

Form 2

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Principal Registrar &
Chief Executive Officer



IN THE SUPREME COURT OF NEW SOUTH WALES
DIVISION: EQUITY
REGISTRY: SYDNEY
CORPORATIONS LIST

IN THE MATTER OF STA TRAVEL PTY LIMITED (IN LIQUIDATION)

ACN 004 801 512

**JASON MARK TRACY AND TIMOTHY BRYCE NORMAN IN THEIR CAPACITY AS JOINT
AND SEVERAL LIQUIDATORS OF STA TRAVEL PTY LIMITED (IN LIQUIDATION) ACN 004
801 512**
First Plaintiffs

STA TRAVEL PTY LIMITED (IN LIQUIDATION) ACN 004 801 512
Second Plaintiff

AMENDED ORIGINATING PROCESS

A. DETAILS OF APPLICATION

This application is made under sections 60-20 and 90-15 of the *Insolvency Practice Schedule (Corporations)*, being Schedule 2 of the *Corporations Act 2001 (Cth) (Act)* and sections 47 and 63 of the *Trustee Act 1925 (NSW) (Trustee Act)*.

Nature of proceeding: This is an application for directions by the First Plaintiffs, Jason Mark Tracy and Timothy Bryce Norman (**Liquidators**) in their capacity as joint and several liquidators of STA Travel Pty Limited (In Liquidation) (**STA Travel**), under section 90-15 of the *Insolvency Practice Schedule (Corporations)* (being Schedule 2 of the Act).

On the facts stated in the supporting affidavits, the Plaintiffs seek the following relief:

1. A direction that the Liquidators would be justified as treating the funds recovered during the external administration from, or otherwise repaid by, various travel providers in the form of refunds that had been requested by or on behalf of the customers of STA Travel for travel services that were not provided to them (**Travel Services**), as being held on trust for those customers identified in Schedule 1, Schedule 2 and Schedule 3 to the

Filed on behalf of (name & role of party)	Plaintiffs
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Originating Process (**Schedule 1, Schedule 2 and Schedule 3** respectively, collectively referred to as the “**Schedules**”) in the proportions set out therein (**Customer Refunds**).

- 1A. An order that the remuneration of the Liquidators with respect to the recovery, preservation, administration and proposed distribution of the Customer Refunds be approved and fixed in the sum of \$301,735.50 (exclusive of GST).
- 1B. An order that the Liquidators have leave to derive a profit or advantage from the external administration of STA Travel, in a sum up to but not exceeding \$15,000 (plus GST) for the utilisation of the Halo platform (as described in the affidavit of Jason Mark Tracy affirmed 1 September 2022) as an internal disbursement for the proposed distribution of the Customer Refunds in accordance with prayer 2 below.
2. A direction that, subject to prayer 3 below, the Liquidators would be justified in distributing the Customer Refunds as follows:
 - (a) In relation to the total of the amounts set out in Column F of Schedule 1 titled ‘Net Amount (\$)’ (**IATA Refunds**):
 - (i) First, in payment of the Liquidators’ costs and expenses in connection with these proceedings so far as the Court may determine that such costs and expenses are properly paid from the IATA Refunds, calculated on a pro rata basis in proportion to the total Customer Refunds recovered;
 - (ii) Second, in payment of the Liquidators’ ~~remuneration~~, costs, charges and expenses (including any disbursements as approved in conformity with paragraph 1B) and the Liquidators’ remuneration (as ~~may be~~ approved in conformity with paragraph 1A above (to the extent necessary)) with respect to the recovery, preservation, ~~and~~ administration and proposed distribution of the IATA Refunds, calculated on a pro-rata basis in proportion to the total Customer Refunds recovered; and
 - (iii) Third, after deduction of the amount of \$102,812.84, being the offsets applied by various airlines with respect to the processing of the IATA Refunds, to the customers identified in Schedule 1 in the proportions set out therein;
 - (b) In relation to the total of the amounts set out in Column F of Schedule 2 titled ‘Net Amount (\$)’ (**Direct Airline Refunds**):

