

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 18/06/2021 9:43:29 AM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
File Number:	NSD1220/2020
File Title:	AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION v MELISSA LOUISE CADDICK & ANOR
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



Sia Lagos

Dated: 18/06/2021 10:05:59 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 Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

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.



AMENDED ORIGINATING PROCESS

Federal Court of Australia
District Registry: NSW
Division: Commercial and Corporations

No. NSD 1220 / 2020

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

A. DETAILS OF APPLICATION

This application is made under:

- (a) section 1323, s461(1)(k), 462(2), 472(1) and (2) of the *Corporations Act 2001* (Cth) (**Act**);
- (b) sections 21, 23, 37AF(1)(a) and (b) and 37AG(1)(a) of the *Federal Court of Australia Act 1974* (Cth) (**FCA Act**).

The nature of the proceeding is an application for orders:

- (a) relating to the property of the First and Second Defendants, including for asset preservation orders against the First and Second Defendants under s1323 of the Act and/or the appointment of a receiver / receiver and manager to the Property of the First and Second Defendants;
- (b) requiring the First Defendant to deliver up her passport to the Court;
- (c) prohibiting the First Defendant from leaving Australia without the consent of the Court;

Filed on behalf of	Australian Securities and Investments Commission, Plaintiff
Prepared by	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, 5 Market Street, Sydney NSW 2000 Attention: Nicolette Bearup



- (d) provision of information from the First and Second Defendants as to their financial affairs;
- (e) suppression or non-publication orders;
- (f) for the appointment of a provisional liquidator to the Second Defendant pursuant to 472(2) of the Act and the winding up of the second defendant on the ground set out in s461(1)(k) of the Act and the appointment of a liquidator pursuant to 472(1) of the Act.

For the purposes of this Application:

- (a) “**Property**” means all real or personal property, assets or interests in property of any kind, within or outside Australia including, by virtue of subsection 1323(2A) of the Act, any property held otherwise than as sole beneficial owner
- (b) “**Third Party**” means a person other than the First or Second Defendant or the Plaintiff.

On the facts stated in the supporting affidavits, including the affidavit of Isabella Lucy Allen affirmed on 9 November 2020 (**Main Allen Affidavit**) and the affidavit of Isabella Lucy Allen affirmed on 9 November 2020 (**Suppression Allen Affidavit**), and the affidavit of Isabella Lucy Allen affirmed on 25 November 2020 (**Third Allen Affidavit**) the Plaintiff claims the following orders:

INTERLOCUTORY RELIEF

1. Leave to file this Originating Process in Court.
2. In the first instance, service of this Originating Process be dispensed with, and the Originating Process be returnable immediately.
3. Time for service of this Originating Process and supporting affidavits be abridged to 5pm Wednesday 11 November 2020.
4. That this Originating Process be returnable on _____ for a further hearing in respect of the orders sought by the Plaintiff.
5. Anyone served with or notified of the orders may apply to the Court to vary or discharge them or so much of them as affects the person served and notified, on the giving of reasonable notice.



6. Subject to order 7 below, an order pursuant to sections 37AF(1)(a) and (b) and 37AG(1)(a) of the FCA Act that the publication or disclosure of any ex-parte orders obtained by the Plaintiff, the Originating Application, the Main Allen Affidavit (including the exhibits to that affidavit), the Suppression Allen Affidavit and any written submissions advanced by the Plaintiff in support of the ex-parte orders is prohibited until 5pm Wednesday 11 November 2020, except to enable the Plaintiff to serve the Defendants or provide copies of the orders to the entities set out in paragraph 24 for the purpose of enforcing the orders.
7. An order pursuant to s.37AF(1)(a) and (b) and 37AG(1)(a) of the FCA Act, that until further order, the publication or disclosure (except to the parties and their legal representatives) of:
 - (a) the Main Allen Affidavit in so far as it identifies the names identified in Annexure IA-4 to the Suppression Allen Affidavit;
 - (b) the Suppression Allen Affidavit in so far as it identifies the names or words identified in Annexure IA-4 to the Suppression Allen Affidavit;
 - (c) ASIC's written submissions filed in support of its application for the orders set out in this Originating Process in so far as it identifies the names or words identified in Annexure IA-4 to the Suppression Allen Affidavit;
 - (d) the whole of Exhibit IA-1, IA-2 and IA-3 to the Main Allen Affidavit;be prohibited.

