

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

No. S ECI 2019 03305

BETWEEN:

MCCA ASSET MANAGEMENT LIMITED (ACN 113 728 706)
TRADING AS THE MCCA PROPERTY LIST & ANOR
(according to the Schedule attached)

Plaintiffs

- and -

KAMATA HOMES PTY LTD (ACN 130 155 305)
(ADMINISTRATORS APPOINTED) & ORS
(according to the Schedule attached)

Defendants

GENERAL FORM OF ORDER

JUDGE: The Honourable Justice McDonald

DATE MADE: 19 December 2019

ORIGINATING PROCESS: Originating motion filed 22 July 2019

HOW OBTAINED: This order is made 'on the papers' pursuant to r 59.01 of the *Supreme Court (General Civil Procedure) Rules 2015* ('Rules')

ATTENDANCE: None required

OTHER MATTERS:

1. On 15 October 2019, the plaintiffs made an offer to fund further enquiries, the preparation of an investigative report, and general liquidation activities up to the amount of \$100,000. This offer was conditional upon the DOCA being set aside by order of the Court and will lapse 14 days after the delivery of final judgment in this matter. The offer remains open to be accepted by the liquidators until 2 January 2020.
2. This order is signed by the Judge pursuant to r 60.02(1)(b) of the Rules.



THE COURT ORDERS THAT:

1. Pursuant to s 445D of the *Corporations Act 2001* (Cth), the deed of company arrangement dated 17 July 2019 be terminated effective from the date of this order.
2. Orders 2 and 3 of the orders made on 25 July 2019 (as amended on 1 August 2019) be vacated.
3. The plaintiffs pay the second and third defendant's cost of and incidental to the proceeding from the commencement of the hearing on 19 August 2019 to 11 October 2019 (inclusive) on an indemnity basis with such costs to be taxed in default of agreement.
4. Pursuant to s 29(1) of the *Civil Procedure Act 2010* (Vic), the plaintiffs pay the second defendant's expenses and remuneration incurred in the period between 19 August 2019 and 11 October 2019 (inclusive) in connection with the calling, conduct and consequences of the further meeting of creditors held on 11 September 2019, with such amount to be determined by an Associate Judge or Registrar of the Court in default of agreement.
5. The second and third defendants are jointly and severally liable for:
 - (a) the plaintiffs' costs of and incidental to the plaintiffs' summons filed on 22 July 2019; and
 - (b) the plaintiffs' costs of the hearing on 14 and 15 October 2019,such costs to be paid on a standard basis to be taxed in default of agreement.
6. The plaintiffs pay the second defendant's costs of and incidental to the summons filed on 6 December 2019 on a standard basis to be taxed in default of agreement.
7. The costs, remuneration and expenses incurred by the second defendant in connection with the proceeding, including any unrecoverable costs and expenses the subject of Orders 3 and 4 above, be costs, remuneration and expenses payable in the liquidation of the first defendant.

DATE AUTHENTICATED:

19 December 2019



THE HONOURABLE JUSTICE MCDONALD

SCHEDULE OF PARTIES

S ECI 2019 03305

BETWEEN:

MCCA ASSET MANAGEMENT LIMITED (ACN 113 728 706) TRADING AS THE MCCA PROPERTY LIST First Plaintiff

SANDHURST TRUSTEES LIMITED (ACN 004 030 737) AS CUSTODIAN FOR THE MCCA PROPERTY FUND Second Plaintiff

SANDHURST NOMINEES (VICTORIA) LTD (ACN 092 352 442) AS CUSTODIAN FOR THE MCCA PROPERTY FUND Third Plaintiff

- and -

KAMATA HOMES PTY LTD (ACN 130 155 305) (ADMINISTRATORS APPOINTED) First Defendant

ANDREW SCHWARZ AND BENJAMIN CONRAD IN THEIR CAPACITIES AS JOINT AND SEVERAL ADMINISTRATORS OF KAMATA HOMES PTY LTD (ACN 130 155 305) (ADMINISTRATORS APPOINTED) Second Defendant

HISHAM KHARTABIL Third Defendant



October 15, 2019

To Andrew Schwartz

As Joint Deed Administrator

In the event of the DOCA being set aside and the Company being placed into liquidation, the Plaintiff hereby offers to fund further enquiries, the preparation of an investigative report, and general liquidation activities up to the amount of \$100,000 (One Hundred Thousand Dollars).

This offer is conditional upon the DOCA being set aside by order of the Court and it does not extend to the termination of the DOCA for default of a party.

This offer is open for acceptance for a period of 14 days after the delivery of final judgment in this matter.



Signed John Goulding for the Plaintiff

JOINT & SEVERALLY

