[2026] FCA 1641
Federal Court of Australia

Healey v I'm Organic Pty Ltd

NSD 1973 of 2026
Hearing: 28 October 2026
Decision: 3 November 2026
Younan J

Digest (2)

[1] **Corporations** To apply to court for directions

[2] **High Court and Federal Court** Joinder and removal

Party Names
Liam Healey and Quentin Olde in their capacity as joint and several receivers and managers of AC Invest Hospitality Trading Pty Ltd (Receivers and Managers Appointed) ACN 672 088 738, AC Invest Hospitality Trading Pty Ltd (Receivers and Managers Appointed) ACN 672 088 738, I'm Organic Pty Ltd ACN 653 193 590, YPD Finance Pty Ltd

Legal Representatives
Counsel for the Plaintiffs: *B F Katekar* SC and *S F Gaussen*; Solicitor for the Plaintiffs: *Addisons*; Counsel for the First Defendant: The first defendant did not appear; Counsel for the Second Defendant: *N Bailey*; Solicitor for the Second Defendant: *Maddocks*

Court Supplied Summary
Corporations — application by receivers and managers for judicial advice pursuant to s 424 of the Corporations Act 2001 (Cth) — receivers and managers justified in dealing with, realising, selling and disposing of Company property — application for order under s 420B of the Corporations Act that receivers and managers are entitled to sell and dispose of Company property notwithstanding prior registered security interest — consent of secured party to sale and disposal — net proceeds of sale to be held in trust account pending determination of priority dispute — application granted
Practice and procedure — application by non-party for joinder pursuant to r 1.32 of the Federal Court Rules 2011 (Cth) — non-party involved in priority dispute with plaintiffs and first defendant — application granted

Legislation Considered
Corporations Act 2001 (Cth) ss 9, 57A, 90, 420B, 424, 447D(1)
Personal Property Securities Act 2009 (Cth)
Federal Court Rules 2011 (Cth) rr 1.32, 9.05, 10.24
Gaming Machines Act 2001 (NSW) s 23
Liquor Act 2007 (NSW) s 61(2)

Cases Cited
Boulos Holdings Pty Ltd v Edwin Davey Pty Ltd [2021] NSWSC 689
Grant v BHP Coal Pty Ltd [2015] FCA 329
Heenan, in the matter of Ruby Apartments Pty Ltd (in liq) v Ralan Paradise No. 1 Pty Ltd (in liq) (No 2) [2021] FCA 1314
In the matter of Anglican Development Fund Diocese of Bathurst (Receivers & Managers Appointed) [2015] NSWSC 440
Kadam v MiiResorts Group 1 Pty Ltd [2016] FCA 1205
Karellas Investments Pty Ltd v FW Projects Pty Ltd (in liq) [2021] FCA 870

Kirk, in the matter of Primebroker Securities Ltd (Receivers and Managers Appointed) (in liq) [2011] FCA 86
Korda v Silkchime Pty Ltd [2010] WASC 155; 243 FLR 269
Matthews v Capital Choice Australia Pty Ltd [2024] QSC 236; 20 QR 795
McAlister v New South Wales [2014] FCA 702; 223 FCR 1
News Ltd v Australian Rugby Football League Ltd [1996] FCA 870; 64 FCR 410
Pegang Mining Co Ltd v Choong Sam [1969] 2 MLJ 52
Preston, in the matter of Sandalwood Properties Ltd [2018] FCA 547
Re Ansett Australia Ltd (No 3) [2002] FCA 90; 115 FCR 409
Re Mirabela Nickel Ltd (Receivers and Managers Appointed) (in liq); Ex Parte Madden [2018] WASC 335
Revroof Pty Ltd (Receivers and Managers Appointed) (Administrators Appointed) v Taminga Street Investments Pty Ltd [2023] FCA 543

Orders

THE COURT ORDERS THAT:

1. Pursuant to r 1.32 of the Federal Court Rules 2011 (Cth), YPD Finance Pty Ltd be joined to this proceeding as the second defendant.

2. Subject to order 4, pursuant to s 420B of the Corporations Act 2001 (Cth), the first plaintiffs, in their capacity as receivers of AC Invest Hospitality Trading Pty Ltd (Receivers & Managers Appointed), are entitled to sell and dispose of the liquor licence LIQH400102895 (including the attached gaming machine entitlements) (**Licence**), despite the prior registered charge of I'm Organic Pty Ltd.

