

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 16/03/2021 8:46:47 PM AWST 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

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|----------------------------|--|
| Document Lodged: | Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2 |
| File Number: | WAD59/2021 |
| File Title: | ADAM NICHOLAS IAN FLETCHER & ORS v CHRISTOPHER MICHAEL BROWN & ANOR |
| Registry: | WESTERN AUSTRALIA REGISTRY - FEDERAL COURT OF AUSTRALIA |
| Reason for Listing: | Interlocutory Hearing |
| Time and date for hearing: | 18/03/2021, 3:30 PM |
| Place: | Please check Daily Court List for details |



Sia Lagos

Dated: 17/03/2021 3:57:42 PM AWST

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.



Form 2 Originating process

(rules 2.2 and 15A.3)

Federal Court of Australia

No. of 2021

District Registry: Western Australia

Division: Commercial and Corporations

Adam Nicholas Ian Fletcher & others

Plaintiffs

AND

Christopher Michael Brown & others

Defendants

A. DETAILS OF APPLICATION

This application is made under section 57 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**) and sections 18(1) and 237 of Schedule 2 to the *Competition and Consumer Act 2010* (Cth) (**CCA**).

This is an application brought by the plaintiffs in relation to debts owing to them arising out of, and representations made in relation to, investment arrangements with the defendants. The relief sought includes orders for the appointment of a receiver or receiver and manager (**Receiver**) to the property (as defined in the *Corporations Act 2001* (Cth) (**Corporations Act**)) of the defendants and asset preservation orders. The plaintiffs further seek declaratory relief and orders that the 1st defendant pays the amount of the debts due and owing to each of the plaintiffs, or alternatively that the 1st defendant pays the plaintiffs compensation.

| | |
|--|---|
| Filed on behalf of (name & role of party) | The Plaintiffs |
| Prepared by (name of person/lawyer) | Nirupa Manoharan |
| Law firm (if applicable) | Mills Oakley |
| Tel | +61 8 6167 9800 |
| Fax | +61 8 6167 9898 |
| Email | perthreception@millsoakley.com.au |
| Address for service (include state and postcode) | Level 24, 240 St Georges Tce, Perth WA 6000 |



On the facts stated in the supporting affidavits of Nader El Sayed, Jaysen Taylor, Stuart Campbell and Adam Nicholas Ian Fletcher the Plaintiffs seek the following orders:

Service

1. This originating process be determined on an expedited basis.

Declarations

Debt Claim

2. Declaration that the first defendant is indebted to the plaintiffs in the total amount of \$126,019,336.30 as follows:
 - (a) pursuant to the Binding Term Sheet between the first plaintiff and the first defendant dated 15 May 2020, the Investment Agreement entered on or about 24 September 2020 between the first plaintiff and the first defendant, and as acknowledged in the acknowledgement of debt signed by the first defendant on 11 March 2021, the first defendant is indebted to the first plaintiff in the amount of \$13,561,738.16;
 - (b) pursuant to the Binding Term Sheet between the second plaintiff and the first defendant dated 20 May 2020, the Investment Agreement entered on or about 24 September 2020 between the first plaintiff and the first defendant, and as acknowledged in the acknowledgement of debt signed by the first defendant on 11 March 2021, the first defendant is indebted to the second plaintiff in the amount of \$10,407,032.66;
 - (c) pursuant to the Loan Agreement and Deed of Guarantee dated 1 September 2018 between the third plaintiff and the first defendant (**Taylor Documents**), the cash calls made pursuant to the Taylor Documents, and as acknowledged in the acknowledgement of debt signed by the first defendant on 3 March 2021, the first defendant is indebted to the third plaintiff in the amount of \$65,502,317.50;
 - (d) pursuant to a loan agreement (as amended from time to time) between the fourth plaintiff and the first defendant, and as acknowledged in the acknowledgement of debt signed by the first defendant on 3 March 2021, the first defendant is indebted to the fourth plaintiff in the amount of \$505,000.00;



- (e) pursuant to a loan agreement (as amended from time to time) between the fifth plaintiff and the first defendant, and as acknowledged in the acknowledgement of debt signed by the first defendant on 3 March 2021, the first defendant is indebted to the fifth plaintiff in the amount of \$1,663,730.00; and
- (f) pursuant to a loan agreement (as amended from time to time) between the sixth plaintiff and the first defendant, and as acknowledged in the acknowledgement of debt signed by the first defendant on 3 March 2021, the first defendant is indebted to the sixth plaintiff in the amount of \$34,379,518.00.

