



Federal Court of Australia

District Registry: Victoria Registry

Division: General

No: VID361/2026

GREGORY COTTON and another named in the Schedule
Plaintiffs

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
Defendant

ORDER

JUDGE: JUSTICE BUTTON

DATE OF ORDER: 13 July 2026

WHERE MADE: Melbourne

THE COURT NOTES THAT:

- A. This proceeding was commenced on 16 April 2026, days after ASIC informed the Plaintiffs that it would be seeking orders under s 601EE(2) of the *Corporations Act 2001* (Cth) (the **Act**) in proceeding VID1053/2025 (the **ASIC proceeding**) winding up the unregistered managed investment scheme.
- B. The relief sought in this proceeding comprised orders under s 601EE(2) of the Act winding up an unregistered managed investment scheme (albeit one defined differently from the scheme as defined by ASIC in the ASIC proceeding) and, in respect of the First Plaintiff only, relief under s 1317S(2) of the Act.
- C. On the same day as these orders are made, the Court has made orders in the ASIC proceeding under s 601EE(2) of the Act for the winding up of the Scheme (as defined therein) and under s 461(1)(k) of the Act for the winding up of the Second Plaintiff.
- D. The parties have agreed that this proceeding should be dismissed insofar as it concerns the winding up relief sought and that the First Plaintiff should have leave to discontinue the proceeding insofar as it concerns s 1317S relief, with a right of reinstatement.



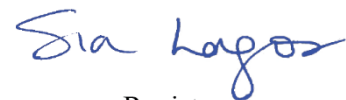
- E. The parties are in dispute about costs. ASIC has sought its costs of this proceeding. The Plaintiffs contend that there should be no order as to costs. The parties made written submissions on costs.
- F. The Court is satisfied that it was not necessary or reasonable for the Plaintiffs to commence this proceeding, without notice to ASIC, days after ASIC advised the Plaintiffs of its intention to amend the ASIC proceeding to seek orders winding up the unregistered managed investment scheme. In addition, the Originating Process in this proceeding did not define the unregistered managed investment scheme with sufficient precision for orders to be made in the terms sought in this proceeding.
- G. The Plaintiffs submitted that it was necessary and appropriate for them to file this proceeding without delay after ASIC raised its contention that there was an unregistered managed investment scheme because the First Plaintiff would need to be able to show he acted promptly, should he need to seek relief under s 1317S of the Act. This contention does not support the commencement of this proceeding in the circumstances in question, as the First Plaintiff could have shown his contrition or remorse, to support any future need to seek relief under s 1317S of the Act, by means other than commencing this proceeding when ASIC had not yet sought any findings against him that may be addressed through such an application.
- H. Although the Court considers that it was not necessary or justified for the Plaintiffs to commence this proceeding when they did, ASIC has not filed any documents in this proceeding, other than a Notice of Address for Service. Such costs as ASIC may have incurred concerning this proceeding specifically in connection with case management hearings are likely to be minimal, and difficult to disentangle from costs incurred in the ASIC proceeding. It is therefore not apparent that ASIC has incurred any material costs specifically and only referable to this proceeding.
- I. The Court has determined that no costs order should be made in ASIC's favour in this proceeding. The question of who should bear the costs of the ASIC proceeding is the subject of orders made in that proceeding on the same day as these orders.



THE COURT ORDERS THAT:

1. The Plaintiffs' applications for the orders sought at paragraphs 1–4 of their Originating Process dated 16 April 2026 be dismissed.
2. To the extent not dismissed by paragraph 1 above, the First Plaintiff has leave to discontinue his application under s 1317S of the Act, subject to a right to reinstate the application should ASIC allege that he has contravened a civil penalty provision.
3. There be no order as to costs.

Date orders authenticated: 13 July 2026


Registrar

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.



Schedule

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Second Plaintiff

FIRST MUTUAL PRIVATE EQUITY PTY LTD (ACN 618
207 560