



Federal Court of Australia

District Registry: Queensland

Division: General

No: QUD439/2018

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION and another/others
named in the schedule
Plaintiff

LINCHPIN CAPITAL GROUP LTD ACN 163 992 961 and another/others named in the
schedule
Defendant

ORDER

JUDGE: JUSTICE DERRINGTON

DATE OF ORDER: 12 December 2018

WHERE MADE: Brisbane


THE COURT ORDERS THAT:

1. Pursuant to rule 8.21 of the *Federal Court Rules 2011* the plaintiff has leave to file the Amended Originating Application attached and marked "Annexure A".
2. Pursuant to rules 1.32 and 5.23(2)(a) of the *Federal Court Rules 2011*:
 - a. by 4pm 15 January 2019, the defendants file and serve a response to the plaintiff's concise statement (which must not exceed 8 pages in length) which:
 - i. states which matters alleged in the plaintiff's concise statement are admitted;
 - ii. states which matters alleged in the plaintiff's concise statement are not admitted or are denied and in respect of each such matter in turn, the basis upon which such matters are not admitted or denied;
 - iii. states which matters alleged in the plaintiff's concise statement in respect of which liability is admitted and the precise terms on which such admission is made;
 - iv. in light of the answers given in respect of subparagraphs (i) to (iii) above, states with precision the issues that are perceived to be remaining in the case; and



- v. in light of the matters referred to in subparagraphs (i) to (iv) above, states with precision the relief that it is submitted the Court should grant in respect of admitted liability;
 - b. by 4pm 15 January 2019, the defendants are to file and serve any additional evidence on which they intend to rely in this proceeding;
 - c. should the defendants fail to comply with paragraph (a) above, then:
 - i. if the plaintiff files and serves an application for judgment pursuant to rules 1.32 and 5.23(2) of the Federal Court Rules by 4pm 18 January 2019;
 - ii. the plaintiff's application for judgment referred to in paragraph (i) above, is set down for the hearing on 25 January 2019 at 10.15am;
 - d. should the defendants fail to comply with paragraph (b) above, the defendants are not permitted to adduce any additional evidence in chief in the proceeding, save with leave of the Court.
3. The proceeding be listed for a case management hearing on 25 January 2019 at 10.15am.
4. The parties have liberty to apply on two business days' notice in writing.
5. Costs be reserved.

Date that entry is stamped: 12 December 2018


Registrar



Schedule

No: QUD439/2018

Federal Court of Australia

District Registry: Queensland

Division: General

Interested Person	JASON MARK TRACY
Interested Person	DAVID ORR
Interested Person	JASON MARK TRACY
Interested Person	DAVID ORR
Second Defendant	ENDEAVOUR SECURITIES (AUSTRALIA) LTD ACN 079 988 819



Annexure A

Form 2

Rule 2.2

AMENDED ORIGINATING PROCESS

No. of 2018

FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: QUEENSLAND
DIVISION: GENERAL

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

And

LINCHPIN CAPITAL GROUP LTD (ACN 163 992 961)

First Defendant

And

ENDEAVOUR SECURITIES (AUSTRALIA) LTD (ACN 079 988 819)

Second Defendant

A. DETAILS OF APPLICATION

This application is made under sections 1101B, 1323 and 1324 of the *Corporations Act 2001* (Cth) (**the Act**), sections 21 and 23 of the *Federal Court of Australia Act 1976* (Cth) (**the FCA**) and the implied/inherent jurisdiction of the Court.

For the purpose of this Application:

"Dealing" includes:

- (a) Removing, causing, procuring, assisting or permitting any Property in the possession or under the control of the first or second defendant (as applicable) to be removed from Australia or from the jurisdiction of this Court; and/or
- (b) Selling, charging, mortgaging, encumbering, securing, diminishing, disposing of, parting with possession, making any declaration of trust in relation to, exercising any

Filed on behalf of the Australian Securities and Investments Commission, Applicant

Prepared by Hugh Copley

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Level 20

240 Queen Street

BRISBANE QLD 4000

Fax (07) 3867 4725



power to vary or modify any trust deed or any interest under any trust in relation to the first or second defendants' Property.

"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.

"Registered Scheme" means all activities and arrangements whereby the second defendant and others associated with the second defendant, elicited or obtained funds from investors for the purpose of reinvesting, trading with and/or otherwise using such funds for the purpose of providing a return to investors on the funds invested, known as the Investport Income Opportunity Fund.

"Registered Scheme Investor Funds" means monies provided to the second defendant for the purpose of the Registered Scheme.

"Unregistered Scheme" means all activities and arrangements whereby the first defendant and others associated with the first defendant, elicited or obtained funds from investors for the purpose of reinvesting, trading with and/or otherwise using such funds for the purpose of providing a return to investors on the funds invested, also known as the Investport Income Opportunity Fund.