3. Subject to order 4, and pursuant to s 424 of the Corporations Act, the first plaintiffs, in their capacity as receivers of AC Invest Hospitality Trading Pty Ltd (Receivers & Managers Appointed), are justified in dealing with, realising, selling and disposing of the Licence.

4. The net proceeds of the sale of the Licence are to be held in the trust account of the solicitors for the plaintiffs, pending determination of the priority dispute between AC Invest Hospitality Trading Pty Ltd (Receivers & Managers Appointed), I'm Organic Pty Ltd and YPD Finance Pty Ltd, by order of this Court or agreement of the parties, and without prejudice to any party's assertion of priority interest in the Licence or its proceeds.

THE COURT NOTES THAT:

1. These orders dispose of the originating process filed on 22 October 2026.

Note: Entry of orders is dealt with in Rule 39.32 of the Federal Court Rules 2011.

Judgment

Younan J

Introduction

1 By originating process filed on 22 October 2026 for urgent interim and final relief, the first plaintiffs, the joint and several receivers and managers of the second plaintiff (**Receivers**), AC Invest Hospitality Trading Pty Ltd (the **Company**), seek orders and directions in relation to a proposed disposal of the liquor licence (LIQH400102895), including the attached gaming machine entitlements (**GMEs**) (together, the **Licence**).

2 On 20 November 2024, Global Loan Agency Services Australia Specialist Activities Pty Ltd (**GLAS**) appointed the Receivers as joint and several receivers and managers over the assets of a group of companies (the **AC Entities**) of which the Company is a member. GLAS has a registered interest over the assets of each of the AC Entities on the Personal Property Securities Register (**PPSR**) as security for a $5 million loan.

3 The first and second defendants, **I'm Organic** Pty Ltd and **YPD Finance** Pty Ltd purport to have security interests in the property of the Company. I'm Organic's charge is registered ahead of that of GLAS' on the PPSR. YPD Finance's charge is registered after that of GLAS. However, YPD Finance claims priority ahead of GLAS due to the circumstances in which the Licence was transferred to the Company.

4 The plaintiffs seek, *first*, an order pursuant to s 420B of the Corporations Act 2001 (Cth) that the first plaintiffs are authorised to sell and dispose of the Licence, despite the prior registered change of the first defendant. *Second*, pursuant to s 424 of the Corporations Act, that the first plaintiffs are justified in dealing with, realising, selling and disposing of the Licence. *Third*, that the net proceeds of the sale of the Licence are held in a trust account of the solicitors for the plaintiffs, pending determining of the priority dispute between the Company and the first defendant.

5 The plaintiffs rely on the affidavit of Liam Healey sworn on 22 October 2026 in support of the originating process (**Healey Affidavit**). Mr Healey is one of the Receivers.

6 At the hearing of the originating process, the plaintiffs and second defendant reached an agreed position as regards the sale of the Licence, and for the net proceedings of the sale to be held in a trust account pending the priority dispute. As outlined below, while the first defendant did not appear and is currently unrepresented, there is evidence before the Court that the sole director of the first defendant has indicated that he does not oppose the orders sought. Notwithstanding this, an application for judicial advice is made pursuant to s 424 of the Corporations Act.

7 For the reasons given below, I have decided to make orders substantially in the form sought by the plaintiffs at prayers 4 to 6 of the originating application, and an order for joinder of the second defendant.

Procedural Background

8 On 22 October 2026, the plaintiffs approached the Commercial and Corporations Duty Judge for orders for short and substituted service, which orders were made by Stewart J.

9 The matter came before me as Duty Judge on 26 October 2026, for the purpose of timetabling the matter for hearing. At the case management hearing, the first defendant did not appear. The plaintiffs proposed that the matter be stood over for 48 hours, to provide the parties with time to come to an agreement as to any proposed short minutes of order. I granted the proposed adjournment, listed the matter for case management on 28 October 2026, and determined to hear the second defendant's oral application for joinder pursuant to r 9.05 (and/or r 1.32) of the Federal Court Rules 2011 (Cth) at that time.

