



Issued: 7 December 2018 11:22 AM

JUDGMENT/ORDER

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Corporations Registrar's List
Registry	Supreme Court Sydney
Case number	2018/00340546

TITLE OF PROCEEDINGS

First Plaintiff	Timothy Hall
First Defendant	Bonny Glen Fruits Pty Ltd ACN 125710036
Second Defendant	Bernard Hall
Number of Defendants	7

DATE OF JUDGMENT/ORDER

Date made or given	27 November 2018
Date entered	27 November 2018

TERMS OF JUDGMENT/ORDER

This matter is listed for Directions (Corporation List) on 11 February 2019 10:00 AM before the Supreme Court - Civil at Supreme Court Sydney.

Estimated duration: 5 Minutes

The following hearing dates are vacated:

28 Nov 2018 11:00 AM

03 Dec 2018 09:45 AM

Reason: By Consent

VERDICT, ORDER OR DIRECTION:

Black J makes orders in accordance with the Short Minutes of Order initialled by him and placed in the file.

ORDERS:

The Court makes the following orders with the consent of the Plaintiff and Second Defendant:

Provisional liquidator

1. Pending further order, pursuant to s 472 of the Corporations Act 2001 (Cth) (the Act), appointing Anthony Elkerton and Cameron Gray of DW Advisory Level 2, 32 Martin Place Sydney NSW 2000 Australia as joint and several provisional liquidators (Provisional Liquidator) to each of the First, Third, Fourth and Fifth Defendants (Corporate Defendants).

2. Pursuant to s472(3)(b) of the Act, but without limiting any other powers of the Provisional Liquidator, the Provisional Liquidator is specifically empowered to:

(a) So far as the Provisional Liquidator considers necessary to preserve the value of the assets of the Corporate Defendants and maximise the return to creditors and shareholders in any winding up, continue to conduct the business currently being undertaken by the Corporate Defendants;

(b) Sell or otherwise realise the assets of the Corporate Defendants, including Lots 10 and 11 in Deposited Plan 1002409 being land known as 474 Canobolas Road, Canobolas, NSW, save that in the event that the Provisional Liquidator determines to sell any asset other than in the ordinary course of business, the Provisional Liquidator shall:

(i) first provide the Plaintiff and the Second Defendant with a valuation of such asset obtained by the Provisional Liquidator as contemplated by Order 5 below;

(ii) Shall not enter into any contract of sale in respect of that land before:

(i) 1 March 2019; and

(ii) before a period of 14 days has lapsed after the provision of such a valuation;

without the written consent of the Plaintiff and the Second Defendant or order of this Court;

(c) Retain the proceeds of the sale or realisation of the assets of the Corporate Defendant, less realisation costs, pending further order of the Court;

(d) In respect of the Third and Fifth Defendants, terminate the employment of such employees, or the contract of such contractors, which, in the Provisional Liquidator's opinion, are not needed to conduct any further work for any of the Corporate Defendants to enable the Provisional Liquidator to achieve the purpose in order 2(a) above;

(e) So far as the Provisional Liquidator considers necessary to achieve the purpose in order 2(a) above, terminate any agreements or arrangements under which any of the Corporate Defendants are incurring liabilities to third parties in the conduct of their business on terms considered appropriate by the Provisional Liquidator.

3. Within 42 days of the appointment of the Provisional Liquidator, the Provisional Liquidator is to file with the Court, and provide to the Plaintiff and the Second Defendant, a report which:

(a) Identifies the assets and liabilities of the Corporate Defendants;

(b) Identifies any assets of the Corporate Defendants which, in the Provisional Liquidator's opinion, are not saleable;

(c) Specifies how any money raised by the sale of the assets of the Corporate Defendants have been disbursed;

(d) Specifies what further steps will need to be taken to complete the sale or realisation of the assets of the Corporate Defendants, how he plans to do so and how long this is estimated to take.