Misleading or Deceptive Conduct Claim

- 3. Declaration that, by the conduct of the first defendant as outlined in the affidavits of Nader El Sayed, Jaysen Taylor, Stuart Campbell and Adam Nicholas Ian Fletcher filed in support of this application the first defendant has, in respect of his dealings with the plaintiffs, in trade or commerce, engaged in conduct that is misleading or deceptive or likely to mislead or deceive in contravention of section 18(1) of Schedule 2 to the CCA.

Orders

Appointment of Receiver

- 4. Pursuant to section 57 of the FCA Act, the appointment of a suitable person as Receiver to the property (as defined in the Corporations Act) of the 1st defendant and if appropriate the property or specified property of the 2nd defendant (**receivership property**):
 - (a) which is without security; and
 - (b) whether within or out of the State of Western Australia.
- 5. The Receiver has the powers set out in sections 420(1), (2)(a), (2)(c), (2)(e), (2)(f), (2)(g), (2)(k), (2)(m), (2)(p), (2)(q), (2)(r) and (2)(t) of the Corporations Act and can exercise those powers in respect of the receivership property in the case of the 1st defendant, as if the 1st defendant was a corporation.
- 6. The Receiver's reasonable costs and expenses be payable from the receivership property.



Asset preservation

7. Further, or alternatively to paragraphs 4 to 6 above, and subject to the terms of paragraph 8 below, that until further order the defendants be restrained from:
- (a) removing, or causing or permitting to be removed from Australia all or any of the property (as defined in the Corporations Act) of the defendants;
 - (b) selling, charging, mortgaging or otherwise dealing with, disposing of and/or diminishing the value of all or any of the property (as defined of the Corporations Act) of the defendants;
 - (c) causing or permitting to be sold, charged, mortgaged or otherwise dealt with, disposed of, or diminished in value, all or any of the property (as defined in of the Corporations Act) of the defendants;
 - (d) without limiting the terms of paragraphs (a) to (c) above, incurring 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; and
 - (e) without limiting the terms of sub-paragraphs (a) to (d) above, withdrawing, transferring or otherwise disposing of or dealing with, any monies available in any account with any bank, building society or other financial institution (in Australia and elsewhere), in which the defendants have any legal or equitable interest.
8. The orders sought in paragraph 7, shall not prevent:
- (a) the first defendant from paying or otherwise incurring a liability for ordinary living expenses up to \$800 per week or such greater sum as may be set by the Court;
 - (b) the first defendant from paying or otherwise incurring a liability for costs reasonably incurred in these proceedings and/or the Federal Court of Australia bankruptcy proceedings WAD 299 of 2020; and
 - (c) 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 the defendants prior to the date of this Order.



Disclosure

9. Except to the extent that a claim of privilege against self-incrimination or civil penalty privilege is made, the defendants delivers or causes to be delivered to the plaintiffs by a date and time set by the Court, a full and detailed affidavit sworn by them setting out:
 - (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 first and second 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 or persons indebted to the defendants and the amount of the indebtedness;
 - (c) an itemised inventory of the defendants assets and liabilities;
 - (d) an itemised inventory of any and all property (as defined in the Corporations Act) whether real or personal owned or controlled by the defendants or in which the defendants have any legal or beneficial interest;
 - (e) in respect of any of the property (as defined in the Corporations Act) of the defendants which has been given as security for any debt, the details of that property and the nature of the security and the debt so incurred; and
 - (f) the source and amount of any income, wages, earnings or other payments received by the defendants in the last 12 months and expected to be received by the defendants in the next 12 months.
10. If the defendants wish to object that compliance of the orders sought in paragraph 9 above may tend to incriminate the defendant or make the defendants liable to a civil penalty, the defendants must:
 - (a) prepare, file and serve on the plaintiffs an affidavit disclosing which information required to be disclosed by paragraph 9 to which no objection is taken by the defendants;
 - (b) prepare an affidavit disclosing which information required to be disclosed by paragraph 9 to which objection is taken by the defendants and deliver it to the Court in a sealed envelope; and



- (c) prepare, file and serve on the plaintiffs an affidavit setting out the basis to which objection is taken by the defendants,

in accordance with section 128A of the *Evidence Act 1995* (Cth).

