

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged: Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 14/02/2024 12:38:59 PM AEST
Date Accepted for Filing: 14/02/2024 12:47:02 PM AEST
File Number: QUD75/2024
File Title: AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v
MACROLEND PTY LTD ACN 122 386 109 & ORS
Registry: QUEENSLAND REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing: To Be Advised
Time and date for hearing: To Be Advised
Place: To Be Advised



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



Form 2

Rules 2.2

ORIGINATING PROCESS

No.

FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: QUEENSLAND
DIVISION: GENERAL

IN THE MATTER OF MACROLEND PTY LTD (ACN 122 386 109) AND GREAT SOUTHLAND LTD

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

And

MACROLEND PTY LTD (ACN 122 386 109)

First Defendant

And

DAVID HODGSON

Second Defendant

And

GREAT SOUTHLAND LTD

Third Defendant

A. DETAILS OF APPLICATION

This application is made under ss21 and 23 of the *Federal Court of Australia Act* (Cth) (**Federal Court Act**), ss206E(1), 1101B and 1324 of the *Corporations Act 2001* (Cth) (**the Act**), s12GD of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) and the implied/inherent jurisdiction of the Court.

The plaintiff seeks declarations of contravention against each defendant of the Act and further or alternatively declarations of contravention by the first and second defendants of the ASIC Act, injunctions against each defendant, an order of disqualification against the second defendant, orders providing for notice to be given of the Court's final orders and costs.

On the facts stated in the Concise Statement, the plaintiff seeks:

Filed on behalf of the Australian Securities and Investments Commission, Plaintiff

Prepared by Savas Miriklis

Tel (03) 9280 3442

Fax 1300 729 000

Email Savas.Miriklis@asic.gov.au

Address for service: Level 20
240 Queen Street
BRISBANE QLD 4000



First Defendant

1. As against the first defendant, Macrolend Pty Ltd (**Macrolend**):
 - (a) declarations pursuant to ss21 and 23 of the Federal Court Act or further or alternatively the implied/inherent jurisdiction of the Court that:
 - i. in respect of Macrolend's conduct in raising funds from investors for the purpose of an investment in a software product called "Kradle" (**Kradle Investment Arrangement**):
 - A. investments made for the purpose of the Kradle Investment Arrangement were made pursuant to a facility within the meaning of s763A(1)(a) of the Act, such that the facility was a financial product;
 - B. further or alternatively, the Kradle Investment Arrangement provided for investors to obtain a legal or equitable right or interest in a share within the meaning of s761A of the Act and accordingly a financial product for the purpose of s764A(1)(a) of the Act;
 - C. alternatively, the Kradle Investment Arrangement was a managed investment scheme (**Kradle Investment Scheme**) that had more than 20 members such that an interest in the scheme was a financial product for the purpose of s764A(1)(ba) of the Act;
 - D. in the premises of paragraphs (A) to (C) above, Macrolend dealt in the financial products identified in those subparagraphs by issuing those financial products and thereby carried on a financial services business in this jurisdiction without an Australian Financial Services Licence (**AFSL**) in contravention of s911A(1) and s911A(5B) of the Act;
 - E. in the premises of paragraph (C) above, Macrolend operated the Kradle Investment Scheme that it had failed to register, in contravention of s601ED(5) and s601ED(8) of the Act;
 - ii. further or alternatively, in respect of Macrolend's conduct in raising funds from investors pursuant to instruments described as "loan agreements" and "promissory notes" (**Macrolend Loan and Promissory Note Arrangement**):
 - A. investments made pursuant to the Macrolend Loan and Promissory Note Arrangement were made pursuant to a facility within the meaning of s763A(1)(a) of the Act, such that the facility was a financial product;
 - B. further or alternatively, each of the instruments entered into by investors for the purpose of the Macrolend Loan and Promissory Note Arrangement was a "debenture" within the meaning of that expression in s9 of the Act and accordingly a "security" within the meaning of s761A of the Act and a financial product within the meaning of s764A(1)(a) of the Act;



