

FEDERAL COURT OF AUSTRALIA

District Registry: Brisbane
Number: QUD13 of 2025

In the matter of: **VOYAGER RESORT LIMITED (In Liquidation) ACN 010 547 618**

Plaintiffs: **BRADLEY VINCENT HELLEN AND NIGEL MARKEY AS JOINT
AND SEVERAL LIQUIDATORS OF VOYAGER RESORT LIMITED**

PLAINTIFFS' WRITTEN SUBMISSIONS

Voyager Resort

- [1] The plaintiffs are the liquidators of Voyager Resort Ltd (in liq) (**Company**), an unlisted public company which owned and operated a moribund timeshare **scheme** from the former Voyage Resort on the Gold Coast.
- [2] The Company was established in 1984 with 3,116 ordinary shares.¹ The scheme it operated was facilitated, as follows:
- (a) The resort was developed as a community title scheme made up of one high-rise tower with 62 lots spread over 15 levels, each being self-contained, and common property containing onsite facilities, such as a pool and tennis court.²
 - (b) The developer and promoter, **Oniska Pty Ltd**, as the registered proprietor of all 62 lots in the community title scheme, granting a peppercorn lease to the Company for 99 years for the sole purpose of operating a holiday resort. The Company paid all outgoings, along with meeting the expenses for maintaining and upkeeping the building and the site.
 - (c) The Company acquiring lots 1 and 2 for use as an office and residence for the on-site manager (the **Management Lots**).³
 - (d) Each remaining lot (the **Lots**) being divided into 51 equal shares⁴ (each a **fractional interest**) and promoting those interests with stapled "shares"⁵ in the Company to provided up to 3,060 members⁶ with certain rights and benefits in the resort;

¹ Hellen affidavit, [11].

² Hellen affidavit, [11].

³ Hellen affidavit, [15].

⁴ Hellen affidavit, [16].

⁵ Hellen affidavit, [16].

⁶ For reasons now unable to be ascertained, the Company issued 3,116 ordinary shares at \$1.00 per share: Hellen affidavit, ex BVH-5, p 95.

- (e) the Company's articles conferring on the holder of each stapled fractional interest and shares the right to occupy their Lot for one week each year (collectively known as a "week"⁷);⁸
- (f) members were levied to contribute to the costs of operating the scheme.⁹
- [3] The demise of the Company and its scheme occurred over two decades and came in waves.
- [4] While the legality may be doubted,¹⁰ the Company in 2003 commenced a buy-back scheme.¹¹ As the years passed, many members became delinquent in payment of their levy contributions, died, or fell out of contact with the Company.¹² At one point, the Company owned as many as 1,000 weeks.¹³
- [5] On 25 March 2022, the Supreme Court appointed three directors of the Company as statutory trustees for sale of Lots 3 to 62.¹⁴ The sale yielded \$45 million.¹⁵
- [6] On 16 December 2022, the statutory trustees paid a distribution to co-owners.¹⁶ The Company received net proceeds of \$15,320,299.¹⁷
- [7] On 2 May 2023, the Supreme Court of Queensland ordered that the Company be wound up.¹⁸
- [8] All creditors have been paid.¹⁹ The only steps remaining are to pay a dividend to contributories.
- [9] As of 17 December 2024, the Company has cash and term deposits of approximately \$19.5M and no liabilities.²⁰

⁷ Hellen affidavit, [19].

⁸ Hellen affidavit, [17] and ex BVH-6 pp 109-110: clauses 8 to 12 of the Articles of Association.

⁹ Hellen affidavit, [18] and ex BVH-6 pp 110-111: clauses 15 to 24 of the Articles of Association.

¹⁰ *Inter alia* the Company purported to own shares issued by itself despite the prohibition in s 259A of the *Corporations Act 2001*.

¹¹ Hellen affidavit, [20].

¹² Hellen affidavit, [20].

¹³ Hellen affidavit, [21].

¹⁴ The Court did not appoint statutory trustees for sale in respect of lots 1 and 2 because those lots, being solely owned by the Company, were not held in co-ownership (*Property Law Act 1974*, s 38): see Hellen affidavit, ex BVH-7.