Joinder

10 At the hearing of 28 October 2026, the issue of joinder was contested by the plaintiffs.

11 As noted above, YPD Finance made an oral application for joinder pursuant to r 9.05 of the Rules. In proposed short minutes of order provided to the Court on 29 October 2026 (and as foreshadowed in the hearing of 28 October 2026), YPD Finance indicated that it also sought to rely on r 1.32 of the Rules. Rule 1.32 relevantly provides:

> **"1.32 Court may make any order it considers appropriate in the interests of justice**
> The Court may make any order that the Court considers appropriate in the interests of justice."

12 Rule 9.05 relevantly provides:

> **"9.05 Joinder of parties by Court order**
> (1) A party may apply to the Court for an order that a person be joined as a party to the proceeding if the person:
> (a) ought to have been joined as a party to the proceeding; or
> (b) is a person:
> (i) whose cooperation might be required to enforce a judgment; or
> (ii) whose joinder is necessary to ensure that each issue in dispute in the proceeding is able to be heard and finally determined; or
> (iii) who should be joined as a party in order to enable determination of a related dispute and, as a result, avoid multiplicity of proceedings.
> … "

13 Only a party to extant proceedings can make an application under r 9.05 to join a non-party: Grant v BHP Coal Pty Ltd [2015] FCA 329 at [10] (Collier J); McAlister v New South Wales (2014) 223 FCR 1 at [14], [21] (Edmonds J). However, a non-party may make an application for joinder relying on r 1.32 of the Rules: Kadam v MiiResorts Group 1 Pty Ltd [2016] FCA 1205 at [13]-[19] (Edelman J). In such a case, the same constraints and conditions as required by r 9.05 of the Rules are generally applicable: Karellas Investments Pty Ltd v FW Projects Pty Ltd (in liq) [2021] FCA 870 at [31] (Cheeseman J), citing Kadam at [13]- [19].

14 The relevant test, for the purposes of r 9.05(1)(a), is whether the non-party's rights against, or liabilities to, any party to the action in respect of the subject matter of the action may be directly affected by any order which may be made in the action: News Ltd v Australian Rugby Football League Ltd (1996) 64 FCR 410 at 524 (Lockhart, von Doussa and Sackville JJ), citing Pegang Mining Co Ltd v Choong Sam [1969] 2 MLJ 52 at 55-56 (Lord Diplock). The test involves matters of degree, and ultimately judgment, having regard to the practical realities of the case, and the nature and value of the rights and liabilities of the non-party that might be directly affected: Australian Rugby Football League at 525.

15 There is an evident lack of utility in contesting joinder, given: (a) the parties' consent to the orders proposed by the Receivers; and (b) the final disposition of the matter once those orders are made.

16 Furthermore, notwithstanding the contest to joinder, the interests of YPD Finance in the proceeding appear to be acknowledged by the Receivers. Mr Healey deposes as to **YPD Security** Pty Ltd's claimed priority ahead of GLAS, and the "real and practical risk" that YPD Security may challenge the Receivers' commercial decision to sell the GMEs, rendering the Receivers personally exposed to a claim for damages. Mr Healey deposes as to an explicit legal threat by YPD Security that, should the Receivers "sell, transfer, dispose of or otherwise deal with" the Licence, YPD Security "may pursue any available remedies, including, for example, seeking damages from [the Receivers] personally". As such, Mr Healey deposes that, in the Receivers' view, if YPD Security is able to be heard as to whether the orders should be made, then the interests of the creditors of the AC Entities will be maximised, the Receivers will be protected from any potential claim, and the interests of YPD Security will be protected.

17 Mr Healey's affidavit focuses on YPD Security's (claimed) security interest. At the hearing of the application, counsel for YPD Finance (and YPD Security) clarified that it is YPD Finance which is the holder of the security interest. This is reflected in the PPSR extract for the Company.

18 Given its evident interest in the proceeding as a claimed prior security interest, which claim is recognised, albeit contested, by the first plaintiffs, I consider that YPD Finance should be joined as second defendant to the proceeding. That is, its rights against the other claimed security interests may be directly affected by an order made in the proceeding.

Non-appearance of the first defendant

19 The first defendant did not appear at the hearings of 26 or 28 October 2026, nor have they filed a notice of appearance.

20 On 22 October 2026, Stewart J made orders pursuant to r 10.24 of the Rules for service of the first defendant by serving a copy of the documents at its registered office in North Sydney. Mr Yasuda (a solicitor at Addisons) deposes, in his affidavit of service affirmed on 23 October 2026, as to service of the originating process, genuine steps statement, Healey Affidavit (and its exhibit "LH-1") and the orders made on 22 October 2026, at or around 10:47am on 23 October 2026. I accept, based on this evidence, that the first defendant has been served in accordance with the orders of Stewart J.

