



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD1220/2020

**AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION**

Plaintiff

**MELISSA LOUISE CADDICK** and another named in the schedule

Defendant

**ORDER**

**JUDGE:** JUSTICE MARKOVIC

**DATE OF ORDER:** 17 December 2020

**WHERE MADE:** Sydney

For the purposes of these orders:

- “**Property**” means all real or personal property, assets or interests in property of any kind, within or outside Australia including, by virtue of s 1323(2A) of the *Corporations Act 2001* (Cth) (**Act**), any property held otherwise than as sole beneficial owner.
- “**Representative**” means the attorney appointed by the first defendant under an Enduring Power of Attorney dated 15 September 2016.
- “**Books**” has the meaning set out in s 9 of the Act.

**THE COURT ORDERS THAT:**

**Powers of the Receivers**

1. For the purpose of attaining the objectives for which Bruce Gleeson and Daniel Robert Soire of Jones Partners were appointed as joint and several receivers (**Receivers**) of the Property of the first defendant pursuant to the order of the Court made on 15 December 2020 (**15 December Orders**), the Receivers have the following further powers in addition to those in Order 6 of the 15 December Orders:
  - (a) to pay the legal expenses referred to in the schedule to these orders (**Schedule**) and any further legal or other professional services expenses that may be incurred and which the Receivers are satisfied ought be paid (subject to any Court application by any of the parties);



- (b) to pay the ordinary living expenses referred to in the Schedule and any further ordinary living expenses that may be incurred and which the Receivers are satisfied ought be paid (subject to any Court application by any of the parties); and
- (c) to pay any such other expenses that they reasonably incur in execution of the functions and powers conferred on them.

### **Provision of Information**

2. By 22 December 2020 the first defendant, by her representative, is to advise the plaintiff in writing of specific categories of records of the first defendant that he seeks copies of that are currently held by the plaintiff regarding the living expenses of the first defendant or the welfare of the first defendant's son, and upon the plaintiff being authorised to provide the documents referred to in this order, the plaintiff is to provide those documents to the first defendant through her representative as soon as practicable and by no later than 19 January 2021.
3. The plaintiff is to provide the Receivers with access to, or copies of, such books and records of the first defendant as the Receivers shall reasonably request in writing, that relate to the first defendant's financial affairs or the matters the subject of the report the Receivers are required to prepare pursuant to Order 7 of the 15 December Orders or are bank records obtained by the plaintiff in respect of bank accounts in the name of the first defendant under notices issued by it under the *Australian and Securities and Investments Commission Act 2001 (Cth) (ASIC Act)* or the Act.
4. The plaintiff is to provide the Provisional Liquidators with access to, or copies of, such books or records of the second defendant as the Provisional Liquidators shall reasonably request in writing, that are relevant to the matters the subject of the report the Provisional Liquidators are required to prepare pursuant to Order 12 of the 15 December Orders or are bank records obtained by the plaintiff in respect of bank accounts in the name of the second defendant under notices issued by it under the ASIC Act or the Act.
5. Orders 17 and 18 of the 15 December Orders be varied to replace the reference to the Provisional Liquidators and Receivers with "the Provisional Liquidators and Receivers and others working at the firm Jones Partners in respect of the provisional liquidation or receivership the subject of these orders and any lawyers retained by the Provisional



Liquidators or Receivers” and, for the avoidance of doubt, the reference to affidavits in Order 17 includes exhibits to affidavits.

#### **Variation to the Asset Preservation Orders**

6. Orders 10 and 11 of the asset preservation orders made on 10 November 2020 be varied as provided for in the Schedule to these Orders.

#### **Variation to the Receivership Orders**

7. Order 6 (d) of the 15 December Orders shall not apply to the Receivers taking steps to lodge caveats over the real property or obtaining access to the real property to inspect it, including for the purpose of obtaining valuations, taking control or possession of other assets or preparing the report required pursuant to Order 7 of the 15 December Orders.

#### **Suppression Orders**

8. In addition to Order 18(a) of the 15 December Orders, pursuant to s 37AF(1)(a) and (b) and s 37AG(1)(a) of the *Federal Court of Australia Act 1976* (Cth) and until further order, the publication or disclosure (except to the parties and their legal representatives and the Provisional Liquidators and the Receivers and others working at the firm Jones Partners in respect of the provisional liquidation or receivership the subject of these orders and any lawyers retained by the Provisional Liquidators or Receivers) of the following is prohibited:
  - (a) the affidavit of Isabella Lucy Allen affirmed 25 November 2020 insofar as it contains references to a minor at pages 44 and 47 of the document; the residential addresses at paragraphs 3, 4, 43(a), 44 and page 26; the safety box number at paragraph 4; the email addresses at paragraphs 7, 8, 9 and 10 and pages 31, 33 and 35; the contents the subject of lines 2, 3, 4 and 5 of paragraph 43; and the vehicle registration numbers at paragraph 44(a) and (b).

Date that entry is stamped: 17 December 2020

  
Registrar



## SCHEDULE TO THE ORDERS

### 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 including:
    - (i) the Receivers making payments, by 22 December 2020, from the funds contained in any bank account held in the name of the First



Defendant, of the amount of \$66,000 in respect of legal costs incurred by the Representative on behalf of the First Defendant for the period 11 November 2020 to 15 December 2020, to legal practitioners retained by the Representative on behalf of the First Defendant upon being provided with invoices for these costs (which costs will not include any costs incurred in respect of determining the validity of the appointment of the Representative including the application made to QCAT in respect of the appointment); and

(ii) the Receivers making payments from the funds contained in any bank account held in the name of the First Defendant in respect of such costs incurred after 15 December 2020 to legal practitioners retained by the Representative on behalf of the First Defendant upon being provided with invoices for those costs (which costs will not include any costs incurred in respect of any costs incurred in respect of determining the validity of the appointment of the Representative the application made to QCAT in respect of the appointment);

(b) any bank, building society or financial institution from exercising any right of setoff 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;~~

~~(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;~~

(c) the Receivers from making payments in respect of the ordinary living expenses of the First Defendant to the Representative of \$1,700 per week (or such other further amounts as the Receivers approve upon being satisfied they are reasonably and properly incurred in respect of ordinary



living expenses) from 11 November 2020 until further order of the Court, such payments to be made from the funds contained in any bank account held in the name of the First Defendant;

(ca) the Receivers dealing with or disposing of the First Defendant's 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;

(d) ~~the Second Defendant from:~~

~~(i) paying trade creditors bona fide and properly incurred not exceeding \$800 weekly;~~

~~(ii) the Provisional Liquidators from paying trade creditors or other business expenses bona fide and properly incurred, or dealing with or disposing of ~~its~~ the Property of the Second Defendant 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.~~

(e) the Receivers or the Provisional Liquidators from exercising their powers and performing their duties, pursuant to the orders and appointments made on 15 December 2020, including transferring the funds in the accounts of the First or Second Defendants to trust accounts under their control only for the purpose of paying expenses incurred by them in the exercise of their powers and functions.



**Schedule of Parties**

No: NSD1220/2020

Federal Court of Australia

District Registry: New South Wales

Division: General

Second Defendant      MALIVER PTY LTD