

NOTICE OF FILING

Details of Filing

Document Lodged: Non-Prescribed Pleading
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 16/11/2022 2:53:49 PM AEDT
Date Accepted for Filing: 17/11/2022 9:25:28 AM AEDT
File Number: NSD1220/2020
File Title: AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v
MELISSA LOUISE CADDICK & ORS
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

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 of the filing of the document is determined pursuant to the Court's Rules.



IN THE FEDERAL COURT OF AUSTRALIA
DIVISION: COMMERCIAL AND CORPORATIONS
LIST: CORPORATIONS
REGISTRY: SYDNEY
CASE No. **NSD1220/2020**

IN THE MATTER OF MELISSA LOUISE CADDICK

**Australian Securities and Investments Commission
Plaintiff**

Melissa Louise Caddick

First Defendant

Bruce Gleeson

First Applicant in Interlocutory Application

Daniel Robert Soire

Second Applicant in Interlocutory Application

AMENDED POINTS OF CROSS-CLAIM for ANTHONY KOLETTI

RELIEF SOUGHT

- 1 A declaration that item 40 in Schedule 1A to the Interlocutory Application filed on 6 October, 2022 ("**the Interlocutory Application**"), being gentleman's Louis Vuitton digital wristwatch, is the property of Anthony Koletti.
- 2 A declaration that the proceeds of sale of item 39 in Schedule 1A to the Interlocutory Application being gentleman's steel Breitling chronograph Navitimer wrist watch are the property of Anthony Koletti.
- 3 A declaration that item 17 in Schedule 1C to the Interlocutory Application, being Canturi 18ct white gold channel set baguette and carre cut diamond cubism cross pendant is the property of Anthony Koletti.
- 4 A declaration that item 18 in Schedule 1C to the Interlocutory Application being 18 ct white gold wide Cubism ring 4.26 ct black sapphires is the property of Anthony Kioletti.
- 5 A declaration that items 8&9 in Schedule 3A to the Interlocutory Application being two paintings by Adrian Lockhart are the property of Anthony Koletti.

Filed for Anthony Koletti

Judith Louise Swan Swan Lawyers
87 Victoria Road, Bellvue Hill 2023

Email: judy.swan@sweanlawyers.com.au
Ph:91617121

- 6 A declaration that the proceeds of sale of items 1 to 16 inclusive in Schedule 1C to the Interlocutory Application which are listed in paragraph 4 of the Notice of Objection dated 24 October 2022 lodged on behalf of Anthony Koletti are the property of Anthony Koletti.
- 7 A declaration that the monies held in the bank account with National Australia Bank in the name of the Defendant as trustee for Caddick Services Trust referred to in Schedule 4A to the Interlocutory Application is held on the terms of Caddick Services Trust for Caddick Services Trust, for the son of the Defendant.
- 8 A declaration that the monies held in the bank account with National Australia Bank in the name of Caddick Family Trust Superannuation Fund referred to in Schedule 4A to the Interlocutory Application is held by the Defendant and Adam Grimley as trustees for Caddick Family Trust Superannuation Fund on the terms of the Caddick Family Trust Superannuation Fund Deed for the benefit of Caddick Family Trust Superannuation Fund.
- 9 A declaration that monies held in the two accounts with National Australia Bank in the name of the Defendant's son referred to in schedule 4B to the Interlocutory Application are the property of the son of the Defendant.

PLEADINGS AND PARTICULARS

1. Anthony Koletti is an Interested Person in these proceedings.
2. Anthony Koletti married the Defendant Melissa Louise Caddick on 31 December 2013.
3. The Defendant has disappeared and has not been seen since the morning of 12 November 2021.
4. Since 12 November 2021 the Defendant's only child, her son who is aged 16 years and 4 months, has resided with Anthony Koletti who has been the primary carer for the son of the Defendant.
5. The Defendant executed a will on 30 August 2019.
6. Anthony Koletti is named as one of the trustees and executors in the said will, with the brother of the Defendant Adam Grimley and Juli Robertson
7. Pursuant to Clause 6 of the said will Anthony Koletti is named as the guardian of the son of the Defendant.
8. Pursuant to Clause 49 of the said will the Defendant leaves the residue of her estate after the gifts previously recorded in the will to her son upon his attaining 30 years of age.