4. Upon the sale or realisation of all of the assets of the Corporate Defendant that the Provisional Liquidator considers can be sold or realised, the Provisional Liquidator is to apply for the proceeding relisted for the making of orders 1 and 2 sought in the Originating Process filed in these proceedings on 6 November 2018.

5. The Provisional Liquidator is to instruct forthwith an appropriate property valuer or valuers to calculate and provide a valuation as to the market value, as at the date of the valuation, for Lots 10 and 11 in DP 1002409, being land known as 474 Canobolas Road, Canobolas Road, Canobolas, NSW 2800, including as individual lots as well as all other significant assets.

6. The Provisional Liquidator is authorised to instruct a licensed real estate agent for the sale of Lots 10 and 11 in DP 1002409 and, if need be, an auctioneer where the total commission payable to the estate agent is not to exceed 2.5% exclusive of GST, unless agreed to in writing by the Plaintiff and Second Defendant.

Statutory trustee

7. Pursuant to s 66G of the Conveyancing Act 1919 (NSW) (the Conveyancing Act), the Provisional Liquidator is appointed trustee for the sale of land (Trustee) for the following land (Real Property):

- (a) Lot 1 in Deposited Plan 1212458, Lot 2 in Deposited Plan 862724 and Lot 2 in Deposited Plan 1212458 and known as 253 Nancarrow Lane, Nashdale, NSW, 2800 (253 Nancarrow) being land owned as tenants in common in equal shares by the Plaintiff, the Second, Sixth and Seventh Defendants;
- (b) Lot 1 in Deposited Plan 187518 and Lot 1 in Deposited Plan 516257 and known as 'Brooklyn' 135 Nancarrow Lane, Nashdale, NSW, 2800 (135 Nancarrow) being land owned as tenants in common in equal shares by the Plaintiff and the Second Defendant;
- (c) Lot 2 in Deposited Plan 78720 being land known as 'Valley View' 305 Nancarrow Lane, Nashdale, NSW, 2800 (305 Nancarrow) being land owned as tenants in common in equal shares by the Plaintiff and the Second Defendant.

8. Pursuant to Division 6 of Part IV of the Conveyancing Act, the Real Property vests in the Trustee subject to any encumbrances affecting the entirety of any parcels of the Real Property and free of any encumbrances affecting any undivided shares in the Real Property upon the statutory trust for sale created by the Conveyancing Act.

9. The Trustee be empowered to offer the Real Property, as separate sales of 253 Nancarrow, 135 Nancarrow and 305 Nancarrow, by public auctions, or private treaties, with the power to fix reserve price for any auction, or to fix a sale price for a sale by any private treaty save that the Trustee:

- (a) Shall first provide the Plaintiff and the Second Defendant with a valuation of such land obtained by the Provisional Liquidator as contemplated by Order 13 below;
- (b) Shall not enter into any contract of sale in respect of that land before:
 - (i) 1 March 2019; and
 - (ii) before a period of 14 days has lapsed after the provision of such a valuation;

without the written consent of the Plaintiff and the Second Defendant or order of this Court;

10. The Trustee has the sole conduct of the Real Property and is authorised to instruct a licensed real estate agent for each sale and, if need be, an auctioneer where the total commission payable to the estate agent is not to exceed 2.5% exclusive of GST, unless agreed to in writing by the Plaintiff and Second Defendant.

11. The Plaintiff and Second Defendants, and the Sixth and Seventh Defendants only in respect of 253 Nancarrow, do all such things, acts and deeds to:

- (a) Cause 253 Nancarrow, 135 Nancarrow and 305 Nancarrow to be brought to, and maintained in, a clean and presentable manner as required for the proper and effective marketing of the Real Property;
- (b) Allow for inspections of 253 Nancarrow, 135 Nancarrow and 305 Nancarrow by the Trustee and any selling agent and auctioneer appointed by the Trustee on 48 hours' notice of a request being made;
- (c) Allow for an inspection of 253 Nancarrow, 135 Nancarrow and 305 Nancarrow for purposes of marketing on 7 days' notice of a request made by the Trustee or any selling agent appointed by the Trustee; and
- (d) Give vacant possession of 253 Nancarrow, 135 Nancarrow and 305 Nancarrow within 28 days of a request made by the Trustee provided that such request shall not be given before 1 March 2019 unless the Trustee has the written consent of the Plaintiff and the Second Defendant or order of this Court.