¹⁵ Hellen affidavit, [24].

¹⁶ Hellen affidavit, [40].

¹⁷ Hellen affidavit, [41].

¹⁸ Hellen affidavit, ex BVH-4.

¹⁹ Hellen affidavit, [42].

²⁰ Hellen affidavit, ex BVH-12.

Reason for seeking judicial directions

- [10] The Company registers were not kept current.²¹ The share register does not distinguish between sole and joint owners, nor between single and multiple holdings.²² Further, despite ordinary shares being stapled to a fractional interest, there are inconsistencies between the share register and land title records in 82 instances.²³
- [11] Mr Hellen (an experienced liquidator of 31 years' standing²⁴) considers that the plaintiffs cannot rely on the share register to pay the dividend to contributories.²⁵ Instead, Mr Hellen considers that the Company should pay a dividend to the party recorded in the freehold land register as the owner of the fractional interest, except where:
- (a) he is satisfied, based on evidence, that the true owner of a fractional interest is someone other than the person recorded in the freehold land register. In each such case, Mr Hellen has adduced to this Court the evidence on which he satisfied himself; and
 - (b) the Company owns the fractional interest. In this circumstance, Mr Hellen proposes to treat the share as cancelled by a reduction in share capital. This prevents the circulatory of the Company paying itself a dividend which then has to be distributed by the Company paying yet another dividend.²⁶
- [12] Further, when calculating that dividend, Mr Hellen seeks judicial direction that he is justified in not collecting debts owed to the Company for contributions because those claims are variously, in his opinion, uncommercial to recover, defeatable by a defence under the *Limitations of Actions Act 1974* or owned by a party who is unable to be found.²⁷

Section 90-15

- [13] The principles relevant to an application under s 90-15 were comprehensively collated in *Colbran, in the matter of Balsub Pty Ltd (in liquidation)* [2023] FCA 1635, where McEvoy J said at [30]-[40] (**emphasis added**):

30 Section 90-15 confers two separate heads of power on the Court, being to:

- (a) give judicial directions (as were made formerly under ss 479 and 511 of the Corporations Act), which provides comfort and relief from liability to a liquidator if the liquidator acts in accordance with a direction which turns out to be wrong: *One T Development Pty Ltd v Krejci (in his capacity as*

²¹ Hellen affidavit, [29].

²² Hellen affidavit, [31].

²³ Hellen affidavit, [35].

²⁴ Hellen affidavit, ex BVH-2.

²⁵ Hellen affidavit, [37].

²⁶ Hellen affidavit, [38].

²⁷ Hellen affidavit, [50].

liquidator of ENA Development Pty Ltd) [2023] NSWCA 120 at [40] and [42] (Ward P, Leeming JA and Mitchelmore JA); and

- (b) make orders (which were not able to be made under ss 479 or 511 of the Corporations Act) that can affect rights and obligations, or conclusively determine controversies, that arise in relation to an external administration: see, for example, *Re Hawden Property Group Pty Ltd* (ACN 003 528 345) (*in liq*) (2018) 125 ACSR 355 at 357 [7]-[8] (Gleeson JA); *Joiner (Liquidator), in the matter of CuDeco Limited (Receivers and Managers Appointed) (in liq)* [2020] FCA 1661 at [93]-[97] (Banks-Smith J); *Re Woodhouse (in their capacities as joint and several liquidators of Forex Capital Trading Pty Ltd (in liq) (ACN 119 086 270))* (2022) 159 ACSR 669 at [51] (Banks-Smith J).

31 The principles that were applicable to the giving of directions under former ss 447D(1), 479 and 511 of the Corporations Act are applicable to the giving of directions under ss 90-15 and 90-20: *Re Walley* [2017] FCA 486 at [41] (Gleeson J); *Re Reidy* (in their capacity as administrators of eCHOICE Ltd) (*admins apptd*) [2017] FCA 1582 at [27] (Yates J); *El-Saafin v Franek (No 2)* [2018] VSC 683 at [110] (Lyons J); *Re University Co-Operative Bookshop LTD (admins apptd) (No 2)* (2020) 142 ACSR 607 at [13]-[14] (Gleeson J); *Re Equiticorp Australia Ltd (in liq)* [2020] NSWSC 143 at [43] (Gleeson J).

