

EQUITY DIVISION

SYDNEY REGISTRY

IN THE MATTER OF PRIMESPACE PROPERTY INVESTMENT LIMITED (IN LIQUIDATION)

ACN: 107 345 317

SHAUN ROBERT FRASER
First Plaintiff

ANTHONY GREGORY MCGRATH
Second Plaintiff

PRIMESPACE PROPERTY INVESTMENT LIMITED (IN LIQUIDATION)
ACN: 107 345 317
Third Plaintiff

AMENDED INTERLOCUTORY PROCESS

A. DETAILS OF INTERLOCUTORY APPLICATION

This interlocutory application is made under sections 479(3) and, 511, ~~and 1322~~ of the *Corporations Act 2001* (Cth) (**Corporations Act**), or alternatively under section 63 of the *Trustee Act 1925* (NSW) (**Trustee Act**), and the inherent jurisdiction of the Court.

The First and Second Plaintiffs (**Liquidators**) are the joint and several liquidators of the Third Plaintiff, PrimeSpace Property Investment Limited (**PPIL**). PPIL is the trustee of the PrimeSpace Northbourne Trust (**PSNT**) and PrimeSpace Property Trust No. 3 (**PSPT3**), responsible entity of the Prime Access Property Fund (**PAPF**) and the former trustee of the IQ Investment Trust (**IQIT**).

On the facts stated in the supporting affidavit, the Plaintiffs apply for the following interlocutory relief:

Filed for the **Plaintiffs** by:
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Ref: B5139

CFG Proceedings

1 A direction pursuant to sections 479(3) and 511 of the Corporations Act ~~and, or~~ alternatively under section 63 of the Trustee Act, that the Liquidators would be justified in distributing the funds held by PPIL in its capacity as trustee of PSNT to pay PPIL's reasonable costs and expenses ~~(in such amounts as are approved by a Registrar of this Honourable Court)~~ in:

- (a) the Liquidators investigating the claims made by Canberra Finance Group Pty Ltd (CFG) against PPIL in its capacity as trustee of PSNT in proceeding numbered 120251 of 2016 issued in this Court (**CFG Proceeding**) including by:
 - (i) conducting examinations and seeking production of documents pursuant to Part 5.9 of the Corporations Act; and
 - (ii) obtaining an opinion from counsel for the purpose of determining whether PPIL in its capacity as trustee of PSNT would be justified in defending the CFG Proceeding and bringing any cross-claim in that proceeding;
 - (iii) ~~causing the Plaintiffs to defend the CFG Proceeding;~~
 - (iv) ~~bringing any new claims in relation to the CFG Proceeding;~~
- (b) the Liquidators and PPIL taking such steps in the CFG Proceeding as are necessary pending the carrying out of the investigations referred to in (a) above; and
- (c) the Liquidators and PPIL taking such other steps or action ~~of and~~ incidental to any of the foregoing.

Convertible Notes

2 A direction pursuant to sections 479(3) and 511 of the Corporations Act ~~and, or~~ alternatively under section 63 of the Trustee Act, that the Liquidators would be justified in distributing the funds held by PPIL in its capacity as trustee and responsible entity of PAPF to pay PPIL's reasonable costs and expenses ~~(in such amounts as are approved by a Registrar of this Honourable Court)~~ in:

- (a) the Liquidators investigating the circumstances in which PPIL issued convertible notes pursuant to Convertible Note Subscription Agreements during 2011

(**Convertible Notes**) including conducting examinations and seeking production of documents pursuant to Part 5.9 of the Corporations Act;

- (b) the Liquidators obtaining an opinion from counsel for the purpose of determining whether PPIL would be justified in commencing proceedings in respect of the circumstances in which the Convertible Notes were issued; and
- (c) ~~the Liquidators causing the Plaintiffs to pursue any claims that may be available to the Plaintiffs in respect of the Convertible Notes including by the commencement of any new proceeding;~~
- (d) ~~the Liquidators taking such legal or other advice as the Liquidators may from to time require; and~~
- (c) ~~(e)~~ the Liquidators and PPIL taking such other steps or action ~~of and~~ incidental to any of the foregoing.

Remuneration

3 An order that the Liquidators be allowed remuneration in the following amounts for the following periods with respect to the external administration of PPIL:

- (a) in the amount of \$236,498.50 for the period 23 April 2015 to 28 May 2015 inclusive in their capacity as joint and several voluntary administrators; and
- (b) in the amount of \$381,721.51 for the period 28 May 2016 to 24 June 2016 inclusive in their capacity as joint and several liquidators.

4 A direction pursuant to sections 479(3) and 511 of the Corporations Act ~~and, or alternatively under section 63 of the Trustee Act as to the manner in which~~, that the Liquidators would be justified in drawing their remuneration (in their capacity as administrators of PPIL) for the period 23 April 2015 to 28 May 2015, as approved by the creditors of PPIL at the second meeting of creditors held on 28 May 2015, as between referred to in order 3(a) as follows:

- (a) \$16,460.85 from the funds held by PPIL in its capacity as responsible entity of PAF;
- (b) \$214,037.65 from the funds held by PPIL in its capacity as trustee of PSNT;

- (c) \$3,000 from the funds held by PPIL in its capacity as trustee of PSPT3; and
- (d) \$3,000 from the funds held by PPIL in trust for IQIT.

5 A direction pursuant to sections 479(3) and 511 of the Corporations Act ~~and, or~~ alternatively under section 63 of the Trustee Act, that the Liquidators would be justified in distributing the funds held by PPIL to pay the Liquidators' remuneration referred to in order 3(b) above as follows:

- (a) for the period 28 May 2015 to 24 June 2016 in the following amounts:
 - (i) as to the funds held by PPIL in its capacity as responsible entity of PAPF, \$10,740.14;
 - (ii) as to the funds held by PPIL in its capacity as trustee of PSNT, ~~\$306,663.58~~\$318,601.89;
 - (iii) as to the funds held by PPIL in its capacity as trustee of PSPT3, \$57,956.65; and
 - (iv) as to the funds held by PPIL in trust for IQIT, \$6,361.14, and.
- ~~(b) for future periods, in such amounts and from such trusts/funds as are approved by a Registrar of this Honourable Court.~~

Costs of application

6 A direction pursuant to sections 479(3) and 511 of the Corporations Act ~~and, or~~ alternatively under section 63 of the Trustee Act, that the Liquidators would be justified in distributing the funds held by PPIL to pay the Plaintiffs' costs and expenses of this application as follows:

- (a) as to the funds held by PPIL in its capacity as responsible entity of PAPF, one third;
- (b) as to the funds held by PPIL in its capacity as trustee of PSNT, one third;
- (c) as to the funds held by PPIL in its capacity as trustee of PSPT3, one sixth; and
- (d) as to the funds held by PPIL in trust for IQIT, one sixth.

7 Such further or other orders as the Court sees fit.

Date: ~~12 July~~ 22 September 2016



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Antonietta Vozzo of Johnson Winter & Slattery
 Solicitor for the Plaintiffs

This interlocutory application will be heard by at the
Supreme Court of New South Wales at the Law Courts Building, Queens Square, Sydney,
New South Wales at am/pm on

B. NOTICE TO RESPONDENT

Not applicable.

C. FILING

This interlocutory process is filed by **Antonietta Vozzo of Johnson Winter & Slattery**, solicitor for the Plaintiffs.

D. SERVICE

The Plaintiffs' address for service is:

Johnson Winter & Slattery
Level 25
20 Bond Street
SYDNEY NSW 2000

Attn: Eve Thomson

It is intended to serve a copy of this interlocutory process on: N/A