

FORM 2
ORIGINATING PROCESS



IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE COMMERCIAL COURT
CORPORATIONS LIST

Case: S ECI 2020 01581
Filed on: 30/03/2020 07:39 PM

No. S ECI 2020

IN THE MATTER OF AUS STREAMING LIMITED (IN LIQUIDATION) ACN 600 577
348

BETWEEN

Petrus Caspardus Stephanus Helberg

Plaintiff

and

Ronald John Dean-Willcocks (and others as listed in the Schedule)

Defendants

Date of document: 30 March 2020
Filed on behalf of: The Plaintiff
Prepared by:
Johnson Winter & Slattery
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A. DETAILS OF APPLICATION

This application is made under section 75-41(1) and (3), and section 90-15(1) read with section 90-20 of Schedule 2 (Insolvency Practice Schedule) (**IPS**) of the *Corporations Act 2001* (Cth) (**Corporations Act**).

The Plaintiff seek orders that the creditors' resolution dated 4 March 2020 terminating the Deed of Company Arrangement (**DOCA**) and appointing the First Defendant (**Mr Dean-Willcocks**) and Second Defendant (**Mr Gray**) as liquidators of the Third Defendant, Aus Streaming Limited (In Liquidation) ACN 600 577 348 (**Aus Streaming**) be set aside and that Mr Dean-Willcocks and Mr Gray be replaced as the liquidators of Aus Streaming by Craig Crosbie (**Mr Crosbie**) and Daniel Walley (**Mr Walley**), or alternatively, that Mr Crosbie and Mr Walley be appointed as liquidators of Aus Streaming, or in the further alternative, that Mr Crosbie and Mr Walley be appointed as special purpose liquidators of Aus Streaming.

On the facts stated in the supporting affidavits, the Plaintiff seeks orders that –

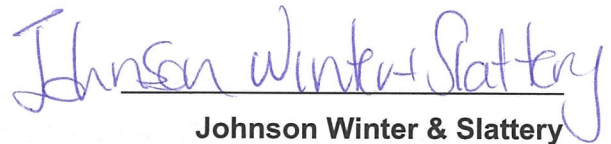
1. the resolution of the creditors of Aus Streaming terminating the DOCA and appointing Mr Dean-Willcocks and Mr Gray as liquidators of Aus Streaming passed on 4 March 2020 be set aside and that Aus Streaming be wound up by order of the Court with Mr Crosbie and Mr Walley of PricewaterhouseCoopers appointed as its liquidators;
2. alternatively, the resolution voted on by the creditors of Aus Streaming terminating the DOCA and appointing Mr Dean-Willcocks and Mr Gray as liquidators of Aus Streaming passed on 4 March 2020 be set aside and the proposal be considered and voted on at a meeting of the creditors of Aus Streaming convened at a place and at a time as ordered by the Court. Any related creditor (as defined in section 75-41(4) of the IPS) shall not be entitled to vote on the proposal or a resolution to amend or vary the proposal;
3. further alternatively, Mr Dean-Willcocks and Mr Gray be replaced as liquidators of Aus Streaming by Mr Crosbie and Mr Walley;
4. further alternatively, Mr Crosbie and Mr Walley be appointed as special purpose liquidators of Aus Streaming for the purpose of:
 - a. investigating the circumstances relating to the Investments as defined in the affidavit of Petrus Caspardus Stephanus Helberg sworn on 30 March 2020, including their existence and value, by:
 - i. inspecting the books and records of Aus Streaming;
 - ii. if they consider necessary and appropriate, conducting public examinations pursuant to sections 596A or 596B of the Corporations Act and/or obtaining orders for production pursuant to section 597(9) of the Corporations Act or the relevant provisions of the *Supreme Court Rules 2015*; and
 - iii. requiring statements to be provided pursuant to section 475(2) of the Corporations Act;
 - b. commencing and prosecuting any claims, including commencing any legal proceedings, that may be available to Aus Streaming or to them, including

obtaining and considering legal advice in respect of pursuing any such claim, in respect of the Investments that they may determine should be pursued for the benefit of Aus Streaming's creditors;