21 I also accept that the first defendant has notice of the proceeding, including the listings on 26 and 28 October 2026, and therefore that the first defendant has chosen not to appear.

22 There is also evidence that the first defendant does not oppose the relief sought by the plaintiffs. In this regard, the plaintiffs rely on the affidavit of Steven Antonio Mattiussi sworn on 29 October 2026, in which Mr Mattiussi (Partner at Addisons) deposes as to the consent obtained from I'm Organic as to the orders sought.

23 Mr Mattiussi deposes that Mr Adrian Musumeci has been the sole director, secretary and shareholder of I'm

Organic at all relevant times, which is borne out by the Australian Securities and Investments Commission extract for I'm Organic. On 25 October 2026, the managing director of Australian Bond Exchange (**ABE**), Mr Bradley McCosker, received an email from Mr Musumeci, in which Mr Musumeci stated that he was the director of I'm Organic and that he consents to the orders proposed in the proceeding. Mr Mattiussi deposes that ABE is a member of the secured creditor group that appointed the first plaintiffs as receivers and managers of the second plaintiff.

24 Mr Mattiussi deposes that on 26 October 2026, Mr Yasuda sent an email to Mr Musumeci, attaching the short minutes of order in the form of prayers 4 to 6 of the originating process and requesting Mr Musumeci's consent to those proposed orders. As at the time of swearing the affidavit, Mr Musumeci had not responded to that email. Mr Mattiussi deposes that he has endeavoured to contact Mr Musumeci, but has not been able to do so.

25 The consent of the defendants is relevant to the question of the application of s 420B of the Corporations Act, which is considered below.

Factual Background

26 The Company holds the liquor licence (LIQH400102895) for the hotel and hospitality business, the **Lady Hampshire Hotel**, located at 91 Parramatta Road, Camperdown (the **Premises**). There are nine GMEs and six poker machine permits attached to the liquor licence.

27 Mr Healey deposes that **91 Parramatta Road** Pty Ltd was the registered proprietor of the Premises, and owner of the Lady Hampshire Hotel business. In or around 26 July 2026, **LH Ops** Pty Ltd (one of the AC Entities), the Company, and 91 Parramatta Road (in its personal capacity, and as trustee for the 91 Parramatta Road Unit Trust) entered into a management agreement, pursuant to which LH Ops was engaged to operate and manage the Lady Hampshire Hotel for a minimum of ten years.

28 Since that time, 91 Parramatta Road entered into receivership. Mr Healey deposes that, on or around 2 September 2026, he received a copy of an information memorandum for the Lady Hampshire Hotel indicating that the business, along with the Premises, was being advertised for sale.

29 Mr Healey deposes that, on or around 11 September 2026, the Premises was listed online as being sold. Mr Healey deposes that he understands that the Premises was being sold with vacant possession, based on a draft "Contract for Sale of Land" in relation to the Premises (which he received on or around 3 September 2026). This view is reinforced by subsequent correspondence between the joint and several receivers and managers of 91 Parramatta Road (**91 Parramatta Road Receivers**), their legal representatives (Maddocks) and LH Opco regarding settlement of the sale of the Premises and the requirement of LH Opco to deliver vacant possession of the Lady Hampshire Hotel. Mr Healey deposes that it is his understanding that the business of the Lady Hampshire Hotel was therefore going to cease to operate. In that context, the Receivers intend to sell the Licence.

30 There have also been two applications by the 91 Parramatta Road Receivers to the New South Wales Independent Liquor and Gaming Authority (**ILGA**) pursuant to s 61(2) of the Liquor Act 2007 (NSW) to have the liquor licence transferred, *first*, to LH Opco (which application was refused by the ILGA Board), and *second*, to the 91 Parramatta Receivers (which application is still on foot).

31 As noted above, there is a priority dispute as between the Company, I'm Organic and YPD Finance in relation to

the Licence, the details of which are not presently relevant.

Application for Judicial Advice

32 The first plaintiffs seek judicial advice pursuant to s 424 of the Corporations Act that the first plaintiffs are justified in dealing with, realising, selling and disposing of the Licence.

