81, 82  
*Federal Court of Australia Act 1976*, s 23  
*National Consumer Credit Protection Act 2009* (Cth), ss 29, 160D  
*Federal Court Rules 2011*

Cases cited: *Australian Securities and Investments Commission v Banovec (No 2)* (2007) 214 FLR 33  
*Australian Securities and Investments Commission v Carey (No 3)* (2006) 57 ACSR 307  
*Australian Securities and Investments Commission v Carey (No 14)* (2007) 158 FCR 92  
*Australian Securities and Investments Commission v Johnston* [2009] FCA 1276  
*Australian Securities and Investments Commission v Wiggins* (1998) 90 FCR 314  
*Re Courtenay House Capital Trading Group Pty Ltd (in liq)* [2018] NSWSC 1918

Division: General Division

Registry: Victoria

National Practice Area: Commercial and Corporations

Sub-area: General and Personal Insolvency

Number of paragraphs: 35

Date of hearing: 17 June 2021

Counsel for the Plaintiff: Mr DB Bongiorno

Solicitor for the Plaintiff: Australian Securities and Investments Commission

## ORDERS

VID 319 of 2021

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

**AND:**                **REMEDY HOUSING PTY LTD (ACN 637 023 851)**  
First Defendant

**BRENT LINDSAY SMITH**  
Second Defendant

**MAHMOUD KHODR (and another named in the Schedule)**  
Third Defendant

**ORDER MADE BY: MOSHINSKY J**

**DATE OF ORDER: 17 JUNE 2021**

### PENAL NOTICE

TO: REMEDY HOUSING PTY LTD (ACN 637 023 851)

**IF YOU:**

- A. REFUSE OR NEGLECT TO DO ANY ACT WITHIN THE TIME SPECIFIED  
IN THIS ORDER FOR THE DOING OF THE ACT; OR**
- B. DISOBEY THE ORDER BY DOING AN ACT WHICH THE ORDER  
REQUIRES YOU TO ABSTAIN FROM DOING,**

**YOU WILL BE LIABLE TO IMPRISONMENT, SEQUESTRATION OF PROPERTY  
OR OTHER PUNISHMENT.**

**ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING  
WHICH HELPS OR PERMITS YOU TO BREACH THE TERMS OF THIS ORDER  
MAY BE SIMILARLY PUNISHED.**

TO: REMEDY HOUSING PTY LTD (ACN 637 023 851)

This is a '*freezing order*' made against you on 17 June 2021 by Justice Moshinsky at a hearing without notice to you after the Court read the affidavit listed in **Schedule A** to this order.

## THE COURT ORDERS THAT:

### Introduction

1. The application for this order is made returnable immediately.
2. The time for service of the application, supporting affidavit and originating process is abridged and service is to be effected by 4.00 pm on 22 June 2021 or as soon as practicable thereafter.
3. Subject to the next paragraph, this order has effect up to and including 4.00 pm on 24 June 2021 (the **Return Date**). On the Return Date at 9.30 am there will be a further hearing in respect of this order before the Duty Judge.
4. Anyone served with or notified of this order, including you, may apply to the Court at any time to vary or discharge this order or so much of it as affects the person served or notified.
5. In this order—
  - (a) “**plaintiff**”, if there is more than one plaintiff, includes all the plaintiffs;
  - (b) “**digital currency**” means *property* as defined in s 9 of the *Corporations Act 2001* (Cth) that is digital currency, virtual currency, cryptocurrency or similar;
  - (c) “**you**”, where there is more than one of you, includes all of you and includes you if you are a corporation;
  - (d) “**third party**” means a person other than you and the plaintiff;
  - (e) “**unencumbered value**” means value free of mortgages, charges, liens or other encumbrances;
  - (f) “**your assets**” include—
    - (i) all your assets:
      - (A) wherever located in the world;
      - (B) whether or not they are in your name and whether they are solely or co-owned;
      - (C) any asset which you have the power, directly or indirectly, to dispose of or deal with as if it were your own (you are to be regarded as having such power if a third party holds or controls the asset in accordance with your direct or indirect instructions); and

- (ii) all property (as defined in the *Corporations Act*) whether real or personal owned or controlled by you or in which you have any legal or beneficial interest.
- (g) If you are ordered to do something, you must do it by yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions.
- (h) If you are ordered not to do something, you must not do it yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions or with your encouragement or in any other way.

### **Freezing of Assets**

- 6. You must not:
  - (a) move or in any way dispose of, deal with or diminish the value of any of your assets; or
  - (b) move or transfer any assets from Australia.
- 7. Order 6 does not prohibit you from, before any further hearing of this matter:
  - (a) paying up to \$1,000 for ordinary living or business expenses; and
  - (b) paying up to \$10,000 on reasonable legal expenses.

### **Disclosure Orders**

- 8. Except to the extent that a claim of privilege against self-incrimination or civil penalty privilege is made:
  - (a) at or before the further hearing on the Return Date, to the best of your ability inform the plaintiff in writing of all your assets world-wide, giving their value, location and details and the extent of your interest in the assets;
  - (b) within 10 working days after being served with this order, you must deliver or cause to be delivered to the plaintiff a full and detailed affidavit sworn setting out:
    - (i) an itemised inventory of your assets and liabilities;
    - (ii) the name and address of any bank, building society or other financial institution (both within Australia and outside Australia) at which there is an account in the name of or under your control, together with the

- number of such account, the name of such account and the balance of that account;
- (iii) the name and address of any Digital Currency exchange at which there is an account in the name of or under your control, together with:
    - (A) all relevant credentials and passwords for access to any Digital Currency held by you including but not limited to, the public and private access keys and/or seed, backup or recovery phrase for any software based or hardware based wallet and/or storage device;
    - (B) all authentication devices required to facilitate access, operation or control of any Digital Currency held, including but not limited to all relevant credentials and passwords for access to the authentication devices or systems, including email, SMS or mobile apps, that facilitate access, operation or control of Digital Currency; and
    - (C) any hard wallet device containing Digital Currency held or controlled by you together with that device's access code;
  - (iv) the name and address of any person or persons indebted to you and the amount of the indebtedness;
  - (v) an itemised inventory of any and all property (as defined in the *Corporations Act*) whether real or personal owned or controlled by you or in which you have any legal or beneficial interest;
  - (vi) in respect of any of your property (as defined in the *Corporations Act*) which has been given as security for any debt or liability, the details of that property and the nature of the security and the debt or liability so incurred;
  - (vii) the sources and amount of any income, wages, earnings or other payments:
    - (A) received in the 18 months preceding the date on which this order is made; and
    - (B) expected to be received in the 12 months following the date on which this order is made.

