

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 8/05/2019 4:19:36 PM AEST 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: NSD2142/2018
File Title: AN APPLICATION BY NEIL ROBERT CUSSEN AND MATTHEW JAMES DONNELLY IN THEIR CAPACITY AS JOINT AND SEVERAL ADMINISTRATORS OF BIG UN LIMITED (ADMINISTRATORS APPOINTED)
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink, reading 'Warwick Soden'.

Dated: 8/05/2019 4:19:44 PM 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 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.



Affidavit

No. NSD2142 of 2019

Federal Court of Australia
District Registry: New South Wales
Division: General

IN THE MATTER OF BIG UN LIMITED (SUBJECT TO DEED OF COMPANY ARRANGEMENT)

ACN 106 399 311

**NEIL ROBERT CUSSEN AND MATTHEW JAMES DONNELLY IN THEIR CAPACITY AS
JOINT AND SEVERAL DEED ADMINISTRATORS OF BIG UN LIMITED (SUBJECT TO
DEED OF COMPANY ARRANGEMENT) ACN 106 399 311**

Plaintiffs

Affidavit of: Neil Robert Cussen
Address: Eclipse Tower, Level 19, 60 Station Street, Parramatta NSW 2150
Occupation: Registered liquidator
Date: 8 May 2019

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I, **NEIL ROBERT CUSSEN**, of Eclipse Tower, Level 19, 60 Station Street, Parramatta NSW 2150, registered liquidator, say on oath:

1. I am the first named Plaintiff in these proceedings, and I swear this affidavit in my capacity as joint and several deed administrator of Big Un Limited (Subject to Deed of Company Arrangement) ACN 106 399 311 ("**Company**").
2. All the facts and circumstances deposed to are within my own knowledge save as otherwise stated in this affidavit. Where I express an opinion in this affidavit, that opinion is based on over 30 years' experience as an insolvency practitioner.

A handwritten signature in blue ink, appearing to read 'Neil Robert Cussen'.

A handwritten signature in blue ink, appearing to be a stylized signature.

3. Shown to me at the time of swearing this affidavit and marked "**NRC-3**" is a paginated bundle of documents to which I refer in this affidavit. References by me to page numbers throughout this affidavit are references to pages in exhibit NRC-3.
4. This is my second affidavit sworn in support of the interlocutory process filed in these proceedings on 8 April 2019 ("**Interlocutory Process**"). I refer to my first affidavit sworn on 29 March 2019 ("**First Affidavit**") and exhibit NRC-1 to my First Affidavit ("**NRC-1**").
5. I swear this affidavit in support of the Interlocutory Process and to update the Court in relation to matters that have occurred in the deed administration of the Company since my First Affidavit.

Giving notice of the application

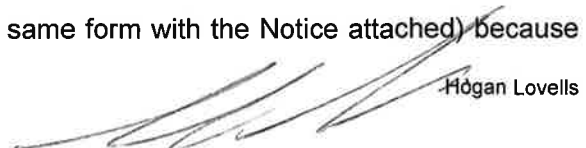
6. On 11 April 2019, the Honourable Justice Stewart ordered that the Plaintiffs give notice of the application ("**s444GA Application**") under section 444GA of the *Corporations Act 2001* (Cth) ("**Act**") by:
 - (a) posting a copy of the notice (in substantially the form of Schedule A to the orders made on 11 April 2019) ("**Notice**") to members of the Company and creditors of the Company known to the Plaintiffs;
 - (b) emailing a copy of the Notice to those persons for which email addresses are known to the Plaintiffs;
 - (c) uploading a copy of the Notice, the Interlocutory Process and my First Affidavit to the Deloitte website; and
 - (d) lodging an advertisement for a period of one day in *The Australian*.

Posting to members of the Company

7. Exhibited at pages 2 to 4 is a copy of the Notice. I instructed my employees to instruct Kwik Kopy, a printing and copying service, to send a copy of the Notice by post to members of the Company.

Emailing to members of the Company

8. I refer to the register of members of the Company ("**Share Register**"), a copy of which is at pages 762 to 981 of NRC-1. The eleventh column of the Share Register, titled "Email", lists the email addresses for approximately one third of the members of the Company ("**Email Addresses**").
9. On 24 April 2019, I instructed Jesse Mudge, a graduate accountant at Deloitte, to send an email to the Email Addresses attaching a copy of the Notice. Mr Mudge sent seven separate emails (each of which was in the same form with the Notice attached) because



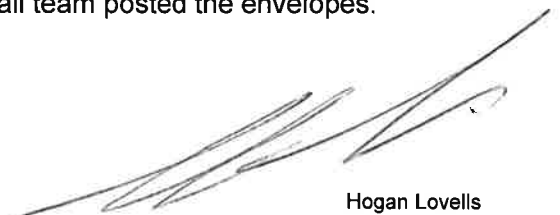
Hogan Lovells

Deloitte's IT system only permits a limited number of recipients for each email. Exhibited at pages 5 to 50 is a copy of:

- (a) the emails sent to the Email Addresses on 24 April 2019 timed at, respectively, 3:23pm, 3:26pm, 3:30pm, 3:36pm, 3:43pm, 3:48pm and 5:39pm (excluding attachments); and
- (b) in each case, a spread sheet which I instructed Mr Mudge to prepare, showing:
 - (i) the Email Addresses to which the relevant email was sent (as it appears on the Share Register);
 - (ii) the name of the corresponding shareholder (as it appears on the Share Register); and
 - (iii) whether the email was delivered to the relevant Email Address or not. In this regard, Mr Mudge marked "no" next to the relevant Email Address on the spread sheet if he received an automatic return email confirming that the email had not been delivered to the relevant Email Address for any reason. For all other Email Addresses where Mr Mudge did not receive such an automatic return email, he marked "yes" on the spread sheet next to the relevant Email Address.

