NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged:	Notice of Appeal (Fee for Leave Not Already Paid) - Form 122 - Rule 36.01(1)(b)(c)
Court of Filing:	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	17/06/2024 11:33:33 AM AEST
Date Accepted for Filing:	18/06/2024 8:38:07 AM AEST
File Number:	NSD775/2024
File Title:	AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v WEB3 VENTURES PTY LTD ACN 655 090 869
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised

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 122
Rules 36.01(1)(b); 36.01(1)(c)

Notice of Appeal

No.   of 2024

Federal Court of Australia

District Registry: New South Wales

Division: General

On appeal from the Federal Court of Australia

Australian Securities and Investments Commission

Appellant

Web3 Ventures Pty Ltd (ACN 655 080 869)

Respondent

To the Respondent

The Appellant appeals from the judgment as set out in this notice of appeal.

1.   The papers in the appeal will be settled and prepared in accordance with the Federal Court Rules Division 36.5.

2.   The Court will make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence. You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place: Queens Square, 184 Phillip Street, Sydney, New South Wales 2000

Date:

Signed by an officer acting with the authority
of the District Registrar

Filed on behalf of (name & role of party)	The Appellant, Australian Securities and Investments Commission
Prepared by (name of person/lawyer)	Nick Kelton, Lawyer
Law firm (if applicable)	Australian Securities and Investments Commission
Tel (03) 9280 4787	Fax N/A
Email Nicholas.Kelton@asic.gov.au	
Address for service (include state and postcode)	Level 7, 120 Collins Street, Melbourne, Victoria, 3000

.   [Version 2 form approved 09/05/2013]

The Appellant appeals from the whole of the judgment of the Federal Court given on 4 June 2024 in Sydney in proceeding NSD 1007/2022: *Australian Securities and Investments Commission v Web3 Ventures Pty Ltd (Penalty)* [2024] FCA 578 (**PJ**).

Grounds of Appeal

Ground 1

1. His Honour erred in holding that, exercising the power conferred by s 1317S of the Corporations Act, the respondent should be relieved from liability in all the circumstances.

Ground 2

2. In holding that the respondent should be relieved from liability his Honour erred in:

    a. inferring that Block Earner relied on legal advice in forming a view that there was no identified risk that the Earner product would breach any laws or regulations when it did not lead evidence to that effect (PJ [14], [30], [33], [36], [38] and [39]), and drawing inferences favourable to the respondent as to the scope, effect and limitations of the legal advice (PJ [33] and [39]) without tender by the respondent of that advice;

    b. giving that relief in the circumstance that the respondent made a profit from the contraventions found by his Honour (PJ [16] and [30]);

    c. holding that the regulatory complexity was a relevant consideration (PJ [17]-[19], [30], [38]-[39]) in circumstances in which the respondent perceived significant uncertainty but deliberately engaged in conduct in the field of endeavour for a profit-making purpose; and

    d. holding that the appellant's press release was a reason to relieve the respondent from liability (PJ [20]-[27], [30]) when there was no evidence that anyone formed an erroneous belief based on that press release.

Ground 3

3. His Honour erred in holding that had the respondent not been relieved from liability under s 1317S, he would have imposed no penalty as:

    a. to impose no penalty failed to give effect to the purposes of specific and general deterrence;

b. for the reasons identified in ground 2 (PJ [79]); and

c. the evidence did not establish that any penalty would have been oppressive (PJ [79]).

Orders Sought

1. The appeal is allowed.

2. That the orders made by the primary judge on 4 June 2024 be set side.

3. In lieu of the orders made by the primary judge, orders as follows:

    a. Pursuant to s 1317G of the *Corporations Act 2001* (Cth), the respondent pay to the Commonwealth a pecuniary penalty in the amount of $350,000 or such other amount the Court sees fit.

    b. Each party pay its own costs of the proceedings up to and including 9 February 2024.

    c. The respondent pay the appellant's costs after 9 February 2024.

4. The respondent pay the appellant's costs of the appeal.

Appellant's Address

The Appellant's address for service is:

Place: Australian Securities and Investments Commission, Level 7, 120 Collins Street, Melbourne, Victoria 3000

Email: Nicholas.kelton@asic.gov.au

The Appellant's address is: Level 7, 120 Collins Street, Melbourne, Victoria 3000

Service on the Respondent

It is intended to serve this application on the Respondent.

Date: 17 June 2024

Nick Kelton
_____
  Signed by Nick Kelton
  Lawyer for the Appellant

Schedule

No.   of 2024

Federal Court of Australia

District Registry: New South Wales

Division: General

Australian Securities and Investments Commission

Appellant

Web3 Ventures Pty Ltd (ACN 655 080 869)

Respondent