FEDERAL COURT OF AUSTRALIA

Pleash (Liquidator) v Tucker [2018] FCAFC 144

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| Appeal from: | *Pleash, in the matter of Equititrust Limited (In Liquidation) (Receivers and Managers Appointed) (No 3)* [2017] FCA 1074 |
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| File number: | QUD 2 of 2018 |
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| Judges: | **MCKERRACHER, FARRELL AND BANKS-SMITH JJ** |
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| Date of judgment: | 29 August 2018 |
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| Catchwords: | **CORPORATIONS** - appeal from refusal to order production of documents under s 597(9) of the *Corporations Act 2001* (Cth) - liquidators' examination - where liquidators sought to assess means of examinee to pay prospective debt - where examinee is beneficiary or object of discretionary trusts and director of corporate trustees - whether control exception applied where beneficiary controls the distribution of trust assets - whether income and capital of trusts and third parties otherwise relevant to examinable affairs - whether liquidators established basis for asserting potential to trace funds into trusts - relevance of Pt VI Div 4A of the *Bankruptcy Act 1966* (Cth) to prospect of payment |
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| Legislation: | *Bankruptcy Act 1966* (Cth) Part VI Division 4A  *Corporations Act 2001* (Cth) ss 596A, 597(9), 1323  *Federal Court of Australia Act 1976* (Cth) s 27  *Federal Court Rules 2011 (Cth)* r 20.31 |
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| Cases cited: | *Australian Securities and Investments Commission v Carey (No 6)* [2006] FCA 814; (2006) 153 FCR 509  *Boys v Quigley* [2002] WASCA 99; (2002) 26 WAR 454  *DKLR Holding Co (No 2) Pty Ltd v Commissioner of Stamp Duties* [1980] 1 NSWLR 510  *Dwyer v Ross* [1992] FCA 20; (1992) 34 FCR 463  *Fordyce v Ryan* [2016] QSC 307; (2017) 2 Qd R 240  *Freeman v National Australia Bank* [2003] FCAFC 200  *Gerah Imports Pty Ltd v Duke Group Ltd* (in liq) (1993) 61 SASR 557; (1993) 116 FLR 479  *Grosvenor Hill (Queensland) Pty Ltd v Barber* [1994] FCA 59; (1994) 48 FCR 301  *House v The King* [1936] HCA 40; 55 CLR 499  *Inland Revenue Commissioners v Trustees of Sir John Aird’s Settlement* [1982] 2 All ER 929  *Kennon v Spry* [2008] HCA 56; (2008) 238 CLR 366  *Pleash, in the matter of Equititrust Limited (In liquidation) (Receivers and Managers Appointed)* [2017] FCA 16  *Pleash, in the matter of Equititrust Limited (In liquidation) (Receivers and Managers Appointed) (No 2)* [2017] FCA 758; (2017) 122 ACSR 299  *Pleash, in the matter of Equititrust Limited (In liquidation) (Receivers and Managers Appointed) (No 3)* [2017] FCA 1074  *Rafferty v Time 2000 West Pty Ltd (No 9)* [2011] FCA 1483  *Swishette Pty Ltd v Australian Competition and Consumer Commission* [2017] FCAFC 45; (2017) 249 FCR 483  *Wainter Pty Ltd, in the matter of New Tel Limited (in liq)* [2005] FCAFC 114; (2005) 221 ALR 331; (2005) 145 FCR 176 |
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| Date of hearing: | 29 May 2018 |
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| Registry: | Queensland |
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| Division: |  |
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| National Practice Area: | Commercial and Corporations |
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| Sub-area: | Corporations and Corporate Insolvency |
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| Category: | Catchwords |
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| Number of paragraphs: | 81 |
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| Counsel for the Appellant: | Mr JW Peden QC with Mr L Sheptooha |
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| Counsel for the Respondents: | M D O'Brien QC with Mr P Hackett |
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| Solicitor for the Respondents: | Tucker & Cowen Solicitors |

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| **Table of Corrections** |  |
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| 22 August 2019 | At [26] the third and fourth paragraphs of the quotation have been correctly renumbered as '(c)' and '(d)'. |

ORDERS

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|  | | QUD 2 of 2018 |
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| BETWEEN: | BLAIR ALEXANDER PLEASH AND RICHARD ALBARRAN AS LIQUIDATORS OF EQUITITRUST LTD (IN LIQ) (RECEIVERS AND MANAGERS APPOINTED) (ACN 061 383 944)  Appellant | |
| AND: | DAVID ROBERT WALTER TUCKER  First Respondent  VIKWOOD PTY LTD  Second Respondent  TUCKER FINANCE PTY LTD (and others named in the Schedule)  Third Respondent | |

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| JUDGES: | MCKErraCHER, FARRELL AND BANKS-SMITH JJ |
| DATE OF ORDER: | 29 AUGUST 2018 |

THE COURT ORDERS THAT:

1. The appellant has leave to appeal.
2. The appeal is dismissed.
3. The appellant's interlocutory application for production of documents filed 20 April 2018 is dismissed.
4. The parties are to file any submissions with respect to costs within seven days and, subject to further order, the question of costs will be dealt with on the papers.