## **Objection to Compliance with Disclosure Orders**

9. If all of the persons who are able to comply with Order 8 on your behalf and with whom you have been able to communicate, wish to object to your complying with Order 8 on the grounds that some or all of the information required to be disclosed may tend to prove that they respectively:

- (a) have committed an offence against or arising under an Australian law or a law of a foreign country; or
- (b) are liable to a civil penalty;

you must:

- (c) prepare, file and serve on the plaintiff an affidavit disclosing so much of the information required to be disclosed by that order to which no objection is taken;
- (d) prepare an affidavit containing so much of the information required to be disclosed to which objection is taken and deliver it to the Court in a sealed envelope; and
- (e) prepare, file and serve on the plaintiff a separate affidavit setting out the basis of the objection.

## **Schedule A**

### **AFFIDAVITS RELIED ON**

Affidavit of Evan Rhys Bradshaw affirmed on 16 June 2021.

### **NAME AND ADDRESS OF PLAINTIFF'S LAWYERS**

Nathalie Pietsch  
Litigation Counsel – Chief Legal Office  
Australian Securities and Investments Commission  
Level 7, 120 Collins Street, Melbourne, 3000  
nathalie.pietsch@asic.gov.au

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



## ORDERS

VID 319 of 2021

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

**AND:**                 **REMEDY HOUSING PTY LTD (ACN 637 023 851)**  
First Defendant

**BRENT LINDSAY SMITH**  
Second Defendant

**MAHMOUD KHODR (and another named in the Schedule)**  
Third Defendant

**ORDER MADE BY: MOSHINSKY J**

**DATE OF ORDER: 17 JUNE 2021**

### PENAL NOTICE

TO: BRENT LINDSAY SMITH

**IF YOU:**

- A. REFUSE OR NEGLECT TO DO ANY ACT WITHIN THE TIME SPECIFIED  
IN THIS ORDER FOR THE DOING OF THE ACT; OR**
- B. DISOBEY THE ORDER BY DOING AN ACT WHICH THE ORDER  
REQUIRES YOU TO ABSTAIN FROM DOING,**

**YOU WILL BE LIABLE TO IMPRISONMENT, SEQUESTRATION OF PROPERTY  
OR OTHER PUNISHMENT.**

**ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING  
WHICH HELPS OR PERMITS YOU TO BREACH THE TERMS OF THIS ORDER  
MAY BE SIMILARLY PUNISHED.**

TO: BRENT LINDSAY SMITH

This is a '*freezing order*' made against you on 17 June 2021 by Justice Moshinsky at a hearing without notice to you after the Court read the affidavit listed in **Schedule A** to this order.

## THE COURT ORDERS THAT:

### Introduction

1. The application for this order is made returnable immediately.
2. The time for service of the application, supporting affidavit and originating process is abridged and service is to be effected by 4.00 pm on 22 June 2021 or as soon as practicable thereafter.
3. Subject to the next paragraph, this order has effect up to and including 4.00 pm on 24 June 2021 (the **Return Date**). On the Return Date at 9.30 am there will be a further hearing in respect of this order before the Duty Judge.
4. Anyone served with or notified of this order, including you, may apply to the Court at any time to vary or discharge this order or so much of it as affects the person served or notified.
5. In this order—
  - (a) “**plaintiff**”, if there is more than one plaintiff, includes all the plaintiffs;
  - (b) “**digital currency**” means *property* as defined in s 9 of the *Corporations Act 2001* (Cth) that is digital currency, virtual currency, cryptocurrency or similar;
  - (c) “**you**”, where there is more than one of you, includes all of you and includes you if you are a corporation;
  - (d) “**third party**” means a person other than you and the plaintiff;
  - (e) “**unencumbered value**” means value free of mortgages, charges, liens or other encumbrances;
  - (f) “**your assets**” include—
    - (i) all your assets:
      - A. wherever located in the world;
      - B. whether or not they are in your name and whether they are solely or co-owned;
      - C. any asset which you have the power, directly or indirectly, to dispose of or deal with as if it were your own (you are to be regarded as having such power if a third party holds or controls the asset in accordance with your direct or indirect instructions); and

- (ii) all property (as defined in the *Corporations Act*) whether real or personal owned or controlled by you or in which you have any legal or beneficial interest.
- (g) If you are ordered to do something, you must do it by yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions.
- (h) If you are ordered not to do something, you must not do it yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions or with your encouragement or in any other way.

### **Freezing of Assets**

- 6. You must not:
  - (a) move or in any way dispose of, deal with or diminish the value of any of your assets; or
  - (b) move or transfer any assets from Australia.
- 7. Order 6 does not prohibit you from, before any further hearing of this matter:
  - (a) paying up to \$1,000 for ordinary living or business expenses; and
  - (b) paying up to \$10,000 on reasonable legal expenses.

### **Disclosure Orders**

- 8. Except to the extent that a claim of privilege against self-incrimination or civil penalty privilege is made:
  - (a) at or before the further hearing on the Return Date, to the best of your ability inform the plaintiff in writing of all your assets world wide, giving their value, location and details and the extent of your interest in the assets;
  - (b) within 10 working days after being served with this order, you must deliver or cause to be delivered to the plaintiff a full and detailed affidavit sworn setting out:
    - (i) an itemised inventory of your assets and liabilities;
    - (ii) the name and address of any bank, building society or other financial institution (both within Australia and outside Australia) at which there is an account in the name of or under your control, together with the

- number of such account, the name of such account and the balance of that account;
- (iii) the name and address of any Digital Currency exchange at which there is an account in the name of or under your control, together with:
    - A. all relevant credentials and passwords for access to any Digital Currency held by you including but not limited to, the public and private access keys and/or seed, backup or recovery phrase for any software based or hardware based wallet and/or storage device;
    - B. all authentication devices required to facilitate access, operation or control of any Digital Currency held, including but not limited to all relevant credentials and passwords for access to the authentication devices or systems, including email, SMS or mobile apps, that facilitate access, operation or control of Digital Currency; and
    - C. any hard wallet device containing Digital Currency held or controlled by you together with that device's access code;
  - (iv) the name and address of any person or persons indebted to you and the amount of the indebtedness;
  - (v) an itemised inventory of any and all property (as defined in the *Corporations Act*) whether real or personal owned or controlled by you or in which you have any legal or beneficial interest;
  - (vi) in respect of any of your property (as defined in the *Corporations Act*) which has been given as security for any debt or liability, the details of that property and the nature of the security and the debt or liability so incurred;
  - (vii) the sources and amount of any income, wages, earnings or other payments:
    - A. received in the 18 months preceding the date on which this order is made; and
    - B. expected to be received in the 12 months following the date on which this order is made.

### **Objection to Compliance with Disclosure Orders**

9. If you wish to object to complying with Order 8 on the grounds that some or all of the information required to be disclosed may tend to prove that you:
  - (a) have committed an offence against or arising under an Australian law or a law of a foreign country; or
  - (b) are liable to a civil penalty;you must:
  - (c) prepare, file and serve on the plaintiff an affidavit disclosing so much of the information required to be disclosed by that order to which no objection is taken;
  - (d) prepare an affidavit containing so much of the information required to be disclosed to which objection is taken and deliver it to the Court in a sealed envelope; and
  - (e) prepare, file and serve on the plaintiff a separate affidavit setting out the basis of the objection.

