

NOTICE OF FILING AND HEARING

Filing and Hearing Details

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File Title: IN THE MATTER OF MURRAY & ROBERTS PTY LTD
(ADMINISTRATORS APPOINTED) ACN 105 617 865
Registry: WESTERN AUSTRALIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing: Hearing
Time and date for hearing: 13/12/2022, 10:15 AM
Place: Please check Daily Court List for details



Sia Lagos

Registrar

Important Information

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 of the filing of the document is determined pursuant to the Court's Rules.



Form 2 Originating process

(rules 2.2 and 15A.3)

Federal Court of Australia

of 2022

District Western Australia

Registry:

Division: Commercial and Corporations List

IN THE MATTER OF MURRAY & ROBERTS PTY LTD (ADMINISTRATORS APPOINTED)

ACN: 105 617 865

SALVATORE ALGERI, JASON TRACY, GLEN KANEVSKY and DAVID ORR, in their capacities as joint and several administrators of the Second to Thirteenth Plaintiffs named in the schedule

First Plaintiffs

A. DETAILS OF APPLICATION

This application is made under section 447A(4)(c) of the *Corporations Act 2001* (Cth) (**Corporations Act**) and section 90-15 of the *Insolvency Practice Schedule (Corporations)*, being Schedule 2 to the Corporations Act (**IPS**).

On the facts stated in the supporting affidavit of David Michael Orr dated 12 December 2022 (**Orr Affidavit**) and the confidential supporting affidavit of David Michael Orr dated 12 December 2022, the First Plaintiffs seek the following orders:

Limitation of Administrators' Liability

Specified Categories of Agreements

1 Pursuant to section 447A(1) of the Corporations Act and section 90-15 of the IPS, Part 5.3A of the Corporations Act is to operate in relation to the Plaintiffs as if section 443A(1) of the Corporations Act provides that:

(a) the liabilities of the First Plaintiffs (in their capacities as administrators of each of the Second to Thirteenth Plaintiffs (together the **Clough Companies** and each a **Clough Company**)) incurred with respect to any obligations arising out of, or in connection with, any purchase orders or other agreements:

(i) which the First Plaintiffs cause any of the Clough Companies to issue or enter into with:

(A) a third party in connection with or relating to any of the Clough Companies' projects referred to in paragraph 25 of the Orr Affidavit;



- (B) PayPower Solutions Pty Ltd (**PayPower**) in respect of third party payroll services as described in paragraphs 41 to 44 of the Orr Affidavit;
 - (ii) that contain within their terms:
 - (A) a limited recourse provision substantially the same as the limited recourse provision referred to in paragraph 39 of the Orr Affidavit;
 - (B) notice of these orders; and
 - (iii) where the limited recourse provision referred to in paragraph 39 of the Orr Affidavit has been accepted by the third party or PayPower (as the case may be) as forming part of the terms of the purchase order or other agreement,
- (together, the **Applicable Agreements** and each, an **Applicable Agreement**) are in the nature of debts incurred by the First Plaintiffs in the performance and exercise of their functions as joint and several administrators of each of the Clough Companies; and
- (b) notwithstanding that the liabilities in suborder (a) are debts incurred by the First Plaintiffs in the performance and exercise of their functions as joint and several administrators of each of the Clough Companies, the First Plaintiffs will not be personally liable to repay such debts or satisfy such liabilities to the extent that the assets of the particular Applicable Agreement are insufficient to satisfy the debt and liabilities incurred by the First Plaintiffs arising out of, or in connection with, the Applicable Agreements.

2 Pursuant to section 447A(1) of the Corporations Act and section 90-15 of the IPS, the First Plaintiffs are to provide notice, in the Applicable Agreement or otherwise, to any counterparty to an Applicable Agreement of order 1 above, prior to that counterparty entering into an Applicable Agreement.

3 Pursuant to section 447A(1) of the Corporations Act and section 90-15 of the IPS, the First Plaintiffs are to:

- (a) keep a schedule noting each Applicable Agreement entered into by the First Plaintiffs on behalf of any of the Clough Companies; and
- (b) provide an update to the committee of inspection formed for the Second to Thirteenth Plaintiffs (**Committee**), at each meeting of the Committee, as to the nature of Applicable Agreements that the First Plaintiffs have entered into



or proposed to be entered into together with total estimated debts that may be incurred in respect of each Applicable Agreement, on behalf of any of the Clough Companies.

Property leased, used or occupied

- 4 Pursuant to sections 443B(8) and 447A(1) of the Corporations Act and section 90-15 of the IPS, Part 5.3A of the Corporations Act is to operate in relation to each of the Second to Thirteenth Plaintiffs as if:
- (a) the First Plaintiffs' personal liability under sections 443A(1)(c) and 443B(2) of the Corporations Act begins on 31 January 2023, such that the First Plaintiffs are not personally liable for any liability with respect to any property leased, used or occupied by any of the Second to Thirteenth Plaintiffs (including the amounts pursuant to any leases entered into by any of the Second to Thirteenth Plaintiffs), from any lessors, in the period from 5 December 2022 to 31 January 2023; and
 - (b) the words "within five business days after the beginning of the administration" in section 443B(3) of the Corporations Act instead read "by 31 January 2023".

