

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 4/04/2022 4:19:22 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: Affidavit - Form 59 - Rule 29.02(1)  
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: 5/04/2022 10:14:22 AM 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.



Form 59  
Rule 29.02(1)

### Affidavit

No. NSD 1220 of 2020

Federal Court of Australia  
District Registry: New South Wales  
Division: Commercial and Corporations

#### AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

#### MELISSA LOUISE CADDICK and ANOR

Defendants

Affidavit of: **Michael Kevin Hayter**  
Address: Level 4, 20 Hunter Street Sydney NSW 2000  
Occupation: Solicitor  
Date: *4/4* April 2022

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I, **Michael Kevin Hayter**, Solicitor, of Level 4, 20 Hunter Street, Sydney New South Wales 2000, say on oath:

- I am the solicitor on record for Bruce Gleeson and Daniel Robert Soire (together, **Receivers**), the joint and several Liquidators of Maliver Pty Ltd (In Liquidation) and joint and several Receivers to the property of Melissa Louise Caddick.
- I make this affidavit in support of the Receivers' application to stay the proceeding described in paragraphs 3 to 6 of Final Orders Sought and 5, 6 and 8 of Interlocutory

Filed on behalf of BRUCE GLEESON & DANIEL ROBERT SOIRE in their capacity as joint and several receivers of the property of Melissa Caddick  
 Prepared by Michael Kevin Hayter  
 Law firm Swaab  
 Tel 02 9233 5544 Fax 02 9233 5400 Ref: 217242  
 Email mkh@swaab.com.au  
 Address for service Level 4, 20 Hunter Street, Sydney NSW 2000  
 (include state and postcode)

[Form approved 01/08/2011]

Orders Sought (those orders together, the **Koletti Proceeding**) in the initiating application filed by Anthony Koletti (**Application**) and exhibited to this affidavit at page 1-23 of **Confidential Exhibit MKH8(a)**.

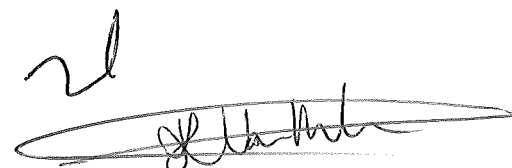
3. Capitalised terms in this affidavit that are not otherwise defined take their meaning from the Confidential Schedule exhibited at page 182 of Confidential Exhibit MKH8(a).
4. At the time of swearing this Affidavit, an Exhibit has been prepared on my behalf and I will refer to the documents in the Exhibit as **EX "MKH 8"**.

### **Background**

5. The Receivers were appointed by this honourable Court on 22 November 2021 for the purpose of, amongst other things:
  - a. Identifying, collecting and securing Receivership Property (as that term is defined in the orders made by her Honour Justice Markovic on 22 November 2021 (**Appointment Orders**));
  - b. To the extent necessary, ascertaining the total quantum of Investor Funds (as that term is defined in the Appointment Orders) and any funds advanced by any interested party to Melissa Caddick;
  - c. Subject to further orders, taking possession of and realising the Receivership Property; and
  - d. Seeking directions in relation to the distribution of funds obtained through the realisation of Receivership Property.
6. A copy of the Appointment Orders is at page **1-6** of MKH 8. Paragraph 5 of the Appointment Orders sets out the Receivers' powers in respect of their appointment, which include the power to do all things reasonably necessary in connection with the objectives for which the Receivers were appointed, and certain powers under section 420 of the Corporations Act.
7. On 24 February 2022, amongst other things, her Honour Justice Markovic made orders (**February Orders**):
  - a. joining Anthony Koletti to this proceeding for the purpose of orders regarding the Dover Heights Property;
  - b. requiring Anthony Koletti to articulate any claim he asserts in the Dover Heights Property by way of concise statement, to be filed and served in this proceeding; and


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- c. absent any such concise statement being filed by Anthony Koletti, granting leave to the Receivers to file and serve an application seeking vacant possession and delivery up of the Dover Heights Property for sale.
8. A copy of the February Orders is at pages **7-10** of MKH 8.
  9. On 3 March 2022, Swan Lawyers filed a notice of appearance on behalf of Anthony Koletti in this proceeding. A copy of that document was served on the Receivers (by email to me) on 3 March 2022. A copy of the email with attachment is at **11-14** of MKH 8.
  10. Amongst other things, the 3 March 2022 email from Swan Lawyers also stated that Anthony Koletti intended to make an application to the Federal Circuit and Family Court of Australia and requested if Swaab held instructions to accept service of such application on behalf of the Receivers.
  11. On 3 March 2022, I caused a letter to be sent to Swan Lawyers with a copy of the February Orders. A copy of that letter with attachments is at **15-23** of MKH 8.
  12. On 3 March 2022, I also caused a second letter to be sent to Swan Lawyers by email. Amongst other things, that second letter states that to the extent Anthony Koletti seeks to bring proceedings against the Receivers in respect of matters within the scope of their appointment, including control of Receivership Property, an application for leave must be brought in this Court (being the Court that appointed the Receivers), on the authority of *Re Siromath* (1991) 25 NSWLR 25. A copy of that letter is at **24-26** of MKH 8.
  13. On 4 March 2022, with the consent of the Receivers and Anthony Koletti, the Court made orders regarding the terms on which Anthony Koletti is required to grant access to the Dover Heights Property to the Receivers. A copy of those orders is at **27-29** of MKH 8.
  14. Anthony Koletti failed to file and serve a concise statement by 17 March 2022 as required by the February Orders.
  15. On 18 March 2022, I caused a letter to be sent to Swan Lawyers stating, amongst other things, that Anthony Koletti had not yet filed a concise statement in accordance with the February Orders and requesting confirmation that he agreed to give vacant possession of the Dover Heights Property.
  16. On 18 March 2022, I received a letter in response from Swan Lawyers, stating, amongst other things, that Anthony Koletti did not object to the sale of the Dover Heights Property in current market conditions, that he cannot pay the mortgage over the property and that he desires to remain living in the property until its sale.

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- 17. A copy of the above two letters dated 18 March 2022 are at **30-36** of MKH 8.
- 18. On 21 March 2022 I caused a letter to be sent to Swan Lawyers. That letter reiterated (at paragraph 5(a)) the need to obtain leave of this Court prior to commencing any separate proceedings against the Receivers. A copy of that letter is at **37-43** of MKH 8.
- 19. On 23 March 2022, I received an email from Judy Swan of Swan Lawyers with a copy of the Application and supporting documents. The Application is listed for a first return on 21 April 2022.
- 20. The Koletti Proceeding in the Application seeks orders in respect of Receivership Property, including the Dover Heights Property (Final orders 3 and 4, Interlocutory Order 5), the subject of this proceeding. It also seeks orders requiring the Receivers to perform certain acts and take certain steps in the context of their capacity as Receivers of the Receivership Property (Final Order 5).
- 21. It is intended that the Receivers will very shortly file an application in the Koletti Proceeding seeking to transfer the Koletti Proceeding to this Court.

Sworn by the deponent )  
 At Sydney )  
 In New South Wales )  
 On 4 April 2022 )  
 Before me: *Kellie Van Munster* )

  
 \_\_\_\_\_  
 Signature of deponent

  
 \_\_\_\_\_  
 Signature of witness  
 Solicitor  
 Level 4, 20 Hunter Street Sydney NSW 2000