Provision of information

8. Subject to paragraph 9, pursuant to s 1323(1) of the Act and s 23 of the FCA Act, by 5pm on 16 November 2020, the First and Second Defendant swear and serve upon the Plaintiff an affidavit, in the case of the First Defendant deposing in detail to the matters set out in 8. (a) – (h) below, and in the case of the Second Defendant deposing in detail to the matters set out in 8. (a) – (i) below:
 - (a) the name and address of any bank, building society or other financial institution at which there is an account in the name of or under the control of the relevant Defendant, together with the number of such account, the name of such account and the balance of that account;



- (b) the name and address of any person indebted to the relevant Defendant and the amount and nature of the indebtedness;
- (c) an itemised inventory of all Property owned or controlled by the relevant Defendant or in which that Defendant has any legal or beneficial interest giving each item's value, location and the extent of the relevant Defendant's interest in the property;
- (d) the names and address of any person to whom the relevant Defendant is indebted and the amount and nature of the indebtedness, including amounts owed to any person who has deposited funds with the relevant Defendant for investment (**Investor**);
- (e) in respect of any of the Property of the relevant Defendant which has been given as security for any debt, the details of that Property and the nature of the security and the nature and amount of the debt;
- (f) the sources and amount of any income, wages, earnings or other payments received by the relevant Defendant in the last 12 months and expected to be received by the relevant Defendant in the next 12 months;
- (g) the name, physical address, email address and phone number of each person who currently has funds deposited with the relevant Defendant for investment at the date of these orders, or on whose behalf the Defendant holds shares or other Property, and the amount of, location and nature of those funds and/ or the Property;
- (h) for the period from 1 January 2020 to 31 October 2020, details regarding:
 - (i) each amount deposited with the relevant Defendant by an Investor, the date of each deposit and the name and address of the Relevant Investor;
 - (ii) each amount paid to an Investor and the date of the payment;
- (i) the Second Defendant's financial statements and accounts for the year



ended 30 June 2020 or 31 December 2019 (as the case may be depending upon its particular financial year), whether or not audited and whether or not in the form of management accounts only.

9. If:

- (a) the First Defendant wishes to object to complying with paragraph 8 on the grounds that some or all of the information required to be disclosed may tend to prove that:
 - (i) she has committed an offence against or arising under Australian law or a law of a foreign country; or
 - (ii) is liable to a civil penalty,

- (b) all of the persons who are able to comply with paragraph 8 on behalf of the Second Defendant and with whom it has been able to communicate, wish to object to the Second Defendant complying with paragraph 8 on the grounds that some or all of the information required to be disclosed may tend to prove that they:
 - (i) have committed an offence against or arising under Australian law or a law of a foreign country; or
 - (ii) are liable to a civil penalty,

the First Defendant or Second Defendant must:

- (c) disclose so much of the information required to be disclosed to which no objection is taken; and
- (d) prepare an affidavit containing so much of the information required to be disclosed to which objection is taken, and deliver it to the Court in a sealed envelope; and
- (e) file and serve on each other party a separate affidavit setting out the basis of the objection.

INTERLOCUTORY AND FINAL RELIEF

Asset restraint



10. Pursuant to sections 1323(1) and 1323(3) of the Act and/or section 23 of the FCA Act that until further order, the Defendants, by themselves and their servants, agents and employees or any other person on their behalf, must not:
- (a) remove, or cause or permit to be removed from Australia any of their Property, including, but not limited to, funds in bank accounts held by the Defendants;
 - (b) sell, charge, mortgage or otherwise deal with, dispose of and/or diminish the value of any of their Property;
 - (c) without limiting the terms of sub-paragraphs (a) and (b) above, incur new liabilities, including, without limitation, liabilities incurred either directly or indirectly, through the use of a credit card, a credit facility, a drawdown facility or a re-draw facility;
 - (d) cause or permit to be sold, charged, mortgaged or otherwise dealt with, disposed of, or diminished in value, any of their Property; and
 - (e) without limiting the terms of sub-paragraphs (a) to (d) above, withdraw, transfer or otherwise dispose of or deal with, any monies available in any account with any bank, building society or other financial institution in which the First or Second Defendants have any legal or equitable interest, including without limitation the bank accounts listed in **Annexure A**.
11. The order sought in paragraph 10 above, shall not prevent:
- (a) any of the Defendants from paying or otherwise incurring a liability for costs reasonably incurred in these proceedings and any criminal proceedings arising from the Plaintiff's investigation into the affairs of each of the Defendants; and
 - (b) any bank, building society or financial institution from exercising any right of set-off which it may have in respect of a facility afforded by it to any of the Defendants prior to the date of this order;
 - (c) the First Defendant from:



- (i) paying ordinary living expenses not exceeding \$800 per week or such other amount as determined by the Court;
 - (ii) dealing with or disposing of her Property in the discharge of obligations bona fide and properly incurred under any contract entered into by the First Defendant before these orders were made, following a request in writing to the Plaintiff including details and documentary evidence of the obligation and receipt of the Plaintiff's approval;
- (d) the Second Defendant from:
- (i) paying trade creditors bona fide and properly incurred not exceeding \$800 weekly;
 - (ii) paying other business expenses bona fide and properly incurred, or dealing with or disposing of its Property in the discharge of obligations bona fide and properly incurred under any contract entered into by the Second Defendant before these orders were made, following a request in writing to the Plaintiff including details and documentary evidence of the expense or obligation and receipt of the Plaintiff's approval.

Receiver - First Defendant

12. Pursuant to s 1323(1)(h) and / or 1323(3) of the Act appointing a receiver or receiver and manager of the Property of the First Defendant (**Caddick Receiver**).
13. That the Caddick Receiver have the powers set out in sections 420(1), (2)(a), (b), (e), (f), (g), (k), (n), (o), (p), (q), (r), (t) and (u) of the Act and can exercise those powers in respect of all of the Property of the First Defendant, as if the First Defendant was a corporation.
14. That the Caddick Receiver provide a report to the Court and the Plaintiff regarding the financial affairs of the First Defendant.



15. That the Caddick Receiver's reasonable costs and expenses be payable from the Property of the First Defendant.

Receiver and Manager– Second Defendant

16. Pursuant to s 1323(1)(h) and / or 1323(3) of the Act appointing a receiver or receiver and manager of the Property of the Second Defendant (**Maliver Receiver**).
17. That the Maliver Receiver have the powers set out in sections 420(1), (2)(a), (b), (e), (f), (g), (k), (n), (o), (p), (q), (r), (t) and (u) of the Act and can exercise those powers in respect of all of the Property of the Second Defendant.
18. That the Maliver Receiver provide a report to the Court and the Plaintiff regarding the financial affairs of the Second Defendant.
19. That the Maliver Receiver's reasonable costs and expenses be payable from the Property of the Second Defendant.

Winding Up

- 19A. Pursuant to section 461(1)(k) of the Act, the Second Defendant, Maliver Pty Ltd (ACN 164 334 918), be wound up.
- 19B. Joint and several liquidators (**Liquidators**) be appointed to the Second Defendant.
- 19C. Paragraph 7 of the orders made on 10 November 2020 be varied and the Plaintiff have leave to provide the Liquidators with unredacted copies of the affidavits filed by the Plaintiff in these proceedings.
- 19D. The Plaintiff's costs of and incidental to the winding up application be costs in the winding up of the Second Defendant (taxed or as agreed) and reimbursed in accordance with section 466(2) of the Act.

Appointment of Provisional Liquidator

- 19E. Joint and several provisional liquidators be appointed (**Provisional Liquidators**) to the Second Defendant.



19F. The Provisional Liquidators have the powers set out in the Act and the power to investigate and report on the matters set out in paragraph 19G.

19G. The Provisional Liquidators shall, within 30 days of their appointment, provide to the Court and to the Plaintiff a report as to the provisional liquidation of the Second Defendant, including:

- (a) the persons who have paid money to the Second Defendant for investment, the amounts they invested, and whether, and to what extent, these amounts have been repaid;
- (b) identifying any bank accounts in which funds paid to the Second Defendant for investment (**Investor Funds**) are held;
- (c) identifying any Property purchased or acquired with Investor Funds;
- (d) the assets and liabilities of the Second Defendant, including any assets in which the Second Defendant has any legal or beneficial interest and an estimate of the value of each asset;
- (e) an opinion as to the solvency of the Second Defendant;
- (f) an opinion as to whether the Second Defendant has proper financial records;
- (g) the likely return to creditors;
- (h) any other information necessary to enable the financial position of the Second Defendant to be assessed;
- (i) an opinion as to whether the Second Defendant has contravened any provisions of the Act and/or any other legislation; and
- (j) any suspected contraventions of the Act by any directors or officers of the Second Defendant.

19H. Within 14 days of their appointment, the Provisional Liquidators send a notice to each creditor of the Second Defendant at the last known address for each such person as shown in the books and records of the defendant giving notice of:

- (a) the appointment of the Provisional Liquidators; and



(b) a contact address for the Provisional Liquidators.

19I. Paragraph 7 of the orders made on 10 November 2020 be varied and the Plaintiff have leave to provide the Provisional Liquidators with unredacted copies of the affidavits filed by the Plaintiff in these proceedings, including the Main Allen Affidavit and the Suppression Allen and Exhibits IA-1, IA-2 and IA-3 to the Main Allen Affidavit.

