

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 19/02/2021 8:54:57 PM AEDT 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: 19/02/2021 8:55:01 PM AEDT

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. NSD1220 of 2020

Federal Court of Australia
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

Affidavit of: Isabella Lucy Allen

Address: Level 5, 100 Market Street, Sydney, New South Wales

Occupation: Investigator

Date: 19 February 2021

Filed on behalf of (name & role of party) Australian Securities and Investments Commission, Plaintiff

Prepared by (name of person/lawyer) Nicolette Bearup

Tel (02) 9911 5745

Fax (02) 9911 2414

Email nicolette.bearup@asic.gov.au

Address for service Email address above and Level 5, 100 Market Street, Sydney, NSW, 2000
(include state and postcode)

[Form approved 01/08/2011]

A handwritten signature in black ink, appearing to be 'Nicolette Bearup', located at the bottom right of the page.

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I, Isabella Lucy Allen, Investigator of Level 5, 100 Market Street Sydney New South Wales 2000 affirm:

1. This is the sixth affidavit that I have affirmed in relation to these proceedings, with previous affidavits being affirmed on 9 November 2020 (my **Main Affidavit and Suppression Affidavit**), 25 November 2020 (my **Third Affidavit**) and 7 December 2020 (**Fourth Affidavit**) and 15 December 2020 (my **Fifth Affidavit**).
2. I am employed by the Australian Securities and Investments Commission (**ASIC**) as an investigator in ASIC's Financial Services Enforcement team as part of the Office of Enforcement.
3. I am authorised to make this affidavit on behalf of ASIC pursuant to section 102 of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) and have been delegated certain functions and powers, including the functions and powers under Part 3 of the ASIC Act which relate to ASIC's investigation and information gathering powers.
4. Unless otherwise stated:
 - (a) I make this affidavit from information within my own knowledge and from an examination of the records of, or otherwise in the possession of, ASIC. Where I depose to matters from information and belief, I believe those matters to be true and correct; and
 - (b) the abbreviations and acronyms used in this affidavit are the same as those referred to in my affidavits affirmed on 9 November 2020, 25 November 2020, 7 December 2020 and 15 December 2020.

5. The purpose of this affidavit is to update the Court on the progress of ASIC's investigation since this matter was last before the Court of 17 December 2020.

Status of the First Defendant as a missing person

6. The First Defendant remains a missing person, since she was reported as missing on 12 November 2020.
7. On 19 February 2021, I instructed Ms Steph Colbran an ASIC investigator to access the NSW Police Missing Person Enquiry Register and the National Missing Persons Register monitored by the Australian Federal Police. She advised me she searched for 'Melissa Caddick'. The search took her to the following URLs <https://apps.police.nsw.gov.au/missingpersons enquiry/search.do> and <https://www.missingpersons.gov.au/search/nsw/melissa-caddick> respectively. A copy of the webpages are at Annexure IA-25.
8. ASIC has assisted with all enquiries it has received from NSW Police from 13 November 2020 to the date of this affidavit and is continuing to cooperate with the NSW Police investigation into the disappearance of the First Defendant.

Progress of ASIC's investigation since matter last in Court

9. Since 17 December 2020, ASIC has taken a number of steps to progress its investigation into the conduct of the First and Second Defendants. ASIC has, among other things:
- (a) provided unredacted copies of the affidavits filed by the Plaintiff in this proceeding to the Receivers and Provisional Liquidators;
 - (b) reviewing documents seized pursuant to the Search Warrant
 - (c) on 19 January 2021, provided documents regarding the living expenses of the First Defendant or the welfare of the First Defendant's son to the First Defendant's representative;
 - (d) liaised with the Receivers and provided copies of requested books and records of the First Defendant that relate to the First Defendant's financial affairs or the matters the subject of the Receiver's report to the Court due on 15 February 2021;



- (e) liaised with the Provisional Liquidators and provided copies of requested books and records of the Second Defendant that relate to the Second Defendant's financial affairs or the matters the subject of the Receiver's report to the Court due on 15 February 2021;
- (f) liaised with the Receivers and Provisional Liquidators to facilitate valuations of the First and/or Second Defendant's property seized by ASIC pursuant to the Search Warrants and currently in ASIC's custody and control;
- (g) liaised with investors and reviewed documents provided to it by investors;
- (h) examined Mr Anthony Koletti and Mr Adam Grimley on 18 February 2021 and 19 February 2021, respectively, under section 19 of the ASIC Act;
- (i) conducted voluntary interviews with a number of investors and other witnesses;
- (j) commenced taking statements from witnesses; and
- (k) liaised with the New South Wales Police Force regarding their searches for the First Defendant.