### **Travel Restraint Orders**

10. Subject to further order, for a period of 6 months from the date thereof, you are restrained from leaving or attempting to leave Australia.
11. Within 24 hours of service, you must deliver up to the Registry of the Court:
  - (a) all passports in your name which are in your possession; and
  - (b) any airline tickets for any travel made for the twelve (12) month period commencing from the date of these orders;such documents to be held by the Registry until further order.

## **Schedule A**

### **AFFIDAVITS RELIED ON**

Affidavit of Evan Rhys Bradshaw affirmed on 16 June 2021.

### **NAME AND ADDRESS OF PLAINTIFF'S LAWYERS**

Nathalie Pietsch  
Litigation Counsel – Chief Legal Office  
Australian Securities and Investments Commission  
Level 7, 120 Collins Street, Melbourne, 3000  
nathalie.pietsch@asic.gov.au

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

## ORDERS

VID 319 of 2021

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

**AND:**                 **REMEDY HOUSING PTY LTD (ACN 637 023 851)**  
First Defendant

**BRENT LINDSAY SMITH**  
Second Defendant

**MAHMOUD KHODR (and another named in the Schedule)**  
Third Defendant

**ORDER MADE BY: MOSHINSKY J**

**DATE OF ORDER: 17 JUNE 2021**

### PENAL NOTICE

TO: MAHMOUD KHODR

IF YOU:

- A. REFUSE OR NEGLECT TO DO ANY ACT WITHIN THE TIME SPECIFIED IN THIS ORDER FOR THE DOING OF THE ACT; OR
- B. DISOBEY THE ORDER BY DOING AN ACT WHICH THE ORDER REQUIRES YOU TO ABSTAIN FROM DOING,

**YOU WILL BE LIABLE TO IMPRISONMENT, SEQUESTRATION OF PROPERTY OR OTHER PUNISHMENT.**

**ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS YOU TO BREACH THE TERMS OF THIS ORDER MAY BE SIMILARLY PUNISHED.**

TO: MAHMOUD KHODR

This is a '*freezing order*' made against you on 17 June 2021 by Justice Moshinsky at a hearing without notice to you after the Court read the affidavit listed in **Schedule A** to this order.

## THE COURT ORDERS THAT:

1. The application for this order is made returnable immediately.
2. The time for service of the application, supporting affidavit and originating process is abridged and service is to be effected by 4.00 pm on 22 June 2021 or as soon as practicable thereafter.
3. Subject to the next paragraph, this order has effect up to and including 4.00 pm on 24 June 2021 (the **Return Date**). On the Return Date at 9.30 am there will be a further hearing in respect of this order before the Duty Judge.
4. Anyone served with or notified of this order, including you, may apply to the Court at any time to vary or discharge this order or so much of it as affects the person served or notified.
5. In this order—
  - (a) “**plaintiff**”, if there is more than one plaintiff, includes all the plaintiffs;
  - (b) “**digital currency**” means *property* as defined in s 9 of the *Corporations Act 2001* (Cth) that is digital currency, virtual currency, cryptocurrency or similar;
  - (c) “**you**”, where there is more than one of you, includes all of you and includes you if you are a corporation;
  - (d) “**third party**” means a person other than you and the plaintiff;
  - (e) “**unencumbered value**” means value free of mortgages, charges, liens or other encumbrances;
  - (f) “**your assets**” include—
    - (i) all your assets:
      - A. wherever located in the world;
      - B. whether or not they are in your name and whether they are solely or co-owned;
      - C. any asset which you have the power, directly or indirectly, to dispose of or deal with as if it were your own (you are to be regarded as having such power if a third party holds or controls the asset in accordance with your direct or indirect instructions); and



- (ii) all property (as defined in the *Corporations Act*) whether real or personal owned or controlled by you or in which you have any legal or beneficial interest.
- (g) If you are ordered to do something, you must do it by yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions.
- (h) If you are ordered not to do something, you must not do it yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions or with your encouragement or in any other way.

### **Freezing of Assets**

- 6. You must not:
  - (a) move or in any way dispose of, deal with or diminish the value of any of your assets; or
  - (b) move or transfer any assets from Australia.
- 7. Order 6 does not prohibit you from, before any further hearing of this matter:
  - (a) paying up to \$1,000 for ordinary living or business expenses; and
  - (b) paying up to \$10,000 on reasonable legal expenses.

### **Disclosure Orders**

- 8. Except to the extent that a claim of privilege against self-incrimination or civil penalty privilege is made:
  - (a) at or before the further hearing on the Return Date, to the best of your ability inform the plaintiff in writing of all your assets world wide, giving their value, location and details and the extent of your interest in the assets;
  - (b) within 10 working days after being served with this order, you must deliver or cause to be delivered to the plaintiff a full and detailed affidavit sworn setting out:
    - (i) an itemised inventory of your assets and liabilities;
    - (ii) the name and address of any bank, building society or other financial institution (both within Australia and outside Australia) at which there is an account in the name of or under your control, together with the

- number of such account, the name of such account and the balance of that account;
- (iii) the name and address of any Digital Currency exchange at which there is an account in the name of or under your control, together with:
    - A. all relevant credentials and passwords for access to any Digital Currency held by you including but not limited to, the public and private access keys and/or seed, backup or recovery phrase for any software based or hardware based wallet and/or storage device;
    - B. all authentication devices required to facilitate access, operation or control of any Digital Currency held, including but not limited to all relevant credentials and passwords for access to the authentication devices or systems, including email, SMS or mobile apps, that facilitate access, operation or control of Digital Currency; and
    - C. any hard wallet device containing Digital Currency held or controlled by you together with that device's access code;
  - (iv) the name and address of any person or persons indebted to you and the amount of the indebtedness;
  - (v) an itemised inventory of any and all property (as defined in the *Corporations Act*) whether real or personal owned or controlled by you or in which you have any legal or beneficial interest;
  - (vi) in respect of any of your property (as defined in the *Corporations Act*) which has been given as security for any debt or liability, the details of that property and the nature of the security and the debt or liability so incurred;
  - (vii) the sources and amount of any income, wages, earnings or other payments:
    - A. received in the 18 months preceding the date on which this order is made; and
    - B. expected to be received in the 12 months following the date on which this order is made.

### **Objection to Compliance with Disclosure Orders**

9. If you wish to object to complying with Order 8 on the grounds that some or all of the information required to be disclosed may tend to prove that you:
- (a) have committed an offence against or arising under an Australian law or a law of a foreign country; or
  - (b) are liable to a civil penalty;
- you must:
- (c) prepare, file and serve on the plaintiff an affidavit disclosing so much of the information required to be disclosed by that order to which no objection is taken;
  - (d) prepare an affidavit containing so much of the information required to be disclosed to which objection is taken and deliver it to the Court in a sealed envelope; and
  - (e) prepare, file and serve on the plaintiff a separate affidavit setting out the basis of the objection.

