



Federal Court of Australia

District Registry: Victoria

Division: General

No: VID558/2024

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION

Plaintiff

UNITED GLOBAL CAPITAL PTY LTD and another named in the schedule

Defendant

ORDER

JUDGE: JUSTICE O'CALLAGHAN

DATE OF ORDER: 20 June 2024

WHERE MADE: Melbourne

PENAL NOTICE

TO: UNITED GLOBAL CAPITAL PTY LTD (ACN 154 158 273) AND GLOBAL CAPITAL PROPERTY FUND LIMITED (ACN 635 565 070)

IF YOU (BEING THE PERSON BOUND BY THIS ORDER):

- (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 NOT TO DO,**

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.



THE COURT ORDERS THAT:

Ex parte/short service orders

1. ASIC have leave to file in Court:
 - a. Originating Process dated 20 June 2024;
 - b. Affidavit of Andrew Anthony Kenneth Smith affirmed 20 June 2024;
 - c. Confidential affidavit of Andrew Anthony Kenneth Smith affirmed 20 June 2024.
2. Service of the Originating Process and the supporting affidavits is dispensed with for the purpose of today's hearing.
3. The application for interim relief contained in the plaintiff's Originating Process are made returnable *instanter*.
4. The time for service on the Defendants of the following documents be abridged to 4:00 pm on 21 June 2024:
 - a. Originating Process dated 20 June 2024;
 - b. Affidavit of Andrew Anthony Kenneth Smith affirmed 20 June 2024;
 - c. Confidential affidavit of Andrew Anthony Kenneth Smith affirmed 20 June 2024; and
 - d. ASIC's written submissions dated 20 June 2024.
5. The plaintiff serve the transcript of today's hearing as soon as reasonably practicable after it is made available to the plaintiff.
6. The plaintiff's Originating Process is made returnable on 25 June 2024 at 10.15am before O'Callaghan J.
7. Anyone served with or notified of the orders may apply to the Court to vary or discharge them, or so much of them, as affects the person served and notified, on the giving of reasonable notice.



Non-Publication Orders

8. Pursuant to sections 37AF(1)(a), 37AF(1)(b) and 37AG(1)(a) of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**), the publication or disclosure of:
- a. the making of this application by the Plaintiff;
 - b. any orders obtained by the Plaintiff ex-parte;
 - c. this Originating Process; and
 - d. the affidavit of Andrew Anthony Kenneth Smith affirmed on 20 June 2024 and headed 'First Affidavit',

is prohibited until the Plaintiff notifies the Court that it has effected service of these documents on the Defendants, except to enable the Plaintiff to serve the Defendants or provide copies of the orders to the entities set out in paragraph 14 below for the purpose of enforcing the orders.

9. Pursuant to sections 37AF(1)(a) and (b) and 37AG(1)(a) of the FCA Act, in order to avoid prejudice to the proper administration of justice, the publication or disclosure of the confidential affidavit of Andrew Anthony Kenneth Smith affirmed on 20 June 2024 and headed 'Second Affidavit', and the written submissions of the Plaintiff in support of the ex-parte orders, is prohibited without the express consent of all parties or by order of the Court, except to the Court, the parties, their legal representatives and the parties' external litigation service providers (including process servers).

Disclosure Orders

10. Except to the extent that a claim of privilege against self-incrimination or civil penalty privilege is made, each of the First and Second Defendants, deliver or cause to be delivered to the Plaintiff within seven days or such other time as the Court may order an affidavit deposing in detail to the following matters:
- a. the name and address of any bank, building society or other financial 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 account, the name of such account and the balance of that account;