Meetings of Creditors and the Halo Platform

- 5 Pursuant to section 447A(1) of the Corporations Act and section 90-15 of the IPS, that, to the extent not permitted specifically by sections 75-30, 75-35 and 75-75 of the *Insolvency Practice Rules (Corporations) 2016* (Cth) (**IPR**), the First Plaintiffs be permitted to convene and hold meetings of creditors during the administration of Second to Thirteenth Plaintiffs using the Deloitte Halo platform described in the Orr Affidavit (**Halo Platform**).
- 6 Pursuant to section 447A(1) of the Corporations Act and section 90-15 of the IPS, the First Plaintiffs are justified in:
- (a) requiring that any creditors of the Clough Companies who intend to participate in the first meetings of creditors of the Clough Companies, convened pursuant to section 436E of the Corporations Act (**First Meetings**), must register with the Halo Platform by no later than 5:00PM (AEDT) Wednesday, 14 December 2022.
 - (b) requiring that any creditors of the Clough Companies who intend to vote at the second meetings of creditors of the Clough Companies, convened pursuant to section 439A of the Corporations Act (**Second Meetings**) must



register with the Halo Platform by no later than 5:00PM (AEDT) Wednesday, 14 December 2022.

- 7 Pursuant to section 90-15 of the IPS, the First Plaintiffs are justified in:
- (a) ascertaining who is a creditor of any of the Clough Companies for the purposes of section 75- 85(1) of the IPR (or who may otherwise be entitled to vote by reason of section 75-86 of the IPR); and
 - (b) admitting in whole, or in part, a person's debt or claim for the purposes of section 75-85(3)(a) of the IPR,
- based only on the books and records of the Clough Companies and information provided by any person on, or otherwise entered in, the Halo Platform (and are otherwise entitled to disregard any other debt or claim).
- 8 Pursuant to section 90-15 of the IPS, the IPR operate in relation to the Clough Companies such that the requirements of a person to:
- (a) lodge particulars of a debt or claim for the purposes of section 75-85(3)(b) of the IPR;
 - (b) provide an instrument of appointment of proxy pursuant to section 75-150(3) of the IPR; and
 - (c) provide an instrument evidencing the appointment of a power of attorney pursuant to section 75-155(2) of the IPR,
- in order to establish an entitlement to vote at the Second Meetings may only be satisfied by a person submitting relevant information electronically using the Halo Platform.
- 9 Pursuant to section 90-15 of the IPS, the First Plaintiffs are justified in utilising the Halo Platform to communicate with persons who have registered on the Halo Platform, in respect of:
- (a) notification and provision of information as to the conduct of the administrations of the Clough Companies;
 - (b) any proof or particulars of debt or claim lodged on the Halo Platform, including:
 - (i) the adjudication of such proof or particulars of debts or claims for the purposes of voting at the Second Meetings pursuant to section 75-100 of the IPR; and



- (ii) requesting further evidence from a person in respect of a debt claimed pursuant to section 75-95 of the IPR.

- 10 Information concerning a creditor's debt or claim and provided by that creditor to the First Plaintiffs, is to be stored on the Halo Platform and accessible in the relevant creditor's account on the Halo Platform.
- 11 If a person claiming to be a creditor notifies the First Plaintiffs that the person disputes a decision, notice or adjudication by the First Plaintiffs about the person's claim, the First Plaintiffs must promptly provide that person with all relevant material and information used or relied upon by the First Plaintiffs in making their decision, notification or adjudication not already provided to or by the person, subject to there being no obligation to provide any confidential material or information relating to third parties.

Committee of Inspection

- 12 Pursuant to section 447A(1) of the Corporations Act and section 90-15 of the IPS, Divisions 75 and 80 of the IPS and Division 75 of the IPR are to operate as if:
- (a) the requirement in sections 80-10 and 80-15 of the IPS for the creditors of a company to resolve that a committee of inspection be formed and to appoint members of the committee of inspection, be dispensed with;
 - (b) a single committee of inspection be formed in respect of the Second to Thirteenth Plaintiffs (**Committee**); and
 - (c) the members of the Committee be persons proposed by the First Plaintiffs from nominations made to them in advance of, or at, the First Meeting.
- 13 Pursuant to section 447A(1) of the Corporations Act and section 90-15 of the IPS, to the extent not permitted specifically by section 80-5(3) of the IPR:
- (a) a meeting of the committee of inspection may be convened by publishing a notice via the Halo Platform; and
 - (b) a meeting of the committee of inspection may be permitted to be held by audio-visual conference (only, and in place of a physical meeting).