19J. The Provisional Liquidators shall be entitled to such remuneration as is determined by the Court pursuant to section 473(2) of the Act.

19K. The Provisional Liquidators shall have liberty to apply on 48 hours' notice.

Travel restriction

20. Pursuant to ss 1323(1)(j) and 1323(3) of the Act, the First Defendant deliver up all passports in her name which are in her possession, custody or control, and any tickets for international travel by her, to the Sydney Registry of this Court by 4.00 pm Australian Eastern Daylight Time on 12 November 2020 to be retained by the Court until further order.
21. Pursuant to ss 1323(1)(k) and 1323(3) of the Act, the First Defendant be restrained from leaving Australia without the consent of the Court until further order.
22. Pursuant to s 23 of the FCA Act, in the event that the First Defendant cannot locate any passport within one day of the making of these orders, she file an affidavit stating that fact and exhibiting a copy of a written notification sent by her to the Department of Home Affairs or the Australian Passport Office / Information Service informing them of the same.
23. Pursuant to s 23 of the FCA Act, the First Defendant may not apply for the issue of any passport until further order.

FURTHER ORDERS



24. Pursuant to s 23 of the FCA Act, the Plaintiff have leave, to the extent necessary, to give notice of any orders made, to:

- (a) any relevant authorities that record, control and regulate the ownership of real property, motor vehicles and maritime vessels; and
- (b) any bank, building society or other financial institution with which, to the best of the Plaintiff's belief, any of the Defendants may operate any account; and
- (c) any securities broking firm, foreign exchange broking or trading firm or futures broking firm with which, to the best of the Plaintiff's belief, any of the Defendants may operate any account; and
- (d) any other person or entity, holding or controlling property, which, to the best of the Plaintiff's belief, may belong to any of the Defendants;
- (e) the Australian Border Force or the Australian Federal Police;


by giving a copy of a minute of the order to a person apparently in the employ of that entity or person.

25. Liberty to apply on 48 hours' notice.

26. Costs.

27. Such further or other orders that the Court considers appropriate.

Date: ~~10 November 2020~~ 15 December 2020


.....
Nicolette Bearup
Legal Practitioner for the
Australian Securities and Investments Commission



This application will be heard by
on _____ 2020.

at

am/pm

B. NOTICE TO DEFENDANTS

TO: **Melissa Louise Caddick**

██████████

████████████████████

Hogan Lovells Solicitors

Level 17 20 Martin Place

Sydney NSW 2000

Maliver Pty Ltd (ACN 164 334 918)

C/O LSI Taxation & Business Advisors Pty Ltd

22 Webster Avenue

Hendra QLD 4011

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff.

Note Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

C. FILING



Date of filing:

Registrar

This originating process is filed by the Plaintiff.

D. SERVICE

The Plaintiff's address for service is:

Australian Securities and Investments Commission, Level 5, 5 Market Street, Sydney
NSW 2000

It is intended to serve a copy of this originating process on each defendant.

The time by which a copy of this originating process is to be served has been abridged
by order made on to pm on .



ANNEXURE A – BANK ACCOUNTS

Account Name	BSB	Account Number	Bank
Melissa Caddick		Card ending 44005	AMEX
Melissa L Caddick		Card ending 71008	AMEX
ML Caddick	082057	67 738 0367	NAB
Maliver Pty Ltd	082057	946084145	NAB
Maliver Pty Ltd	067167	19309571	CBA
Melissa Caddick	067167	15770731	CBA
Maliver Pty Ltd		2776566	CommSec
Maliver Pty Ltd		2776613	CommSec
Melissa Caddick		0AC-375746	CommSec
Mrs Melissa Louise Caddick		2422359	CommSec
Caddick - US Dollar Account		CADSTUDS01	NAB
Melissa Caddick & Adam Grimley - Home loan	082057	841504991	NAB
Melissa Caddick & Adam Grimley	082057	840053439	NAB
Melissa Caddick - Home loan	082057	980989888	NAB
Melissa Caddick	082057	715801266	NAB
Melissa Caddick	082057	981224254	NAB
Melissa Caddick		4303 3064 7494 4912	NAB



SCHEDULE

Federal Court of Australia

No. NSD 1220 / 2020

District Registry: NSW

Division: Commercial and Corporations

Defendants

Second Defendant: MALIVER PTY LTD (ACN 164 334 918)

Date: ~~10 November 2020~~ 15 December 2020