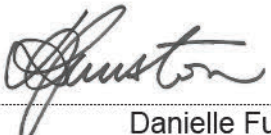
- (i) First, in payment of the Liquidators' costs and expenses in connection with these proceedings so far as the Court may determine that such costs and expenses are properly paid from the Direct Airline Refunds, calculated on a pro rata basis in proportion to the total Customer Refunds recovered;
 - (ii) Second, in payment of the Liquidators' ~~remuneration~~, costs, charges and expenses (including any disbursements as approved in conformity with paragraph 1B) and the Liquidators' remuneration (as may be approved in conformity with paragraph 1A above (to the extent necessary)) with respect to the recovery, preservation, ~~and~~ administration and proposed distribution of the Direct Airline Refunds, calculated on a pro rata basis in proportion to the total Customer Refunds recovered; and
 - (iii) Third, after deduction of the amount of \$420.05 (being the offsets applied by various airlines with respect to the processing of the Direct Airline Refunds), to the customers identified in Schedule 2 in the proportions set out therein; and
- (c) In relation to the total of the amounts set out in Column F of Schedule 3 (**Other Travel Supplier Refunds**):
- (i) First, in payment of the Liquidators' costs and expenses in connection with these proceedings so far as the Court may determine that such costs and expenses are properly paid from the Other Travel Supplier Refunds, calculated on a pro rata basis in proportion to the total Customer Refunds recovered;
 - (ii) Second, in payment of the Liquidators' ~~remuneration~~, costs, charges and expenses (including any disbursements as approved in conformity with paragraph 1B) and the Liquidators' remuneration (as may be approved in conformity with paragraph 1A above (to the extent necessary)) with respect to the recovery, preservation, ~~and~~ administration and proposed distribution of the Other Travel Supplier Refunds, calculated on a pro rata basis in proportion to the total Customer Refunds recovered; and
 - (iii) Third to the customers identified in Schedule 3 in the proportions set out therein.

3. A direction that, to the extent any customers identified in the Schedules have also had a chargeback claim honoured by the Commonwealth Bank of Australia (**CBA**) and received a refund from their credit or debit card provider, then the Liquidators would be justified in:
 - (a) not treating those customers as being entitled to a distribution from the Customer Refunds in accordance with prayer 2 for the amounts of any chargeback claim honoured by CBA; and
 - (b) instead paying the amount that would otherwise be payable to those customers from the Customer Refunds to STA Travel as an asset of the company to be distributed in the winding up in accordance with the priority provided by the Act.
4. A direction that the Liquidators would be justified in distributing and/or treating any future Customer Refunds recovered in the manner set out in prayers 2 and 3 above.
5. An order that any:
 - (a) of the Customer Refunds that the Liquidators, after taking all reasonable efforts, have been unable to distribute to the customers identified in Schedule 1, Schedule 2 and Schedule 3 in accordance with prayers 2, 3 and 4 (because of an inability to locate the relevant customers within six (6) months following the final determination of this application); and
 - (b) distribution of Customer Refunds to the customers identified in Schedule 1, Schedule 2 and Schedule 3 in accordance with prayers 2, 3 and 4 that remains unclaimed within six (6) months following the date of the distribution by the Liquidators,

are to be paid to the ~~Australian Securities and Investments Commission~~ NSW Trustee in the manner provided for in section ~~544~~ 47 of the Trustee Act.
6. A direction that the Liquidators would be justified in permitting the CBA to set-off, against the funds in the following bank accounts of STA Travel held with CBA, STA Travel's liabilities to make payments to the CBA under the Merchant Agreement entered into by STA Travel and CBA on or about June 2014 (including chargebacks paid by CBA to various merchant credit and debit card providers) (**Chargeback Liabilities**) and with respect to bank guarantees given by CBA to various landlords of premises leased by STA Travel (**Landlord Liabilities**):
 - (a) CBA Premium Business Cheque Account, account number 400010427676;

- (b) CBA Cheque Account, account number 400010427684;
 - (c) CBA Cheque Account, account 400012595825; and
 - (d) CBA Cash Deposit Account, account number 151 555.
7. A direction that the Liquidators would be justified in treating the funds in bank account number 400012673520 held with CBA (**Client Travel Account**) as an asset of STA Travel to be distributed in the winding up in accordance with the priority provided by the Act.
8. An order that the Liquidators' costs of and incidental to the proceedings:
- (a) insofar as they are referable to the relief in relation to the Customer Refunds, be payable out of the Customer Refunds in accordance with subparagraphs 2(a) to (c); and
 - (b) insofar as they are referable to the Chargeback Liabilities, Landlord Liabilities, Client Travel Account and CBA's right of set-off, be costs in the winding up of STA Travel.
9. Such further or other order as the Court may deem fit.

Date: ~~14 June~~ 8 September 2022



 Danielle Funston
 Legal practitioner for the plaintiffs

This application will be heard by the Supreme Court of New South Wales at Law Courts Building Queens Square Sydney at [time] [am/pm] on [date]

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

N/A

C. APPLICATION FOR WINDING UP ON GROUND OF INSOLVENCY

N/A

D. FILING

Date of filing: [date of filing to be entered by the Court officer]

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This originating process is filed by Maddocks Lawyers for the plaintiffs.

E. SERVICE

The plaintiff's address for service is c/- Maddocks Lawyers, Level 27, Angel Place, 123 Pitt Street, Sydney, NSW, 2000.

It is intended to serve a copy of this originating process on each defendant and on any person listed below:

1. Australian Securities and Investments Commission
2. The known creditors and customers of the Company, including with respect to the funds held on trust as identified in Schedule 1, Schedule 2 and Schedule 3 to this Originating Process
3. Commonwealth Bank of Australia
4. Commonwealth of Australia C-/ Attorney-General's Department (administering the Fair Entitlements Guarantee Scheme)
5. the International Air Transport Association