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

REASONS FOR JUDGMENT

THE COURT:

## Background

1. This appeal concerns the scope of documents to be produced in response to summonses issued under s 597(9) of the *Corporations Act 2001* (Cth). More particularly, the question is whether financial documents of a trust ought to be produced where an examinee has no proprietary interest in the trust assets but the liquidator contends those assets might be available to satisfy a prospective judgment debt.
2. The appellants are the liquidators of Equititrust Limited (In Liquidation) (Receivers and Managers Appointed) (Liquidators). The first respondent, Mr Tucker, was for a time a director of Equititrust and its former solicitor. The other respondents are related entities of which Mr Tucker is the sole director or, in the case of the ninth respondent, a director. Six of the respondents are corporate trustees of trusts.
3. On 20 January 2017, a judge of this Court ordered that certain persons be summonsed pursuant to s 596A of the *Corporations Act* for examination about the examinable affairs of Equititrust: *Pleash, in the matter of Equititrust Limited (In liquidation) (Receivers and Managers Appointed)* [2017] FCA 16 (*Pleash (No 1)*). Mr Tucker was one of those persons. A Deputy Registrar subsequently made orders requiring Mr Tucker to produce documents at his examination.
4. Mr Tucker applied to set aside those respective orders, contending that the examination was for an improper purpose and therefore an abuse of process. The application was dismissed: *Pleash, in the matter of Equititrust Limited (In liquidation) (Receivers and Managers Appointed (No 2)* [2017] FCA 758; (2017) 122 ACSR 299 (*Pleash (No 2)*).
5. The primary judge dealt separately with aspects of the review of the Deputy Registrar's orders as to production of documents, and published separate reasons: *Pleash, in the matter of Equititrust Limited (In liquidation) (Receivers and Managers Appointed) (No 3)* [2017] FCA 1074 (*Pleash (No 3)*). Relevantly, his Honour ordered the production of some documents but excluded the remainder. The Liquidators seek leave to appeal against the orders that exclude the remainder.

## Excluded documents

1. The excluded documents relevant to this appeal are described more specifically in the schedule to these reasons (Schedule). Expressed generally, the orders exclude from production:
   1. certain financial statements of any superannuation fund in which Mr Tucker has an interest in any period from 1 July 2013;
   2. the financial statements and income tax returns for various companies for the years ended 30 June 2015 and 30 June 2016; and
   3. the most recently received bank statements for those same entities.

## Relevant factual background

1. The background facts are described briefly in *Pleash (No 1)* at [19]‑[20]and *Pleash (No 2)* at [18]‑[19].
2. In summary, in February 2012 administrators were appointed to Equititrust under s 436A of the *Corporations Act*. At that time, Equititrust owed its secured creditor BOS International (Australia) Ltd (BOSI) some $11.5 million. BOSI appointed receivers and managers over certain of Equititrust's property and subsequently the Liquidators were appointed. In July 2012 MS Asia Debt Acquisition Ltd (MS Asia) acquired the BOSI debt and securities by assignment for some $2 million. MS Asia then appointed receivers and managers to recover the BOSI debt it had acquired, and those receivers and managers were able to recover some $16.5 million over time and apparently have remitted some $13 million to MS Asia.
3. The Liquidators contend that Mr Tucker was involved in MS Asia's acquisition of the BOSI debt and has an interest in the proceeds received by MS Asia.
4. Since the decision in *Pleash (No 3)* Mr Tucker has been examined in accordance with the court orders. The Liquidators say his examination has shed some light on Mr Tucker's role in the MS Asia debt acquisition and they seek to rely on an affidavit that annexes parts of the transcript of that examination by way of fresh evidence.