- C. alternatively, the Macrolend Loan and Promissory Note Arrangement was a managed investment scheme (**Macrolend Loan and Promissory Note Scheme**) that had more than 20 members such that an interest in that scheme was a financial product for the purpose of s764A(1)(ba) of the Act;
- D. in the premises of paragraphs (A) to (C) above, Macrolend carried on a financial services business in this jurisdiction without an AFSL in contravention of s911A(1) and s911A(5B) of the Act;
- E. in the premises of paragraph (C) above, Macrolend operated the Macrolend Loan and Promissory Note Scheme that it had failed to register, in contravention of s601ED(5) and s601ED(8) of the Act;
- iii. Macrolend has engaged in conduct in contravention of s1041H of the Act and further or alternatively s12DA of the ASIC Act because in respect of the Kradle Investment Arrangement:
- A. it represented to potential investors that they would acquire shares in Corearth Holdings Pty Ltd following their investment when such investors would not, in fact, be receiving shares but would instead be issued an instrument described as a “convertible note” which would only confer an entitlement to shares subject to the fulfilment of future conditions;
- B. it represented to potential investors that a patent had been obtained in respect of the Kradle software product, when at the time of the representation no such patent had been sought or obtained;
- C. it represented to potential investors that Kradle Software Pty Ltd held intangible assets of AU\$1,027,140,000, when in truth that company did not hold intangible assets of that amount and where the balance sheet did not record any such asset but instead recorded intangible assets of \$11,180;
- D. it represented to potential investors that it would use funds obtained from investors:
- a. to “grow Kradle Software Pty Ltd”; and
 - b. for the purpose of providing loans to Kradle Software Pty Ltd on certain terms as set out in the Kradle IMs as defined in paragraph 8 of the Concise Statement,

When, in fact it:

- c. used funds obtained from investors for its own working capital; and



- d. did not provide loans on the terms represented in the Kradle IMs to Kradle Software Pty Ltd from funds obtained from investors,
- E. it represented to potential investors that:
- a. there would be a “public listing” on the London or Nasdaq stock exchanges on identified dates in 2021 or 2022;
 - b. there would be a “possible [Initial Public Offering]” in 2022;
 - c. it was intended that there would be an Initial Public Offering in 2022; and
 - d. there would be a “possible [Initial Public Offering]” in 2023,
- when it did not have reasonable grounds for making those representations which were misleading and deceptive;
- (b) injunctions pursuant to ss1101B and 1324 of the Act and further or alternatively s12GD of the ASIC Act to restrain Macrolend from:
- i. carrying on a financial services business in this jurisdiction without holding an AFSL;
 - ii. further or alternatively, operating:
 - A. the Kradle Investment Scheme without having registered the scheme pursuant to s601EB of the Act;
 - B. the Macrolend Loan and Promissory Note Scheme without having registered the scheme pursuant to s601EB of the Act;
- (c) an order pursuant to ss1101B and 1324 of the Act that Macrolend post a notice, in a form to be approved by the Court, of any final relief granted in this proceeding, on the website www.paladincorp.com.au for a period of 90 days from the date of this order.

Second Defendant

2. As against the second defendant, Mr Hodgson:
- (a) declarations pursuant to ss21 and 23 of the Federal Court Act or further or alternatively the implied/inherent jurisdiction of the Court that Mr Hodgson:
 - i. contravened s911A(1) and s911A(5B) of the Act by carrying on a financial services business in this jurisdiction without an AFSL;
 - ii. further or alternatively, on and from 13 March 2019, contravened s911A(1) and s911A(5B) of the Act because he was involved in Macrolend’s contravention of s911A(1) and s911A(5B) of the Act, within the meaning of s1317E(4)(b) of the Act;



- iii. alternatively, on and from 13 March 2019, contravened s601ED(5) and s601ED(8) of the Act because he was involved in Macrolend's contravention of s601ED(5) and s601ED(8) of the Act, within the meaning of s1317E(4)(b) of the Act;
- iv. further or alternatively, on and from 13 March 2019, contravened s911A(1) and s911A(5B) of the Act because he was involved in the third defendant, Great Southland Ltd's (**GSL's**) contravention of s911A(1) and s911A(5B) of the Act, within the meaning of s1317E(4)(b) of the Act;
- v. alternatively, on and from 13 March 2019, contravened s601ED(5) and s601ED(8) of the Act because he was involved in GSL's contravention of s601ED(5) and s601ED(8) of the Act, within the meaning of s1317E(4)(b) of the Act;
- vi. engaged in conduct in contravention of s1041H of the Act and further or alternatively s12DA of the ASIC Act because in respect of the Kradle Investment Arrangement:
 - A. he represented to potential investors that they would acquire shares in Corearth Holdings Pty Ltd following their investment when such investors would not, in fact, be receiving shares but would instead be issued an instrument described as a "convertible note" which would only confer an entitlement to shares subject to the fulfilment of future conditions;
 - B. he represented to potential investors that a patent had been obtained in respect of the Kradle software product, when at the time of the representation no such patent had been sought or obtained;
 - C. he represented to potential investors that Kradle Software Pty Ltd held intangible assets of AU\$1,027,140,000, when in truth that company did not hold intangible assets of that amount and where the balance sheet did not record any such asset but instead recorded intangible assets of \$11,180;
 - D. he represented to potential investors that Macrolend would use funds obtained from investors:
 - a. to "grow Kradle Software"; and
 - b. for the purpose of providing loans to Kradle Software Pty Ltd on certain terms as set out in the Kradle IMs,when, in fact it:
 - c. used funds obtained from investors for its own working capital; and