### **Travel Restraint Orders**

10. Subject to further order, for a period of 6 months from the date thereof, you are restrained from leaving or attempting to leave Australia.
11. Within 24 hours of service, you must deliver up to the Registry of the Court:
- (a) all passports in your name which are in your possession; and
  - (b) any airline tickets for any travel made for the twelve (12) month period commencing from the date of these orders;
- such documents to be held by the Registry until further order.

## **Schedule A**

### **AFFIDAVITS RELIED ON**

Affidavit of Evan Rhys Bradshaw affirmed on 16 June 2021.

### **NAME AND ADDRESS OF PLAINTIFF'S LAWYERS**

Nathalie Pietsch  
Litigation Counsel – Chief Legal Office  
Australian Securities and Investments Commission  
Level 7, 120 Collins Street, Melbourne, 3000  
nathalie.pietsch@asic.gov.au

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

## ORDERS

VID 319 of 2021

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

**AND:**                 **REMEDY HOUSING PTY LTD (ACN 637 023 851)**  
First Defendant

**BRENT LINDSAY SMITH**  
Second Defendant

**MAHMOUD KHODR (and another named in the Schedule)**  
Third Defendant

**ORDER MADE BY: MOSHINSKY J**

**DATE OF ORDER: 17 JUNE 2021**

### PENAL NOTICE

TO: TREVOR LEOTA

IF YOU:

- A. REFUSE OR NEGLECT TO DO ANY ACT WITHIN THE TIME SPECIFIED IN THIS ORDER FOR THE DOING OF THE ACT; OR
- B. DISOBEY THE ORDER BY DOING AN ACT WHICH THE ORDER REQUIRES YOU TO ABSTAIN FROM DOING,

**YOU WILL BE LIABLE TO IMPRISONMENT, SEQUESTRATION OF PROPERTY OR OTHER PUNISHMENT.**

**ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS YOU TO BREACH THE TERMS OF THIS ORDER MAY BE SIMILARLY PUNISHED.**

TO: TREVOR LEOTA

This is an order made against you on 17 June 2021 by Justice Moshinsky at a hearing without notice to you after the Court read the affidavit listed in **Schedule A** to this order.

## THE COURT ORDERS THAT:

### Introduction

1. The application for this order is made returnable immediately.
2. The time for service of the application, supporting affidavit and originating process is abridged and service is to be effected by 4.00 pm on 22 June 2021 or as soon as practicable thereafter.
3. Subject to the next paragraph, this order has effect up to and including 4.00 pm on 24 June 2021 (the **Return Date**). On the Return Date at 9.30 am there will be a further hearing in respect of this order before the Duty Judge.
4. Anyone served with or notified of this order, including you, may apply to the Court at any time to vary or discharge this order or so much of it as affects the person served or notified.
5. In this order—
  - (a) “**plaintiff**”, if there is more than one plaintiff, includes all the plaintiffs;
  - (b) “**digital currency**” means *property* as defined in s 9 of the *Corporations Act 2001* (Cth) that is digital currency, virtual currency, cryptocurrency or similar;
  - (c) “**you**”, where there is more than one of you, includes all of you and includes you if you are a corporation;
  - (d) “**third party**” means a person other than you and the plaintiff;
  - (e) “**unencumbered value**” means value free of mortgages, charges, liens or other encumbrances;
  - (f) “**your assets**” include—
    - (i) all your assets:
      - A. wherever located in the world;
      - B. whether or not they are in your name and whether they are solely or co-owned;
      - C. any asset which you have the power, directly or indirectly, to dispose of or deal with as if it were your own (you are to be regarded as having such power if a third party holds or controls the asset in accordance with your direct or indirect instructions); and

- (ii) all property (as defined in the *Corporations Act*) whether real or personal owned or controlled by you or in which you have any legal or beneficial interest.
- (g) If you are ordered to do something, you must do it by yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions.
- (h) If you are ordered not to do something, you must not do it yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions or with your encouragement or in any other way.

### **Disclosure Orders**

- 6. Except to the extent that a claim of privilege against self-incrimination or civil penalty privilege is made:
  - (a) at or before the further hearing on the Return Date, to the best of your ability inform the plaintiff in writing of all your assets world wide, giving their value, location and details and the extent of your interest in the assets;
  - (b) within 10 working days after being served with this order, you must deliver or cause to be delivered to the plaintiff a full and detailed affidavit sworn setting out:
    - (i) an itemised inventory of your assets and liabilities;
    - (ii) the name and address of any bank, building society or other financial institution (both within Australia and outside Australia) at which there is an account in the name of or under your control, together with the number of such account, the name of such account and the balance of that account;
    - (iii) the name and address of any Digital Currency exchange at which there is an account in the name of or under your control, together with:
      - A. all relevant credentials and passwords for access to any Digital Currency held by you including but not limited to, the public and private access keys and/or seed, backup or recovery phrase for any software based or hardware based wallet and/or storage device;

- B. all authentication devices required to facilitate access, operation or control of any Digital Currency held, including but not limited to all relevant credentials and passwords for access to the authentication devices or systems, including email, SMS or mobile apps, that facilitate access, operation or control of Digital Currency; and
  - C. any hard wallet device containing Digital Currency held or controlled by you together with that device's access code;
- (iv) the name and address of any person or persons indebted to you and the amount of the indebtedness;
  - (v) an itemised inventory of any and all property (as defined in the *Corporations Act*) whether real or personal owned or controlled by you or in which you have any legal or beneficial interest;
  - (vi) in respect of any of your property (as defined in the *Corporations Act*) which has been given as security for any debt or liability, the details of that property and the nature of the security and the debt or liability so incurred;
  - (vii) the sources and amount of any income, wages, earnings or other payments:
    - A. received in the 18 months preceding the date on which this order is made; and
    - B. expected to be received in the 12 months following the date on which this order is made.

### **Objection to Compliance with Disclosure Orders**

7. If you wish to object to complying with Order 6 on the grounds that some or all of the information required to be disclosed may tend to prove that you:
- (a) have committed an offence against or arising under an Australian law or a law of a foreign country; or
  - (b) are liable to a civil penalty;
- you must:
- (c) prepare, file and serve on the plaintiff an affidavit disclosing so much of the information required to be disclosed by that order to which no objection is taken;



- (d) prepare an affidavit containing so much of the information required to be disclosed to which objection is taken and deliver it to the Court in a sealed envelope; and
- (e) prepare, file and serve on the plaintiff a separate affidavit setting out the basis of the objection.

**Travel Restraint Orders**

- 8. Subject to further order, for a period of 6 months from the date thereof, you are restrained from leaving or attempting to leave Australia.
- 9. Within 24 hours of service, you must deliver up to the Registry of the Court:
  - (a) all passports in your name which are in your possession; and
  - (b) any airline tickets for any travel made for the twelve (12) month period commencing from the date of these orders;such documents to be held by the Registry until further order.

## **Schedule A**

### **AFFIDAVITS RELIED ON**

Affidavit of Evan Rhys Bradshaw affirmed on 16 June 2021.

