

IN THE SUPREME COURT OF WESTERN AUSTRALIA

COR 152 of 2019

IN THE MATTER OF BULLION BOURSE PTY LTD (IN LIQUIDATION) ACN
140 221 067

EX PARTE

**Neil Raymond CRIBB as
liquidator of BULLION BOURSE
PTY LTD (IN LIQUIDATION) (ACN
140 221 067)**

Plaintiff

ORIGINATING PROCESS PURSUANT TO CORPORATIONS LAW



Date of Document: 29/07/2019
Filed on Behalf of: The Plaintiff
Date of Filing: 29/07/2019

Prepared By:

HWL Ebsworth Lawyers
Level 11, Westralia Plaza
167 St Georges Terrace
PERTH WA 6000
Australia

Telephone: 9420 1526
Facsimile: 1300 704 211

A. DETAILS OF APPLICATION

This application is made under section 90-15 of the Insolvency Practice Schedule (Corporations) (IPS) contained in Schedule 2 of the Corporations Act 2001 (Cth).

FILED

29 JUL 2019

Via eLodgment
CENTRAL OFFICE
SUPREME COURT

Folio 1
Page 1

On the facts stated in the supporting affidavit(s), the plaintiff claims:

Safety Deposit Box Goods

Identified SDB Goods

1. The goods contained in the Identified Boxes (**Identified SDB Goods**) are:
 - (a) the property of the Identified SDB Holders (as that term is defined in paragraph 54(b) of the Affidavit); and
 - (b) able to be collected from the plaintiff by the Identified SDB Holders or their authorised representative by the method outlined in these directions.
2. The plaintiff is justified, and is otherwise acting reasonably, in asserting an entitlement to an indemnity secured by an equitable lien against the Identified SDB Goods, for the payment of his costs, expenses and remuneration relating to identifying, preserving and facilitating the return of (**Costs**) the Identified Safety Deposit Box Goods limited to the amount of \$350 per collection (**Base Levy**), or such other amount that the Court thinks fit.
3. Further and alternatively, that the plaintiff is justified, and is otherwise acting reasonably, in treating his costs and expenses incurred in relation to the Identified Boxes as a cost of the winding up of Bullion Bourse Pty Ltd (In Liquidation) (ACN 140 221 067) (**Company**).

Unidentified SDB Goods

4. The plaintiff is justified, and is otherwise acting reasonably in undertaking the course of action set out at paragraph 60 of the Affidavit in relation to the goods contained in the Unidentified Boxes (**Unidentified SDB Goods**).
5. Any Unidentified SDB Goods whose owner is identified by plaintiff by reason of having undertaken the process referred to in paragraph 4 or otherwise (**Subsequently Identified SDB Goods**) are:
 - (a) the property of the Subsequently Identified SDB Owner (as that term is defined in paragraph 60(b) of the Affidavit); and
 - (b) able to be collected from the plaintiff by the Subsequently Identified SDB Owner or their authorised representative by the method outlined in these directions.
6. The plaintiff is justified, and is otherwise acting reasonably, in asserting an entitlement to an indemnity secured by an equitable lien against the Subsequently Identified SDB Goods, for the payment of his Costs in relation to the Identified SDB Goods calculated by the method set out at paragraph 68 of the Affidavit, or such other method as the Court thinks fit.

7. Further and alternatively, that the plaintiff is justified, and is otherwise acting reasonably, in treating his Costs in relation to the Subsequently Identified SDB Goods as a cost of the winding up of the Company.

Allocated Storage Goods

8. The plaintiff is justified, and is otherwise acting reasonably in undertaking the course of action set out at paragraph 72 of the Affidavit in relation to the Unidentified Goods.

Identified AS Goods

9. Any Identified AS Goods (as that term is defined in paragraph 72(a) of the Affidavit) are:
 - (a) the property of the Identified AS Goods Owner (as that term is defined in paragraph 72(a) of the Affidavit); and
 - (b) able to be collected from the plaintiff by the Identified AS Goods Owners or their authorised representative by the method outlined in these directions.
10. The plaintiff is justified, and is otherwise acting reasonably, in asserting an entitlement to an indemnity secured by an equitable lien against the Identified AS Goods, for the payment of his Costs in relation to the Identified AS Goods calculated by the method set out at paragraph 73 of the Affidavit, or such other method as the Court thinks fit.
11. Further and alternatively, that the plaintiff is justified, and is otherwise acting reasonably, in treating his Costs in relation to the Identified AS Goods as a cost of the winding up of the Company.

Sales orders

Completed Orders

12. The goods comprising the Completed Orders (**Completed Orders Goods**) that have been paid for in full are:
 - (a) the property of the relevant Order Owners (as that term is defined at paragraph 81 of the Affidavit); and
 - (b) able to be collected by the Order Owners or their authorised representative by the method outlined in these directions.
13. The plaintiff is justified, and is otherwise acting reasonably, in asserting an entitlement to an indemnity secured by an equitable lien against the Completed Orders Goods, for the payment of his Costs in relation to the Completed Orders Goods.
14. Further and alternatively, that the plaintiff is justified, and is otherwise acting reasonably, in treating his Costs in relation to the Completed Orders Goods as a cost of the winding up of the Company.