## Reasons of the primary judge

1. It must be emphasised that the primary judge in *Pleash (No 3)* proceeded on the basis that the Liquidators sought access to the documents because they were said to be relevant to whether any judgment they might obtain against Mr Tucker in an action with respect to the MS Asia transaction might ultimately be recoverable from him: (*Pleash (No 3)* at [26]).
2. The question of whether it was an improper purpose to pursue Mr Tucker's examination to identify his ability to satisfy any judgment obtained against him was considered and answered in the negative in *Pleash (No 2)* (at [34]‑[38]). The primary judge accepted that a consideration of whether Mr Tucker might meet a judgment debt if proceedings are issued falls within the examinable affairs of Equititrust under s 597(9), applying long‑standing authorities in support of such a proposition, including *Gerah Imports Pty Ltd v Duke Group Ltd* *(in liq)* (1993) 61 SASR 557; (1993) 116 FLR 479 and the Full Court decision in *Wainter Pty Ltd, in the matter of New Tel Limited (in liq)* [2005] FCAFC 114; (2005) 221 ALR 331; (2005) 145 FCR 176 (*Evans v Wainter*). In *Pleash (No 1)* the Court also noted that an examination to determine whether any chose in action will ultimately be recoverable from any party or its insurer is within the contemplation of the examination provisions: *Pleash (No 1)* at [20].
3. However, as appeared from the evidence before the primary judge as to each of the trusts, the corporate trustees and the superannuation fund, the documents sought and excluded did not relate to assets held directly by Mr Tucker but to assets and liabilities of discretionary trusts and the superannuation fund. Mr Tucker is a primary beneficiary of each of the trusts. He is not the only beneficiary. He is a beneficiary along with other members of his immediate family and there are also secondary and tertiary tier beneficiaries of each trust: *Pleash (No 3)* at [8].
4. The competing positions of the Liquidators and Mr Tucker before the primary judge centred on the relevance of control over assets. Whilst the Liquidators did not contend that Mr Tucker had a proprietary interest in the income or capital of the trusts, they contended that he has effective control over distributions to beneficiaries. He could therefore cause the corporate trustees to pay any beneficiaries, including himself.
5. Further, the Liquidators rely on a statement by Mr Tucker to the effect that if a judgment were entered against him he would not seek recourse to the assets of the trusts or the superannuation fund to meet any judgment debt but would file for bankruptcy (referred to in *Pleash (No 2)* at [36]). The Liquidators also relied on the provisions of Part VI Division 4A of the *Bankruptcy Act 1966* (Cth) and the potential for orders to be made with respect to property that is not owned by the bankrupt person.
6. Whilst Mr Tucker accepted that as sole director of the corporate trustees (save for the superannuation fund trustee) he held certain powers as to distributions to beneficiaries in accordance with the relevant trust deeds, he contended that despite such control, the critical point is that he has no proprietary interest in the income or capital of the trusts.
7. The primary judge found that the control that Mr Tucker may have over distributions under the trust deeds does not alter the well-established principle that a beneficiary of a trust does not have a proprietary interest in the income or capital of a trust, consistent with the decisions in *Fordyce v Ryan* [2016] QSC 307; [2017] 2 Qd R 240 and *Swishette Pty Ltd v Australian Competition and Consumer Commission* [2017] FCAFC 45; (2017) 249 FCR 483. Also implicit in the primary judge's reasons is that absent a proprietary interest, the assets of the trusts would not be available to apply to any judgment against Mr Tucker and so information as to those assets was outside the scope of 'examinable affairs'.
8. His Honour then considered that reliance on the provisions of Part VI Division 4A of the *Bankruptcy Act* does not assist the Liquidators. First, the Liquidators would not control any recovery process, that being a task for a trustee in bankruptcy. Second, the date of any sequestration order may be some considerable time into the future. Third, the provisions of Part VI Division 4A include so many pre‑conditions that the prospect of recovery is too remote in the circumstances.
9. His Honour concluded (at [25]‑[26]):

In my view, these features of the relevant provisions of Division 4A demonstrate that the possibility of orders being made against the property of one, or more, of the trusts under those provisions are too remote in time and too dependent on too many unrelated contingencies to provide any support for the Liquidators' case to gain access to the documents identified in the items above at the present time. This is so because, at the earliest, those provisions will apply, if at all, at some time well in the future and, even then, their application will depend upon Mr Tucker's presumed trustee in bankruptcy being able to establish a host of quite complex factual conditions, many of which will be contingent on Mr Tucker's future conduct and none of which has any relevance to the current income or asset position of all of the trusts. I do not therefore consider that the present income and capital positions of the trusts are sufficiently relevant to the operation of those provisions to justify the Liquidators having access to those documents.

For these reasons, I do not consider the documents described in items (gg)(i) to (xiii) [documents in item 2 of Schedule] and (hh)(iii) to (xv) above [documents in item 3 of Schedule] are relevant to the particular examinable matter presently under consideration, namely the recoverability from Mr Tucker of any judgment that may be obtained against him in the proceedings contemplated by the Liquidators.

1. The primary judge then considered whether the position should be any different with respect to the superannuation fund. His Honour first noted that the superannuation trust may not be a 'pure' discretionary trust in that the exercise of powers may (in effect) be circumscribed by the terms of the trust (at [27]). However, his Honour then continued (at [28]):

The Liquidators did not, however, rely upon this distinction. They claimed the documents in item (ff)(iii) [documents in item 1 of Schedule] were relevant because of 'the potential application of Div 4A, Pt VI of the Bankruptcy Act, but also in showing [Mr Tucker's] contributions; hence they will shed some light on the level of his income and his wealth in general'. And further, '[t]he financial status of [Mr Tucker's] superannuation fund will similarly show a resource available to him, should he choose to resort to it to satisfy a judgment' (emphasis omitted). I have already rejected the Liquidators' attempt to rely upon Div 4A, Pt VI of the Bankruptcy Act. The balance of these submissions appear to treat the assets of the superannuation trust as if they are Mr Tucker's personal assets. Whether the superannuation trust is treated as a 'purely' discretionary trust or not, the fact remains it is a discretionary trust to which the principles outlined above apply. Those principles do not support the proposition that Mr Tucker has a proprietary interest in the assets of that trust. In the absence of some articulation by the Liquidators as to why that principle does not apply to the superannuation trust, I do not consider they have discharged their onus with respect to the documents described in item (ff)(iii) above.