33 For the reasons that follow, I consider that the first plaintiffs are justified in doing so.

Legal principles

34 Section 424(1) of the Corporations Act enables a receiver to apply for a direction whether or not he or she may lawfully take a particular proposed course of action: Korda v Silkchime Pty Ltd [2010] WASC 155; 243 FLR 269 at [31] (Le Miere J). Section 424 provides:

> **"424 Controller may apply to Court**
>
> (1) A controller of property of a corporation may apply to the Court for directions in relation to any matter arising in connection with the performance or exercise of any of the controller's functions and powers as controller.
>
> (2) In the case of a receiver of property of a corporation, subsection (1) applies only if the receiver was appointed under a power contained in an instrument."

35 Section 424 applies to a receiver of property of a corporation if the receiver was appointed "under a power contained in an instrument": s 424(2). While there is some doubt as to whether court-appointed receivers may rely on s 424(1) of the Corporations Act, that debate does not arise in the present proceeding: In the matter of Anglican Development Fund Diocese of Bathurst (Receivers & Managers Appointed) [2015] NSWSC 440 at [11] (Brereton J). In this instance, the Receivers were appointed under a "Deed of Appointment", on the basis that events of default had occurred, and the "Security" under each of the "General Security Deed", "AC Specific Security Deed" and "Archibald Specific Security Deed" had become enforceable (and pursuant to which, GALS is entitled to appoint the Receivers). On that basis, I am satisfied that s 424 has application in the present circumstances.

36 The Court's power to give directions under s 424 is broad, as it is intended to facilitate the work of receivers, and should be interpreted as widely as possible to give effect to that intention: Revroof Pty Ltd (Receivers and Managers Appointed) (Administrators Appointed) v Taminga Street Investments Pty Ltd [2023] FCA 543 at [12] (Jackman J); Preston, in the matter of Sandalwood Properties Ltd [2018] FCA 547 at [42] (Colvin J). Directions are a form of personal advice or guidance to the receiver, and do not involve adjudication of claims, rights or entitlements of third parties: Sandalwood Properties at [47].

37 However, the Court's power to give directions is not unlimited. In particular, the Court will not pronounce on the commercial prudence of a course to be adopted by the receivers: Heenan, in the matter of Ruby Apartments Pty Ltd (in liq) v Ralan Paradise No. 1 Pty Ltd (in liq) (No 2) [2021] FCA 1314 at [52] (Downes J), citing Kirk, in the matter of Primebroker Securities Ltd (Receivers and Managers Appointed) (in liq) [2011] FCA 86 at [17] (North J).

In Primebroker Securities, North J observed (at [22]) that the principles articulated by Goldberg J in Re Ansett Australia Ltd (No 3) (2002) 115 FCR 409 (in relation to the former s 447D(1) of the Corporations Act) are equally applicable to s 424. Justice Goldberg relevantly stated (at [65]):

> " … the prevailing principle adopted by the courts, when asked by liquidators and administrators to give directions, is to refrain from doing so where the direction sought relates to the making and implementation of a business or commercial decision, either committed specifically to the liquidator or administrator or well within his or her discretion, in circumstances where there is no particular legal issue raised for consideration or attack on the propriety or reasonableness of the decision in respect of which the directions are sought. There must be something more than the making of a business or commercial decision before a court will give directions in relation to, or approving of, the decision. It may be a legal issue of substance or procedure, it may be an issue of power, propriety or reasonableness, but some issue of this nature is required to be raised."

38 In other words, there must be an issue calling for the exercise of legal judgment, *i.e.*, a legal issue of substance or procedure or an issue of power, propriety or reasonableness. It must be more than a business or commercial decision. The fact that a legal question may have significant commercial consequences does not make the giving of directions inappropriate: Heenan at [57], citing Re Mirabela Nickel Ltd (Receivers and Managers Appointed) (in liq); Ex Parte Madden [2018] WASC 335 at [89 (4)] (Vaughan J).

Rationale for the proposed order

39 The essence of the plaintiffs' position is that the Receivers are, at present, unable to carry out their duties without risking: (i) the sale of the GMEs at an impaired value; (ii) a claim against the Receivers if they do attempt to sell the GMEs; and conversely (iii) a claim if they do not take prompt steps to sell the GMEs.

40 Mr Healey deposes that the risk that the GMEs will be sold at an impaired value arises from the following matters.

41 *First*, if prospective buyers perceive that there is controversy regarding the Receivers' power to sell assets, they may not participate in the sales process. This is because there may be uncertainty as to whether clear title can be provided and whether the vendor can transfer the assets, as well as a risk of third-party challenge to ownership.