"Unregistered Scheme Investor Funds" means monies provided to the first defendant for the purpose of the Unregistered Scheme.

On the facts stated in the supporting affidavit of Anne Elizabeth Gubbins affirmed 26 June 2018 and such further affidavits as may be filed and read, the plaintiff, the Australian Securities and Investments Commission, applies for the following relief:

Asset preservation orders

1. Subject to the terms of paragraph 2 below, an order pursuant to section 1323 of the Act that, until further order, each of the first and second defendants, by themselves and their officers, servants, agents and employees be restrained from:
 - (a) removing, or causing or permitting to be removed from Australia all or any of the Property;
 - (b) selling, charging, mortgaging or otherwise dealing with, disposing of and/or diminishing the value of all or any of their Property;
 - (c) causing or permitting to be sold, charged, mortgaged or otherwise dealt with, disposed of, or diminished in value, all or any of their Property;
 - (d) without limiting the terms of sub-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.
2. An order that the orders sought in the preceding paragraph, shall not prevent:
- (a) each of the first and second 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 each of the first and second defendants prior to the date of this order.

Restraint – first defendant

3. An order pursuant to sections 1101B(1) and 1324 of the Act that, until further order, the first defendant, by itself and its officers, servants, agents and employees be restrained from:
- (a) further promoting or operating the Unregistered Scheme;
 - (b) promoting or carrying on any financial services business in Australia;
 - (c) doing any act in furtherance of or in connection with the Unregistered Scheme;
 - (d) receiving, soliciting, transferring or disposing of Investor Funds received in connection with the Unregistered Scheme;
 - (e) providing financial services advice;
 - (f) dealing in financial products;
 - (g) promoting financial products; and
 - (h) otherwise carrying on a financial services business within the meaning of Chapter 7 of the Act.
4. An order pursuant to sections 1101B(1) and 1324 of the Act that, until further order, the first defendant, by itself and its officers, servants, agents and employees be restrained from:
- (a) holding out or representing that it is permitted or authorised to:
 - i. provide financial services advice;
 - ii. deal in financial products;
 - iii. promote financial products; and/or



- iv. otherwise carry on a financial services business within the meaning of Chapter 7 of the Act;
- (b) holding out or representing that it is an authorised representative of an Australian Financial Services Licence (AFSL) holder.

Restraint – second defendant

- 5. An order pursuant to sections 1101B(1) and 1324 of the Act that, until further order, the second defendant, by itself and its officers, servants, agents and employees be restrained from:
 - (a) further promoting or operating the Registered Scheme;
 - (b) promoting or carrying on any financial services business in Australia;
 - (c) doing any act in furtherance of or in connection with the Registered Scheme;
 - (d) receiving, soliciting, transferring or disposing of Investor Funds received in connection with the Registered Scheme; and
 - (e) either directly or indirectly carrying on a financial services business.
- 6. An order pursuant to sections 1101B(1) and 1324 of the Act that, until further order, the second defendant, by itself and its officers, servants, agents and employees be restrained from:
 - (a) holding out or representing that it is permitted or authorised to:
 - i. provide financial services advice;
 - ii. deal in financial products;
 - iii. promote financial products; and/or
 - iv. otherwise carry on a financial services business within the meaning of Chapter 7 of the Act;
 - (b) holding out or representing that it is an authorised representative of an AFSL holder.

Receiver orders – first defendant

- 7. An order pursuant to section 1323(1)(h)(ii) of the Act, that until further order, ~~Richard Hughes~~ Jason Tracy and David Orr of Deloitte (**the Receivers**), be appointed as Receivers and Managers to the Property of the first defendant for the purpose of:
 - (a) identifying, collecting and securing the Property of the first defendant held for the purposes of the Unregistered Scheme;
 - (b) ascertaining the amount of the Unregistered Scheme Investor Funds received by



the first defendant;

- (c) identifying any dealings with, payments of, or distributions by or uses made of the Unregistered Scheme Investor Funds by the first defendant;
 - (d) identifying any Property purchased or acquired with Unregistered Scheme Investor Funds;
 - (e) recovering the Unregistered Scheme Investor Funds; and
 - (f) providing a report to the Court within 28 days in relation to the matters referred to in paragraphs 7(a)-(e) of this application.
8. An order that, for the purpose of attaining the objectives for which the Receivers are appointed, the Receivers shall have the following powers:
- (a) the powers set out in sub-sections 420(1) and 420(2)(a), (e), (f), (k), (o), (p), (q) and (u) of the Act; and
 - (b) the power to apply to the Court for directions or further orders.

