

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 10/11/2020 4:19:27 PM AEDT and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

### Filing and Hearing Details

Document Lodged:	Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
File Number:	NSD1220/2020
File Title:	AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v MELISSA LOUISE CADDICK & ANOR
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



*Sia Lagos*

Dated: 10/11/2020 4:46:06 PM AEDT

Registrar

### Important Information

As required by the Court's Rules, 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 Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



## ORIGINATING PROCESS

Federal Court of Australia  
District Registry: NSW  
Division: Commercial and Corporations

No. of 2020

### IN THE MATTER OF MALIVER PTY LTD (ACN 164 334 918)

#### AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

#### MELISSA LOUISE CADDICK and others named in the Schedule

Defendants

#### A. DETAILS OF APPLICATION

This application is made under:

- (a) section 1323 of the *Corporations Act 2001* (Cth) (**Act**);
- (b) sections 21, 23, 37AF(1)(a) and (b) and 37AG(1)(a) of the *Federal Court of Australia Act 1974* (Cth) (**FCA Act**).

The nature of the proceeding is an application for orders:

- (a) relating to the property of the First and Second Defendants, including for asset preservation orders against the First and Second Defendants under s1323 of the Act and/or the appointment of a receiver / receiver and manager to the Property of the First and Second Defendants;
- (b) requiring the First Defendant to deliver up her passport to the Court;
- (c) prohibiting the First Defendant from leaving Australia without the consent of the Court;
- (d) provision of information from the First and Second Defendants as to their financial affairs;

Filed on behalf of	Australian Securities and Investments Commission, Plaintiff
Prepared by	Nicolette Bearup
Tel (02) 9911 5745	Fax (02) 9911 2414
Email	Nicolette.Bearup@asic.gov.au

**Address for service** Email address above and Level 5, 5 Market Street, Sydney NSW 2000  
Attention: Nicolette Bearup



(e) suppression or non-publication orders.

For the purposes of this Application:

- (a) “**Property**” means all 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 Act, any property held otherwise than as sole beneficial owner
- (b) “**Third Party**” means a person other than the First or Second Defendant or the Plaintiff.

On the facts stated in the supporting affidavits, including the affidavit of Isabella Lucy Allen affirmed on 9 November 2020 (**Main Allen Affidavit**) and the affidavit of Isabella Lucy Allen affirmed on 9 November 2020 (**Suppression Allen Affidavit**), the Plaintiff claims the following orders:

#### **INTERLOCUTORY RELIEF**

1. Leave to file this Originating Process in Court.
2. In the first instance, service of this Originating Process be dispensed with, and the Originating Process be returnable immediately.
3. Time for service of this Originating Process and supporting affidavits be abridged to 5pm Wednesday 11 November 2020.
4. That this Originating Process be returnable on \_\_\_\_\_ for a further hearing in respect of the orders sought by the Plaintiff.
5. 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.
6. Subject to order 7 below, an order pursuant to sections 37AF(1)(a) and (b) and 37AG(1)(a) of the FCA Act that the publication or disclosure of any ex-parte orders obtained by the Plaintiff, the Originating Application, the Main Allen Affidavit (including the exhibits to that affidavit), the Suppression Allen Affidavit and any written submissions advanced by the Plaintiff in support of the ex-parte orders is prohibited until 5pm Wednesday 11 November 2020, except to enable the Plaintiff to serve the Defendants or provide copies of the orders to the entities set out in paragraph 24 for the purpose of enforcing the orders.



7. An order pursuant to s.37AF(1)(a) and (b) and 37AG(1)(a) of the FCA Act, that until further order, the publication or disclosure (except to the parties and their legal representatives) of:
- (a) the Main Allen Affidavit in so far as it identifies the names identified in Annexure IA-4 to the Suppression Allen Affidavit;
  - (b) the Suppression Allen Affidavit in so far as it identifies the names or words identified in Annexure IA-4 to the Suppression Allen Affidavit;
  - (c) ASIC's written submissions filed in support of its application for the orders set out in this Originating Process in so far as it identifies the names or words identified in Annexure IA-4 to the Suppression Allen Affidavit;
  - (d) the whole of Exhibit IA-1, IA-2 and IA-3 to the Main Allen Affidavit;
- be prohibited.