1. Accordingly, the primary judge refused to order production of the documents now set out in the Schedule.

## Leave to appeal and amended notice of appeal

1. Because the primary judge's decision was interlocutory in nature, the appellants required leave to appeal. We indicated during the course of the hearing that our tentative view was that leave ought to be granted and on that basis we proceeded to hear the appeal. Having considered the position fully, we have determined that leave to appeal should be granted. Absent leave, the Liquidators are deprived of the opportunity to challenge orders of a substantive effect, orders that deny them the opportunity to satisfy themselves as to the content of documents.
2. The respondents sought to rely on affidavit evidence filed in response to the application for leave. The tenor of the affidavits was to comment on the terms or effect of the documents that the Liquidators seek to access, and make submissions as to why it was said production of the documents would not assist the Liquidators in identifying a cause of action or tracing. We declined to accept the further evidence. In our view, it did not address or undermine the argument that the Liquidators would clearly be at a disadvantage if they were wrongly denied the opportunity to review the excluded documents themselves.
3. During the hearing, we granted the Liquidators leave to amend the proposed notice of appeal to introduce in ground 2 an allegation as to failure to deal with tracing (ground 2(h)). A hotly contested issue in the appeal was whether the issue of the potential ability to trace proceeds from the MS Asia transaction into the various trusts was squarely raised before the primary judge. Neither the application for leave to appeal nor the original proposed notice of appeal referred to any failure on the primary judge's part to deal with the issue of tracing, but the Liquidators by their written submissions filed prior to the appeal aired that contention. This matter is addressed further below.

## Grounds of appeal

1. Ground 1 contends that the primary judge erred in holding that the excluded documents were not relevant to the examinable affairs of Equititrust.
2. Ground 2 then sets out a number of alleged errors made by the primary judge in making the finding referred to in ground 1. Those alleged errors are said to be as follows:

(a) Erroneously treating as practically decisive the fact that the first respondent had no proprietary interests in the income or capital of the trust estates of the second to tenth respondents;

(b) Approaching the question too narrowly, namely by seeking to determine whether a judgment that may be obtained against the first respondent at the behest of the appellants could be ultimately recoverable from him, in effect by execution against the trust property of the second to tenth respondents;

(c) Failing to appreciate the significance of the first respondent's control over the property and income of the trust estates gave him immediate and direct power to apply such property and income in satisfaction of such a judgment and/or in satisfaction of a compromise of the claim the subject of the appellants' investigation;

(d) Erroneously rejecting (and failing to deal at all with) the appellant's submissions that the first respondent's powers of appointment to remove trustees and appoint others are fiduciary powers and are not property which would pass to a trustee in the bankruptcy of the first respondent;

(e) Failing to attach any or any sufficient weight to the following evidence of the first respondent:-

*44. If the liquidators sue me, and I suffer a judgment against me in the sums alleged by the liquidators' solicitors, or indeed a fraction of those amounts, and it is not covered by insurance, I would not seek to have recourse to the assets of the trusts or superannuation fund described above, but rather I would file for bankruptcy.*

*45. Nor could I seek to have recourse to the assets of my superannuation fund as the preservation age is 60, and I am currently aged 49, so l cannot draw funds from it for about 11 years;*

(f) Failing to attach any or any sufficient weight to the prospect that a trustee in bankruptcy of the first respondent (referred to in such evidence) might secure orders under Division 4A of Part VI of the *Bankruptcy Act 1966* (Cth) in respect of the trust estates which were the subject of the Trust Financial Documents;

(g) Failing appropriately to apply the principles that the scope of examinations under part 5.9 of the *Corporations Act 2001* is extremely wide and that an examination to determine whether any chose in action will be ultimately recoverable from any party is within the contemplation of part 5.9 which principles, appropriately applied, required the learned primary judge to refuse the respondents' application;

(h) Failing to address as a relevant factor the relevance of the documents to the liquidators' investigations involving a tracing exercise in respect of profits.

1. The discrete matters raised in those grounds of appeal were addressed by the parties by considering three issues:

(a) whether property must be owned by a prospective defendant to be relevant to the potential recovery of a judgment debt in the context of examinable affairs;

(b) whether the Liquidators could rely upon a prospective tracing investigation to justify production of the excluded documents; and

(c) whether the *Bankruptcy Act* provided a reason to justify production of the documents.

