



Federal Court of Australia

District Registry: Queensland

Division: General

No: QUD390/2019

WILLIAMS & KERSTEN PTY LTD ACN 141 894 724 and another named in the
schedule
Plaintiff

WALTON CONSTRUCTION (QLD) PTY LTD (IN LIQUIDATION) ACN 100 833 225
and others named in the schedule
Defendant

ORDER

JUDGE: JUSTICE REEVES

DATE OF ORDER: 21 August 2019

WHERE MADE: Brisbane (in chambers)

THE COURT ORDERS THAT:

1. Pursuant to s 90-15 of Division 90 of Schedule 2 of the *Corporations Act 2001* (Cth), an order that Michael Caspany (**special purpose liquidator**) be appointed as additional liquidator to the first and second defendants (**the Companies**) for the purpose of:
 - (a) conducting investigations into any of the matters set out in the **Schedule** to these Orders, including by:
 - (i) inspecting and copying the books and records of the Companies, excluding any files and working papers of the third defendants or any liquidator/s of the Companies from time to time (other than the special purpose liquidator) (**the Liquidators**);
 - (ii) conducting (further) public examinations pursuant to ss 596A or 596B of the *Corporations Act 2001* (Cth) or obtaining orders for production pursuant to s 597(9) of the *Corporations Act 2001* (Cth) or under the relevant provisions of either the *Federal Court Rules 2011* (Cth) or the *Uniform Civil Procedure Rules 1999* (Qld); and
 - (iii) requiring statements to be provided pursuant to s 475(2) of the *Corporations Act 2001* (Cth),



noting that for the avoidance of doubt, the following books and records of the Companies are not files and working papers of the Liquidators: all restored or reconstructed detailed accounting records of the Companies (together with other related entities), all general ledger account reconciliations for the Companies, the Companies' hard drives or other data storage devices (or copies of them), and email accounts of all officers and employees of the Companies;

- (b) commencing and pursuing any claim, including commencing any legal proceedings, that may be available to the Companies or the special purpose liquidator in relation to any of the matters set out in the Schedule, including considering and obtaining legal advice in respect of pursuing any such claim;
- (c) taking any steps in relation to any matters set out in the Schedule, including by commencing legal proceedings, to preserve or to protect the assets of the Companies, or assets to which the Companies or the special purpose liquidators claim to be entitled, whether or not in the possession of the Companies; and
- (d) exercising any powers conferred on the Liquidators of the Companies by ss 477 and 506(1)(b) of the *Corporations Act 2001* (Cth), including the power to seek relief under s 1317H of the *Corporations Act 2001* (Cth), in relation to any matters set out in the Schedule, except for the powers contained in s 477(1)(a) of the *Corporations Act 2001* (Cth),

PROVIDED that in taking any steps pursuant to this Order, the special purpose liquidator must at all times act so as to avoid interfering in, conflicting with, or causing prejudice to the work of the liquidators, including to:


- (i) any proceeding the Liquidators are currently pursuing; or
- (ii) any prospective Court proceedings for which the Liquidators advise the SPL that they have obtained litigation funding and which they intend to commence.

2. Pursuant to s 90-15 of Division 90 of Schedule 2 of the *Corporations Act 2001* (Cth), an order that the Liquidators use their reasonable endeavours to assist the special purpose liquidators to exercise the powers given to them in Order 1 above, including by providing any documents or information previously prepared or obtained by them in investigating or pursuing any claim in relation to any of the matters set out in the Schedule (other than documents prepared pursuant to statutory obligations or in respect of which a privilege applies and subject to the exclusion of the Liquidators' files and working papers referred to in Order 1(a)(i)) PROVIDED that the special purpose liquidator shall pay any costs incurred or remuneration payable to the Liquidators in respect of the assistance referred to in this order within 7 days of the issue of an invoice for same.



3. Pursuant to s 90-15 of Division 90 of Schedule 2 of the *Corporations Act 2001* (Cth), an order that the special purpose liquidators shall, in accordance with the requirements of the *Corporations Act 2001* (Cth):
 - (a) report to creditors of the Companies and the Liquidators on the terms of their appointment and subsequently once every six months during the course of their appointment, such report to include details of the investigations conducted, any public examinations undertaken, any claims made or legal proceedings commenced, and any property recovered; and
 - (b) shall provide to the Liquidators all information the Liquidators reasonably request in respect of the actions of the SPL.
4. An order that any costs or expenses incurred by, or approved remuneration payable to, the special purpose liquidator are only to be paid from any funds which the special purpose liquidator recovers as a consequence of the actions he has been specifically appointed to undertake pursuant to these orders, or from any other funding which the special purpose liquidator may obtain, or pursuant to court order.
5. An order that the costs of the third defendants be costs in the liquidation of the Companies.

Date that entry is stamped: 21 August 2019


Registrar



Schedule

- I. Whether, in relation to the Companies' engagement of, dealings with, or following the instructions, advice, recommendations or proposals of Mawson Restructures and Workouts Pty Ltd and the people and entities related to or connected with that company (collectively, **Mawson**), any of the appointed directors or officers of the Companies breached any statutory or fiduciary duties that they owed to the Companies.
- II. Whether the National Australia Bank Ltd (including its officers, agents or employees) was involved in, or is otherwise liable for (whether as an accessory or otherwise), any breaches of statutory or fiduciary duties committed by any of the directors or officers of the Companies in relation to the Companies' engagement of, dealings with, or following instructions, advice, recommendations or proposals given by Mawson.
- III. Whether any of the directors or officers of the Companies breached s 588G of the *Corporations Act 2001* (Cth).



Schedule

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Second Plaintiff PAGE STEEL FABRICATIONS PTY LTD ACN 006 636 004

Second Defendant WALTON CONSTRUCTION PTY LTD (IN LIQUIDATION)
ACN 060 900 218

Third Defendant MICHAEL GERARD MCCANN, GRAHAM ROBERT KILLER
AND ANDREW STEWART REED HEWITT (IN THEIR
CAPACITY AS THE LIQUIDATORS OF THE FIRST AND
SECOND DEFENDANTS