#### **Provision of information**

8. Subject to paragraph 9, pursuant to s 1323(1) of the Act and s 23 of the FCA Act, by 5pm on 16 November 2020, the First and Second Defendant swear and serve upon the Plaintiff an affidavit, in the case of the First Defendant deposing in detail to the matters set out in 8. (a) – (h) below, and in the case of the Second Defendant deposing in detail to the matters set out in 8. (a) – (i) below:
- (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;
  - (d) the names and address of any person to whom the relevant Defendant is



indebted and the amount and nature of the indebtedness, including amounts owed to any person who has deposited funds with the relevant Defendant for investment (**Investor**);

- (e) 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;
- (f) the sources and amount of any income, wages, 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;
- (g) the name, physical address, email address and phone number of each person who currently has funds deposited with the relevant Defendant for investment at the date of these orders, or on whose behalf the Defendant holds shares or other Property, and the amount of, location and nature of those funds and/ or the Property;
- (h) for the period from 1 January 2020 to 31 October 2020, details regarding:
  - (i) each amount deposited with the relevant Defendant by an Investor, the date of each deposit and the name and address of the Relevant Investor;
  - (ii) each amount paid to an Investor and the date of the payment;
- (i) the Second Defendant's financial statements and accounts for the year ended 30 June 2020 or 31 December 2019 (as the case may be depending upon its particular financial year), whether or not audited and whether or not in the form of management accounts only.

9. If:

- (a) the First Defendant wishes to object to complying with paragraph 8 on the grounds that some or all of the information required to be disclosed may tend to prove that:



- (i) she has committed an offence against or arising under Australian law or a law of a foreign country; or
  - (ii) is liable to a civil penalty,
- (b) all of the persons who are able to comply with paragraph 8 on behalf of the Second Defendant and with whom it has been able to communicate, wish to object to the Second Defendant complying with paragraph 8 on the grounds that some or all of the information required to be disclosed may tend to prove that they:
- (i) have committed an offence against or arising under Australian law or a law of a foreign country; or
  - (ii) 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.

## **INTERLOCUTORY AND FINAL RELIEF**

### **Asset restraint**

10. Pursuant to sections 1323(1) and 1323(3) of the Act and/or section 23 of the FCA Act that until further order, the 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 Property, including, but not limited to, funds in bank accounts held by the Defendants;
  - (b) sell, charge, mortgage or otherwise deal with, dispose of and/or diminish the value of any of their Property;



- (c) without limiting the terms of sub-paragraphs (a) and (b) 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;
  - (d) cause or permit to be sold, charged, mortgaged or otherwise dealt with, disposed of, or diminished in value, any of their Property; and
  - (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, including without limitation the bank accounts listed in **Annexure A**.
11. The order sought in paragraph 10 above, shall not prevent:
- (a) any of the Defendants from paying or otherwise incurring a liability for costs reasonably incurred in these proceedings and any criminal proceedings arising from the Plaintiff's investigation into the affairs of each of the Defendants; and
  - (b) 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 any of the Defendants prior to the date of this order;
  - (c) the First Defendant from:
    - (i) paying ordinary living expenses not exceeding \$800 per week or such other amount as determined by the Court;
    - (ii) dealing with or disposing of her Property in the discharge of obligations bona fide and properly incurred under any contract entered into by the First Defendant before these orders were made, following a request in writing to the Plaintiff including details and documentary evidence of the obligation and receipt of the Plaintiff's approval;
  - (d) the Second Defendant from:



- (i) paying trade creditors bona fide and properly incurred not exceeding \$800 weekly;
- (ii) paying other business expenses bona fide and properly incurred, or dealing with or disposing of its Property in the discharge of obligations bona fide and properly incurred under any contract entered into by the Second Defendant before these orders were made, following a request in writing to the Plaintiff including details and documentary evidence of the expense or obligation and receipt of the Plaintiff's approval.

### **Receiver - First Defendant**

- 12. Pursuant to s 1323(1)(h) and / or 1323(3) of the Act appointing a receiver or receiver and manager of the Property of the First Defendant (**Caddick Receiver**).
- 13. That the Caddick Receiver have the powers set out in sections 420(1), (2)(a), (b), (e), (f), (g), (k), (n), (o), (p), (q), (r), (t) and (u) of the Act and can exercise those powers in respect of all of the Property of the First Defendant, as if the First Defendant was a corporation.
- 14. That the Caddick Receiver provide a report to the Court and the Plaintiff regarding the financial affairs of the First Defendant.
- 15. That the Caddick Receiver's reasonable costs and expenses be payable from the Property of the First Defendant.