Notice of orders to third parties

11. To the extent necessary, the plaintiffs have leave to provide notice of these orders to:

- (a) the relevant authorities (domestic and overseas) that record, control and/or regulate the ownership of any real property which, to the best of the plaintiffs' knowledge and belief, the defendant has any legal or beneficial interest;
- (b) the relevant authorities (domestic and overseas) that record, control and/or regulate the ownership of any motor vehicle which, to the best of the plaintiffs' knowledge and belief, the defendant has any legal or beneficial interest;
- (c) the relevant authorities and entities (domestic and overseas) that record, control and/or regulate the ownership of any security which, to the best of the plaintiffs' knowledge and belief, the defendant has any legal or beneficial interest;
- (d) any bank, building society or other financial institution (domestic and overseas) which, to the best of the plaintiffs' knowledge and belief, the defendant has any legal or beneficial interest, or any incident of control, in an account operated by such bank, building society or other financial institution (domestic and overseas); and
- (e) any other person or entity (domestic and overseas), holding or controlling property (as defined in the Corporations Act) which, to the best of the plaintiffs' knowledge and belief, the defendant has any legal or beneficial interest;

by delivering a copy of a minute of the orders to that entity, person or any person employed by that entity or person.



Payment or Other Compensation

12. The first defendant pay:
 - (a) to the first plaintiff, the sum of \$13,561,738.16 in respect of the debt payable to the first plaintiff;
 - (b) to the second plaintiff, the sum of \$10,407,032.66 in respect of the debt payable to the second plaintiff;
 - (c) to the third plaintiff, the sum of \$65,502,317.50 in respect of the debt payable to the third plaintiff; and
 - (d) to the fourth plaintiff, the sum of \$505,000.00, in respect of the debt payable to the fourth plaintiff;
 - (e) to the fifth plaintiff the sum of \$1,663,730.00 in respect of the debt payable to the fifth plaintiff; and
 - (f) to the sixth plaintiff the sum of \$34,379,518.00 in respect of the debt payable to the sixth plaintiff.
13. Further, or alternatively, the defendant pays compensation to each of the plaintiffs pursuant to section 237 of the ACL.

General

14. The defendants pays the plaintiffs' costs of, and incidental to, this originating process, and the costs be reimbursed out of the property (as defined in the Corporations Act) of the defendants.
15. There be liberty to any party to apply to the Court on 48 hours' notice.
16. Such further and other orders as the Court thinks fit.

Date: 17 March 2021

.. Mills Oakley ..
 Mills Oakley
 Lawyers for the Plaintiffs

This application will be heard by at
 Peter Durack Commonwealth Law Courts Building, 1 Victoria Avenue, Perth WA 6000
 at *am/*pm on



B. NOTICE TO DEFENDANT(S) (IF ANY)

TO: Christopher Michael Brown

AT: [REDACTED] and c/- HopgoodGanim Lawyers, Level 28, Allendale Square, 77 St Georges Terrace, Perth, WA 6000.

AND TO: CMB Investments 1993 Pty Ltd (ACN 618 397 925)

AT: [REDACTED] and c/- HopgoodGanim Lawyers, Level 28, Allendale Square, 77 St Georges Terrace, Perth, WA 6000.

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 plaintiffs.

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: March 2021

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Registrar

This originating process is filed by Mills Oakley for the plaintiffs.

D. SERVICE

The plaintiffs' address for service is c/ Mills Oakley, Level 24, 240 St Georges Terrace, Perth WA 6000.

It is **not** intended to serve a copy of this originating process on the defendant until after the hearing of the interlocutory process (form 3) filed herewith.



Schedule

Federal Court of Australia

No. of 2021

District Registry: Western Australia

Division: Commercial and Corporations

Adam Nicholas Ian Fletcher

First Plaintiff

and

Stuart Campbell

Second Plaintiff

and

Jaysen Taylor

Third Plaintiff

and

365 Plant Hire Pty Ltd (ACN 621 477 978)

Fourth Plaintiff

and

Jaytona Pty Ltd (ACN 137 723 418)

Fifth Plaintiff

and

Nameo Pty Ltd (ACN 155 839 197)

Sixth Plaintiff

AND

Christopher Michael Brown

First Defendant

and

CMB Investments 1993 Pty Ltd (ACN 618 397 925)

Second Defendant