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Details of Filing

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



A handwritten signature in blue ink that reads 'Sia Lagos'.

Dated: 11/12/2020 7:06:24 PM AEDT

Registrar

Important Information

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Australian Securities and Investments Commission
V
Melissa Louise Caddick and Maliver Pty Ltd

Federal Court of Australia No. NSD 1220/2020

**ASIC's Submissions in Relation to the Appointment of a Receiver and Provisional Liquidator
and Variation of Freezing Orders**

Introduction

1. These submissions are advanced in support of the Australian Securities and Investments Commission's (**ASIC** or **plaintiff**) applications for:
 - (a) leave to amend the Originating Process;
 - (b) the appointment of a receiver and manager to the property of the first defendant;
 - (c) the appointment of a provisional liquidator to the property of the second defendant (together the **Plaintiff's Applications**).
2. For convenience, the orders sought by ASIC are attached to this submission and marked annexure A (**Proposed Orders**).
3. These proceedings were commenced on 10 November 2020 on an urgent ex parte basis. On that day, Jagot J made a number of ex parte orders including freezing orders against the assets of the first and second defendants. For the reasons outlined below, since the making of the urgent ex parte orders, there have been further developments that make it highly desirable to now appoint independent external persons to essentially investigate, identify, manage, and report as to the first and second defendants' property.
4. The second defendant has been served at its registered office with all Court documents including the orders made on 8 December 2020. Nonetheless, it is anticipated that the second defendant will continue to be unrepresented and, that being so, the application for the appointment of a provisional liquidator is essentially made on an ex parte basis.
5. The plaintiff relies on the following affidavits:
 - (a) an affidavit by Isabella Allen affirmed on 9 November 2020 (**Main Allen Affidavit**);
 - (b) an affidavit by Isabella Allen affirmed on 9 November 2020 (**Allen Suppression Affidavit**);
 - (c) an affidavit by Isabella Allen affirmed on 25 November 2020 (**Third Allen Affidavit**); and
 - (d) an affidavit by Isabella Allen affirmed on 7 December 2020 (**Fourth Allen Affidavit**).

6. The affidavit evidence of Ms Allen, an ASIC investigator, is extensive and detailed. It is indicative of serious misconduct on the part of the defendants and the very real likelihood that there have been a number of contraventions of the *Corporations Act 2001* (Cth) (**the Act**) and other laws in connection with the misappropriation of consumer funds. A large number of documents are exhibited to Ms Allen's affidavits in support of the findings and conclusions contained in her affidavits.
7. These submissions also address the first defendant's application to vary the freezing orders made on 10 February 2020 (**the Defendant's Application**).
8. Before turning to each of the Plaintiff's Applications and the Defendant's Application, it is appropriate to set out an overview of the evidence.

Overview of the Evidence

9. In obtaining urgent ex parte relief on 10 November 2020, ASIC relied on the evidence contained in the Main Allen Affidavit as to ASIC's investigation, findings and concerns as at that date, which was conveniently summarised in ASIC's written submissions.¹ Without repeating that evidence or the submissions again here, it is appropriate to briefly note the following by way of summary.
10. On 8 September 2020, ASIC commenced an investigation (**the investigation**) pursuant to s.13 of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) into suspected contraventions by the defendants.²
11. The suspected contraventions, including a number of breaches under the Act, are identified in [13] to [14] of the Main Allen Affidavit (**Suspected Contraventions**) and arise from concerns that Ms Caddick, the sole director and shareholder of Maliver, is falsely holding out that Maliver holds an Australian financial services license (**AFSL**) and persuading consumers to deposit funds with Maliver for the purposes of investing in shares on their behalf and misappropriating at least some of those funds.
12. As part of the investigation, ASIC made a number of enquiries including examinations of various ASIC registers, interviewing and obtaining documents from a number of investors, issuing

¹ ASIC's written submissions dated 10 November 2020 at [25]-[37]

