

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 7/04/2022 4:19:18 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Concise Statement
File Number: NSD1220/2020
File Title: AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v
MELISSA LOUISE CADDICK & ANOR
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF
AUSTRALIA



Sia Lagos

Dated: 7/04/2022 5:29:00 PM AEST

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 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.



Concise Statement: Barbara and Edward Grimley

No. NSD1220 of 2020

Federal Court of Australia

District Registry: New South Wales

Division: General

Australian Securities & Investments Commission

Plaintiff

Melissa Louise Caddick & anor

Defendant

Barbara Anne Grimley and Edward Grimley

Interested Persons

1. Barbara Grimley and Edward Grimley (**Barbara** and **Ted**) are the parents of Melissa Caddick (**Melissa**). This Concise Statement has been prepared in accordance with orders made by Markovic J on 24 February 2022. It sets set out the basis of Barbara and Ted's interests in the "Edgecliff Property" (**Edgecliff**), with a view to assisting in the efficient resolution of their claims.
2. Barbara and Ted do not accept that the proceedings are properly constituted if they are to be used as a vehicle to ventilate any presently unarticulated priority dispute in relation to Edgecliff: the registered proprietor of Edgecliff, Melissa, has not been served and her interests are otherwise unrepresented. Moreover, the interests of the other non-party "investors" are disparate, and at some point, their interests will need to be properly represented. There is certainly no basis for Messrs Gleeson and Soire (**Receivers**) to represent them. At present, the Receivers' only "interest" (if that is what it is) is to seek vacant possession of Edgecliff, for the purpose of a sale. To do so, they need to displace the possession of Barbara and Ted.

Filed on behalf of	Barbara and Edward Grimley, Interested Persons
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3. Although it is understood that there is likely to be some significant contest about the claims of the investors, the basis of that contest – at least on the part of the Receivers – is an oft-repeated assertion, in correspondence and elsewhere, of the existence of a “*Black v S Freedman* trust”, but without any precise articulation of the particular persons who hold such asserted interests, the date or dates on which such interests arose, or the amounts said to be reflected by those interests. Barbara and Ted are therefore presently unable to respond to, and for the same reasons do not accept, those amorphous assertions, which are for the alleged beneficiaries of such trusts to establish in properly constituted proceedings.

A IMPORTANT FACTS GIVING RISE TO THE CLAIM

4. Between 1997 and early 2017, Barbara and Ted owned and lived in a property at 56 Queens Road, Connells Point, New South Wales (**Connells Point**), in the southern suburbs of Sydney. By 2006, both Barbara and Ted had retired from the workforce.
5. From around 2012, Melissa was living in the eastern suburbs of Sydney. From around that time, Melissa encouraged Barbara and Ted to relocate from Connells Point to the eastern suburbs of Sydney, to be closer to Melissa, her husband and son. The proceeds of sale of Connells Point were unlikely to be sufficient to permit Barbara and Ted to purchase a similar property in the eastern suburbs.
6. Melissa thereafter commenced searching for suitable properties in the eastern suburbs. Melissa told Barbara and Ted that she had received advice that she should purchase a property in her own name, to be held on trust for Barbara and Ted, and that Barbara and Ted could live in the property until they died.
7. On 22 November 2016, Melissa emailed Barbara and Ted and set out the nature of an agreement between them for the purchase by Melissa of any property in which Barbara and Ted were to have an interest in and would live in. *Inter alia*:
 - a. the title to the property would be “100% in the name of Mrs Melissa Caddick”;
 - b. Barbara and Ted would have a right to live in the property, without any obligation to pay rent, until they either passed away or chose to relocate for health or other reasons (**Life Estate**); and
 - c. \$1,000,000 from the sale of Connells Point would be contributed by Barbara and Ted, and Melissa would apply that money in reduction of the loan Melissa would obtain from National Australia Bank Limited (**NAB**) to finance the purchase.
8. On 28 November 2016, Melissa exchanged contracts for the purchase of Edgecliff at a purchase price of \$2,550,000. Melissa also sent an email and various documents to

Barbara and Ted on that day, which recorded “who made what contributions and finally % of ownership”. Melissa attached a spreadsheet which recorded *inter alia* that Barbara and Ted’s \$1,000,000 contribution was to be applied as set out in 7.c above (that is, against bank debt of \$1,800,000), with the result that Barbara and Ted would have a 37.37% ownership of Edgecliff. This communication, and the email of 22 November 2016, set out the terms of an agreement between Melissa, on the one hand, and Barbara and Ted, on the other.

9. Melissa also told Barbara and Ted that she would contact her solicitor, to update Melissa’s will to account for both Barbara and Ted’s 37.37% interest in Edgecliff and their Life Estate. The latter was so included in Melissa’s will dated 10 December 2016.
10. Melissa’s purchase of Edgecliff settled on 18 January 2017 and thereafter she became the registered proprietor.
11. On 21 January 2017, Barbara and Ted exchanged contracts for the sale of Connells Point at a sale price of \$1,510,000, and the sale settled on 7 April 2017. From Barbara and Ted’s net proceeds of the sale of Connells Point, a total of \$1,187,167.49 by one payment of \$32,450.40 and one of \$1,154,717.09, was paid directly to Melissa. Barbara and Ted therefore fully performed their obligations under the agreement referred to above.
12. Without the knowledge of Barbara and Ted, Melissa did not apply the full sum \$1,000,000.00 in reduction of the NAB debt owing in respect of Edgecliff. Melissa’s failure to apply the full sum of \$1,000,000.00 in reduction of the NAB debt occurred without the knowledge of Barbara and Ted; amounts to a breach of the binding agreement between them; and was done by Melissa dishonestly and fraudulently.
13. Barbara and Ted have lived at Edgecliff since 17 March 2017, on terms consistent with the Life Estate and ownership of a 37.37% interest of Edgecliff.
14. On 22 November 2021, the Receivers were appointed, under s 1101B(1) of the *Corporations Act 2001* (Cth), as joint and several receivers of the “Receivership Property”, being all of Melissa’s “property” (as defined in s 9, *Corporations Act*).