## Access to property where there is no proprietary interest

1. In *Pleash (No 2)*, the primary judge considered closely the history and scope of the examination and production order powers provided for by s 596A and s 597(9) of the *Corporations Act*. It is to be recalled that at that hearing his Honour was considering Mr Tucker's contention that the examinations were being conducted for an improper purpose. Each ground of impropriety alleged by Mr Tucker was carefully considered and rejected. It is apparent from those reasons that his Honour was very much aware of the wide scope of the expression 'examinable affairs'. For example, his Honour included in his reasons (*Pleash (No 2)* at [35]) the following extract from Lander J's reasons in *Evans v Wainter* at [81]-[82]:

An examination to determine whether the corporation would be likely to succeed in litigation against its officers, auditors or third parties would be within the examinable affairs of a corporation. Such an examination would assist an eligible applicant in identifying a chose in action which is an asset of the corporation: *Grosvenor Hill (Queensland) Pty Ltd v Barber* (1994) 48 FCR 301; *Spedley Securities Ltd (in liq) v Bank of New Zealand* (1990) 3 ACSR 366 at 376.

An examination to determine whether any chose in action will be ultimately recoverable from any party or that party’s insurer is also within the contemplation of the section: *Gerah Imports Pty Ltd v Duke Group Ltd (in liq)* (1993) 61 SASR 557. Indeed, such an examination may be of a person against whom litigation is contemplated or even pending: *Re Hugh J Roberts Pty Ltd (in liq)* [1970] 2 NSWLR 582; *Hamilton v Oades* (1989) 166 CLR 486 at 497; *Re Laurie Cottier Productions Pty Ltd (in liq)* (1992) 9 ACSR 513).

1. This is important background to the Liquidators' submission in this appeal that the primary judge in *Pleash (No 3)* took too narrow a view of the purpose of the production order, focussing on the ability of Mr Tucker to meet any judgment debt and overlooking or failing to properly consider the broader inquiries into the affairs of Equititrust being undertaken by the Liquidators.
2. We accept that the primary judge focussed on whether documents may assist in identifying property that was of a nature that could be applied towards a judgment debt enforceable against Mr Tucker. In our view, his Honour's approach was an inevitable consequence of the manner in which the application was run by the Liquidators. The Liquidators' argument as to purpose and relevance in *Pleash (No 3)* focussed on prospective judgment recoverability from Mr Tucker. So much is apparent from the written submissions of the Liquidators before the primary judge dated 4 July 2017 and the transcript of the hearing before his Honour (set out further below).
3. That was the context in which the primary judge considered the questions of whether Mr Tucker has any proprietary interest in the income or capital of the various trusts and whether he could control those entities so as to direct payments in satisfaction of his own debts.
4. It was not for the primary judge to unilaterally consider all the various matters that the Liquidators might seek to investigate in the course of the liquidation that fall within the ambit of examinable affairs, but rather to assess the application on the basis advanced by the Liquidators, taking into account objections raised by Mr Tucker.
5. It was not in issue between the parties that Mr Tucker, as the beneficiary of the discretionary trusts concerned, has no proprietary interest in the income and capital of those trusts: *Pleash (No 3)* at [23]. That position is established. An object of a discretionary trust has no legal or beneficial interest but only the right to due consideration and due administration of the trust: *Kennon v Spry* [2008] HCA 56; (2008) 238 CLR 366; *Dwyer v Ross* (1992) 34 FCR 463; *DKLR Holding Co (No 2) Pty Ltd v Commissioner of Stamp Duties* [1980] 1 NSWLR 510.
6. However, the Liquidators submitted on two bases that documents relevant to the asset and income positon of the trusts should be produced:

(a) first, documents relating to an interest in a discretionary trust are within the scope of an examination; and

(b) second, documents relating to a judgment debtor's potential access to a source of funds to satisfy a judgment, even if not directly available to a judgment creditor, are within the scope of an examination.

1. The Liquidators rely upon *Boys v Quigley* [2002] WASCA 99; (2002) 26 WAR 454, in which the Western Australian Court of Appeal considered the scope of documents that should be produced individually by the audit partners of an accounting firm who were the defendants in a claim brought against them by the receiver and manager of Geneva Finance Limited. At first instance, the Master did not discharge examination summonses completely, but refused to order the production of a broad range of documents, including bank accounts of any trusts in which the auditors had any legal or beneficial interest over a period of time.
2. The Court specifically noted that it has power to order an examination 'for the purpose of ascertaining the worth of a person against whom the corporation claims to have a cause of action' (at [20]) and held that many of the documents sought by the receiver would include documents 'having no connection with the enforceability of any claim' against the appellants (at [30]). The Court did not consider it oppressive to seek to obtain information about the personal financial capacity of the appellants 'which would enable the respondent to assess the appellants' capacity to satisfy a judgment in the action' (at [33]). During the course of refusing to order the production of certain categories of documents, the Court asked rhetorically (at [35]):

How can documents of that type which are of that age assist the respondent to assess the particular appellant's present or future capacity to satisfy a judgment?