² Main Allen Affidavit at [13]

statutory notices, conducting analysis of various bank accounts, obtaining statements from Australian Border Force and the Department of Foreign Affairs, and conducting searches to determine the assets of the defendants.³

13. On the basis of ASIC's findings in the investigation, Ms Allen expressed her concern that⁴:

- (a) Maliver is providing unlicensed financial services;
- (b) Maliver is using the AFSL of another company without authorisation in order to represent to consumers that Maliver is licensed to provide financial services;
- (c) Maliver and Caddick are representing to consumers that:
 - (i) Maliver opens trading accounts in the names of consumers with Commonwealth Securities Limited (**Commsec**) and other financial services providers;
 - (ii) Maliver invests consumer funds via these accounts in shares;
 - (iii) Profits are generated through capital growth in shares, together with dividends payments; and
 - (iv) Maliver is remunerated for this service by an annual fee calculated at 0.75% of a consumer's total funds under management;
- (d) When in fact:
 - (i) Consumer monies are co-mingled in bank accounts held in the name of Ms Caddick and Maliver and are not transferred to trading accounts held in the name of individual consumers;
 - (ii) Of the money deposited by consumers, not all is ultimately invested in shares. In excess of 0.75%, is being used for Ms Caddick's own benefit or the benefit of other persons, including to make mortgage repayments, payments to other consumers and to purchase jewellery and luxury goods from brands including Canturi, Christian Dior and Chanel;
 - (iii) Ms Caddick has provided falsified documents to investors purporting to be from Commsec or Link Market Services Pty Ltd detailing account numbers and transactions which do not in fact exist⁵; and
 - (iv) Of those funds that are ultimately invested in shares, it appears that very little profit is generated by either capital growth or dividend payments⁶.

³ Main Allen Affidavit at [16]

⁴ Main Allen Affidavit at [18]

⁵ As detailed in Main Allen Affidavit at [48] to [78]

⁶ As detailed in Main Allen Affidavit at [200] to [205]

14. Significantly, the above remains unanswered by the defendants. Additionally, since the ex parte orders were made, a number of further matters have emerged which effectively support the appointment of receivers and provisional liquidators at this time. These matters include:
15. *First*, the first defendant has disappeared and is being treated as a missing person by the police.⁷
16. *Secondly*, the defendants have not complied with the Court's orders made on 10 November 2020 to provide disclosure affidavits in respect of their assets and liabilities.⁸
17. *Thirdly*, the first defendant's brother, Mr Adam Grimley, is her attorney named under an enduring power of attorney and is seeking to represent the first defendant in these proceedings, including appointing legal representatives.⁹ However, Mr Grimley himself appears to have no knowledge of the allegations made by ASIC¹⁰, and it can and should be inferred that he will not be able to assist the plaintiff with its investigation nor is he able to provide the disclosure affidavits.
18. *Fourthly*, the second defendant is unrepresented in these proceedings, and it can and should be inferred from the disappearance of the first defendant (its sole director and shareholder) that there is vacuum at the helm of the second defendant company such that nobody is managing its affairs.
19. *Fifthly*, a large number of additional (and, unsurprisingly, distressed) consumers who claim to have invested with the defendants have contacted ASIC and provided further information and documents to ASIC regarding their investments¹¹ which show that these investors have invested approximately \$13.1 million with the defendants and the majority have not received any funds back from the defendants to date.¹² There is stark evidence of further victims of the suspected contraventions.¹³
20. *Sixthly*, on 11 November 2020 a search warrant was executed at the first defendant's premises in Dover Heights¹⁴ during which physical and electronic documents and other items (including

⁷ Third Allen Affidavit at [11]-[17]

⁸ Third Allen Affidavit at [29]

⁹ Affidavit of Adam Grimley sworn on 8 December 2020 at [1] and [22]

¹⁰ Affidavit of Adam Grimley sworn on 8 December 2020 at [8]

¹¹ Third Allen Affidavit at [30]-[37] and Fourth Allen Affidavit at [9]

¹² Fourth Allen Affidavit at [9]