### **NAME AND ADDRESS OF PLAINTIFF'S LAWYERS**

Nathalie Pietsch  
Litigation Counsel – Chief Legal Office  
Australian Securities and Investments Commission  
Level 7, 120 Collins Street, Melbourne, 3000  
nathalie.pietsch@asic.gov.au

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

## ORDERS

VID 319 of 2021

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

**AND:**                 **REMEDY HOUSING PTY LTD (ACN 637 023 851)**  
First Defendant

**BRENT LINDSAY SMITH**  
Second Defendant

**MAHMOUD KHODR (and another named in the Schedule)**  
Third Defendant

**ORDER MADE BY: MOSHINSKY J**

**DATE OF ORDER: 17 JUNE 2021**

### PENAL NOTICE

TO:    MAY-ANN SMITH

IF YOU:

- A.    **REFUSE OR NEGLECT TO DO ANY ACT WITHIN THE TIME SPECIFIED  
IN THIS ORDER FOR THE DOING OF THE ACT; OR**
- B.    **DISOBEY THE ORDER BY DOING AN ACT WHICH THE ORDER  
REQUIRES YOU TO ABSTAIN FROM DOING,**

**YOU WILL BE LIABLE TO IMPRISONMENT, SEQUESTRATION OF PROPERTY  
OR OTHER PUNISHMENT.**

**ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING  
WHICH HELPS OR PERMITS YOU TO BREACH THE TERMS OF THIS ORDER  
MAY BE SIMILARLY PUNISHED.**

TO:    MAY-ANN SMITH

This is a '*freezing order*' made against you on 17 June 2021 by Justice Moshinsky at a hearing without notice to you after the Court read the affidavit listed in **Schedule A** to this order.

## THE COURT ORDERS THAT:

### Introduction

1. The application for this order is made returnable immediately.
2. The time for service of the application, supporting affidavit and originating process is abridged and service is to be effected by 4.00 pm on 22 June 2021 or as soon as practicable thereafter.
3. Subject to the next paragraph, this order has effect up to and including 4.00 pm on 24 June 2021 (the **Return Date**). On the Return Date at 9.30 am there will be a further hearing in respect of this order before the Duty Judge.
4. Anyone served with or notified of this order, including you, may apply to the Court at any time to vary or discharge this order or so much of it as affects the person served or notified.
5. In this order—
  - (a) “**plaintiff**”, if there is more than one plaintiff, includes all the plaintiffs;
  - (b) “**digital currency**” means *property* as defined in s 9 of the *Corporations Act 2001* (Cth) that is digital currency, virtual currency, cryptocurrency or similar;
  - (c) “**you**”, where there is more than one of you, includes all of you and includes you if you are a corporation;
  - (d) “**third party**” means a person other than you and the plaintiff;
  - (e) “**unencumbered value**” means value free of mortgages, charges, liens or other encumbrances;
  - (f) “**your assets**” include—
    - (i) all your assets:
      - A. wherever located in the world;
      - B. whether or not they are in your name and whether they are solely or co-owned;
      - C. any asset which you have the power, directly or indirectly, to dispose of or deal with as if it were your own (you are to be regarded as having such power if a third party holds or controls the asset in accordance with your direct or indirect instructions); and

- (ii) all property (as defined in the *Corporations Act*) whether real or personal owned or controlled by you or in which you have any legal or beneficial interest.
- (g) If you are ordered to do something, you must do it by yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions.
- (h) If you are ordered not to do something, you must not do it yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions or with your encouragement or in any other way.

### **Freezing of Assets**

- 6. You must not:
  - (a) move or in any way dispose of, deal with or diminish the value of any of your assets; or
  - (b) move or transfer any assets from Australia.
- 7. Order 6 does not prohibit you from, before any further hearing of this matter:
  - (a) paying up to \$1,000 for ordinary living or business expenses; and
  - (b) paying up to \$10,000 on reasonable legal expenses.

### **Disclosure Orders**

- 8. Except to the extent that a claim of privilege against self-incrimination or civil penalty privilege is made:
  - (a) at or before the further hearing on the Return Date, to the best of your ability inform the plaintiff in writing of all your assets world wide, giving their value, location and details and the extent of your interest in the assets;
  - (b) within 10 working days after being served with this order, you must deliver or cause to be delivered to the plaintiff a full and detailed affidavit sworn setting out:
    - (i) an itemised inventory of your assets and liabilities;
    - (ii) the name and address of any bank, building society or other financial institution (both within Australia and outside Australia) at which there is an account in the name of or under your control, together with the

- number of such account, the name of such account and the balance of that account;
- (iii) the name and address of any Digital Currency exchange at which there is an account in the name of or under your control, together with:
    - A. all relevant credentials and passwords for access to any Digital Currency held by you including but not limited to, the public and private access keys and/or seed, backup or recovery phrase for any software based or hardware based wallet and/or storage device;
    - B. all authentication devices required to facilitate access, operation or control of any Digital Currency held, including but not limited to all relevant credentials and passwords for access to the authentication devices or systems, including email, SMS or mobile apps, that facilitate access, operation or control of Digital Currency; and
    - C. any hard wallet device containing Digital Currency held or controlled by you together with that device's access code;
  - (iv) the name and address of any person or persons indebted to you and the amount of the indebtedness;
  - (v) an itemised inventory of any and all property (as defined in the *Corporations Act*) whether real or personal owned or controlled by you or in which you have any legal or beneficial interest;
  - (vi) in respect of any of your property (as defined in the *Corporations Act*) which has been given as security for any debt or liability, the details of that property and the nature of the security and the debt or liability so incurred;
  - (vii) the sources and amount of any income, wages, earnings or other payments:
    - A. received in the 18 months preceding the date on which this order is made; and
    - B. expected to be received in the 12 months following the date on which this order is made.

## **Objection to Compliance with Disclosure Orders**

9. If you wish to object to complying with Order 8 on the grounds that some or all of the information required to be disclosed may tend to prove that you:
- (a) have committed an offence against or arising under an Australian law or a law of a foreign country; or
  - (b) are liable to a civil penalty;
- you must:
- (c) prepare, file and serve on the plaintiff an affidavit disclosing so much of the information required to be disclosed by that order to which no objection is taken;
  - (d) prepare an affidavit containing so much of the information required to be disclosed to which objection is taken and deliver it to the Court in a sealed envelope; and
  - (e) prepare, file and serve on the plaintiff a separate affidavit setting out the basis of the objection.

## **Schedule A**

### **AFFIDAVITS RELIED ON**

Affidavit of Evan Rhys Bradshaw affirmed on 16 June 2021.