- d. did not provide loans on the terms represented in the Kradle IMs to Kradle Software Pty Ltd from funds obtained from investors, as it had represented;
- E. he represented to potential investors that:
- a. there would be a “public listing” on the London or Nasdaq stock exchanges on identified dates in 2021 or 2022;
 - b. there would be a “possible [Initial Public Offering]” in 2022;
 - c. it was intended that there would be an Initial Public Offering in 2022; and
 - d. there would be a “possible [Initial Public Offering]” in 2023,
- when he did not have reasonable grounds for making the representations which were misleading and deceptive;
- (b) injunctions pursuant to ss1101B and 1324 of the Act and further or alternatively s12GD of the ASIC Act to restrain him from carrying on a financial services business in this jurisdiction without holding an AFSL;
 - (c) an order pursuant to s206E of the Act that he be disqualified from managing corporations for a period to be determined by the Court.

Third Defendant

3. As against GSL:

- (a) declarations pursuant to ss21 and 23 of the Federal Court Act or further or alternatively the implied/inherent jurisdiction of the Court that:
 - i. in respect of GSL’s conduct in raising funds from investors pursuant to instruments described as promissory notes (**GSL Promissory Note Arrangement**):
 - A. GSL contravened s601CD of the Act by carrying on business in this jurisdiction without being registered to do so under Part 5B.2 of the Act;
 - B. investments made for the purpose of the GSL Promissory Note Arrangement were made pursuant to a facility within the meaning of s763A(1)(a) of the Act, such that the facility was a financial product;
 - C. further or alternatively, each of the instruments entered into by investors for the purpose of the GSL Promissory Note Arrangement was a “debenture” within the meaning of that expression in s9 of the Act and accordingly a “security” within the meaning of s761A of the Act and a financial product within the meaning of s764A(1)(a) of the Act;



- D. alternatively, the GSL Promissory Note Arrangement was a managed investment scheme (**GSL Scheme**) that had more than 20 members such that an interest in the scheme was a financial product for the purpose of s764A(1)(ba) of the Act;
- E. in the premises of paragraphs (A) to (D) above, GSL carried on a financial services business in this jurisdiction without an AFSL in contravention of s911A(1) and s911A(5B) of the Act;
- F. in the premises of paragraph (A) and (D) above, GSL operated the GSL Scheme that it had failed to register, contrary to s601ED(5) and s601ED(8) of the Act;
- (b) injunctions pursuant to ss1101B and 1324 of the Act to restrain it from:
- i. carrying on business in this jurisdiction unless registered pursuant to Division 2 of Part 5B.2 of the Act;
 - ii. carrying on a financial services business in this jurisdiction without holding an AFSL;
 - iii. further or alternatively, operating the GSL Scheme without having registered the scheme pursuant to s601EB of the Act;
- (c) an order pursuant to ss1101B and 1324 of the Act that GSL post a notice, in a form to be approved by the Court, of any final relief granted in this proceeding, on the website www.paladincorp.com.au for a period of 90 days from the date of this order.

General orders

4. The defendants pay the plaintiff's costs of the proceeding.
5. The parties have liberty to apply on five business days' notice in writing.
6. Such further or other order or relief as the Court considers appropriate.

Date: 14 February 2024

Savas Miriklis

Savas Miriklis
Legal Practitioner for ASIC



This application will be heard by _____ at the Federal Court of Australia at Harry Gibbs
Commonwealth Law Courts Building, 119 North Quay (cnr Tank Street), Brisbane, QLD at
am on _____

B. NOTICE TO DEFENDANTS

TO: MACROLEND PTY LTD (ACN 122 386 109)
Initiative Accounting Pty Ltd
Suite 2, 10 Lake Kawana Boulevard
Birtinya Qld 4575

TO: DAVID HODGSON
Unit 802, 110 Duporth Avenue
Maroochydore Qld 4558

TO: GREAT SOUTHLAND LTD
C/- Unit 802, 110 Duporth Avenue
Maroochydore Qld 4558

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff.

Note Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

C. FILING

Date of filing:

Registrar

This originating process is filed by Savas Miriklis, Legal Practitioner for the Australian Securities and Investments Commission.

**D. SERVICE**

The plaintiff's address for service is:

Name: Australian Securities and Investments Commission
Plaintiff's address: Level 20, 240 Queen Street, Brisbane, Queensland,
4000
Plaintiff's solicitor's name: Savas Miriklis
Telephone: (03) 9280 3442
Facsimile: 1300 729 000
Email: savas.miriklis@asic.gov.au

It is intended to serve a copy of this originating process on the defendants.