¹³ Fourth Allen Affidavit at [10] and [12] to [33]

¹⁴ Third Allen Affidavit at [4]

jewellery, watches, designer label clothing, accessories and footwear) were seized.¹⁵ The documents seized reveal that there might be further property including valuable assets in Sydney and the United States owned by the defendants.¹⁶

21. *Seventhly*, ASIC has obtained updated information from various financial institutions which show that as at 7 December 2020 there is approximately \$4million in various bank accounts held by the defendants.¹⁷
22. *Eighthly*, persons who claim to be dependents of the first defendant (namely her husband and son) are seeking to vary the freezing orders so that their alleged reasonable living expenses can be provided for.¹⁸ This being a matter that could be more practicably managed by a receiver.
23. In the light of the foregoing, and on the assumption that leave to amend the originating application is granted, these submissions now turn to a consideration of the applications to appoint receivers and provisional liquidators to the property of the first and second defendants, respectively.

Application to Appoint Receivers

24. ASIC seeks an order pursuant to s.1323(1)(h)(i) for the appointment of a receivers to the property of the first defendant. ASIC accepts that this has been variously described in the authorities as “an extraordinary step”, “a drastic step” and “the most intrusive order”.¹⁹
25. There is ample authority for the appointment of interim receivers when, as here, asset freezing orders are still in place.²⁰ The circumstances where a receiver and manager may be appointed include where potential or actual claimants are being protected from incompetence, breach of trust or from fraud.²¹

¹⁵ Third Allen Affidavit at [39]-[43]

¹⁶ Third Allen Affidavit at [42]-[48]

¹⁷ Fourth Allen Affidavit at [7]-[8]

¹⁸ See Affidavit of Anthony Koletti sworn 8 December 2020 and Affidavit of Adam Grimley sworn 8 December 2020

¹⁹ See authorities referred to in *ASIC v Marco (No 3)* [2020] FCA 719 at [130]

²⁰ See *ASIC v Marco (No 3)* [2020] FCA 719 at [172] and the numerous cases cited there.

²¹ *ASIC v Marco (No 3)* [2020] FCA 719 at [172] citing Derrington J in *ASIC v Linchpin Capital Group Ltd* [2018] FCA 1104 (at [63]).

26. Ultimately, however, it is a discretionary power for the Court turning on the question whether it is *necessary or desirable* to do so for the purposes of protecting the interests of a person. The boundaries of that criterion and the consequences of its width were considered by French J (as he then was) in *ASIC v Carey (No 3)*²² as follows:

[26] The circumstances in which the court may make orders under s 1323(1) are wide as indicated by the words “necessary or desirable...for the purpose of protecting the interests of a person...”. There is an element of risk assessment and risk management in the judgment the court is called on to make. It follows, and has been accepted, that there is no requirement on the part of ASIC to demonstrate a prima facie case of liability on the part of the relevant person or that the person’s assets have been or are about to be dissipated [authorities omitted]

[27] The nature and duration of orders made under s 1323(1) can be fashioned by the court to reflect its assessment of any risk of dissipation of the assets of a person under investigation. But their legitimate purpose can further. The interests of aggrieved persons may be protected not only by orders designed to protect dissipation of assets, but also by orders which create an opportunity for the assets of the person under investigation to be ascertained.”

27. The above observations are particularly apposite to the present circumstances as is clear from the unanswered evidence referred to above and in particular:

- (a) Not that a prima facie case is required, the evidence in support of ASIC’s case of suspected contraventions against the defendants is strong and uncontroverted²³;
- (b) The first defendant has disappeared without providing a disclosure affidavit and it appears nobody else on the part of the defendants is able to assist ASIC in identifying all the assets of the first defendant, in circumstances where there may be further valuable assets owned by the first defendant; and
- (c) The ongoing reasonable living expenses of the first defendant’s dependents will need to be considered and managed having regard to the available funds and the competing interests of investors, which is something that a receiver will be best positioned to do;

28. The appointment of receivers and the provision of the report to the Court will provide the Court (and the investors) with an independent assessment of the identity, value and location of all assets held by the first defendant. It is respectfully submitted that it is necessary and desirable for the purpose of protecting the interests of investors that receivers be appointed in accordance with the Proposed Orders.