Confidentiality

- 14 Pursuant to s 37AF and s 37AG(1)(a) of the *Federal Court of Australia Act 1976* (Cth), on the ground that the order is necessary to prevent prejudice to the proper administration of justice, the following documents be marked confidential on the Court



file and not be made available for inspection without prior notice being provided to the Plaintiffs and an order of this Court:

- (a) confidential affidavit of David Orr sworn 12 December 2022; and
- (b) exhibit DMO-1C to the confidential affidavit of David Orr sworn 12 December 2022.

Other Ancillary Orders

15 The First Plaintiffs must take all reasonable steps to cause notice of these orders to be given, within one (1) business day after the making of these orders, to:

- (a) the creditors (including persons or entities claiming to be creditors) of each of the Clough Companies, in the following manner:
 - (i) where the creditor is a registered user on the Halo Platform, by publishing a notice via the Halo Platform;
 - (ii) where the creditor is not a registered user on the Halo Platform but the First Plaintiffs have an email address for a creditor, notifying each such creditor, via email, of the making of the orders and providing a link to a website where the creditor may download the orders and this Originating Process;
 - (iii) where a creditor is not a registered user on the Halo Platform and the First Plaintiffs do not have an email address for a creditor but have a postal address for that creditor (or have received notification of non-delivery of a notice sent by email in accordance with (a)(ii) above), notifying each such creditor, via post, of the making of the orders and providing a link to a website where the creditor may download the orders and the Originating Process; and
 - (iv) placing scanned, sealed copies of the orders and the Originating Process on the website maintained by the First Plaintiffs at <https://aurestructuring.deloitte-halo.com/clough>;
- (b) the Australian Securities and Investments Commission;
- (c) the Deputy Commissioner of Taxation; and
- (d) the Attorney-General's Department (administering the Fair Entitlements Guarantee Scheme).



- 16 Any person who can demonstrate a sufficient interest has liberty to apply to vary or discharge any orders made pursuant to orders 1 to 3 above, on three (3) business days' notice being given to the Plaintiffs and the Court.
- 17 The Plaintiffs' costs of, or incidental to, this application be costs in the administration of the Clough Companies, joint and severally.
- 18 These orders be entered forthwith.

Date: 12 December 2022

Sam Dundas
Lawyer for the Plaintiffs
King & Wood Mallesons

This application will be heard by the Federal Court of Australia at Commonwealth Law Courts, 1 Victoria Avenue, Perth atam/pm on

B. NOTICE TO DEFENDANT(S)

It is intended to provide a copy of this interlocutory process on each of the persons listed below:

1. Australian Securities and Investments Commission

C. APPLICATION FOR WINDING UP ON GROUND OF INSOLVENCY

D. FILING

Date of filing:

Registrar

This originating process is filed by Sam Dundas for the Plaintiffs.

E. SERVICE

The address for service is

King & Wood Mallesons
Level 30, QV.1 Building
250 St Georges Terrace
Perth WA 6000
Sam.Dundas@au.kwm.com



**Schedule**

Federal Court of Australia

of 2022

District Western Australia
Registry:

Division: General

IN THE MATTER OF MURRAY & ROBERTS PTY LTD

ACN: 105 617 865

MURRAY & ROBERTS PTY LTD (ADMINISTRATORS APPOINTED) ACN 105 617 865

Second Plaintiff

CLOUGH LIMITED (ADMINISTRATORS APPOINTED) ACN 008 678 813

Third Plaintiff

CLOUGH OPERATIONS PTY LTD (ADMINISTRATORS APPOINTED) ACN 109 444 279

Fourth Plaintiff

CLOUGH OVERSEAS PTY LTD (ADMINISTRATORS APPOINTED) ACN 067 272 182

Fifth Plaintiff

CLOUGH SEAM GAS PTY LTD (ADMINISTRATORS APPOINTED) ACN 139 610 656

Sixth Plaintiff

**CLOUGH ENGINEERING & INTEGRATED SOLUTIONS (CEIS) PTY LTD
(ADMINISTRATORS APPOINTED) ACN 097 480 736**

Seventh Plaintiff

E20 PTY LTD (ADMINISTRATORS APPOINTED) ACN 125 234 924

Eighth Plaintiff

SHARP RESOURCES PTY LTD (ADMINISTRATORS APPOINTED) ACN 166 613 127

Ninth Plaintiff

CLOUGH PROJECTS PTY LTD (ADMINISTRATORS APPOINTED) ACN 109 444 831

Tenth Plaintiff

CLOUGH ENGINEERING PTY LTD (ADMINISTRATORS APPOINTED) ACN 009 093 869

Eleventh Plaintiff

**CLOUGH PROJECTS INTERNATIONAL PTY LTD (ADMINISTRATORS APPOINTED) ACN
109 444 902**

Twelfth Plaintiff

**CLOUGH PROJECTS AUSTRALIA PTY LTD (ADMINISTRATORS APPOINTED) ACN 109
444 215**

Thirteenth Plaintiff

Date: 12 December 2022