12. Within 21 days of the date of these orders, the Plaintiff and Second Defendant, and the Sixth and Seventh Defendants only in respect of 253 Nancarrow, are to deliver up to the Trustee the original certificate of title folio identifiers for 253 Nancarrow, 135 Nancarrow and 305 Nancarrow if it is in either of their possession, custody or control.

13. The Trustee instruct an appropriate property valuer forthwith to calculate and provide a valuation as to the market value for 253 Nancarrow, 135 Nancarrow and 305 Nancarrow as at the date of the valuation on the basis that they be sold under separate sales.

14. If the certificate of title folio identifiers for any of 253 Nancarrow, 135 Nancarrow and 305 Nancarrow are not in the possession, custody or control of the Plaintiff, Second, Sixth or Seventh Defendants, they are to:

- (a) Inform the Trustee of where they believe the documents to be; and
- (b) If they do not know where the documents are, or if the Trustee is not able to obtain the documents, provide all reasonable assistance to the Trustee in obtaining the documents, including by approaching any former mortgagee or by having new certificate of title folio identifiers issued by NSW Land Registry Services.

15. On completion of any sale of any of 253 Nancarrow, 135 Nancarrow and 305 Nancarrow by the Trustee, the settlement funds received on completion (Sale Proceeds) shall be distributed in the following order:

- (a) First, in payment of selling costs and expenses in connection with the sale of the relevant property including selling agent's fees and commission, advising fees, auctioneer's fees, legal costs and disbursements in transferring the relevant property into the names of the Trustee and Trustee's legal costs and disbursements associated with the sale; then
- (b) In payment of any amounts owing in connection with the relevant property for council rates, water rates, water usage and any other utility or statutory imposts including Capital Gains Tax, Land Tax and Goods & Services Tax (GST); then
- (c) For the remuneration and expenses of the Trustee in respect of the sale; then
- (d) In payment of the costs of obtaining any report from a valuer; then
- (e) The remaining balance of the sale proceeds be paid equally between the Plaintiff and Second Defendant subject to any further order that the Court might make.

Other orders

16. The requirement for publication of notice of the application under s465A(1)(c) of the Act is dispensed with pursuant to s467(3)(b) of the Act.

17. Liberty, including to the Provisional Liquidator, to restore on 3 days' notice.

18. Stand the matter over to the Corporations Directions List at 10am on 11 February 2019 for further directions.

SEAL AND SIGNATURE



Signature Chris D'Aeth
Capacity Principal Registrar
Date 7 December 2018

If this document was issued by means of the Electronic Case Management System (ECM), pursuant to Part 3 of the Uniform Civil Procedure Rules (UCPR), this document is taken to have been signed if the person's name is printed where his or her signature would otherwise appear.

FURTHER DETAILS ABOUT Plaintiff(s)**First Plaintiff**

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Fax
E-mail
Client reference

Legal representative for plaintiffs

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FURTHER DETAILS ABOUT Defendant(s)**First Defendant**

Name Bonny Glen Fruits Pty Ltd
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80 Kitchener Parade
BANKSTOWN NSW 2200

Second Defendant

Name Bernard Hall
Address Caernarvon
Canobolas Road
ORANGE NSW 2800

Third Defendant

Name Bonny Glen Trading Pty Ltd
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BANKSTOWN NSW 2200

Fourth Defendant

Name Caernarvon Canobolas Pty Ltd
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Fifth Defendant

Name Melrose Park Nashdale Pty Ltd
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Sixth Defendant

Name
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Seventh Defendant

Name
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