Emailing creditors of the Company

- 10. Exhibited at page 51 is a list of all known creditors of the Company, together with their last known postal addresses, which I instructed my staff to prepare (following a review of the Company's books and records and the investigations undertaken by the Deed Administrators to date) ("**Creditors' List**").
- 11. On 24 April 2019, I instructed Mr Mudge to post a copy of the Notice to each of the creditors of the Company. I am informed by Mr Mudge and believe that, on 24 April 2019, Mr Mudge:
 - (a) placed a copy of the Notice in pre-paid envelopes addressed to each of the creditors on the Creditors' List;
 - (b) sealed the envelopes; and
 - (c) delivered the envelopes to Deloitte's internal mail team. I understand and believe that Deloitte's internal mail team affixed stamps to the envelopes and, at approximately 4:00pm, Deloitte's internal mail team posted the envelopes.



12. On 24 April 2019, I instructed Mr Mudge to email a copy of the Notice to each of the creditors of the Company for which I hold an email address. Exhibited at pages 52 to 53 is a copy of:
- (a) the email to creditors dated 24 April 2019 timed at 3.07pm (excluding the attachment); and
 - (b) a spread sheet which I instructed Mr Mudge to prepare, showing:
 - (i) the email addresses to which the relevant email was sent;
 - (ii) the name of the corresponding creditor; and
 - (iii) whether the email was delivered to the relevant email address or not. In this regard, Mr Mudge marked "no" next to the relevant email address on the spread sheet if he received an automatic return email confirming that the email had not been delivered to the relevant email address for any reason. For all other email addresses where Mr Mudge did not receive such an automatic return email, he marked "yes" on the spread sheet next to the relevant email address.

Uploading to the Deloitte website

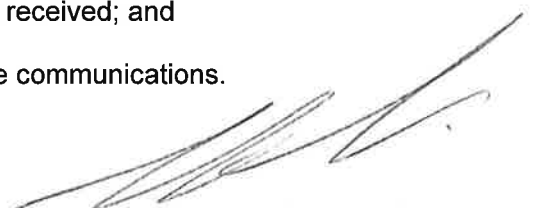
13. Following the directions hearing before the Honourable Justice Stewart on 11 April 2019, I instructed my staff to arrange for a copy of the Notice, the Interlocutory Process and my First Affidavit to be uploaded by Deloitte's IT team to the Deloitte website. Exhibited at pages 54 to 56 is a printed record of the Deloitte website as at 7 May 2019 showing that these documents have been uploaded.

Advertising in The Australian

14. On 26 April 2019, I lodged an advertisement in relation to the s444GA Application in *The Australian*. Exhibited at page 57 is a copy of the advertisement in *The Australian*.

Responses received

15. Following the giving of notice to members and creditors of the Company, my staff have received a number of communications in relation to the s444GA Application by phone and email. Most of these responses were by members of the Company with questions about the s444GA Application and the impact of the s444GA Application on members. Exhibited at pages 72 to 80 is a table ("**Communications Log**") which records:
- (a) each of the communications which my staff have received; and
 - (b) the responses which my staff have given to those communications.



16. Exhibited at pages 81 to 213 is a copy of the emails referred to in the Communications Log.

Communications with the Australian Securities and Investments Commission ("ASIC")

17. On 26 April 2019, Hogan Lovells served on ASIC a copy of the Interlocutory Process, my First Affidavit, Exhibit NRC-1, the Notice, and the orders made by the Honourable Justice Stewart on 11 April 2019. I refer to the affidavit of Evy Sandra Wiggins sworn 6 May 2019.


18. On 2 May 2019, I submitted an application to ASIC for relief from the operation of section 606 of the Act ("**ASIC Relief Application**"). Exhibited at pages 58 to 68 is a copy of the relief application dated 2 May 2019 (excluding attachments).

19. On 3 May 2019, Hogan Lovells received an email from Lydia Sia of ASIC (to which I was copied) in relation to the ASIC Relief Application and the s444GA Application, by which ASIC confirmed that, inter alia, in the absence of an independent expert's report in relation to the equity value of the Company:

- (a) ASIC is unable to grant the relief sought in the ASIC Relief Application; and
- (b) ASIC may consider appearing at the hearing of the Interlocutory Process on 13 May 2019.

Exhibited at pages 69 to 71 is a copy of the email from Ms Sia dated 3 May 2019.

Sworn by the deponent)
 at Sydney)
 in New South Wales)
 on 8 May 2019)
 Before me:)



Signature of deponent



Signature of witness

Name of witness: Christopher Moses
 Qualification of witness: Australian legal practitioner
 Address of witness: Level 17, 20 Martin Place, Sydney NSW 2000