1. The Court considered some documents to be 'so peripheral [to that task] as to be outweighed by considerations of privacy and confidentiality' (at 35]).
2. Those extracts reflect and reinforce the need to direct attention to the question of whether the documents sought will assist in assessing the capacity of a prospective defendant to satisfy a judgment.
3. The Court in *Boys v Quigley* indicated it would be prepared to order production of certain documents as follows (at [36]):

Every document in the possession or control of the examinee evidencing or referring to any ownership interest, legal or equitable, in any real or personal property including money and choses in action; and every document in the examinee's possession or control evidencing or referring to any trust arrangement pursuant to which the examinee may exercise any power of disposition or distribution; and every document in the examinee's possession or control evidencing or referring to any trust arrangement pursuant to which the examinee or any member of his family will or may obtain a benefit; and every document in the examinee's possession or control evidencing or referring to any disposition of property by the examinee since 26 July 1990 otherwise than in the ordinary course of business or in the ordinary course of management of the examinee's family or domestic affairs.

1. The Liquidators note the reference by the Court to 'trust arrangements'. However, read carefully, the category described by the Court does not extend to requiring production of documents relating to the assets and income of discretionary trusts or otherwise relating to assets in which the prospective defendant has no legal or equitable interest. In this case, the documents that reveal the 'trust arrangements', including any powers Mr Tucker may have of disposition or distribution and his position as a beneficiary, are the formal trust deeds for the various trusts, all of which apparently have been produced. The respondents accept that the Liquidators are entitled to review such documents to consider for themselves Mr Tucker's powers and whether he is a beneficiary.
2. We do not consider *Boys v Quigley* extends the principles discussed in *Grosvenor Hill (Queensland) Pty Ltd v Barber* (1994) 48 FCR 301 and *Evans v Wainter*. It is not authority for any proposition that a liquidator's legitimate task of assessing the capacity of a prospective defendant to satisfy a judgment of itself justifies production of documents that may evidence the income and capital of a discretionary trust in which the defendant is a named beneficiary.
3. The Liquidators also rely on *Australian Securities and Investments Commission v Carey (No 6)* [2006] FCA 814; (2006) 153 FCR 509 in which French J discussed the concept of 'property' within the meaning of s 9 and s 1323 of the *Corporations Act* in the context of restraint proceedings. In that context, French J said that where a discretionary trust is controlled by a trustee who is in truth the alter ego of a beneficiary, then the beneficiary has 'something which is akin to a proprietary interest' or 'something approaching a general power and the ownership of property' (at [29], [36]-[37]). His Honour referred to *Inland Revenue Commissioners v Trustees of Sir John Aird’s Settlement* [1982] 2 All ER 929 to hold that, in such a case the beneficiary may have a contingent interest in the property of the trust, as it is 'as good as certain' that the beneficiary will receive the benefits of distributions.
4. The application of the reasoning in *ASIC v Carey* to individual property rights in bankruptcy was considered carefully and rejected by the Court in *Fordyce v Ryan*. *Fordyce v Ryan* concerned the rights of a trustee in bankruptcy to gain access to the income and capital of a discretionary trust. The bankrupt was the sole director of the trust's corporate trustee. The trustee contended that the bankrupt's control of the trustee company to the requisite degree meant that the bankrupt had a property interest in the trust, relying on *ASIC v Carey*. The critical question, as Jackson J noted, was whether effective control of a trustee's power of selection can transform the interest of a beneficiary of a discretionary trust into property of the bankrupt (*Fordyce v Ryan* at [34]). Jackson J first considered a line of bankruptcy cases that established a contrary position. In particular, his Honour referred to *Dwyer v Ross* (1992) 34 FCR 463 where the court confirmed that a trustee in bankruptcy is not entitled to any share of a trust fund, and that the distribution of the income and assets of the trust continues to be a matter for the trustee in its discretion. *Dwyer v Ross* has been followed on many occasions, including in *Rafferty v Time 2000 West Pty Ltd (No 9)* [2011] FCA 1483.
5. Jackson J noted that French J in *ASIC v Carey* relied on cases that deal with the meaning of property of a party to a marriage under the *Family Law Act 1975* (Cth) in reaching his view. For example, in Kennon v Spry, the majority of the High Court took a broader view of the rights of the object of a power of appointment for the purposes of that Act.
6. Jackson J did not consider such cases affect what constitutes property according to the general law (at [36]). Nor did he accept that a beneficiary's legal or de facto control of the trustee of a discretionary trust alters the character of the interest of the beneficiary such that it will constitute property of the bankrupt if the beneficiary becomes bankrupt. This was in circumstances where all distributions under a particular discretionary trust had been made in favour of the bankrupt and in circumstances where he was in effective control of the trustee of each of the trusts (at [38]). We respectfully agree with his Honour's analysis and conclusion.
7. Further, such analysis is consistent with that of the Full Court in *Swishette.* The issue in *Swishette* was the power of the Court to make an order under s 239 of the *Australian Consumer Law (Schedule 2 to the Competition and Consumer Act 2010* (Cth)) directing Swishette's sole director and shareholder, Mr Laski, to apply certain trust funds to repay dissatisfied customers. Swishette was the corporate trustee of a discretionary trust of which Mr Laski was a beneficiary. The Full Court considered the line of cases including *Kennon v Spry*, *DKLR Holding Co (No 2)* and *ASIC v Carey* and held that despite Mr Laski's level of control over Swishette, absent the exercise of the trustee's power of distribution in his favour, he had no entitlement to the assets or income and Swishette was not free to exercise rights in respect of the trust property as if no trust existed (*Swishette* at [26]). The Full Court distinguished *ASIC v Carey* (*Swishette* at [21]). The primary judge in these proceedings properly followed and applied *Swishette*. Both *Fordyce v Ryan* and *Swishette* address whether a beneficiary's control over a trustee operates so that the income and capital of a discretionary trust may be treated as if it were property of the beneficiary. The proposition is rejected in both and we consider the decisions to be correct and applicable in the circumstances of this case. Despite *Swishette* addressing a different statutory provision, the Court in both *Swishette* and these proceedings is concerned with the potential application of trust income and capital to meet a judgment debt.