Application to Appoint Provisional Liquidators

²² *ASIC v Carey (No 3)* [2006] FCA 433 at [26]-[27] cited recently in *ASIC v Marco (No 3)* [2020] FCA 719 at [61].

²³ The strength of any case advanced by ASIC is relevant to the consideration: see *ASIC v Marco (No 3)* [2020] FCA 719 at [66]

29. On the assumption that leave to amend the Originating Process in the form proposed by ASIC²⁴ is granted and that leave to file the Amended Originating Process returnable *instanter* is granted, ASIC now immediately applies to appoint provisional liquidators pursuant to s. 472(2) of the Act to the second defendant.
30. ASIC essentially seeks the appointment of a provisional liquidator to the second defendant to ensure, in the public interest, that an independent person investigates and reports on the second defendant's affairs while securing and preserving the assets of the second defendant pending the final hearing of ASIC's winding up application.
31. At the time of preparing these written submissions it is anticipated that the application will be unopposed and heard *ex parte* because the second defendant is unrepresented.
32. Section 472(2) gives the Court power to appoint a provisional liquidator at any time after the filing of a winding up application and before the making of a winding up order. The Court has a wide and complete discretion whether or not to appoint a provisional liquidator.²⁵ It is well established that the appointment of a provisional liquidator pending determination of a winding up application is a drastic intrusion into the affairs of the company. Therefore an applicant must show some good reason for intervention prior to final hearing of the winding up application.
33. The relevant principles that apply to the exercise of the Court's discretion to appoint a provisional liquidator were neatly set out by O'Bryan J in *ASIC v Merlin Diamonds Limited* [2019] FCA 1546 at [97]-[103]. Broadly stated, before appointing a provisional liquidator pursuant to s.472(2) the Court must be satisfied of two matters:
- (1) that a winding up application has been filed and that there are reasonable prospects that a winding up order will be made on the application;
 - (2) that there is urgency and sufficient reason for intervention prior to final hearing including whether the appointment is needed in the public interest, or to protect the company's assets or to preserve the status quo in relation to the affairs of the company.
34. In relation to the first factor, ASIC relies on the just and equitable ground in s. 461(k) of the Act. It has long been established that a company may be wound up on the just and equitable ground

²⁴ The form of the proposed Amended Originating Process is found at annexure 1A-5 annexed to the Third Allen Affidavit.

²⁵ *ASIC v ActiveSuper Pty Ltd (No 2)* [2013] FCA 234 per Gordon J at [11] citing *Re Hunterford Pty Ltd* (1993) 12 ACSR 274 at 277

if there is mismanagement, misconduct or a lack of confidence in the conduct and management of the affairs of the company; if there have been breaches of the provisions of the Act including breaches of directors duties, inadequacy of accounts and record keeping; if there is a need to ensure investor protection; and if the company has not carried on its business candidly and in a straightforward manner with the public.²⁶ Moreover, public interest considerations may be prominent when ASIC applies for a winding up order.²⁷

35. There is authority to show that it is just and equitable to wind up a company where the company carried on a financial services business in Australia without being the holder of an AFSL and made misleading representations to the public on its website.²⁸
36. It is respectfully submitted that the facts and circumstance of this case provide compelling reasons to conclude that there are reasonable prospects that a winding up order on the just and equitable ground will be made in due course. The facts and circumstances include (not exhaustively) the substantial evidence indicating misappropriation of consumer funds, the intermingling of consumer funds within company accounts, the failure to have an AFSL, and the falsification of financial documents.
37. In relation to the second factor, namely whether there is urgency and sufficient reason for the appointment of a provisional liquidator in the public interest, the relevant circumstances (of which there is significant overlap with the matters relevant to the just and equitable ground for winding up²⁹) include:
 - (a) the financial position of the company;
 - (b) where there is a need for the examination of the state of the accounts of a company in the public interest;
 - (c) whether the affairs of the company have been conducted casually without due regard to legal obligations such that the Court has no confidence that the affairs of the company are being carried on for the benefit of the shareholders or investors.
38. In this case, the defendants have not provided any information as to the financial position of the second defendant, nor have they answered the matters raised in ASIC's affidavits as to the suspected contraventions. This alone raises a matter of suspicion that it may be in the public