42 *Second*, even if prospective buyers participate in the sales process, they are less likely to offer the ordinary market value if the Receivers are perceived as "desperate" to sell the assets.

43 *Third*, the Lady Hampshire Hotel was part of the John Adgemis group of companies, which has been the subject of numerous (and sometimes well-publicised) disputes, such that market participants are aware of controversies as to title.

44 *Fourth*, based on his experience, Mr Healey believes that the value achievable could be closer to the estimate of realisable market value in the event that uncertainty as to title is resolved.

45 The above observations are based on Mr Healey's experience as a receiver. Relevantly, Mr Healey is a chartered accountant and registered liquidator, with over 20 years of experience in advisory, restructuring and insolvency matters, and is a Senior Managing Director in Turnaround and Restructuring at Ankura.

46 In the event that the Receivers do attempt to sell the GMEs, Mr Healey deposes that the Receivers are concerned that there may be a legal challenge to their entitlement to do so, either during or after the sales process. This is in circumstances where YPD Security previously indicated in correspondence to the Receivers that it retains its rights over the Licence, and that it may pursue any available remedies (including personally against the Receivers) if they "sell, transfer, dispose of or otherwise deal with" the Licence. Further, as noted above, I'm Organic also has a security interest which, according to the PPSR, ranks higher than that of GLAS.

47 Finally, the Receivers consider that, if they do not sell the GMEs, there is a real risk that their value will reduce or disappear. This is on the basis of a "possibly imminent" legislative change. In such circumstances, Mr Healey deposes that there is a real and practical threat that the Receivers will be challenged by the Company, I'm Organic or YPD Finance, for the failure to sell the GMEs for the best value obtainable under the circumstances.

48 The "possibly imminent" legislative change is a reference to "recently announced reform to reduce the number of GMEs". Mr Healey deposes that he understands that, under the reform, for every two GMEs traded, one will be forfeited, in order to reduce the number of entitlements in New South Wales (which is greater forfeiture than is currently in place). The timing of this proposed reform is not apparent. However, the Receivers consider that it is important that the sale of the GMEs occur expeditiously, and prior to the introduction of the reforms, to derive the most value from the sale for creditors. I understand the Receivers' concern to relate to the fact of any reform, as well as the prospect of such reforms, which may generate buyer scepticism.

49 Mr Healey deposes that if the GMEs are not transferred at the end of the 12-month period following the cancellation of a licence, the remaining entitlements are forfeited. (Mr Healey cites his experience as a receiver, as well as s 23 of the Gaming Machines Act 2001 (NSW) as the basis of his opinion. It is not apparent that this outcome necessarily follows from the application of s 23, but I accept it is a possible outcome, assuming the cancellation of the Licence.) As such, the Receivers consider that the sale should occur as soon as possible, in order to realise the value from the GMEs for the benefit of creditors.

50 Overall, Mr Healey deposes that the Receivers are of the view that it is in the best interest of creditors, and the AC Entities, that the GMEs are sold and that an appropriate realisation process is conducted in order to achieve the best valuable obtainable for the GMEs. This is particularly the case in circumstances where the Licence is now attached to vacant premises, the Lady Hampshire Hotel is no longer operating, and the Receivers understand that no one is using the GMEs in operating gaming machines.

51 Mr Healey deposes that, while the Receivers consider that they have clear title, they are concerned that they may be personally exposed to a claim for damages or some other form of liability. This is a real, and not speculative, concern given the stated position of YPD Finance, as stated above at paragraph [46]. The Receivers consider that, with the benefit of judicial advice, they will be able to sell the GMEs without any uncertainty in the minds of prospective buyers as to title arising from the priority dispute, which will enable the GMEs to be realised for the best value obtainable, and provide the Receivers with some protection in the performance of their duties.

Conclusion

52 I have considered the justifications proffered by the Receivers for: (a) selling the GMEs to achieve the best value obtainable for the benefit of creditors; and (b) seeking judicial advice in that regard. I have also considered that the proposed course of selling the GMEs has the support of the defendants. On that basis, and on the proviso that the sale proceeds are held in trust pending the determination of the priority dispute (or otherwise by order of the Court or by agreement), I am of the view that the direction sought is appropriate, and that the Receivers are justified in dealing with, realising, selling and disposing of the Licence.