Receiver orders – second defendant

9. An order pursuant to section 1323(1)(h)(ii) of the Act, that until further order, the Receivers be appointed as Receivers and Managers to the Property of the second defendant for the purpose of:
- (a) identifying, collecting and securing the Property of the second defendant held for the purposes of the Registered Scheme;
 - (b) ascertaining the amount of the Registered Scheme Investor Funds received by the second defendant;
 - (c) identifying any dealings with, payments of, or distributions by or uses made of the Registered Scheme Investor Funds by the second defendant;
 - (d) identifying any Property purchased or acquired with Registered Scheme Investor Funds;
 - (e) recovering Registered Scheme Investor Funds; and
 - (f) providing a report to the Court within 28 days in relation to the matters referred to in paragraphs 9(a)-(e) of this application.
10. An order that, for the purpose of attaining the objectives for which the Receivers are appointed, the Receivers shall have the following powers:
- (a) the powers set out in sub-sections 420(1) and 420(2)(a), (e), (f), (k), (o), (p), (q) and (u) of the Act; and
 - (b) the power to apply to the Court for directions or further orders.



Books and records

11. An order that the first defendant shall immediately deliver up to the Receivers all the books, records and other papers including, but not limited to, all files, computer records and data in their possession, custody or control which relate to the Unregistered Scheme and to the Property of the first defendant.
12. An order that the second defendant shall immediately deliver up to the Receivers all the books, records and other papers including, but not limited to, all files, computer records and data in their possession, custody or control which relate to the Registered Scheme and to the Property of the second defendant.
13. An order that the plaintiff shall, upon the request of the Receivers, deliver up to the Receivers all documents and books concerning the defendants which have been obtained by the applicant under Part 3, Division 3 of the *Australian Securities and Investments Act 2001* (Cth).

Winding up – unregistered scheme

- 13A. An order pursuant to section 601EE(2) of the Act that the Unregistered Scheme be wound up.
- 13B. An order pursuant to section 601EE(2) of the Act that the Receivers be made responsible for the winding up.

Winding up – registered scheme

14. An order pursuant to section 601ND(1)(a) of the Act that the Registered Scheme be wound up on the ground that it is just and equitable to do so.
15. An order pursuant to section 601NF(1) of the Act that the Receivers be made responsible for winding up the Registered Scheme.

Winding up – first and second defendants

16. An order that each of the first and second defendants be wound up pursuant to s461(1)(k) of the Act on the ground that it is just and equitable to do so.

Declarations

17. Declarations pursuant to section 1101B of the Act and section 21 of the FCA, or further or alternatively the implied/inherent jurisdiction of the Court, that the first defendant has acted in contravention:
 - (aa) section 601ED(5) of the Act;
 - (a) section 911A of the Act;
 - (b) section 911B of the Act; and
 - (c) section 1041H of the Act.



18. Further or in the alternative, a declaration pursuant to section 21 of the FCA or further or alternatively the implied/inherent jurisdiction of the Court, that the first defendant has acted in contravention of section 12DA of the *Australian Securities and Investments Commission Act 2001*.
19. Declarations pursuant to section 1101B of the Act and section 21 of the FCA, or further or alternatively the implied/inherent jurisdiction of the Court, that the second defendant has acted in contravention:
 - (a) section 912A(1)(a) of the Act;
 - (b) section 912A(1)(aa) of the Act;
 - (c) section 1013D(1)(c) of the Act;
 - (d) section 1013D(1)(f) of the Act;
 - (e) section 1013E of the Act; and
 - (f) section 1017B(1) of the Act.
20. Declarations pursuant to section 21 of the FCA, or further or alternatively the implied/inherent jurisdiction of the Court that the second defendant has acted in contravention of:
 - (a) section 208 of the Act (as modified by s601LC of the Act); and
 - (b) all or further or alternatively any of sub-sections 601FC(1)(b), (c), (h), (i), (j) and (k) of the Act.

General orders

21. The defendants pay the plaintiff's costs of this application.
22. The parties have liberty to apply on five business days' notice in writing.
23. Such further or other order or relief as the Court considers appropriate.

Date:

Hugh Copley
Legal Practitioner for ASIC

This application will be heard by _____ at the Federal Court of Australia at Harry Gibbs
Commonwealth Law Courts Building, 119 North Quay (cnr Tank Street), Brisbane, QLD at
am on _____



B. NOTICE TO DEFENDANTS

TO: LINCHPIN CAPITAL GROUP LTD (ACN 163 992 961)
Level 13, 111 Elizabeth Street
Sydney NSW 2000

TO: ENDEAVOUR SECURITIES (AUSTRALIA) LTD (ACN 079 988 819)
Level 13, 111 Elizabeth Street
Sydney NSW 2000

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 Hugh Copley, Legal Practitioner for the Australian Securities and Investments Commission.

D. SERVICE

The applicant's address for service is:

Name: Australian Securities and Investments Commission
Applicant's address: Level 20, 240 Queen Street, Brisbane, Queensland,
4000
Applicant's solicitor's name: Hugh Copley
Telephone: (07) 3867 4700
Facsimile: (07) 3867 4790
Email: hugh.copley@asic.gov.au

It is intended to serve a copy of this originating process on the defendants.