²⁶ *ASIC v Merlin Diamonds Limited* [2019] FCA 1546 at [107] and the authorities cited there

²⁷ *ASIC v Finchley Central Funds Management Ltd* [2009] FCA 1110 per Gilmour J at [3] cited in *ASIC v Merlin Diamonds Limited* [2019] FCA 1546 at [107]

²⁸ *ASIC v Stone Assets Management Pty Ltd* [2012] FCA 630

²⁹ *ASIC v Merlin Diamonds Limited* [2019] FCA 1546 at [109]

interest to put in a provisional liquidator.³⁰ There is also a demonstrated lack of control over the assets of the corporation by reason of the disappearance of the first defendant (its sole director and shareholder). There can be no real dispute that there is a pressing need for an independent examination of the state of its accounts and activities of the corporation and for an independent person to take control of the management of the company's affairs.

39. Although the appointment of a provisional liquidator pending the determination of a winding up application is ordinarily regarded as a drastic intrusion into the affairs of the company, having regard to the facts and circumstances of this case, there are no other measures that would be adequate to protect the public interest. In the circumstances, it is appropriate, and in the public interest, that a provisional liquidator be appointed to the second defendant.

Proposed Variation of Freezing Orders

40. As noted above, persons who claim to be dependants of the first defendant (namely her husband and son) are seeking to vary the freezing orders so that their alleged ordinary living expenses can be provided for.³¹ To that end, the first defendant has served proposed orders, which among other things, essentially seek to vary the freezing orders made on 10 November 2020 so as to increase the first defendants' allowance for ordinary living expenses from \$800 per week (as ordered by Jagot J on 10 November 2020) to an amount of \$20,922 per month commencing from 10 November 2020. This translates into an increase from \$800 a week to a staggering \$4,880 a week.
41. ASIC's primary position is that any variation to Jagot J's freezing orders is a matter more properly and practicably addressed by the receivers. This is contemplated by the Proposed Orders.
42. If the Court is against ASIC's primary position, and instead wishes to engage at this time with the question of what ordinary living expenses ought to be allowed, the following matters ought to be considered:
- (a) there is an element of speculation as to the claimed living expenses sought, which Mr Grimley has based on only a limited review of first defendant's books and records and are still subject to verification³²;

³⁰ *Riviana (Aust) Pty Ltd v Laospac Trading Pty Ltd* (1986) 10 ACLR 865 at 866 per Young J cited in *ASIC v Merlin Diamonds Limited* [2019] FCA 1546 at [111]

³¹ See Affidavit of Anthony Koletti sworn 8 December 2020 and Affidavit of Adam Grimley sworn 8 December 2020

³² Affidavit of Adam Grimley sworn on 8 December 2020 at [11] to [18]

- (b) the evidence suggests that the living expenses of the first defendant and her dependants have been, and will continue to be, paid out of investor funds³³, and in such circumstances the Court ought to be careful to ensure that any allowance that the dependents are allowed to receive would not significantly undermine the purpose of protecting the affected assets for the balance of the period for which the restrictions are in place;
- (c) the evidence suggests that the first defendant and her dependants have been used to a very high standard of living³⁴ and the Court will need to be careful to strike the right balance between protecting the interests of investors and the standard of living that the dependents ought to now enjoy. It is respectfully submitted that having regard to this balancing exercise, not all the expenses claimed ought to be allowed.

Conclusion

43. For the foregoing reasons, it is respectfully submitted that the Court ought to make the orders sought in the Proposed Orders.