Partial Orders

15. The Picked Goods (as that term is defined at paragraph 79(b) of the Affidavit) are:
- (a) the property of the relevant PO Owners (as that term is defined at paragraph 83(a) of the Affidavit); and
 - (b) subject to payment in full of the Partial Orders by the PO Owners, able to be collected by the PO Owners or their authorised representative by the method outlined in these directions.
16. The plaintiff is justified, and is otherwise acting reasonably:
- (a) in undertaking the course of action set out at paragraph 83 of the Affidavit in relation to the Picked Goods (as that term is defined in the Affidavit);
 - (b) asserting an entitlement to an indemnity secured by an equitable lien against the Picked Goods, for the payment of his Costs in relation to the Picked Goods;
 - (c) further and alternatively to paragraph 16(b), that the plaintiff is justified, and is otherwise acting reasonably, in treating his Costs in relation to the Picked Goods as a cost of the winding up of the Company.

Collection

17. For the purposes of paragraphs 18 to 21 the following definitions apply:

- (a) **Identified Goods** means:
- (i) the Identified SDB Goods;
 - (ii) any Subsequently Identified SDB Goods;
 - (iii) the Identified AS Goods;
 - (iv) the Complete Orders Goods; and
 - (v) the Picked Goods,

and any or each of them as the context requires.

- (b) **Owner** means:
- (i) the Identified SDB Goods Owners;
 - (ii) any Subsequently Identified SDB Owners;
 - (iii) the Identified AS Goods Owners;
 - (iv) the Order Owners; and
 - (v) the PO Owners.

and any or each of them as the context requires.

- (c) **Collection Levy** means, in relation to each of the Identified Goods, the amount (if any) that the Court directs the plaintiff is justified in levying on the Owners in respect of his Costs of dealing with the Identified Goods.

18. The Identified Goods shall be collected from the premises at 180 Wright Street, Cloverdale, Western Australia (**Premises**) at a time and date authorised by the plaintiff, by:

- (a) the Owner, who shows appropriate identification to the plaintiff's staff; or
- (b) the authorised representative of the Owner, who shows appropriate identification and written proof of authority (to the plaintiff's reasonable satisfaction) to the plaintiff's staff,

(the **Collecting Person**).

19. The plaintiff is justified in requesting at the time of delivery of, and prior to releasing, any Identified Goods under paragraph 18 of these directions that the Collecting Person is to provide:

- (a) a release in the form set out in Annexure NRC19 of the Affidavit (or such other form that the Court thinks fit) duly signed by the Owner;
- (b) if applicable, payment of any outstanding rent or storage fees relating to the Identified Goods; and
- (c) if applicable, payment to the plaintiff of the relevant Collection Levy.

20. The plaintiff is justified in treating any goods of third parties in his possession that remain unclaimed as at 30 November 2019 (or such other date that the Court thinks fit) (**Unclaimed Goods**) as the property of the Company provided the plaintiff has:

- (a) no later than 14 days prior to the Deadline, cause an advertisement to be published in each of The Australian (print), The West Australian (print), on the Liquidation Website and the Website advising of the intended sale of the Unclaimed Goods (without having to itemise each of the Unclaimed Goods) and have received no relevant response from any person claiming an interest in those Unclaimed Goods by the Deadline;
- (b) in relation to those Unclaimed Goods that are Identified Goods, no later than 14 days prior to the Deadline, written to the relevant owner(s) by letter by registered post (at the address recorded in the Company's records or, if none is recorded, the registered office of the owner (if the owner is a body corporate) or the address recorded with the Australian Electoral Commission (if the owner is a natural person)) and have received no relevant response by the Deadline; and
- (c) no later than 14 days prior to the Deadline, provided the WA Police with a list or catalogue of the Unclaimed Goods and the WA Police have not, by

the Deadline, identified those Unclaimed Goods as having been reported as lost or stolen.

21. The plaintiff's costs of undertaking the processes authorised by these directions that are not recouped by receipt of the Collection Levy, be paid out of the assets of the Company as an expense of the winding up.
22. The plaintiff's cost of this proceeding be paid out of the assets of the Company as an expense of the winding up.
23. There be liberty to apply, including by any person affected by these Orders on 48 hours' notice.

Date: 29/07/2019

HWL Ebsworth Lawyers

This application will be heard by a Master in Chambers at the Supreme Court of Western Australia in Perth.

B. NOTICE TO DEFENDANT(S) (IF ANY)

TO:

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 Registry and serve a copy of it 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. APPLICATION FOR WINDING-UP ON GROUND OF INSOLVENCY

D. FILING

Date of filing: 29/07/2019

This originating process is filed by **HWL Ebsworth Lawyers** for the plaintiff.

E. SERVICE

The plaintiff's address for service is -

HWL Ebsworth Lawyers
Level 11, Westralia Plaza
167 St Georges Terrace
PERTH WA 6000
Australia

It is not intended to serve a copy of this originating process on any person.

[Form 2 amended in Gazette 13 Feb 2009 p. 308.]





**SUPREME COURT
OF WESTERN AUSTRALIA**

ABN: 70 598 519 443
DAVID MALCOLM JUSTICE CENTRE
28 BARRACK STREET
PERTH WA 6000
TELEPHONE: 9421 5333
FACSIMILE: 9421 5353

**CRIBB
SUPREME COURT MATTER No. PER COR 152 of 2019**

This application has been listed for Tuesday, 30 July 2019 at 09:45 AM at the Supreme Court, David Malcolm Justice Centre, 28 Barrack Street, PERTH.

All parties are required to attend the hearing date unless otherwise advised.

Issued by the Supreme Court of Western Australia
29 Jul 2019