32 **That power may be exercised where it is just and beneficial to do so:** see *Federal Commissioner of Taxation v ACN 154 520 199 Pty Ltd (in liq)* [2017] FCA 444 at [64] (Gleeson J), citing *Gusdote Pty Ltd v North Queensland Land Development Pty Ltd (No 4)* [2012] FCA 759 at [6]-[8] (Emmett J); *Lo v Nielsen & Moller Autoglass (NSW) Pty Ltd* [2008] NSWSC 407 at [29]-[31] (Barrett J). **Alternatively, the power may be exercised where a liquidator's decision to act in a particular way is likely to be contentious:** *Re One. Tel Ltd and Others* (2014) 99 ACSR 247 at 256 [35] (Brereton J), citing *Re Ansett Australia Ltd and Korda* (2002) 115 FCR 409 at 428 [65] (Goldberg J), *Re 7 Steel Distribution Pty Ltd (in liq) (recs and mgrs apptd)* [2013] NSWSC 669 at [20] (Black J), and *Re S&D International Pty Ltd (in liq) (No 7)* (2012) 92 ACSR 38; [2012] VSC 551 at [58]-[59] (Robson J). Directions will not generally be granted in relation to a decision that is purely commercial, but may be granted where there is a "particular legal issue raised for consideration or attack on the propriety or reasonableness of the decision in respect of which the directions are sought": *Krejci, in the matter of Union Standard International Group Pty Ltd (Administrators Appointed) (No 2)* [2020] FCA 1111 at [10] (Stewart J), citing *Re Ansett* at 428 [65] (Goldberg J).

Effect of a Direction

33 If a liquidator acts in accordance with a direction and has made full and fair disclosure of the material facts, the liquidator will be protected from claims by creditors or contributories in respect of an alleged breach of duty arising from the direction: *Bastion v Gideon Investments Pty Ltd (in liq) (No 2)* (2000) 35 ACSR 466 at [49] (Austin J).

34 The power to give directions under the relevant predecessor provisions had limitations, as McLelland J explained in *Re G B Nathan & Co Pty Ltd (in liq)* (1991) 24 NSWLR 674 at 679-680:

The historical antecedents of s 479(3), the terms of that subsection and the provisions of s 479 as a whole combine to lead to the conclusion that the only proper subject of a liquidator's application for directions is the manner in which the liquidator should act in carrying out his functions as such, and that the only binding effect of, or arising from, a direction given in pursuance of such an application (other than rendering the liquidator liable to appropriate sanctions if a direction in mandatory or prohibitory form is disobeyed) is that the liquidator, if he has made full and fair disclosure to the court of the material facts, will be protected from liability for any alleged breach of duty as liquidator to a creditor or contributory or

to the company in respect of anything done by him in accordance with the direction.

Modern Australian authority confirms the view that s 479(3) “does not enable the court to make binding orders in the nature of judgments’ and that the function of a liquidator’s application for directions “is to give him advice as to his proper course of action in the liquidation; it is not to determine the rights and liabilities arising from the company’s transactions before the liquidation”.

35 In *ENA Development*, the New South Wales Court of Appeal observed that s 90-15 is broader than its predecessors as it confers power to make orders that can determine rights and liabilities in an external administration (at [33]). However, such orders can only be made where necessary and proper parties are given an opportunity to be heard or joined: *ENA Development* at [35]; see also *Re Hawden* at [8] (Gleeson JA).

36 In *ENA Development*, the relevant direction concerned whether the liquidator would be justified in proceeding on the basis that company assets were not held on trust. The Court explained the effect of the direction made at [36] and [40]:

However, the orders from which this appeal has been brought do not determine any title to property. They merely confirm that, in advance of a determination of beneficial title to property in the company’s name, the liquidator would be justified in proceeding on the basis that the property was owned beneficially by the company and is available for the benefit of creditors. They are to that extent unusual, insofar as there will have been a hearing as to whether the liquidator would be justified in proceeding on a basis, and also a hearing which will determine finally whether that basis is correct. ...

...

