Federal Court of Australia

District Registry: Victoria Registry

Division: General No: VID1053/2025

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
Plaintiff

GREGORY RAYMOND COTTON and another named in the Schedule
Defendants

ORDER

JUDGE:	JUSTICE BUTTON
DATE OF ORDER:	13 July 2026
WHERE MADE:	Melbourne

THE COURT NOTES THAT:

A. This proceeding was commenced by ASIC on 15 August 2025, *ex parte*, seeking — and obtaining — asset preservation orders under s 1323 of the *Corporations Act 2001* (Cth) (the **Act**).

B. On 17 November 2025, ASIC applied, on notice, for the appointment of receivers to the Defendants' property. The Defendants filed material opposing the application. A contested hearing was commenced, in the course of which the Defendants determined no longer to oppose the appointment of receivers, on a limited basis. Orders were made on 15 December 2025 appointing receivers on a limited basis, and for a limited period.

C. After filing material in support of a foreshadowed application to discharge the appointment of the receivers, the receivers' appointment was ultimately continued, by consent, by orders made on 21 April 2026.

D. On 10 April 2026, ASIC informed the Defendants that it intended to seek relief under s 601EE of the Act for the winding up of an unregistered managed investment scheme. ASIC proposed a detailed set of orders providing for the amendment of its Originating Process, the provision of a Concise Statement, a Concise Response by the Defendants, and the exchange of evidence. That proposed timetable ran to mid-August 2026, and was also provided in anticipation of a case management hearing fixed for 17 April 2026.

E. On 16 April 2026, the day before the case management hearing in this proceeding, and without notice to ASIC, the Defendants commenced proceeding VID361/2026, in which they sought 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 this proceeding) and, in respect of the First Defendant, relief under s 1317S(2) of the Act (the **2026 proceeding**).

F. The Defendants have taken the position that it was necessary for them to have commenced the 2026 proceeding when they did, notwithstanding that it also sought orders winding up an unregistered managed investment scheme.

G. In its submissions on costs, ASIC submitted that the Defendants' definition of the scheme in the 2026 proceeding excluded bank accounts that had balances in excess of $2.4 million as at December 2025. The "scheme" that the Defendants proposed be wound up in the 2026 proceeding was not clearly defined by the Originating Process in the 2026 proceeding. The Originating Process referred to a paragraph of a solicitor's affidavit, which did not identify specific bank accounts. An affidavit sworn by Mr Cotton in the 2026 proceeding also was not specific and exhaustive as to the bank accounts the Plaintiffs in that proceeding considered were encompassed in the unregistered managed investment scheme.

H. It was not until 12 June 2026 that the Defendants indicated a willingness to consent to winding up orders being made in this proceeding, in accordance with the scheme as ASIC defined it, which included the identification of specific bank accounts. It was then that it became clear that there would be no dispute concerning orders being made in this proceeding winding up the unregistered managed investment scheme as ASIC defined it.

I. The parties subsequently agreed orders winding up the unregistered managed investment scheme under s 601EE(2) of the Act, in the form proposed by ASIC.

J. ASIC seeks its costs of the proceeding, but the Defendants submitted that there should be no order as to costs. The parties made written submissions on costs. In opposing costs being awarded to ASIC, the Defendants submitted that, had ASIC articulated its position regarding there being an unregistered managed investment scheme at the outset, orders could have been made providing for the winding up of the unregistered managed investment scheme much earlier, and there would have been no need to appoint receivers. The Defendants also submitted that it was reasonable and appropriate for them to have commenced the 2026 proceeding, and that its conduct materially contributed to the resolution of this proceeding.

K. The Court concludes that the history of this litigation shows the claims of the Defendants to be overstated. Their conduct of the litigation exhibited a pattern of opposing each step that ASIC proposed, only to accede to it (or something very close to it) at the eleventh hour. The Court does not accept that costs would have been substantially lower had ASIC articulated its position on the unregistered managed investment scheme earlier. Against this, however, the matter has ultimately been resolved without a contested hearing on the winding up of an unregistered managed investment scheme, and the cooperation of the Defendants in that regard does warrant some recognition in the making of costs orders. The Court also takes into account that it took some time for ASIC to settle on the relief it would ultimately pursue in the proceeding, having obtained asset preservation orders and orders for the appointment of receivers.

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AUSTRALIA

L. The Court has determined that the Defendants should pay 75% of ASIC's costs of the proceeding.

M. Final relief in this proceeding, and in the 2026 proceeding, is being addressed through separate sets of orders, made on the same day as these orders regarding costs.

THE COURT ORDERS THAT:

1. The Defendants are to pay 75% of the Plaintiff's costs of the proceeding.

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

No: VID1053/2025

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Division: General

Second Defendant	FIRST MUTUAL PRIVATE EQUITY PTY LTD (ACN 618 207 560)