- b. the name and address of any person indebted to the relevant Defendant and the amount and nature of the indebtedness;
 - c. an itemised inventory of all property owned or controlled by the relevant Defendant or in which that Defendant has any legal or beneficial interest giving each item's value, location and the extent of the relevant Defendant's interest in the property and the methodology used to value that property;
 - d. 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 nature and amount of the debt;
 - e. the sources and amount of any income, earnings or other payments received by the relevant Defendant in the last 12 months and expected to be received by the relevant Defendant in the next 12 months;
 - f. any sale or sales of any part of any property development project in which the relevant Defendant has invested, or advanced monies in respect of, or has an interest in for in the last 12 months, including the terms of the sales and how the sale proceeds have been distributed;
 - g. any proposed sales of any part of any property developments in which the relevant Defendant has invested, or advanced monies in respect of, or has an interest in, including the terms of the sales and how the proceeds of those sales are to be distributed.
11. If all of the persons who are able to comply with paragraph 10 above on behalf of the First or Second Defendant and with whom it has been able to communicate, wish to object to the First or Second Defendant complying with paragraph 10 on the grounds that some or all of the information required to be disclosed may tend to prove that they:
- a. have committed an offence against or arising under Australian law or a law of a foreign country; or
 - b. are liable to a civil penalty,



the First Defendant or Second Defendant must:

- c. disclose so much of the information required to be disclosed to which no objection is taken; and
- 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. file and serve on each other party a separate affidavit setting out the basis of the objection.

Freezing Orders

12. Pursuant to sections 1323(1) and (3) of the *Corporations Act 2001* (Cth) (**Corporations Act**) and section 23 of the FCA Act, until further order, the First and Second Defendants, by themselves and their servants, agents and employees or any other person on their behalf, must not:

- a. remove, or cause or permit to be removed from Australia any of their real or personal property, assets or interests in property of any kind, within or outside Australia including, by virtue of subsection 1323(2A) of the Corporations Act, any property held otherwise than as sole beneficial owner (**Property**), including, but not limited to, funds in bank accounts held by the First and Second Defendants;
- b. sell, charge, mortgage, encumber or otherwise deal with, dispose of and/or diminish the value of any of their Property;
- c. cause or permit to be sold, charged, mortgaged or otherwise dealt with, disposed of, or diminished in value, all or any of their Property;
- d. without limiting the terms of sub-paragraphs a to (c) above, incur new 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;
- e. without limiting the terms of sub-paragraphs a to (d) above, withdraw, transfer or otherwise dispose of or deal with, any monies available in any



account with any bank, building society or other financial institution in which the First or Second Defendants have any legal or equitable interest.

13. The order in paragraph 12 above shall not prevent:
 - a. any of the Defendants from paying or otherwise incurring a liability for costs reasonably incurred in these proceedings;
 - b. the First and Second Defendants from dealing with or disposing of their Property in the ordinary and proper course of their business in the discharge of obligations bona fide and properly incurred, but only with the written consent of the Plaintiff after providing to the Plaintiff full details and documentary evidence of the obligation in question;
 - 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 First or Second Defendant prior to the date of this order.

Notice of Orders to Third Parties

14. To the extent necessary, the Plaintiff has leave to give notice of any orders made to:
 - a. the relevant authorities that record, control and regulate the ownership of real property, motor vehicles and maritime vessels and craft;
 - b. any bank, building society, cryptocurrency exchange or other financial institution with which, to the best of the Plaintiff's belief, any of the Defendants may operate an account or hold Property;
 - c. any securities broking firm, foreign exchange broking or trading firm or futures broking firm with which, to the best of the Plaintiff's belief, any of the Defendants may operate any account; and
 - d. any other person or entity, holding or controlling Property, which, to the best of the Plaintiff's belief, may belong to the First or Second Defendant,by giving a copy of the minute of the orders to a person apparently in the employ of that entity or person.



Other Orders

15. Liberty to apply.

Date that entry is stamped: 20 June 2024

Sia Lagos
Registrar



Schedule

No: VID558/2024

Federal Court of Australia

District Registry: Victoria

Division: General

Second Defendant GLOBAL CAPITAL PROPERTY FUND LIMITED (ACN 635
565 070)