The effect of the orders is limited. **They do not determine title to any property. Instead, they provide qualified comfort to the liquidator in the event that it turns out that he is wrong to proceed on the basis that the assets are assets held beneficially by the company being wound up.** ...

37 The Liquidator submits that this conclusion is consistent with the general principle that the function of a judicial direction is not to determine rights and liabilities: *Re Sparks, IG Energy Holdings (Australia) Pty Ltd* [2023] FCA 538, [24] (Halley J), citing *Union Standard International* at [7] (Stewart J). The Liquidator also submits that the only binding effect that arises from a direction is protection of a liquidator from liability, citing *Re G B Nathan* at 679.

Absence of contradictor

38 Plainly it will often be desirable that there be a contradictor at the hearing of an application seeking approval to proceed in a manner that distinguishes between certain classes of creditors of a company.

39 Though preferable in an application such as this that there be a contradictor, the Liquidator submits that the absence of a contradictor is not generally regarded as an impediment to the determination of questions arising in a winding up: *In the matter of Dalma No 1 Pty Ltd (in Liquidation)* (2013) 279 FLR 80 at 83-84 [8] - [9] (Brereton J); *Lewis and Templeton v LG Electronics Australia Pty Ltd (No 2)* (2016) 308 FLR 100 at 114 [62] (Sifris J).

40 Both *Dama* [sic] and *Lewis and Templeton* were cited with approval in *Re Sparks* at [53] – [54], where Halley J summarised the principles as follows:

The absence of a contradictor, whilst undesirable, does not preclude a Court from determining an application of an administrator if all reasonable steps

have been undertaken to obtain a contradictor or if the natural contradictor has elected against intervening: *Re Jick Holdings Pty Ltd (in liq)* (2009) 234 FLR 22; [2009] NSWSC 574 at [7] (White J); see *Re Dalma No 1 Pty Ltd (in liq)* (2013) 279 FLR 80; [2013] NSWSC 1335 at [9] (Brereton J); *Hall v Poolman* (2009) 75 NSWLR 99; [2009] NSWCA 64 at [7]-[8] (Spigelman CJ, Hodgson JA and Austin J).

Reasonable steps can include giving notice of the proceedings to persons with a potential interest in the outcome of the application, circulating a report to creditors of the company and **inviting creditors to express an opinion on the application, including by appearing before the Court**: *Re Jick* at [7] (White J); see also *Lewis and Templeton and Another v LG Electronics Australia Pty Ltd and Others (No 2)* (2016) 48 VR 450; [2016] VSC 63 at [63] (Sifris J)

Nature of the plaintiffs' application

- [14] The plaintiffs' application is only for judicial directions (as were made formerly under ss 479 and 511 of the *Corporations Act*). They do not seek orders to determine the title to the Company's shares.
- [15] Instead, the plaintiffs seek a judicial direction that they would be justified in paying a dividend to identified payees in respect of identified shares.
- [16] The balance of these submissions addresses the unpaid contributions (debtors of the Company) and the contentious dividends.

Unpaid contributions

- [17] The Company's books record 98 debtors who collectively owe slightly less than \$3M in contributions.²⁸ The largest debtor owes \$93,203.22.²⁹
- [18] Many debts:
 - (a) exceed the prospective dividend payable to the member;
 - (b) have been accruing for greater than six years;
 - (c) are owed by members who are not in contact with the Company or its liquidator;³⁰
- [19] The so-called rule in *Cherry v Boulton* (1839) 4 My & Cr 442; 41 ER 171 is applicable. The rule was recently essayed by Leeming JA (with whom Bell CJ and McHugh JA) agreed in *Harris Health Care Pty Ltd (Receivers and Managers Appointed) (in liq) v Hayes* [2024] NSWCA 301 at [80]-[123].

²⁸ Hellen affidavit, [44].

²⁹ Hellen affidavit, [46].

³⁰ Hellen affidavit, [48].

[20] In *Kaupthing Singer and Friedlander Ltd*,³¹ Walker LJ explained that the rule is:

...basically a simple technique for netting-off reciprocal monetary obligations, even where there is no room for legal set-off, developed and used by masters in the Court of Chancery in giving directions for the administration of estates of deceased persons. Complication arises only in a situation of insolvency, where the equitable rule produces a different outcome from that produced by statutory set-off.