11 December 2020

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³³ See for example the Main Allen Affidavit at [99], [130], and [198] which provides examples of the use of investor moneys for personal expenses.

³⁴ This is apparent from the items seized during the search warrant

Annexure A - Proposed Orders

ORDERS

Federal Court of Australia

No. NSD 1220 / 2020

District Registry: NSW

Division: Commercial and Corporations

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

ORDER

JUDGE:

DATE OF ORDER: 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 subsection 1323(2A) of the *Corporations Act 2001* (Cth) (**Act**), any property held otherwise than as sole beneficial owner.

THE COURT ORDERS THAT:

Amended Originating Process

1. That the Plaintiff have leave to amend the Originating Process as set out in the proposed Amended Originating Process being Annexure 1A-5 to the affidavit of Isabella Lucy Allen affirmed 25 November 2020 (**the Amended Originating Process**).
2. That the Plaintiff have leave to file the Amended Originating Process in Court, returnable immediately.

3. In the first instance, that service of the filed Amended Originating Process be dispensed with.
4. The costs of the amendment application be costs in the cause.

Appointment of Receivers

5. Until further order, pursuant to s 1323(1)(h)(i) of the Act, Bruce Gleeson and Daniel Robert Soire of Jones Partners of Level 13,189 Kent St, Sydney, NSW 2000 be appointed as joint and several receivers (**Receivers**) of the Property of the First Defendant for the purpose of:
 - (a) identifying, collecting and securing the Property of the First Defendant;
 - (b) approving or making the payments from Property of the First Defendant permitted by order 11 of the orders made on 10 November 2020 as varied below;
 - (c) ascertaining the amount of money received by the First Defendant from funds paid to the Second Defendant by investors for investment (**Investor Funds**);
 - (d) identifying any Investor Funds held by the First Defendant, any Property acquired by the First Defendant with Investor Funds and any payments made by the First Defendant to third parties with Investor Funds and any other dealings by the First Defendant with Investor Funds;
 - (e) ascertaining whether any money was paid directly to the First Defendant by investors for investment and identifying the matters set out in paragraph (d) in relation to any such money.
6. For the purpose of attaining the objectives for which the Receivers are appointed, the Receivers shall have the following powers:
 - (a) the powers set out in s420(1) and 420(2)(a), (e), (f), (k), (o), (p), (q), (r) and (u) of the Act as if the references to corporation were references to the First Defendant;
 - (b) the power to investigate and report on the matters set out in order 7;
 - (c) the power to apply to the Court for directions or further orders on 48 hours' notice.
7. By 15 February 2021 the Receivers shall, provide to the Court and to the Plaintiff a report regarding:
 - (a) the assets and liabilities of the First Defendant;

- (b) an opinion as to the solvency of the First Defendant;
 - (c) the amount of Investor Funds received by the First Defendant;
 - (d) any Investor Funds held by the First Defendant, any property acquired by the First Defendant with Investor Funds and any payments made by the First Defendant to third parties with Investor Funds and any other dealings by the First Defendant with Investor Funds.
 - (e) the Receivers' remuneration, costs and expenses.
8. Costs of the application to appoint the Receivers be costs in the cause.
9. The Receivers' remuneration, costs and expenses shall be capped at \$70,000 or such other amount as the Court subsequently orders, and the Receivers shall make an application to the Court for approval of their reasonable remuneration, costs and expenses and their payment out of the Property of the First Defendant, within 14 days following the provision of the report referred to in order 7.

