



Federal Court of Australia
District Registry: Queensland
Division: General

No: QUD439/2018

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION
Plaintiff

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

ORDER

JUDGE: JUSTICE DERRINGTON

DATE OF ORDER: 07 August 2018

WHERE MADE: Brisbane

FOR THE PURPOSES OF THIS ORDER:

"Corporations Act" means *Corporations Act 2001* (Cth).

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

"*Endeavour Scheme Property*" means all real or personal property, assets or interests in property of any kind, within or outside Australia held by the second defendant in its capacity as responsible entity of the Registered Scheme.

"*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 Corporations 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.

THE COURT ORDERS THAT:

1. Subject to the terms of paragraph 2 below, pursuant to section 1323 of the Corporations 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 their 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. 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;



- 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; and
 - c. the second defendant from paying its ordinary business expenses reasonably incurred in respect of its activities other than in respect of the Registered Scheme.
3. Pursuant to sections 1101B(1) and 1324 of the Corporations 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 Unregistered Scheme 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 Corporations Act.
4. Pursuant to sections 1101B(1) and 1324 of the Corporations 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 Corporations Act;
 - b. holding out or representing that it is an authorised representative of an Australian Financial Services Licence holder.



5. Pursuant to sections 1101B(1) and 1324 of the Corporations 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 in connection with the Registered Scheme;
 - c. doing any act in furtherance of or in connection with the Registered Scheme;
 - d. receiving, soliciting, transferring or disposing of Registered Scheme Investor Funds received in connection with the Registered Scheme; and
 - e. either directly or indirectly carrying on a financial services business in connection with the Registered Scheme.

6. Pursuant to section 1323(1)(h)(ii) of the Corporations Act, that until further order, David Orr and Jason Tracy 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 6.a-e of this application.

7. 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 Corporations Act; and
 - b. the power to apply to the Court for directions or further orders.

8. For the purpose of attaining the objectives for which the Receivers are appointed, the Receivers' powers do not extend to dealing with the first defendant's shares in the first



defendant's subsidiaries or exercising shareholder powers in relation to those subsidiaries, without further order of the Court.

9. Pursuant to section 1323(1)(h)(ii) of the Corporations Act, that until further order, the Receivers be appointed as Receivers and Managers to the Endeavour Scheme Property for the purpose of:
 - a. identifying, collecting and securing the Endeavour Scheme 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. 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), (p) and (q) of the Corporations Act; and
 - b. the power to apply to the Court for directions or further orders.
11. The first defendant shall immediately make available to the Receivers for their inspection (and copying, where necessary) 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. The second defendant shall immediately make available to the Receivers for their inspection (and copying, where necessary) 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. 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).

14. Within 21 days of this Order, the first defendant, by a proper officer, deliver to the plaintiff and the Receivers a sworn affidavit providing:
 - a. a comprehensive and detailed list of all persons who, in the period 1 January 2014 to the date of these orders, have provided monies to the first defendant or any entity associated with it for the purpose of investing in the Unregistered Scheme, such list to include particulars of:
 - i. the name, address and other contact details of each such person;
 - ii. the amount(s) paid by such person identifying the date or dates on which payment was received;
 - iii. the manner in which each payment was received, and how that money or part thereof, was expended or applied;
 - iv. the amount calculated by the first defendant as presently owing to each such person arising out of operation of the Unregistered Scheme (including a full statement of debits and credits relating to such person's investment);
 - b. a comprehensive and detailed list of all interests in any Property acquired over which the first defendant or any person or entity associated with it, has or has held a legal, equitable or other interest (whether as registered proprietor, purchaser, vendor, nominee, nominator, developer) in the period 1 January 2014 to the date of these orders;
 - c. the name and address of any bank, building society or other financial institution or organisation wheresoever situated from 1 January 2014 to today in which there is an account or accounts (including trading accounts) that is held in the first defendant's name or held jointly with any other person, company or entity, or that is held in the names of nominees or trustees for the first defendant, or that are under the control of the first defendant, together with the description and number of such account(s) and the balance(s) therein;
 - d. the names and addresses of any person or persons indebted to the first defendant, or to any entities controlled by the first defendant, and to the Unregistered Scheme, and the amount of the debt or debts owed by such person, persons or entities, and particulars of the circumstances in which such debt or debts arose;
 - e. the names and addresses of any person or persons to whom the first defendant, or any entities controlled by the first defendant, and the Unregistered Scheme, is indebted, and the amount of the debt or debts owed by them to such person, persons or entities, and particulars of the circumstances in which such debt or debts arose;