[21] In *Harris*, Bell CJ (at [1]) and Leeming JA (at [5]) endorsed that specific paragraph from Walker LJ's judgment in *Kaupthing*.

[22] *Harris* is factually aligned with the present case. The liquidator of a solvent company sought to net-off a dividend to a contributory against money that the contributory owed to the Company.³² Applying the rule in *Cherry v Boulton*, the Court of Appeal dismissed the contributory's appeal upholding that the liquidator was entitled to net-off (with the effect of extinguishing) the contributory's dividend.

[23] Applying *Harris*, the liquidators seek the Court's direction that they are justified in netting off monies owed to the Company by contributories against their dividend by applying the rule in *Cherry v Boulton*.

Irregular distributions

[24] The statutory trustees paid 16 distributions to persons other than the registered owner on the fractional interest (**Irregular Distributions**).³³ The liquidators have investigated those Irregular Distributions.³⁴ Based on those investigations, Mr Hellen is of the opinion that they too should pay a dividend to the persons to whom the statutory trustees paid the Irregular Distributions.³⁵

Disputed distributions

[25] The statutory trustees withheld two distributions because there was a dispute as to whom they should pay.³⁶ References to shareholders are to the individual recorded in the share register.

[26] **Dorris Gorse**: Dorris Gorse is a shareholder. She died on 19 June 1996.³⁷ She was survived by two daughters who are estranged from one another.³⁸ There is a dispute about her last Will.³⁹ Probate has not been granted.⁴⁰

³¹ [2012] AC 804; [2011] UKSC 48, at [8].

³² *Harris* at [2] (Leeming JA).

³³ Hellen affidavit, [67].

³⁴ Hellen affidavit, [69]-[166].

³⁵ Hellen affidavit, [75], [95], [101], [111], [118], [129], [133], [138], [145], [151], [157], [166].

³⁶ Hellen affidavit, [167].

³⁷ Hellen affidavit, [169].

³⁸ Hellen affidavit, [170].

³⁹ There being a 1993 will and a 1996 will: see Hellen affidavit, [170].

⁴⁰ Hellen affidavit, [191].

- [27] Mr Hellen considers that he should distribute the deceased's interest in accordance with her last Will (from 1996), resulting in her dividend being paid to the daughters in equal shares.⁴¹ He should be justified in doing so.
- [28] **Anthony Joseph Vitellaro:** Mr Vitellaro is a shareholder. He died in about 2015.⁴² He was survived by three children.⁴³ He made a Will in 1999,⁴⁴ which appoints his three children as executors.⁴⁵ One child has since died and there are some suspicious circumstances about that son's testamentary affairs.⁴⁶
- [29] Mr Hellen considers that, notwithstanding the death of one executor, he should pay the dividend in accordance with Mr Viterallo's 1999 Will to his surviving executors and let them administer it under the estate.⁴⁷ He should be justified in doing so.

Unclaimed distributions

- [30] The statutory trustees withheld nine dividends payable to owners that could not be found.
- [31] The liquidators cannot withhold dividends. They must pay unclaimed money to ASIC: *Corporations Act 2001*, s 544(1)(b). That is the course the liquidators propose to take.

Deregistered corporations

- [32] The statutory trustees made distributions for eight "weeks" to companies which were deregistered.⁴⁸ The contributions for each deregistered company had been kept up-to-date by certain individuals. The statutory trustees paid made the respective distributions to those individuals.
- [33] Once a dividend is declared, the chose in action represented by the dividend is "property" of the deregistered company which vests in ASIC: *Corporations Act 2001*, s 601AD.
- [34] The liquidators propose to pay any respective dividends to ASIC, leaving it for ASIC to deal with any claims made by third parties.

⁴¹ Hellen affidavit, [191].

⁴² Hellen affidavit, [193].

⁴³ Hellen affidavit, [194].

⁴⁴ Hellen affidavit, [194].

⁴⁵ Hellen affidavit, [194].

⁴⁶ Hellen affidavit, [194].

⁴⁷ Hellen affidavit, [216].