### **NAME AND ADDRESS OF PLAINTIFF'S LAWYERS**

Nathalie Pietsch  
Litigation Counsel – Chief Legal Office  
Australian Securities and Investments Commission  
Level 7, 120 Collins Street, Melbourne, 3000  
nathalie.pietsch@asic.gov.au

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



## ORDERS

VID 319 of 2021

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

**AND:**                **REMEDY HOUSING PTY LTD (ACN 637 023 851)**  
First Defendant

**BRENT LINDSAY SMITH**  
Second Defendant

**MAHMOUD KHODR (and another named in the Schedule)**  
Third Defendant

**ORDER MADE BY: MOSHINSKY J**

**DATE OF ORDER: 17 JUNE 2021**

### PENAL NOTICE

TO: JULIANA KHODR

**IF YOU:**

- A. REFUSE OR NEGLECT TO DO ANY ACT WITHIN THE TIME SPECIFIED  
IN THIS ORDER FOR THE DOING OF THE ACT; OR**
- B. DISOBEY THE ORDER BY DOING AN ACT WHICH THE ORDER  
REQUIRES YOU TO ABSTAIN FROM DOING,**

**YOU WILL BE LIABLE TO IMPRISONMENT, SEQUESTRATION OF PROPERTY  
OR OTHER PUNISHMENT.**

**ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING  
WHICH HELPS OR PERMITS YOU TO BREACH THE TERMS OF THIS ORDER  
MAY BE SIMILARLY PUNISHED.**

TO: JULIANA KHODR

This is a '*freezing order*' made against you on 17 June 2021 by Justice Moshinsky at a hearing without notice to you after the Court read the affidavit listed in **Schedule A** to this order.

## THE COURT ORDERS THAT:

### Introduction

1. The application for this order is made returnable immediately.
2. The time for service of the application, supporting affidavit and originating process is abridged and service is to be effected by 4.00 pm on 22 June 2021 or as soon as practicable thereafter.
3. Subject to the next paragraph, this order has effect up to and including 4.00 pm on 24 June 2021 (the **Return Date**). On the Return Date at 9.30 am there will be a further hearing in respect of this order before the Duty Judge.
4. Anyone served with or notified of this order, including you, may apply to the Court at any time to vary or discharge this order or so much of it as affects the person served or notified.
5. In this order—
  - (a) “**plaintiff**”, if there is more than one plaintiff, includes all the plaintiffs;
  - (b) “**digital currency**” means *property* as defined in s 9 of the *Corporations Act 2001* (Cth) that is digital currency, virtual currency, cryptocurrency or similar;
  - (c) “**you**”, where there is more than one of you, includes all of you and includes you if you are a corporation;
  - (d) “**third party**” means a person other than you and the plaintiff;
  - (e) “**unencumbered value**” means value free of mortgages, charges, liens or other encumbrances;
  - (f) “**your assets**” include—
    - (i) all your assets:
      - A. wherever located in the world;
      - B. whether or not they are in your name and whether they are solely or co-owned;
      - C. any asset which you have the power, directly or indirectly, to dispose of or deal with as if it were your own (you are to be regarded as having such power if a third party holds or controls the asset in accordance with your direct or indirect instructions); and

- (ii) all property (as defined in the *Corporations Act*) whether real or personal owned or controlled by you or in which you have any legal or beneficial interest.
- (g) If you are ordered to do something, you must do it by yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions.
- (h) If you are ordered not to do something, you must not do it yourself or through directors, officers, partners, employees, agents or others acting on your behalf or on your instructions or with your encouragement or in any other way.

### **Freezing of Assets**

- 6. You must not:
  - (a) move or in any way dispose of, deal with or diminish the value of any of your assets; or
  - (b) move or transfer any assets from Australia.
- 7. Order 6 does not prohibit you from, before any further hearing of this matter:
  - (a) paying up to \$1,000 for ordinary living or business expenses; and
  - (b) paying up to \$10,000 on reasonable legal expenses.

### **Disclosure Orders**

- 8. Except to the extent that a claim of privilege against self-incrimination or civil penalty privilege is made:
  - (a) at or before the further hearing on the Return Date, to the best of your ability inform the plaintiff in writing of all your assets world wide, giving their value, location and details and the extent of your interest in the assets;
  - (b) within 10 working days after being served with this order, you must deliver or cause to be delivered to the plaintiff a full and detailed affidavit sworn setting out:
    - (i) an itemised inventory of your assets and liabilities;
    - (ii) the name and address of any bank, building society or other financial institution (both within Australia and outside Australia) at which there is an account in the name of or under your control, together with the

- number of such account, the name of such account and the balance of that account;
- (iii) the name and address of any Digital Currency exchange at which there is an account in the name of or under your control, together with:
    - A. all relevant credentials and passwords for access to any Digital Currency held by you including but not limited to, the public and private access keys and/or seed, backup or recovery phrase for any software based or hardware based wallet and/or storage device;
    - B. all authentication devices required to facilitate access, operation or control of any Digital Currency held, including but not limited to all relevant credentials and passwords for access to the authentication devices or systems, including email, SMS or mobile apps, that facilitate access, operation or control of Digital Currency; and
    - C. any hard wallet device containing Digital Currency held or controlled by you together with that device's access code;
  - (iv) the name and address of any person or persons indebted to you and the amount of the indebtedness;
  - (v) an itemised inventory of any and all property (as defined in the *Corporations Act*) whether real or personal owned or controlled by you or in which you have any legal or beneficial interest;
  - (vi) in respect of any of your property (as defined in the *Corporations Act*) which has been given as security for any debt or liability, the details of that property and the nature of the security and the debt or liability so incurred;
  - (vii) the sources and amount of any income, wages, earnings or other payments:
    - A. received in the 18 months preceding the date on which this order is made; and
    - B. expected to be received in the 12 months following the date on which this order is made.

## **Objection to Compliance with Disclosure Orders**

9. If you wish to object to complying with Order 8 on the grounds that some or all of the information required to be disclosed may tend to prove that you:
- (a) have committed an offence against or arising under an Australian law or a law of a foreign country; or
  - (b) are liable to a civil penalty;
- you must:
- (c) prepare, file and serve on the plaintiff an affidavit disclosing so much of the information required to be disclosed by that order to which no objection is taken;
  - (d) prepare an affidavit containing so much of the information required to be disclosed to which objection is taken and deliver it to the Court in a sealed envelope; and
  - (e) prepare, file and serve on the plaintiff a separate affidavit setting out the basis of the objection.

## **Schedule A**

### **AFFIDAVITS RELIED ON**

Affidavit of Evan Rhys Bradshaw affirmed on 16 June 2021.

### **NAME AND ADDRESS OF PLAINTIFF'S LAWYERS**

Nathalie Pietsch  
Litigation Counsel – Chief Legal Office  
Australian Securities and Investments Commission  
Level 7, 120 Collins Street, Melbourne, 3000  
nathalie.pietsch@asic.gov.au

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

## REASONS FOR JUDGMENT

**MOSHINSKY J:**

### Introduction

1 This is an ex parte application by the plaintiff, the Australian Securities and Investments Commission (**ASIC**), for freezing orders, disclosure orders and travel ban orders.

2 The proceeding was commenced by ASIC by originating application filed today. The defendants to the proceeding are:

- (a) Remedy Housing Pty Ltd (**Remedy Housing**);
- (b) Brent Lindsay Smith (**Mr Smith**);
- (c) Mahmoud Khodr (**Mr Khodr**); and
- (d) Trevor Leota (**Mr Leota**).