Section 420B Application

53 The first plaintiffs sought an order in the originating process under s 420B of the Corporations Act that the first plaintiffs are authorised to sell and dispose of the Licence, despite the prior registered change of the first defendant.

54 At the hearing of 28 October 2026, the first plaintiffs faintly pressed this application (*i.e.*, to the extent that the Court considered it necessary to do so) given the first plaintiffs' view that the necessary consent had been obtained.

55 That position subsequently changed, as evinced in the first plaintiffs' written submissions filed following the hearing. In those submissions, the first plaintiffs contend that the "consent" obtained from the first defendant (described at paragraph [23] above) was "not sufficient", in circumstances where it was provided to a non-party (ABE) rather than to the plaintiffs. As such, the first plaintiffs seek an order under s 420B of the Corporations Act in the form proposed in the originating process.

56 While there is nothing to suggest that the "consent" of the secured party to the sale or disposal of the Licence, for the purposes of s 420B(2)(b) of the Corporations Act, must be obtained in a particular form, I am prepared to proceed cautiously on the basis of the plaintiffs' submission and address the application under s 420B.

Legal principles

57 Section 420B provides a process for a Court to authorise a "managing controller" to sell or dispose of property even though it is subject to a higher-ranking security interest: Matthews v Capital Choice Australia Pty Ltd (2024) 20 QR 795 at [44] (Martin SJA), citing Boulos Holdings Pty Ltd v Edwin Davey Pty Ltd [2021] NSWSC 689 at [306] (Ward CJ in Eq).

58 Section 420B relevantly provides:

> **"420B Court may authorise managing controller to dispose of property despite prior security interest**
>
> (1) On the application of a managing controller of property of a corporation, the Court may by order authorise the controller to sell, or to dispose of in some other specified way, specified property of the corporation, even though it is subject to a security interest (the *prior security interest*) that has priority over a security interest (the *controller's security interest*) in that property that the controller is enforcing.
>
> (2) However, the Court may only make an order if satisfied that:
>
> (a) apart from the existence of the prior security interest, the controller would have power to sell, or to so dispose of, the

> property; and
>
> (b) the controller has taken all reasonable steps to obtain the consent of the secured party in relation to the prior security interest to the sale or disposal, but has not obtained that consent; and
>
> (c) sale or disposal of the property under the order is in the best interests of the corporation's creditors and of the corporation; and
>
> (d) sale or disposal of the property under the order will not unreasonably prejudice the rights or interests of the secured party in relation to the prior security interest.
>
> (3) The Court is to have regard to the need to protect adequately the rights and interests of the secured party in relation to the prior security interest.
>
> … "

59 An application may be made to the Court under s 420B by a "managing controller" of property of a "corporation". A "corporation" includes, relevantly, a company and body corporate: ss 9, 57A of the Corporations Act. A "managing controller" is defined in s 9 of the Corporations Act as follows:

> "*managing controller*, in relation to property of a corporation, means:
>
> (a) a receiver and manager of that property; or
>
> (b) any other controller of that property who has functions or powers in connection with managing the corporation;and has a meaning affected by paragraph 434G(b) (which deals with 2 or more persons appointed as managing controllers)."

60 A "receiver of property" of a body corporate is also a manager if the receiver manages, or has under the terms of the receiver's appointment power to manage, affairs of the body: s 90 of the Corporations Act. A "controller" of property relevantly includes a "receiver": s 9 of the Corporations Act. As outlined below, the first plaintiffs contend that they satisfy the definition of "managing controller", and as such, have standing to bring the application.

61 In the present case, the Receivers seek to sell the Licence despite the prior registered PPSR interest of I'm Organic. A "security interest" includes, relevantly, a "PPSA security interest" (*i.e.*, a security interest within the meaning of the Personal Property Securities Act 2009 (Cth)): s 9 of the Corporations Act. The PPSR interest of I'm Organic, therefore, falls within the scope of "security interest" for the purposes of s 420B.

62 In Matthews, Martin SJA stated that the provisions of s 420B are confined to a specific set of circumstances which impose obligations upon receivers to proceed in a particular way. The section confers a power in those limited circumstances, provided that the pre-requisites of the section are satisfied: at [48]. In the present case, the plaintiffs contend that each of subparas 420B(2)(a)-(d) are met, and therefore, that the order sought by the plaintiffs should be made.