Correspondence

10. On 1 February 2021, the solicitors for the Receiver sent a letter to the First Defendant's solicitors stating that there remained only a "very small amount which represented a cash balance and which our clients have requested be paid to our clients (with the intention of using those funds for living expenses)". A copy of this letter is at "Annexure IA-26".

Reports from the Receivers and Provisional Liquidators

11. On 15 February 2021, ASIC received reports from the Receivers and the Provisional Liquidators. ASIC is currently reviewing those reports and considering the best way to maximise the returns to the affected investors in the most efficient and cost effective way possible. As a result, ASIC is still considering the need to further amend its originating application to seek orders as to final relief.

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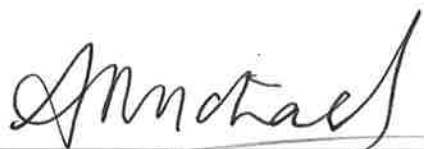
Affirmed by the deponent
at Sydney
in New South Wales
on 19 February 2021

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)
)
)
)
)



Signature of deponent

Before me:



Signature of witness

An Australian Legal Practitioner within the
meaning of the Legal Profession Uniform Law (NSW)



Federal Court of Australia
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

Annexure IA-25

This is the exhibit referred to as Annexure IA-25 in the affidavit of Isabella Lucy Allen affirmed on 19 February 2021.

Before me: 

An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (NSW)

Filed on behalf of (name & role of party)	Australian Securities and Investments Commission, Plaintiff		
Prepared by (name of person/lawyer)	Nicolette Bearup		
Tel	(02) 9911 5745	Fax	(02) 9911 2414
Email	nicolette.bearup@asic.gov.au		
Address for service (include state and postcode)	Email address above and Level 5, 100 Market Street, Sydney, NSW, 2000		





New South Wales Government
NSW Police Force



NSW Police Force
www.police.nsw.gov.au

You are at: NSWPF Website > Community Issues > Missing Persons > Missing Persons - Enquiry

Missing Persons - Enquiry

Missing Persons Enquiry System



Details

Name: CADDICK Melissa Louise **Sex:** Female
Year of Birth: 1971 **Age Now:** 49

At Time of Disappearance

Age: 49 **Height (cm):** 165.0 **Build:** Thin
Hair Colour: Brown **Eye Colour:** Brown **Complexion:** Fair
Nationality: **Racial Appearance:** Caucasian

Circumstances

Melissa CADDICK is believed to have left her home in Dover Heights about 5.30am on 12/11/2020 possibly wearing black singlet, black leggings and silver Nike runners. There are serious concerns for the welfare of the missing person.

If you have any information that may assist with locating this person please contact the Missing Persons Unit
or call Crime Stoppers 1800 333 000

New Search

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Search / NSW

MELISSA CADDICK



Missing since: Wednesday, November 11, 2020

Last seen: Dover Heights, NSW

Responsible jurisdiction: NSW

Year of birth: 1971

Age now: 49

Gender: Female

Height: 165cm

Build: Slim

Hair: Brown

Eyes: Brown

Ethnicity: Caucasian

Circumstances

Melissa Caddick was last seen at a home on Wallangra Road, Dover Heights, after midnight Wednesday (11 November 2020).

Police have been told she may have left the home about 5.30am Thursday (12 November 2020), and she has not been seen or heard from since.

Officers from Eastern Suburbs Police Area Command were notified on Friday (13

[Back to search results](#)

Officers from Eastern Suburbs Police Area Command were notified on Friday (13 November 2020), and commenced investigations into her whereabouts.

Despite an extensive search of the area, Melissa has not been located and concerns are held for her welfare.

Melissa is described as being of Caucasian appearance, about 165cm tall, of slim build, with long brown hair. At the time she was wearing a black singlet top and leggings, and silver 'Nike' sneakers.

She did not take any money, mobile or personal possessions with her.

Anyone with information which may assist in locating the whereabouts of Melissa is urged to call Crime Stoppers on 1800 333 000.

Do you have any information?

[Report information to Crime Stoppers](#)

[View the poster](#)



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Report information to Crime Stoppers
View the poster



Leisl SMITH

About 1pm on Sunday 19 August 2012 Leisl Smith left her home in Wallarah NSW in her Honda Accord and was supposed to return at 5pm to look after her animals. She has not been...