- c. taking any steps in relation to any matters relating to the Investments, including by commencing legal proceedings, to preserve or to protect the assets of Aus Streaming, or assets to which Aus Streaming or the special purpose liquidators claim to be entitled, whether or not in the possession of Aus Streaming;
 - d. exercising any powers conferred on the liquidators by sections 477 and 506(1)(b) of the Corporations Act, including the power to seek relief under section 1317H of the Corporations Act, in relation to any matters pertaining to the Investments;
5. in addition to the order set out in (4) above, Mr Dean-Willcocks and Mr Gray or any liquidators of Aus Streaming from time to time (other than the special purpose liquidators) use their reasonable endeavours to assist the special purpose liquidators to exercise the powers given to them in order (3) above, including by providing any documents or information previously prepared or obtained by them (including during the period Mr Dean-Willcocks and Mr Gray were the Administrators and the Deed Administrators of Aus Streaming) in investigating the Investments or any claims in respect of the Investments, provided that the special purpose liquidators shall pay any costs or remuneration payable to the liquidators in respect of the assistance referred to in this order;
 6. the special purpose liquidators shall, in accordance with the provisions of the Corporations Act, report to creditors of Aus Streaming and the liquidators on the terms of their appointment as soon as practicable after their appointment and at least once every six months during the course of their appointment;
 7. the special purpose liquidators may enter into a funding agreement or arrangement with an independent third party, including a litigation funder, for the provision of funding to enable the special purpose liquidators to exercise the powers given to them in order;
 8. any order that any costs or expenses incurred by, or approved remuneration payable to, the special purpose liquidators:

- a. is not to be paid from any property of Aus Streaming except that which the special purpose liquidators recover as a consequence of the actions they have specifically been appointed to undertake pursuant to these orders, but
 - b. may be paid from any other funding which the special purpose liquidators may obtain, including from a litigation funder;
9. the Plaintiff's costs of and incidental to this application be paid from the assets of Aus Streaming pursuant to sub-section 556(1)(a) of the Corporations Act; and
10. the Court grant such further or other relief as it deems just.

Date: 30 March 2020



Johnson Winter & Slattery

Solicitors for the Plaintiff

This application will be heard by _____ at the Supreme Court of Victoria at Melbourne at _____ am/pm on _____ April 2020. *on a date to be fixed.*

B. NOTICE TO DEFENDANTS

TO:

The First Defendant, Ronald John Dean-Willcocks of DW Advisory, Level 2, 32 Martin Place, SYDNEY, NSW 2000

The Second Defendant, Cameron Hamish Gray of DW Advisory, Level 2, 32 Martin Place, SYDNEY, NSW 2000

To the Third Defendant, Aus Streaming Limited (In Liquidation) ACN 600 577 348, Level 10, 32 Martin Place, 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 office of the Prothonotary and serve a copy 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: 30 March 2020

Prothonotary

This originating process is filed by Johnson Winter & Slattery for the Plaintiff.

D. SERVICE

The Plaintiff's address for service is C/- Johnson Winter & Slattery. Level 34, 55 Collins Street, Melbourne, 3000 (Attention: Paul Buitendag/Rena Solomonidis).

It is intended to serve a copy of this originating process on each defendant:

Ronald John Dean-Willcocks, the First Defendant

Cameron Hamish Gray, the Second Defendant

Aus Streaming Limited (In Liquidation) ACN 600 577 348, the Third Defendant

SCHEDULE OF PARTIES

Petrus Caspardus Stephanus Helberg **Plaintiff**

Ronald John Dean-Willcocks **First Defendant**

Cameron Hamish Gray **Second Defendant**

Aus Streaming Limited (In Liquidation) ACN 600 577 348 **Third Defendant**