Appointment of Provisional Liquidators

10. Pursuant to s 472(2) of the Act, Bruce Gleeson and Daniel Robert Soire of Jones Partners of Level 13,189 Kent St, Sydney, NSW 2000 be appointed as joint and several provisional liquidators (**Provisional Liquidators**) to the Second Defendant.
11. The Provisional Liquidators have the powers set out in the Act and the power to investigate and report on the matters set out in paragraph 12.
12. By 15 February 2021 the Provisional Liquidators shall provide to the Court and to the Plaintiff a report as to the provisional liquidation of the Second Defendant, including:
- (a) the persons who have paid money to the Second Defendant for investment, the amounts they invested, and whether, and to what extent, these amounts have been repaid;
 - (b) identifying any bank accounts in which Investor Funds are held, any Property acquired with Investor Funds or any other dealings with Investor Funds;
 - (c) the assets and liabilities of the Second Defendant, including any assets in which the Second Defendant has any legal or beneficial interest and an estimate of the value of each asset;

- (d) an opinion as to the solvency of the Second Defendant;
 - (e) an opinion as to whether the Second Defendant has proper financial records;
 - (f) an opinion as to the claims that may be available to the Liquidators for the recovery of funds for the benefit of creditors, including claims pursuant to Part 5.7B of the Act;
 - (g) the likely return to creditors;
 - (h) any other information necessary to enable the financial position of the Second Defendant to be assessed;
 - (i) an opinion as to whether the Second Defendant has contravened any provisions of the Act and/or any other legislation; and
 - (j) any suspected contraventions of the Act by any directors or officers of the Second Defendant.
13. Within 14 days of their appointment, the Provisional Liquidators send a notice to each creditor of the Second Defendant at the last known address for each such person as shown in the books and records of the Second Defendant giving notice of:
- (a) the appointment of the Provisional Liquidators; and
 - (b) a contact address for the Provisional Liquidators.
14. The Provisional Liquidators shall be entitled to remuneration as determined by s60-16 of the Insolvency Practice Schedule (Corporations) to the Act.
15. The Provisional Liquidators shall have liberty to apply on 48 hours' notice.
16. The costs of the application to appoint the Provisional Liquidators be costs in the cause.

Provision of Information

17. Paragraph 7 of the orders made on 10 November 2020 (**10 November Orders**) and paragraph 1 of the orders made on 10 December 2020 are amended to provide that the Plaintiff is permitted to provide the Provisional Liquidators and Receivers with unredacted copies of the affidavits filed by the Plaintiff in these proceedings, including the Main Allen Affidavit and the Suppression Allen Affidavit and Exhibits IA-1, IA-2 and IA-3 to the Main Allen Affidavit.

Variation of Freezing Orders

18. Paragraph 11 of the 10 November Orders be varied as follows:

(a) delete paragraph 11(c) and replace with

11 (c) the First Defendant from paying ordinary living expenses, but not exceeding \$800 per week, unless approved by the Receivers;

(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,

(b) delete paragraph 11 (d) and replace with

11 (d) the Provisional Liquidators:

(i) paying trade creditors or other business expenses bona fide and properly incurred, or dealing with or disposing of 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.

(c) add

11 (e) the Receivers or the Provisional Liquidators from exercising their powers and performing their duties, pursuant to the appointments made by these orders.

Suppression Orders

19. An order pursuant to s.37AF(1)(a) and (b) and 37AG(1)(a) of the *Federal Court of Australia Act 1976* (Cth), that until further order, the publication or disclosure (except to the parties and their legal representatives and the Provisional Liquidators and the Receivers) of the following is prohibited:

(a) the affidavit of Isabella Lucy Allen affirmed 25 November 2020 in so far as it identifies the names or words set out in confidential Annexure IA-4 to the affidavit of Isabella Lucy Allen affirmed on 9 November 2020 (8 pages) **Suppression Allen Affidavit**); the entity name, ACN and AFSL number of the entity referred to in paragraph 18(b) of the affidavit of Isabella Lucy Allen affirmed on 9 November 2020 (92 pages) (**Main Allen Affidavit**), the entity name referred to in paragraph 37(e) of that affidavit and the name of the witness referred to in paragraph 26 of that affidavit; and the occupations of witnesses who have spoken with Australian Securities and Investments Commission staff;

(b) the whole of the affidavit of Isabella Lucy Allen affirmed 7 December 2020 and Exhibit IA-18.