Parties' submissions

63 The plaintiffs submit, *first*, that they have standing to make the application because they are the "managing controller" of the property of the Company: s 420B(1) of the Corporations Act.

64 The plaintiffs contend that both paras (a) and (b) of the definition of 'managing controller' in s 9 of the Corporations Act are satisfied in the present case. This is on the basis that, on 20 November 2024, the first plaintiffs were appointed as receivers and managers of the AC Entities pursuant to the "Deed of Appointment". The "Deed of Appointment" (at cl 2(a)(ii)) relevantly conferred each and all of the powers, authorities and discretions conferred on a receiver or a receiver and manager by the "Securities" (*i.e.*, the "General Security Deed", "AC Specific Security Deed" and "Archibald Specific Security Deed") and by law (including the power of sale).

65 *Second*, the plaintiffs submit the Receivers have the power to sell the License. This is because the Company is the licensee of the Licence, and the existence of the priority dispute does not disturb the Receivers' entitlement to sell the Licence.

66 On that basis, I am satisfied that the requisite in s 420B(2)(a) is met.

67 *Third*, the plaintiffs submit that reasonable steps have been taken to obtain the consent of I'm Organic. Mr Healey deposed in his affidavit that the Receivers were currently engaging with I'm Organic to seek its consent to sell the Licence. While consent to the proposed orders was provided by Mr Musumeci, the sole director of I'm Organic, that consent was provided to the managing director of ABE and not to the plaintiffs. The plaintiffs' solicitors have since sought to obtain the first defendant's consent directly, albeit unsuccessfully.

68 As observed above, the plaintiffs submit that the "consent" obtained by Mr Musumeci is not sufficient in circumstances where it was not provided to a non-party, and not the plaintiffs.

69 *Fourth*, the plaintiffs submit that the sale of the Licence is in the best interests of the Company and its creditors, in circumstances where the Licence is now attached to a vacant premises, and a business which is no longer operating. The sale is necessary to realise its value. For the reasons explained above (as deposed by Mr Healey in his affidavit), it is in the best interests of the Company and its creditors that the sale be accompanied by an order of the Court pursuant to s 420B of the Corporations Act to remove any doubt as to the Receivers' ability to pass good title. On that basis, I am satisfied that the requisite in s 420B(2)(c) is met.

70 Finally, the plaintiffs submit that the sale of the Licence will not prejudice the rights or interests of I'm Organic, in circumstances where the proposed relief contemplates that the net sale proceeds will be held in the trust account of the solicitors of the plaintiffs pending determination of the priority dispute. On that basis, I am satisfied that the requisite in s 420B(2)(d) is met.

Consideration

71 An order under s 420B of the Corporations Act is predicated on the absence of consent of the secured party (or

parties): 420B(2)(b). There is a question as to the application of s 420B in the present case, in circumstances where there is evidence that the sole director of the first defendant consents to the orders sought, albeit that the consent was provided to a non-party. If the consent was provided, then s 420B has no application (that is, in circumstances where the other (contested) security interest consents to the orders sought by the plaintiffs).

72 In circumstances where the consent of the first defendant to the orders sought by the plaintiffs has not been obtained directly by the plaintiffs, and where the first defendant has not appeared before this Court or otherwise communicated its position to the Court, I am satisfied that the requisites to s 420B are satisfied, and that the first plaintiffs are entitled to sell and dispose of the Licence, despite the prior registered charge of the first defendant.

73 There is a connection between the rationale for making an order under s 420B and that for an order under s 424 of the Corporations Act. Consideration of one informs the other, at least so far as they are concerned with protection of the rights and interests of the secured party (or parties) in relation to the prior security interest (s 420B(2)(d) and (3)), and, more broadly, the interests of creditors (s 420(2)(c)). In that regard, I am satisfied that the order sought regarding the proceeds of the sale adequately protects those rights and interests. However, the order under s 424 is broader in that it is not limited to recognition of the prior registered charge of the first defendant, but extends to dealing with the Licence in circumstances where the second defendant also makes a claim to the proceeds of its sale or disposition.

Conclusion

74 I will grant the final relief sought by the plaintiffs at prayers 4 to 6 of the originating application, and join the second defendant in the proceeding, thereby disposing of the application.

All Citations

[2026] FCA 1641, 2026 WL 3319108

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