⁴⁸ Hellen affidavit, [234]-[291].

Unverified distributions

- [35] The statutory trustees paid 14 distributions to people who did not provide the “additional Verification Documents” (essentially, identification documents and proof of authority).⁴⁹
- [36] **Tjeerd Ronald Anderson:** Mr Anderson appeared on title as the registered owner as personal representative of Maurice Anderson of four fractional interests.⁵⁰ Mr Hellen considers that there is sufficient evidence to justify the plaintiffs paying the dividend to Mr Anderson.⁵¹
- [37] **Alexander George Harry Barnes and Adam Jeffrey Brice:** Messrs Barnes and Brice each own one week.⁵² Each gentleman has died.⁵³ The High Court of New Zealand has granted probate of each estate.⁵⁴ Mr Hellen considers there is sufficient evidence for him to pay the dividends payable to the deceased their respective executor.⁵⁵
- [38] **David Richard Eyes, Michelle Ann(e) Eyes:** Mr and Mrs Eyes are recorded as owners.⁵⁶ Both are deceased.⁵⁷ The statutory trustees paid their distribution to the administrator of Ms Eyes’ estate as directed by the administrator’s solicitor.⁵⁸ Mr Hellen considers there is sufficient evidence to justify the plaintiffs doing the same.⁵⁹
- [39] **Fiona Patricia Kelly and Tara Ann Searle:** Ms Kelly and Ms Searle are sisters.⁶⁰ They are recorded as registered owners as representatives of the estate of their mother, Patricia Ann McCabe.⁶¹ The statutory trustees paid half to distribution to Ms Kelly and the other half to Ms Searle – not to an estate bank account.⁶² The plaintiffs propose a different course. Mr Hellen considers he should pay the entire dividend to one of the personal representatives – Ms Kelly – on behalf of her and Ms Searle in their capacities as personal representatives.⁶³
- [40] **Robert Brain Manley and Bonnie Heather Jean Manley:** Mr and Mrs Manely are recorded as the owners of three weeks.⁶⁴ Both are deceased.⁶⁵ Kenneth Brian

⁴⁹ Hellen affidavit, [296].

⁵⁰ Hellen affidavit, [298].

⁵¹ Hellen affidavit, [302].

⁵² Hellen affidavit, [303]-[304].

⁵³ Hellen affidavit, [305].

⁵⁴ Hellen affidavit, [308].

⁵⁵ Hellen affidavit, [313].

⁵⁶ Hellen affidavit, [324].

⁵⁷ Hellen affidavit, [325].

⁵⁸ Hellen affidavit, [326].

⁵⁹ Hellen affidavit, [333].

⁶⁰ Hellen affidavit, [336].

⁶¹ Hellen affidavit, [334].

⁶² Hellen affidavit, [337].

⁶³ Hellen affidavit, [345].

⁶⁴ Hellen affidavit, [346].

⁶⁵ Hellen affidavit, [347].

Manley and Ronald James Manley are the executors of Mr Manley's estate.⁶⁶ Mr Hellen considers there is sufficient evidence to justify the plaintiffs paying the dividend to Kenneth Manley on behalf of himself and Ronald Manley as executors.⁶⁷

[41] **Grant Mathiesen:** Mr Mathiesen is recorded as the owner of three weeks in his own right and three weeks as trustee for Ainsley Rubrose Mathieson.⁶⁸ Mr Hellen considers there is sufficient evidence to justify the plaintiffs paying the dividend in relation to the trust to Mr Mathiesen and let him handle the proceeds in accordance with his obligations as trustee.⁶⁹

[42] **Lynette Ann Murray:** Ms Murray is recorded as an owner in her capacity as personal representative of Sybil Doreen Gilbert.⁷⁰ Ms Murray claims she is an owner in her own right.⁷¹ Mr Hellen considers there is sufficient evidence to justify the plaintiffs paying the dividend to Ms Murray as personal representative and let her handle the proceeds in accordance with her obligations (if any).⁷²