3 In the substantive proceeding, ASIC seeks a series of orders including a permanent injunction to prevent the conduct of a business which it says is being conducted contrary to the provisions of the *Corporations Act 2001* (Cth), the *Australian Securities and Investments Commission Act 2001* (Cth) (the **ASIC Act**) and the *National Consumer Credit Protection Act 2009* (Cth).

4 By interlocutory process filed today, ASIC seeks certain interlocutory orders against the four defendants and also two other individuals. The two additional individuals are:

- (a) May-Ann Smith (**Ms Smith**); and
- (b) Juliana Khodr (**Ms Khodr**).

5 The relief sought in the interlocutory process falls into two categories. The first category comprises relief that ASIC seeks today on an ex parte basis – that is, freezing orders, disclosure orders and travel ban orders. The second category comprises interlocutory relief that ASIC will seek on a subsequent occasion on an inter partes basis. That part of the interlocutory process can be put to one side for present purposes.

6 In relation to freezing orders, disclosure orders and travel ban orders, ASIC does not seek all three types of orders against each of the defendants and the two additional individuals. The orders that ASIC seeks in relation to each defendant and the two additional individuals can be summarised as follows:

- (a) Remedy Housing – freezing orders and disclosure orders;
- (b) Mr Smith – all three types of orders;
- (c) Mr Khodr – all three types of orders;
- (d) Mr Leota – disclosure orders and travel ban orders;
- (e) Ms Smith – freezing orders and disclosure orders; and
- (f) Ms Khodr – freezing orders and disclosure orders.

7 At this stage, ASIC seeks orders that will continue for a period of one week, that is, until the end of Thursday, 24 June 2021, with the matter to return to Court on the morning of that day.

8 The evidence currently before the Court indicates that:

- (a) Since November 2020, Remedy Housing and Messrs Smith, Khodr and Leota have been conducting a business branded “Remedy Housing”. Advertised principally via the internet, Remedy Housing offers consumers an “interest free mortgage” without any credit checks upon payment of a \$10,000 deposit. Neither Remedy Housing nor those operating it hold an Australian Financial Services Licence (AFSL) or an Australian Credit Licence (ACL).
- (b) Since 7 November 2019, 123 individuals have deposited \$1,484,250 into Remedy Housing’s bank account. So far as ASIC can tell, these depositors have not obtained any interest in real property or any other return.
- (c) A significant portion of those funds have been disbursed to the individual defendants. For example:
  - (i) an amount over \$775,000 has been transferred to Mr Smith’s and Mr Khodr’s personal bank accounts; and
  - (ii) at least \$130,000 has been transferred to overseas bank accounts and invested in cryptocurrency exchanges.

9 ASIC’s interlocutory application is supported by Evan Bradshaw’s affidavit affirmed on 16 June 2021 (the **Bradshaw affidavit**).

### **Form of order and jurisdiction**

10 ASIC seeks ex parte orders pursuant to s 1323(1)(a) of the *Corporations Act*.



11 The orders sought are similar, but not identical, to the standard form of freezing order granted pursuant to Div 7.4 of the *Federal Court Rules 2011*. Accordingly, the orders provide the defendants and the additional individuals with certain protections pending the return of the matter, including access to funds for living and legal expenses, as well as a mechanism to object to disclosure on the grounds of self-incrimination.

12 As noted above, the orders are sought under s 1323(1)(a), which provides that the Court may make certain orders where (relevantly):

- (a) an investigation is being carried out under the ASIC Act or the *Corporations Act* in relation to an act or omission by a person (the “relevant person”), being an act or omission that constitutes or may constitute a contravention of the *Corporations Act*; and
- (b) the Court considers it necessary or desirable to do so for the purpose of protecting the interests of a person (an “aggrieved person”) to whom the relevant person may 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).

13 Under s 1323(3), the Court may grant the same orders on an interim basis. Under s 1323(4), 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.

14 With respect to this jurisdiction, the following is generally accepted (see *Australian Securities and Investments Commission v Carey (No 3)* (2006) 57 ACSR 307 at [21]-[27] per French J; *Re Courtenay House Capital Trading Group Pty Ltd (in liq)* [2018] NSWSC 1918 at [11] per Black J):

- (a) The liabilities, actual or potential, to which the section refers, may arise from a contravention of the *Corporations Act* or under the general law.
- (b) There are a variety of ways in which the interests of persons, to whom liabilities may be owed, can be protected by orders made under the section. 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.
- (c) Orders can be made before liability is established and indeed before the evidence necessary to establish liability has been collected.

(d) The circumstances in which the Court may make orders under s 1323(1) are wide as indicated by the words “necessary or desirable ... for the purpose of protecting the interests of a person ...”. It follows that there is no requirement on the part of an applicant to demonstrate a prima facie case of liability on the part of the relevant person or that the person’s assets have been or are about to be dissipated.

15 An issue arises regarding the availability of freezing type orders under s 1323(1). In this regard, none of the powers conferred upon the Court under s 1323(1)(d)-(k) expressly include the power to restrain the disposal of assets as ASIC seeks here. This raises the issue whether, if s 1323(1) is not expressed in this way, s 23 of the *Federal Court of Australia Act 1976* (Cth) may be deployed to achieve the same end: see *Australian Securities and Investments Commission v Wiggins* (1998) 90 FCR 314 (*Wiggins*) at 319 per Finkelstein J; *Australian Securities and Investments Commission v Carey (No 14)* (2007) 158 FCR 92 (*ASIC v Carey*) at [29]-[30] per French J; and *Australian Securities and Investments Commission v Banovec (No 2)* (2007) 214 FLR 33 at [4]-[37] per White J.

16 However, any issues on this front are resolved in the present case for the following reasons:

(a) I consider that jurisdiction exists to grant such orders on an interlocutory basis under s 23 of the *Federal Court of Australia Act* in aid of the Court’s jurisdiction under s 1323 of the Act: see *ASIC v Carey* at [29] per French J. In this case, as envisaged by both its interlocutory process and its originating application, ASIC might seek orders under s 1323 once the assets of the defendants and the additional individuals have been ascertained.

(b) Even if the exercise of jurisdiction under Div 7.4 of the *Federal Court Rules* were required, there is evidence that indicates that a relevant dissipation of assets is occurring in this instance: see the Bradshaw affidavit at [56]-[72] and [78]-[106]. That dissipation will frustrate any orders ultimately made under either s 1323 or otherwise. However, so far as this jurisdiction is relevant, I note that ASIC does not proffer any undertaking as to damages.