9. Until the son of the Defendant attains the age of 30 the residue of the estate of the Defendant is to be held on trust by the trustees, including Anthony Koletti.
10. By Deed ("**Caddick Services Trust Deed**") dated 1 June 2016 a discretionary trust was made, known as Caddick Services Trust. The Caddick Services Trust Deed provided that the Settlor wished to establish a Discretionary Trust for the benefit of the Beneficiaries referred to in the Trust Particulars in the Caddick Services Trust Deed.

Particulars

A copy of Caddick Services Trust Deed is at pages 41 to 75 of Exhibit BG-40 to the affidavit of Bruce Gleeson sworn on 28 September 2022 filed in these proceedings

11. The Trust Particulars of Caddick Services Trust Deed provide:
 - 11.1 The Trustee is Melissa Louise Caddick
 - 11.2 The Primary Beneficiaries are the Defendant and her son; and
 - 11.3 The Secondary Beneficiaries include the spouse or widower of the Defendant, being Anthony Koletti.
12. Clause 1.4 of Caddick Services Trust Deed defines income which includes income produced from the efforts of the Trustee less amounts the Trustee is entitled to reimburse itself out of such income.
13. Clause 1.17 of Caddick Services Trust Deed provides that the Trust Fund of Caddick Services Trust includes any property which any person may give to, or assign to, transfer to or vest in or cause to be vested in the Trustee to be held on the terms of the Caddick Services Trust and any other property which may be held by the Trustee pursuant to Caddick Services Trust Deed.
14. Clause 3.2 of Caddick Services Trust Deed provides that if the Trustee shall not by the thirtieth day of June have exercised its discretion to pay, apply, set aside or accumulate the whole or any part of that income, then the Trustee shall hold the income not so paid set aside or accumulated for that year in trust for such of the Primary Beneficiaries as are then living and if more than one in equal shares as tenants in common.
15. On 15 June 2018, monies were deposited into the bank account with National Australia Bank in the name of the Defendant as trustee of Caddick Services Trust referred to in Schedule 4A to the Interlocutory Application. Payments have been made from that account to accounts operated by the Defendant, leaving a balance of USD 33,350.47 as at 22 December 2020.
16. The Defendant did not exercise a discretion in relation to the balance of the monies held in the said account by 30 June 2022.

17. Any money now held in the said account with National Australia Bank is held by the Defendant as trustee of Caddick Services Trust on the terms of Caddick Services Trust for the benefit of Caddick Services Trust, or for the son of the Defendant as the surviving Primary Beneficiary of Caddick Services Trust.
18. The Defendant and her brother Adam Grimley are trustees of Caddick Family Trust Superannuation Fund. A copy of the Caddick Family Trust Superannuation Fund Deed is at pages 77 to 160 of Exhibit BG-40 to the affidavit of Bruce Gleeson sworn on 28 September 2022.
- 18A. By Death Benefit Nomination Form executed by Melissa Louise Caddick on 17 March 2016, (“the Nomination”) Melissa Louise Caddick nominated Anthony Marcus Rodo Koletti (“Anthony Koletti”) and Adam Edward Grimley as beneficiaries of her interest in Caddick Family Trust Superannuation Fund.
- 18B. It is a term of the Nomination that it is a binding nomination and does not indicate that the nomination will lapse, expire, or terminate automatically on a specified date or upon expiration of a specified period from the date of the nomination and comprises a written nomination by Ms Caddick to the Trustee stating how she directs or wishes the Trustee to pay the Death Benefit payable on her death so that the Nomination is a Non-lapsing Binding Nomination as provided by Clause 1.1 of Caddick Family Trust Superannuation Fund Deed, and is a Beneficiary Nomination as provided by the said clause
- 18C. It is a further term of the Nomination that the interest of Melissa Louise Caddick in Caddick Family Trust Superannuation Fund be allocated to Anthony Koletti as to the total proceeds less \$1,000,000 paid to Adam Grimley and allocated to Adam Edward Grimley as to \$1,000,000.
- 18D. Pursuant to Clause 1.1 of Caddick Family Trust Superannuation Fund Deed Anthony Koletti is a Dependant of Melissa Caddick as he is the spouse of Melissa Caddick.
- 18E. Pursuant to Clause 50.2 of Caddick Family Trust Superannuation Fund Deed the Death Benefit payable pursuant to Clause 50.1 includes the balance of the Member’s Accumulation Account as at the date the payment is made.
- 18F. Pursuant to Clause 51 (a) of Caddick Family Trust Superannuation Trust Deed if the Trustee of Caddick Family Trust Superannuation Fund holds a Non-lapsing Binding Nomination in respect of a deceased Member the Trustee must pay the Death Benefit to the person or persons referred to as the Nominated Beneficiary in the Nomination.
- 18G. In the alternative, if the Trustee does not hold a Beneficiary Nomination in respect of a deceased Member, pursuant to Clause 51 (b) of the Caddick Family Trust Superannuation Fund Deed the Trustee must pay or apply the Death benefit to or for the benefit of a person nominated in writing by the deceased Member provided that