[43] **Brian Partridge and Margaret Partridge:** Mr and Mrs Partridge are recorded as owners of four weeks.⁷³ Mrs Partridge is dead and Mr Partridge lacks capacity.⁷⁴ Their four daughters allegedly have Mr Partridge's power of attorney.⁷⁵ However, no evidence has ever been produced to the plaintiffs.⁷⁶ One of the daughters, Ms Stackman, contacted the plaintiffs' office and claimed the payment be made to her account.⁷⁷ The statutory trustees paid the distribution to that account.⁷⁸ The plaintiffs propose to adopt a different course. Unless evidence of the power of attorney is produced, Mr Hellen considers he should treat the dividend as unclaimed money and pay it to ASIC under s 544.⁷⁹

[44] **Barry James Schull and Colleen Sylvia Schull:** Mr and Mrs Schull are recorded as owners as trustee of the Schull Family Trust.⁸⁰ However, the Schull Family Trust was vested by a deed on or about 28 June 2022.⁸¹ The statutory trustees paid the

⁶⁶ Hellen affidavit, [347].

⁶⁷ Hellen affidavit, [353].

⁶⁸ Hellen affidavit, [354].

⁶⁹ Hellen affidavit, [362].

⁷⁰ Hellen affidavit, [363].

⁷¹ Hellen affidavit, [365].

⁷² Hellen affidavit, [369].

⁷³ Hellen affidavit, [370].

⁷⁴ Hellen affidavit, [371].

⁷⁵ Hellen affidavit, [371].

⁷⁶ Hellen affidavit, [374].

⁷⁷ Hellen affidavit, [372].

⁷⁸ Hellen affidavit, [375].

⁷⁹ Hellen affidavit, [380].

⁸⁰ Hellen affidavit, [381].

⁸¹ Hellen affidavit, [382].

distribution to Mr and Mrs Schull.⁸² Mr Hellen considers there is sufficient evidence to justify the plaintiffs doing the same.⁸³

[45] **Essie Thomson:** Essie Thomson is recorded as the owner of 3 weeks.⁸⁴ Ms Patti Geldard claims to have Ms Thomson's power of attorney⁸⁵ but she has not produced evidence of it.⁸⁶ The statutory trustees paid a distribution to Ms Geldard.⁸⁷ The plaintiffs propose to adopt a different course. Unless evidence of the power of attorney is produced, Mr Hellen considers he should treat the dividend as unclaimed money and pay it to ASIC under s 544.⁸⁸

[46] **David Kevin Conrick Walker:** Mr Walker is recorded as the owner of one week as personal representative for Kevin William Walker.⁸⁹ Mr Walker directed the statutory trustees to pay the distribution to LM Walker.⁹⁰ Mr Hellen considers there is sufficient evidence to justify the plaintiffs paying the dividend in accordance with Mr Walker's direction.⁹¹

[47] **Williwar Pty Ltd:** Williwar Pty Ltd is recorded as the owner of six weeks.⁹² The only verification document not provided by Williwar to the statutory trustees was a current company search.⁹³ The statutory trustees paid a distribution in accordance with Williwar's direction.⁹⁴ Mr Hellen considers there is sufficient evidence for the plaintiffs to do likewise.⁹⁵

Debtors

[48] In mid-July 2023, Mr Hellen wrote to 93 debtors to issue a final demand.⁹⁶ He received four responses.⁹⁷ In his opinion, the liquidators should not attempt to recover the debts because:

- (a) Based on what he knows, he predicts substantial difficulties in locating the debtors;
- (b) some corporate debtors are deregistered;

⁸² Hellen affidavit, [383].

⁸³ Hellen affidavit, [389].

⁸⁴ Hellen affidavit, [390].

⁸⁵ Hellen affidavit, [391].

⁸⁶ Hellen affidavit, [392].

⁸⁷ Hellen affidavit, [393].

⁸⁸ Hellen affidavit, [398].

⁸⁹ Hellen affidavit, [399].

⁹⁰ Hellen affidavit, [400].

⁹¹ Hellen affidavit, [404].

⁹² Hellen affidavit, [405].

⁹³ Hellen affidavit, [407].

⁹⁴ Hellen affidavit, [407].

⁹⁵ Hellen affidavit, [415].

⁹⁶ Hellen affidavit, [423].

⁹⁷ Hellen affidavit, [424].