### **Receiver and Manager– Second Defendant**

- 16. Pursuant to s 1323(1)(h) and / or 1323(3) of the Act appointing a receiver or receiver and manager of the Property of the Second Defendant (**Maliver Receiver**).
- 17. That the Maliver Receiver have the powers set out in sections 420(1), (2)(a), (b), (e), (f), (g), (k), (n), (o), (p), (q), (r), (t) and (u) of the Act and can exercise those powers in respect of all of the Property of the Second Defendant.





18. That the Maliver Receiver provide a report to the Court and the Plaintiff regarding the financial affairs of the Second Defendant.
19. That the Maliver Receiver's reasonable costs and expenses be payable from the Property of the Second Defendant.

### **Travel restriction**

20. Pursuant to ss 1323(1)(j) and 1323(3) of the Act, the First Defendant deliver up all passports in her name which are in her possession, custody or control, and any tickets for international travel by her, to the Sydney Registry of this Court by 4.00 pm Australian Eastern Daylight Time on 12 November 2020 to be retained by the Court until further order.
21. Pursuant to ss 1323(1)(k) and 1323(3) of the Act, the First Defendant be restrained from leaving Australia without the consent of the Court until further order.
22. Pursuant to s 23 of the FCA Act, in the event that the First Defendant cannot locate any passport within one day of the making of these orders, she file an affidavit stating that fact and exhibiting a copy of a written notification sent by her to the Department of Home Affairs or the Australian Passport Office / Information Service informing them of the same.
23. Pursuant to s 23 of the FCA Act, the First Defendant may not apply for the issue of any passport until further order.

### **FURTHER ORDERS**

24. Pursuant to s 23 of the FCA Act, the Plaintiff have leave, to the extent necessary, to give notice of any orders made, to:
  - (a) any relevant authorities that record, control and regulate the ownership of real property, motor vehicles and maritime vessels; and
  - (b) any bank, building society or other financial institution with which, to the best of the Plaintiff's belief, any of the Defendants may operate any account; and



- (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 any of the Defendants;
- (e) the Australian Border Force or the Australian Federal Police;

by giving a copy of a minute of the order to a person apparently in the employ of that entity or person.

- 25. Liberty to apply on 48 hours' notice.
- 26. Costs.
- 27. Such further or other orders that the Court considers appropriate.

Date: 10 November 2020

.....  
 Nicolette Bearup  
 Legal Practitioner for the  
 Australian Securities and Investments Commission

This application will be heard by \_\_\_\_\_ at \_\_\_\_\_ am/pm  
 on \_\_\_\_\_ 2020.

**B. NOTICE TO DEFENDANTS**

TO: **Melissa Louise Caddick**  
 5 Wallangra Rd  
 Dover Heights NSW 2030

**Maliver Pty Ltd (ACN 164 334 918)**

C/O LSI Taxation & Business Advisors Pty Ltd  
22 Webster Avenue  
Henda QLD 4011

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 the Plaintiff.

**D. SERVICE**

The Plaintiff's address for service is:



Australian Securities and Investments Commission, Level 5, 5 Market Street, Sydney  
NSW 2000

It is intended to serve a copy of this originating process on each defendant.

The time by which a copy of this originating process is to be served has been abridged  
by order made on to     pm   on     .



## ANNEXURE A – BANK ACCOUNTS

Account Name	BSB	Account Number	Bank
Melissa Caddick		Card ending 44005	AMEX
Melissa L Caddick		Card ending 71008	AMEX
ML Caddick	082057	67 738 0367	NAB
Maliver Pty Ltd	082057	946084145	NAB
Maliver Pty Ltd	067167	19309571	CBA
Melissa Caddick	067167	15770731	CBA
Maliver Pty Ltd		2776566	CommSec
Maliver Pty Ltd		2776613	CommSec
Melissa Caddick		0AC-375746	CommSec
Mrs Melissa Louise Caddick		2422359	CommSec
Caddick - US Dollar Account		CADSTUDS01	NAB
Melissa Caddick & Adam Grimley - Home loan	082057	841504991	NAB
Melissa Caddick & Adam Grimley	082057	840053439	NAB
Melissa Caddick - Home loan	082057	980989888	NAB
Melissa Caddick	082057	715801266	NAB
Melissa Caddick	082057	981224254	NAB
Melissa Caddick		4303 3064 7494 4912	NAB



**SCHEDULE**

Federal Court of Australia

No.            of 2020

District Registry: NSW

Division: Commercial and Corporations

**Defendants**

Second Defendant: MALIVER PTY LTD (ACN 164 334 918)

Date: 10 November 2020