B PRIMARY LEGAL GROUNDS FOR THE RELIEF SOUGHT

15. Properly analysed, the facts set out in 7 and 8 above reflect a binding and enforceable contract between Melissa, on the one hand, and Barbara and Ted, on the other, for:
 - a. with effect from 22 or 28 November 2016, or alternatively from 10 December 2016, the creation of the Life Estate; and
 - b. upon payment of \$1,000,000, for the conveyance of an equitable estate in fee simple (as to 37.37%) in Edgecliff to Barbara and Ted.

16. Barbara and Ted have fully performed their obligations under that contract. In equity, they would be entitled to a decree of specific performance, but it would be sufficient for the Court to grant declaratory relief of the kind set out below.
17. Alternatively, Barbara and Ted contend that Melissa (and through her, the Receivers) are bound by a proprietary, or promissory, estoppel: that is, she (and they) are estopped from denying the truth of the representations set out in 7.b, 7.c and 8 above, which representations Barbara and Ted have relied upon in the way set out in Part C below.

C RELIEF SOUGHT FROM THE COURT

18. Barbara and Ted would be entitled, in any properly constituted proceedings, to declaratory relief to the effect that Edgecliff is held by Melissa (and through her, the Receivers) on constructive trust for them, as to 37.37%; that they have an equitable estate in fee simple in Edgecliff (as to 37.37%), and that they have a valid and subsisting Life Estate. Such relief would perfect the agreement with Melissa that they have fully performed. As the proceedings are presently constituted, there is no need for Barbara and Ted to seek any relief as the only question that could possibly be before the Court is whether the Receivers ought be entitled to an order for possession against Barbara and Ted. For the reasons set out above, the Receivers are not entitled to any such order.
19. In any such proceedings, the Court should declare that Melissa (and through her, the Receivers) are estopped from denying:
 - a. that \$1,000,000 of Barbara and Ted's funds were applied in reduction of the NAB debt in respect of Edgecliff;
 - b. the existence of the Life Estate; and
 - c. Barbara and Ted's 37.37% beneficial ownership of Edgecliff.
20. Barbara and Ted recognise that, in seeking equity, they would have to do equity. Barbara and Ted hereby undertake that they will, for the duration of the Life Estate:
 - a. maintain Edgecliff to a reasonable state of cleanliness and repair;
 - b. pay outgoings (namely utilities, rates and strata levies) in respect of Edgecliff; and
 - c. pay 37.37% of the interest payable from time to time in respect of the debt due to NAB in respect of Edgecliff (other than any default interest that has accrued, or other fees, charges or penalties imposed, since 10 November 2020).
21. The Court would otherwise make such further or other orders, or grant such relief, as it thinks appropriate in the circumstances.

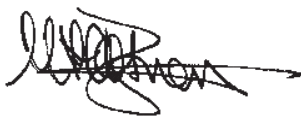
22. At the risk of repetition, unless and until someone commences properly constituted proceedings to the effect that they have a better interest than Barbara and Ted, there is no need to speculate as to the possible outcome of that contest, other than to observe that it will raise significantly complex issues of fact and law, including (but not limited to) the fact that Barbara and Ted were dealing with the registered proprietor of Edgecliff in relation to Edgecliff. For present purposes, Barbara and Ted's position is that if the Receivers asked for an order for possession of Edgecliff, their interest is such as to amount to a concrete answer to such a claim, unless what is sought is deferred until the conclusion of the Life Estate and payment of an amount in recognition of their 37.37% interest, at which point, they will be open to the Receivers dealing with Edgecliff. But, in any event, absent an application by someone to remove Barbara and Ted's caveats over Edgecliff, the property cannot be sold.

D ALLEGED HARM SUFFERED

23. Barbara and Ted have relied on the representations set out in 7.b, 7.c and 8 above, by:
- a. selling Connells Point;
 - b. paying the sum of \$1,000,000 to Melissa; and
 - c. carrying out, at their cost, renovations, improvements and repairs to Edgecliff.
24. If Melissa is permitted to resile from the representations Melissa made in connection with Edgecliff, or the agreement referred to above is not specifically performed, then Barbara and Ted will suffer loss and damage in the form of:
- a. the amount of \$1,000,000 and the opportunity to use those funds to purchase a home in which to live;
 - b. the Life Estate;
 - c. an equitable estate in fee simple in Edgecliff as to 37.37%; and
 - d. out-of-pocket expenditure on *inter alia* renovations, improvements and repairs to Edgecliff, and payments made to Melissa in connection with Edgecliff,

for which, in the circumstances of the case, damages would not be an adequate remedy.

Date: 7 April 2022



Signed by Maria Coffill O'Brien,
Solicitor for Barbara and Edward Grimley

This Concise Statement was prepared by John Anderson and settled by Robert Newlinds SC.