8. We note for completion that we do not accept the matters raised by particulars (d) and (e) of ground 2 of the grounds of appeal. The primary judge was clearly aware of and referred specifically to what he called Mr Tucker's 'statement of intention' as to what he might do if he were pursued to meet a judgment (at [23]). Of course, Mr Tucker may well change his mind. Although his Honour does not expressly refer to a scenario whereby Mr Tucker might exercise powers of appointment to remove trustees, such matters were addressed in *ASIC v Carey* and cited in *Fordyce v Ryan* (*Fordyce v Ryan* at [32]), both being cases carefully analysed by the primary judge. We are not prepared to assume his Honour did not take into account such issues in his overall consideration of the question of control. His Honour's reference to the potential for an action seeking an order for due administration of the trust or trusts reveals an understanding of the fiduciary nature of the trustee's role.
9. There are three other matters raised by the Liquidators that require comment.
10. First, we have taken into account the Liquidators' submission that there should be coherence with other statutes, referring to the *Bankruptcy Act* and the *Family Law Act*. We deal below with the express provisions of the *Bankruptcy Act*. In *Fordyce v Ryan*, in his consideration of *ASIC v Carey*, Jackson J distinguished the position under the *Family Law Act* and did not consider it affected the relevant general law position. Even so, Jackson J noted that even in a family law context, the statutory provisions do not contemplate that an order under s 79 of the *Family Law Act* will ignore the obligations of a trustee and the rights of beneficiaries, citing *Kennon v Spry* (*Fordyce v Ryan* at [36]). The policies that guide the disclosure of and distribution of the assets and property of parties to a marriage are quite different to those that apply to the relationship of a prospective arm's length debtor and creditor. We do not consider a general desirability of coherence overrides the line of cases that state the position that applies at general law.
11. Second, the Liquidators placed some reliance on the fact that orders for production under s 597(9) may extend to documents that evidence insurance arrangements. It is true that funds that might flow from an insurer for the benefit of creditors are technically funds from a third party. However, the distinguishing characteristic of insurance arrangements is that there may be an enforceable obligation on the part of insurers to meet a claim. That legal obligation is not analogous with a discretionary power to make distributions to a range of beneficiaries under the terms of a discretionary trust.
12. Third, the Liquidators suggested before us that the investigations they seek to undertake attract the application of s 1323 of the *Corporations Act* and so *ASIC v Carey* is applicable in any event. That argument was not pursued before the primary judge and in any event, we do not accept it in the circumstances of this case. Section 1323 is concerned with applications to restrain property, and property is defined broadly for that purpose. As noted by the Full Court in *Swishette*, whilst *ASIC v Carey* is authority that an object of a discretionary trust may have a 'property' interest for the purpose of s 1323 of the *Corporations Act*, the decision turned on the defined sense of the word 'property' appearing in that section (*Swishette* at [21]). The primary judge was not invited to exercise his discretion to make any interim or other order under s 1323. It is again necessary to focus on the manner in which this particular application was brought and argued before the primary judge. The purpose was not about restraining assets, but about testing the ability of Mr Tucker to meet a judgment debt. For that reason it is the general law position as to the nature of Mr Tucker's interests in property and their availability to be applied against his debts that is relevant in the circumstances of this application.
13. Mr Tucker is not a bankrupt. We have not approached our consideration of the scope of examinable affairs for the purpose of s 597(9) of the *Corporations Act* by assuming that he will become bankrupt. However, the exercise of assessing the ability of a prospective defendant to meet a judgment debt necessarily requires a consideration of property that can be attached or recovered in some manner and applied against the debt.
14. The ability of a prospective defendant to satisfy a judgment debt in the event that litigation is pursued by a liquidator is within the scope of such examinable affairs but we do not consider there is a proper basis to extend the scope of 'examinable affairs' to a consideration of what assets outside of those that comprise a prospective defendant's property might voluntarily be directed to payment of such debt.
15. The Liquidators say such assets are relevant to the 'wherewithal' of Mr Tucker. However, the point in the context of the application as advanced before the primary judge was not to investigate without parameters his 'wherewithal', but to assess the prospects of any recovery from him for the benefit of creditors.
16. One would not expect a liquidator to recommend to creditors that litigation be pursued against a party based only on speculation and the hope that a favourable judgment would be met by voluntary payments from the assets of a friendly third party, or by a trustee who is able legitimately to control or direct funds to other beneficiaries or, for example, from monies that the judgment debtor may choose to borrow for that purpose in the future. Absent some form of binding agreement, commitment or obligation by a trustee or other third party to make funds available, it is difficult to imagine how documents that evidence assets not owned by the defendant could properly assist the liquidator in assessing the ability of the prospective defendant to satisfy a judgment or assist in advising creditors.
17. It follows that we do not accept either of the two bases (paragraph [34] above) upon which the Liquidators contended that Mr Tucker's interests in the various trusts were sufficient to require production of the relevant documents.

