



Federal Court of Australia

District Registry: Western Australia

Division: General

No: WAD276/2021

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

AND: **MICHAEL JEFFERSON DUNJEY**
First Defendant

**ASCENT INVESTMENT AND COACHING PTY LTD ACN
127 668 553**
Second Defendant

WESTPAC BANKING CORPORATION ACN 007 457 141
Intervener

GD PROJECT LIVING PTY LTD ACN 624 182 083
Interested Person

SEAFLOWER PTY LTD
Interested Person

JOHN GERVASE SHANAHAN
Interested Person

ORDER

JUDGE: **JUSTICE FEUTRILL**

DATE OF ORDER: 21 April 2023

WHERE MADE: Perth

THE COURT NOTES THAT:

For the purposes of these orders, the **Scheme** means the managed investment scheme, with at least the following features, operated by the second defendant between, at least, 1 July 2012 and 13 December 2021:

A.

B.



- C.
- D.
- E.
- F.
- G.
- H.
- I.

THE COURT DECLARES THAT:

- 1.
- 2.

THE COURT ORDERS THAT:

- 1. The second defendant's interlocutory application dated 25 May 2022 for an order that the second defendant be wound up pursuant to s 461(1)(a) of the *Corporations Act* is dismissed with no order as to the costs of that application.
- 2. Pursuant to s 461(1)(k) of the *Corporations Act*, the second defendant is wound up on just and equitable grounds.
- 3. Pursuant to s 472(1) of the *Corporations Act*, **Mr Matthew James Donnelly** and **Mr Sean Holmes** of **Deloitte** Financial Advisory Pty Ltd, are appointed joint and several liquidators to the second defendant (**Liquidators**).
- 4. Pursuant to s 601EE(2) of the *Corporations Act*, the Scheme is to be wound up.
- 5. The Liquidators are to be responsible for the winding up of the Scheme.
- 6. The second defendant is to pay the plaintiff's cost of the proceedings and such costs as taxed or agreed be reimbursed out of the property of the second defendant, in accordance with s 466(2) of the *Corporations Act*.
- 7. Paragraph 5 of the orders made on 13 December 2021 is varied by inserting the following paragraph before existing sub-paragraph 5(a):



- (aa) Mr John Shanahan (**Trustee**), in his capacity as the Trustee in Bankruptcy of the estate of the first defendant, from preserving any property (as defined in the *Corporations Act*) of the first defendant and:
- (i) realising any such property in accordance with the applicable powers under the *Bankruptcy Act 1966* (Cth); and
 - (ii) paying from the proceeds of sale of any such property:
 - (A) any valid and subsisting secured claims against the such property; and
 - (B) the Trustee's reasonable remuneration, costs and expenses relating to the preservation and realisation of such property, with any remaining proceeds of sale, following the payments referred to above at paragraphs 5(a)(ii)(A) and 5(a)(ii)(B), to be paid into an interest bearing bank account held jointly by the Liquidators and the Trustee requiring the dual authorisation of the Trustee and any one of the Liquidators to effect a withdrawal of any funds,
 - (iii) exercising the rights attached to any share held by the first defendant for the purpose of appointing Mr Donnelly and Mr Holmes of Deloitte as liquidators of the company in which that share is held.
8. Pursuant to s 57 of the *Federal Court of Australia Act 1976* (Cth), Mr Donnelly and Mr Holmes are appointed, jointly and severally, as receivers and managers (**Receivers**) over the property, assets and undertakings of the Ascent Trust (formerly the Dunjey Family Trust) (**Trust**).
9. The need for the Receivers to file a guarantee under rr 14.21 and 14.22 of the *Federal Court Rules 2011* (Cth) is dispensed with.
10. The Receivers are authorised to take possession of, preserve, maintain and sell all property, assets and undertakings of the Trust (**Trust Assets**).
11. The Receivers are to have the power:
- (a) to do all things (including, but not limited to, the signing of any documents) for the realisation of the Trust Assets;



- (b) provided by s 420 of the *Corporations Act* as if the reference therein to 'the corporation' were to 'the Trust' together with the powers that a liquidator has in respect of property of a company (in its role as legal owner and trustee) pursuant to s 477(2) of the *Corporations Act*;
 - (c) without limiting the powers granted pursuant to paragraphs 11(a) and (b), necessary to attend to the following identified tasks:
 - (i) the identification of the Trust Assets and the trust liabilities;
 - (ii) the identification of Trust creditors and distinguishing them from non-Trust creditors (if any);
 - (iii) the ascertaining of the state of the accounts between the beneficiaries and the trustee;
 - (iv) the recovering of, or attempting to recover, the Trust Assets, including debts due to the Trust;
 - (v) the taking of possession of, collecting and protecting the Trust Assets;
 - (vi) the carrying on of any business of the Trust;
 - (vii) the realisation, or attempted realisation, of the Trust Assets;
 - (viii) the distribution of any proceeds of realisation to meet the claims of the creditors or persons whose have debts were incurred in relation of the Trust; and
 - (ix) any matter in the administration of the Trust which is ancillary to the above to the extent to which it had to be undertaken for the purposes of the identified tasks.
12. The Receivers are justified and would be acting properly in not distributing any Trust Assets, or any part of them, to or for the benefit of any of the beneficiaries of the Trust until further direction or order of the Court.
13. The question of payment of the remuneration, costs and expenses of the Liquidators and Receivers and of the Trustee for assisting them in the discharge if their duties is reserved and is to be the subject of further order of the Court and, in the meantime:
- (a) the remuneration, costs and expenses incurred by the Receivers are to be paid from the Trust Assets;



- (b) the remuneration, costs and expenses of the Liquidators as liquidators of the Scheme are to be paid out of the assets of the Scheme; and
 - (c) the remuneration, costs and expenses of the Liquidators as liquidators of the second defendant are to be paid out of the assets of the second defendant.
14. Pursuant to section 37AI of the *Federal Court Act*, until 4:15pm on the date fixed for the hearing referred to in paragraph 19 of these orders or any other date to which that hearing may be adjourned, or further or other order, paragraphs A – I of the notes to these orders, paragraphs 1 and 2 of the declarations made under these orders and the reasons for decision in respect of these orders are not to be published to anyone other than to the Court, the parties to these proceedings and the Liquidators and Receivers, the Trustee, Westpac Banking Corporation, Seaflower Pty Ltd and GD Project Living Pty Ltd (collectively, **interested non-parties**) and the parties' and interested non-parties' legal representatives
 15. By 5 May 2023, the first defendant is to file and serve on the other parties to the proceedings and the interested non-parties an outline of submissions in support of his application for a suppression and non-publication order together with a minute of the proposed order and any affidavit(s) in support of that application.
 16. By 12 May 2023, any interested news publisher which wishes to appear and be heard on the first defendant's application is to file a notice to that effect and serve that notice on each party and each interested non-party.
 17. By 19 May 2023, the plaintiff, second defendant, interested non-parties and any interested news publisher are to file and serve on each party, each interested non-party and any interested news publisher any submissions and any affidavit(s) in support of those submissions.
 18. By 19 May 2023, the parties and the interested non-parties are to file and serve on each party and each interested non-party any minute of agreed proposed orders, or competing minute of proposed orders, addressing the matters the subject of paragraphs 167 to 171 of the reasons for decision together with any submissions and affidavit(s) in support of the relevant minute of proposed orders.



19. The question of the Receivers' and Liquidators' costs and the first defendant's application for a suppression and non-publication order is listed for hearing on a date to be fixed.

Date that entry is stamped: 21 April 2023

Sia Lagos
Registrar