- f. an itemised inventory of any Property in respect of which the first defendant or any entities controlled by the first defendant, and the Unregistered Scheme, has an interest (including Property acquired whether wholly or partially with funds raised by, contributed to, or generated by the Unregistered Scheme), and particulars of the nature of the interest in such Property;
 - g. in respect of any Property referred to in subparagraph (f) above, whether it has been given as security for any debt or liability and if so, the nature of the security and the debt or liability so secured;
 - h. the name of any trust in which the first defendant or the Unregistered Scheme has an interest whether as trustee, beneficiary, trust object, settlor or otherwise, and full particulars thereof of such trust and interest therein;
 - i. the name and address of any bank building society or other financial institution or organisation wheresoever situate, in which monies advanced to the first defendant or any entities controlled by the first defendant and the Unregistered Scheme, by the persons pursuant to the Unregistered Scheme have been deposited, specifying the amount of such deposit.
15. Within 21 days of this Order, the second defendant, by a proper officer, deliver to the plaintiff and the Receivers a sworn affidavit providing:
- a. a comprehensive and detailed list of all persons who, in the period 1 April 2015 to the date of these orders, have provided monies to the second defendant or any entity associated with it for the purpose of investing in the Registered Scheme, such list to include particulars of:
 - i. the name, address and other contact details of each such person;
 - ii. the amount(s) paid by such person identifying the date or dates on which payment was received;
 - iii. the manner in which each payment was received, and how that money or part thereof, was expended or applied;
 - iv. the amount calculated by the second defendant as presently owing to each such person arising out of operation of the Registered Scheme (including a full statement of debits and credits relating to such person's investment);
 - b. a comprehensive and detailed list of all interests in any Property acquired over which the second defendant or any person or entity associated with it, has or has held a legal, equitable or other interest (whether as registered proprietor, purchaser, vendor, nominee, nominator, developer) in the period 1 April 2015 to the date of these orders;



- c. the name and address of any bank, building society or other financial institution or organisation wheresoever situated from 1 April 2015 to today in which there is an account or accounts (including trading accounts) that is held in the second defendant's name or held jointly with any other person, company or entity, or that is held in the names of nominees or trustees for the second defendant, or that are under the control of the second defendant, together with the description and number of such account(s) and the balance(s) therein;
 - d. the names and addresses of any person or persons indebted to the second defendant, or to any entities controlled by the second defendant, and to the Registered Scheme, and the amount of the debt or debts owed by such person, persons or entities, and particulars of the circumstances in which such debt or debts arose;
 - e. the names and addresses of any person or persons to whom the second defendant, or any entities controlled by the second defendant, and the Registered Scheme, is indebted, and the amount of the debt or debts owed by them to such person, persons or entities, and particulars of the circumstances in which such debt or debts arose;
 - f. an itemised inventory of any Property in respect of which the second defendant or any entities controlled by the second defendant, and the Registered Scheme, has an interest (including Property acquired whether wholly or partially with funds raised by, contributed to, or generated by the Registered Scheme), and particulars of the nature of the interest in such Property;
 - g. in respect of any Property referred to in subparagraph (f) above, whether it has been given as security for any debt or liability and if so, the nature of the security and the debt or liability so secured;
 - h. the name of any trust in which the second defendant or the Registered Scheme has an interest whether as trustee, beneficiary, trust object, settlor or otherwise, and full particulars thereof of such trust and interest therein;
 - i. the name and address of any bank building society or other financial institution or organisation wheresoever situate, in which monies advanced to the second defendant or any entities controlled by the second defendant and the Registered Scheme, by the persons pursuant to the Registered Scheme have been deposited, specifying the amount of such deposit.
16. The defendants answer such questions about the content of the affidavits referred to in paragraphs 14 and 15 above as the Receivers may reasonably require them to answer, as to the identification of accounts, assets and liabilities of the defendants and that the defendants use their best endeavours to provide such assistance and information to the Receivers as may reasonably be required by the Receivers.
17. The defendants use their best endeavours to cause their officers, agents and/or employees to assist the Receivers in the carrying out of its functions and duties pursuant



to these orders (including the exercise of power to bring or defend any proceeding in the name of or on behalf of defendants) and to provide such information as may be requested by the Receivers from time to time.

THE GENERAL ORDERS OF THE COURT ARE:

18. Costs be reserved.
19. The parties, including the receivers. have liberty to apply on two business days' notice in writing.
20. The proceeding be listed for a case management hearing on 14 August 2018 at 10:15am.

Date that entry is stamped: 7 August 2018

Warrick Soden
Registrar



Schedule

No: QUD439/2018

Federal Court of Australia
District Registry: Queensland
Division: General

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