- (c) the costs incurred are likely to exceed the amount recovered;
- (d) In a normal commercial liquidation, he would not attempt to recover debts of this nature beyond issuing a letter of demand.⁹⁸

[49] The plaintiffs seek the Court's advice that they would be justified in not taking any further recovery actions in respect of the debtors that appear in paragraph 422 of Mr Hellen's affidavit.

Response to submissions filed

Hazel Lang

[50] Hazel Lang is a daughter of Doris Gorse.

[51] As identified in **Error! Reference source not found.**, there is a dispute about two formal Wills left by Ms Gorse.⁹⁹ Probate¹⁰⁰ has not been granted on either Will.¹⁰¹ Nor have any proceedings for a grant of probate in solemn form been commenced.

[52] Ms Lang would have the liquidators ignore the later (1996) Will in favour of the earlier (1993) Will.

[53] The liquidators have no such power. The 1996 Will is, in time, Ms Gorse's last Will. To the extent that Ms Gorse's 1992 statutory declaration (exhibited to Ms Lang's affidavit) has any force, that force was countermanded by the 1996 Will. That is in the absence (as far as we can detect) of any notion that the 1996 Will is invalid.

[54] Absent an order from the Court or probate being granted on the 1993 Will, the liquidators are justified in giving effect to the 1996 Will. There is currently an insufficient foundation, we submit, for the liquidators to disregard the 1996 Will and treat the 1993 Will as the last Will of the deceased.

[55] Accordingly, Mr Hellen considers that he should pay in accordance with the 1996 will such that the dividend will be paid to the daughters in equal shares.¹⁰²

David Maddocks

[56] Mr Maddocks' interests concern the "week" formerly owned by Castlebrook Pty Ltd (deregistered).

[57] The Castlebrook documents appear at exhibit BVH-48.

⁹⁸ Hellen affidavit, [427].

⁹⁹ Hellen affidavit, [170].

¹⁰⁰ A grant of probate is both an order of the court and an instrument of title to property forming part of the estate of the deceased person whose will is admitted to probate: *Estate Kouvakas; Lucas v Konakas* [2014] NSWSC 786 at [228]-[233].

¹⁰¹ Hellen affidavit, [191].

¹⁰² Hellen affidavit, [191].

[58] Castlebrook was deregistered on 27 March 1990.¹⁰³ Despite being deregistered for more than three decades, the contributions owing by Castlebrook continued to be paid.¹⁰⁴ Mr Maddocks asserts that Cemgos Pty Ltd paid those sums. Accepting his evidence at face value does not change the fact that the freehold land register – and therefore indefeasible title to the fractional interest – remained with Castlebrook. The share was a stapled security to the fractional interest.

[59] Further, Castlebrook was deregistered in 1990. In 1997, Mr Maddocks asserts that “Cemgos Pty Ltd has been appointed trustee for Castlebrook Pty Ltd”. That is no answer as Castlebrook’s property had (and remained) vested in the ASC (now ASIC) upon Castlebrook’s deregistration: *Corporations Law 1990*, s 576(1) (reprint as at 27 March 1990). So whatever effect the purported appointment had, it could not have conveyed Castlebrook’s fractional interest and stapled share to Cemgos Pty Ltd because that property had already vested in the ASC.

Orders sought

[60] The plaintiffs seek orders in accordance with the amended originating application.

G Handran KC and M J Downes
Counsel for the plaintiffs
8 May 2025

¹⁰³ Hellen affidavit, [242].

¹⁰⁴ Hellen affidavit, [243].

FEDERAL COURT OF AUSTRALIA

District Registry: Brisbane
Number: QUD13 of 2025

In the matter of: **VOYAGER RESORT LIMITED (In Liquidation) ACN 010 547 618**

Plaintiffs: **BRADLEY VINCENT HELLEN AND NIGEL MARKEY AS JOINT
AND SEVERAL LIQUIDATORS OF VOYAGER RESORT LIMITED**

PLAINTIFFS' LIST OF MATERIAL

Description	Date filed
Amended originating process	24 February 2025
Affidavit – Bradley Hellen	24 February 2025
Affidavit – Benjamin Leigh Sandford	14 April 2025