Frances MALFREDAS

Frances Mafredas was last seen at the James Fletcher Hospital in Newcastle, NSW on the 21st of June 1984. Frances has not been seen, or in contact with family since this time...



Joy LANCASTER

Joy Lancaster was last seen on the night of 19 April 1985. She was at the Windsor Hotel, Albert Park until late into the night. She was drinking alcohol throughout the night and...



Leisl SMITH

About 1pm on Sunday 19 August 2012 Leisl Smith left her home in Wallarah NSW in her Honda Accord and was supposed to return at 5pm to look after her animals. She has not been...



Frances MALFREDAS

Frances Malfredas was last seen at the James Fletcher Hospital in Newcastle, NSW on the 21st of June 1984. Frances has not been seen, or in contact with family since this time....



Joy LANCASTER

Joy Lancaster was last seen on the night of 19 April 1985. She was at the Windsor Hotel, Albert Park until late into the night. She was drinking alcohol throughout the night and...

[See all profiles >](#)



Need more information?

Call our hotline on 1800 000 634



[Handwritten signatures]

MISSING

HAVE YOU SEEN ME?

Melissa CADDICK



Missing since: Wednesday,
11 November 2020

Last seen: Dover Heights, NSW

Year of birth: 1971

Age now: 49

Gender: Female

Ethnicity: Caucasian

Height: 165

Build: Slim

Hair: Brown

Eyes: Brown

Circumstances:

Melissa Caddick was last seen at a home on Wallangra Road, Dover Heights, after midnight Wednesday (11 November 2020).

Police have been told she may have left the home about 5.30am Thursday (12 November 2020), and she has not been seen or heard from since.

Officers from Eastern Suburbs Police Area Command were notified on Friday (13 November 2020), and commenced investigations into her whereabouts.

Despite an extensive search of the area, Melissa has not been located and concerns are held for her welfare.

Melissa is described as being of Caucasian appearance, about 165cm tall, of slim build, with long brown hair. At the time she was wearing a black singlet top and leggings, and silver 'Nike' sneakers.

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She did not take any money, mobile or personal possessions with her.

Anyone with information which may assist in locating the whereabouts of Melissa is urged to call Crime Stoppers on 1800 333 000.

If you have information regarding a missing person, please contact



CRIME STOPPERS 1800 333 000



Federal Court of Australia
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

Annexure IA-26

This is the exhibit referred to as Annexure IA-26 in the affidavit of Isabella Lucy Allen affirmed on 19 February 2021.

Before me: 

An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (NSW)

Filed on behalf of (name & role of party) Australian Securities and Investments Commission, Plaintiff
Prepared by (name of person/lawyer) Nicolette Bearup
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(include state and postcode)



Our Ref: MKH/201237

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1 February 2021

Mr Scott Harris
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Dear Mr Harris

**Re: ASIC v Caddick - Federal Court Proceedings 1220/2020
Melissa Louise Caddick (Receivers Appointed)**

We refer to your letter of 28th January 2021.

We are instructed that in relation to the CommSec accounts, that the balance of those accounts referred primarily to the value of shares purchased held in those accounts except for a very small amount which represented a cash balance and which our clients have requested be paid to our clients (with the intention of using those funds for living expenses).

The Court Orders in relation to paying living expenses specifically referred to the bank accounts of Ms Caddick and did not envisage any sale of assets. Furthermore, the bank accounts referred are bank accounts of Ms Caddick and not accounts held jointly or on trust for others.

There is an added complication in that we are instructed that various investors (who have taken no active role in the proceedings) have put our clients on notice that they object to and take issue with funds directly or indirectly being contributed by investors being utilised to pay for the living expenses of family members of Ms Caddick.

We confirm that on a preliminary basis and subject to finalisation of the report, it is likely that our clients' report will state that the source of funds to purchase the shares in the CommSec account and indeed the source of funds in relation to payments already made for living expenses and legal costs have been sourced from investors.



We note Mr Grimley consents to the funds in his joint account being paid to our clients. The Bank requires a written consent signed by Mr Grimley. Could you provide same?

On another issue, could Mr Adam Grimley urgently provide to us details of the monies he and his parents have paid Ms Caddick to invest in shares which have not been returned to them, with reference to the dates, the amounts and any purported statements and excel spreadsheets etc given by Ms Caddick to them as part of those dealings.

Yours faithfully

GILLIS DELANEY LAWYERS



Michael Hayter

Partner

Email: mkh@gdlaw.com.au

Direct Line: +61 2 9394 1133