17 The orders sought restraining the individual defendants from leaving Australia are supported by s 1323(1)(j) and (k).

## Background facts

18 ASIC's investigation has progressed as follows:

- (a) In October 2020, ASIC commenced investigating Remedy Housing, Mr Smith and Mr Khodr under the *National Consumer Credit Protection Act*.
- (b) On 16 December 2020, the investigation was expanded to include an investigation pursuant to s 13 of the ASIC Act into suspected contraventions by Remedy Housing, Mr Smith and Mr Khodr of various provisions of the ASIC Act, the *National Consumer Credit Protection Act* and the *Corporations Act*. The investigation was further expanded on 15 January 2021 to include suspected contraventions of ss 81 and 82 of the *Crimes Act 1958* (Cth).
- (c) On 1 March 2021, the investigation was further expanded to include an investigation pursuant to s 13 of the ASIC Act into suspected contraventions by Remedy Housing, Mr Smith, Mr Khodr and Mr Leota of s 12DC of the ASIC Act and s 911A of the *Corporations Act*.

19 The steps undertaken pursuant to this investigation, and what those steps have revealed, are detailed in the Bradshaw affidavit. ASIC's investigation remains ongoing with a view to:

- (a) issuing further statutory notices for documents and analysing the information obtained therefrom;
- (b) interviewing individuals, including Remedy Housing's customers as well as those involved in its business; and
- (c) obtaining and analysing information regarding the defendants' crypto assets.

20 The Bradshaw affidavit outlines what is known and unknown regarding Remedy Housing's business. Operating from both a Facebook page and a stand-alone website, Remedy Housing has been offering "interest free mortgages".

21 Although certain things remain unknown at this stage, it appears from the material before the Court that Remedy Housing's customers are induced to expect a significant delay between their payment to Remedy Housing and some form of return. ASIC contends that this has likely facilitated those involved dealing with the deposits as they please.

22 Remedy Housing's bank statements evidence approximately 123 consumers who have deposited funds in its account. These people are, for the purposes of s 1323, the aggrieved

persons. Although not presently parties to this proceeding, nor even aware of ASIC's investigations, the protection of these individuals' interests is the very purpose of the orders ASIC now seeks.

23 As for those involved, being the "relevant persons" under s 1323:

- (a) Mr Smith is Remedy Housing's director and 50 per cent shareholder;
- (b) Mr Khodr is Remedy Housing's former director, current secretary and 50 per cent shareholder;
- (c) Mr Leota promotes Remedy Housing's business and is described on its websites as its "co-founder";
- (d) Ms Smith is Mr Smith's wife. There is no evidence she is directly involved in the business. However, her assets have been comingled with money from Remedy Housing's bank account; and
- (e) Ms Khodr is Mr Khodr's wife. There is no evidence she is directly involved in the business. However, her assets have been comingled with money from Remedy Housing's bank account.

24 Noting none of the defendants possesses an AFSL or ACL, ASIC suspects that Remedy Housing, and individuals associated with Remedy Housing, may have contravened, and may be continuing to contravene, the following provisions:

- (a) with respect to financial services:
  - (i) s 911A of the *Corporations Act*, prohibiting persons from carrying on a financial services business without a financial services licence;
  - (ii) s 12DA of the ASIC Act, prohibiting misleading or deceptive conduct in relation to financial services;
  - (iii) s 12DB of the ASIC Act, prohibiting false or misleading representations in relation to financial services; and
  - (iv) s 12DC of the ASIC Act, prohibiting false or misleading representations in relation to financial products that involve interests in land; and
- (b) with respect to credit activities:
  - (i) s 29 of the *National Consumer Credit Protection Act*, prohibiting persons from engaging in credit activities without an Australian credit licence; and

- (ii) s 160D of the *National Consumer Credit Protection Act*, prohibiting false or materially misleading information in the course of engaging in a credit activity.

25 Against this background, there is material before the Court that suggests that the relevant persons might become liable to the aggrieved persons.

26 ASIC has gathered and analysed significant information relating to the transfer of money from Remedy Housing's bank account. This is set out in the Bradshaw affidavit.

27 ASIC's investigations have also revealed various international transfers and cryptocurrency dealings as detailed in the Bradshaw affidavit.

28 On the basis of the above, ASIC submits, and I accept for present purposes, that there are serious concerns that:

- (a) the \$1,484,250 in deposits from 123 customers is no longer available from Remedy Housing; and
- (b) Mr Smith and Mr Khodr have either:
  - (i) intermingled those funds with their own as well as that of their wives; and
  - (ii) taken additional steps to put beyond those funds beyond reach.

### **Freezing orders and disclosure orders**

29 I am satisfied that, on the basis of the material currently before the Court, these matters warrant freezing orders and disclosure orders as sought today by ASIC. In this regard:

- (a) the freezing orders will prevent the further dissipation of assets, preventing the frustration of any further relief ASIC might seek under s 1323(1); and
- (b) the disclosure orders will reveal the details and location of assets, allowing ASIC to seek more specific relief under s 1323(1).

30 ASIC accepts that, so far as asset dealings are concerned, the evidence against Mr Leota is more limited. ASIC does not presently seek freezing orders against him but maintains its application for disclosure orders.

### **Travel ban orders**

31 ASIC seeks orders restraining Mr Khodr, Mr Smith and Mr Leota from leaving Australia, pursuant to s 1323(1)(j) and (k) of the *Corporations Act*. Details regarding their citizenship are set out in the Bradshaw affidavit.

32 It is established that great caution is required in restricting a person’s freedom of movement: see *Wiggins* at 320 per Finkelstein J. In my view, on the basis of the material presently before the Court, the following matters warrant the making of travel ban orders against Mr Khodr, Mr Smith and Mr Leota (see *Australian Securities and Investments Commission v Johnston* [2009] FCA 1276 at [10]-[12] per Siopis J):

- (a) ASIC requires Mr Kohdr’s, Mr Smith’s and Mr Leota’s continued presence in Australia to:
  - (i) ensure compliance with ASIC’s prospective freezing orders and/or disclosure orders sought in the present interlocutory application; and
  - (ii) assist with ASIC’s ongoing investigation.
- (b) The potential allegations against each person are serious, extending as high as taking money under a deliberately false pretence. They are matters from which a person might seek to abscond.
- (c) All three might have the capacity to settle overseas: Mr Khodr has traded heavily in cryptocurrency and transferred significant sums overseas; Mr Smith and Mr Leota may travel to New Zealand without exemption. They presumably have ties there.

33 These orders should be expressed to be “subject to further order”, to make clear that they can be reviewed when the matters comes back on an inter partes basis.

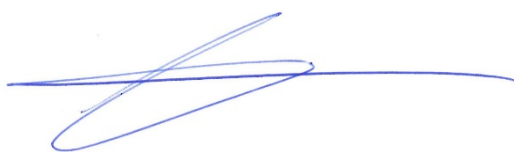
34 ASIC does not seek travel bans against Ms Smith and Ms Khodr.

### **Conclusion**

35 Accordingly, I will make orders substantially in the terms sought by ASIC.

I certify that the preceding thirty-five (35) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Moshinsky.

Associate:



Dated: 21 June 2021

## **SCHEDULE OF PARTIES**

**VID 319 of 2021**

### **Defendants**

Fourth Defendant:                      TREVOR LEOTA