the Trustee is satisfied that the person was a Dependant of the deceased Member at the time of the death of the deceased Member, or any one or more of the Dependents of the deceased Member, or the Legal Personal Representatives of the deceased member.

19. As at 31 December 2020, \$31,133.82 was held in National Australia Bank Account in the name of Caddick Family Trust Superannuation Fund referred to in Schedule 4A to the Interlocutory Application.
20. Monies held in the account entitled Caddick Family Trust Superannuation Fund are held by the Defendant and Adam Grimley as trustees of Caddick Family Trust Superannuation Fund pursuant to the terms of the Trust Deed of Caddick Family Trust Superannuation Fund for the benefit of Caddick Family Trust Superannuation Fund.
21. As at 28 September 2022, the two accounts with National Australia Bank referred to in Schedule 4B to the Interlocutory Application were held by the Defendant's son. Any monies in those two accounts are the property of the Defendant's son, who is a minor.
22. By Notice of Objection dated 24 October 2022 Anthony Koletti gave notice to the Applicants in Interlocutory Application, Bruce Gleeson and Daniel Robert Soire, of his objection to them dealing with the assets set out in the said Notice of Objection.
23. Anthony Koletti opposes the orders sought by the said Applicants in the said Interlocutory Application in relation to the bank accounts referred to above, being the bank accounts set out in Schedules 4A and 4B to the Interlocutory Application.

Schedule1A

24. In or about 2017, Anthony Koletti purchased the gentleman's Louis Vuitton digital wristwatch, being item 40 in Schedule 1A to the Interlocutory Application. The purchase took place at the Louis Vuitton store in New York City, New York USA. The wristwatch was purchased for USD 4,000 which Anthony Koletti had obtained from a money changer in Bondi Junction NSW from his savings.
25. In about 2015, the Defendant gave to Anthony Koletti the gentleman's steel Breitling chronograph Navitimer wristwatch.

Schedule 1C

26. On or about 21 April 2016, the Defendant gave to Anthony Koletti the Canturi 18ct white gold channel set baguette and carre cut diamond cubism cross pendant being item 17 in Schedule 1C to the Interlocutory Application. The gift was a birthday present and has been in the possession of Anthony Koletti since about 21 April 2016.

- 27. On 31 December 2013, at the marriage ceremony of the Defendant and Anthony Koletti at 37 Chamberlain Avenue Rose Bay NSW the Defendant gave to Anthony Koletti the 18 ct white gold wide Cubism ring with 4.26ct black sapphires as the wedding ring.
- 28. In about 2018, Stefano Canturi gave to Anthony Koletti the Canturi black diamond three quarter bangle being item 5 in Schedule 1C to the Interlocutory Application. Anthony Koletti had given lessons to the son of Stefano Canturi concerning music production.
- 29. In about 2019, Stefano Canturi gave Anthony Koletti the Canturi 18ct white gold black rhodium plated skull with a 18ct white gold clasp lock.
- 30. Between 2013 and 2020, the Defendant gave to Anthony Koletti the other items listed in Schedule 1C to the Interlocutory Application, in addition to the items referred to in paragraphs 26 to 29 above.

Schedule 3A

- 31. In about 2015, Anthony Koletti purchased the artwork entitled Love Song by Adrian Lockhart, being item 8 in Schedule 3 to the Interlocutory Application.
- 32. In about 2016, the Defendant gave to Anthony Koletti the untitled abstract art work by Adrian Lockhart, being item 9 in Schedule 3A to the Interlocutory Application



.....
Solicitor for Anthony Koletti