## The tracing investigation and the application to adduce fresh evidence

1. The Liquidators now contend that the excluded documents are relevant not only because they wish to inquire into Mr Tucker's ability to meet any judgment debt, but also because they may show whether profits from the MS Asia transaction were received by any of the trusts, which might in turn allow such profits to be traced. They seek to rely upon the transcript excerpts from Mr Tucker's examination to support the relevance of the tracing exercise. According to the transcript, Mr Tucker said the following during his examination:
   1. he receives, equally with a Mr Kennedy and Mr Howard, a one third share of the profits made by MS Asia in its recovery of the BOSI debt;
   2. he did not know the identity of the shareholders in MS Asia;
   3. he admitted that he has a one-third beneficial interest in MS Asia, but said that neither he nor any of his associated companies owns any share in MS Asia;
   4. he said that he has received about $3.8 million by way of profits from the MS Asia transaction, although it did not come into a personal bank account of his, and he doesn't know where it went;
   5. he also said that he does not recall benefiting from the $3.8 million but that he 'hasn't paid a lot of attention to it'.
2. The Liquidators say that the issue of tracing was raised before the primary judge but that even if it were not, it is open to them to raise it on appeal and they seek to re‑open the evidence under s 27 of the *Federal Court of Australia Act 1976* (Cth) in order to rely upon the transcript excerpts. Mr Tucker objects to any reliance on tracing on the basis it was not raised below, and asserts he is prejudiced if the transcript excerpts are accepted as evidence on the appeal.
3. As already noted, the focus of the written and oral submissions seeking access to the documents before the primary judge was the potential for recovery of any judgment debt from Mr Tucker.
4. The Liquidators rely on a statement in their supplementary submissions filed on the final hearing day below. Relevantly, those submissions state that the Liquidators want to investigate entities 'to whom profits have been channelled'. This was said in the same submissions to be in the context of the MS Asia debt acquisition and the suggestion that the transaction involved the use of inside information 'such as that to which directors and long‑standing solicitors would have access'.
5. It is necessary to set out some detail about how the hearing proceeded after the supplementary submissions were provided. According to the transcript, shortly after the luncheon adjournment counsel for the Liquidators was to commence final submissions. Before he did so, counsel for the respondents raised with the primary judge the fact that he had only just received the supplementary submissions, that they seemed to reflect a shift in the manner in which the Liquidators were articulating their case for the documents and that he would address the issue more fully in reply, rather than pre‑empt what counsel for the Liquidators might say.
6. As it happened, in his oral submissions counsel for the Liquidators did not address that part of the supplementary submissions or refer to tracing. Counsel proceeded on the basis that there were two reasons the documents should be produced, as appears from the following exchange:

MR COOPER: Yes, I have to - I have to satisfy your Honour. My clients have to satisfy your Honour that the documents are relevant to a subject of the examination.

HIS HONOUR: Yes.

MR COOPER: On that last point, it's also common ground, I think, under the principle in *Grosvenor Hill*, and particularly that passage which Mr O'Brien took your Honour to immediately following the luncheon break, at page 307, that those facts - the existence of the examination, and the fact that the liquidators are considering whether to bring a claim against Mr Tucker, would bring documents which show Mr Tucker's worth within the scope of the examinable affairs and also documents which allow the liquidators to test the likelihood of creditors in a winding up, receiving a tangible benefit from satisfaction of a judgment against Mr Tucker. That's the statement of principle.

The question before your Honour is whether documents relating to discretionary trusts, and particularly the value of discretionary trusts, the trust assets, come within that principle. For Mr Tucker, it's submitted that they do not, because he doesn't have a proprietary interest in the trust assets and the liquidators don't contend to the contrary; they don't contend that he has a proprietary interest in those 5 trust assets. But the liquidators do submit that the documents which were sought before the Deputy Registrar and ordered to be produced concerning the financial affairs of the trusts, do come within the scope of the examinable affairs for two reasons.

Firstly, because Mr Tucker - Mr Tucker's control over those trust assets and his ability to determine whether to make those assets available to meet a judgment against him, means that they're relevant to the liquidator's function in assessing whether to bring proceedings against Mr Tucker. And secondly, the potential operation of Part IVA of division 6 of the *Bankruptcy Act* and the potential for orders to be made against trusts which are associated with Mr Tucker are also relevant to the liquidator's function in assessing whether to bring proceedings. I refer your Honour to Mr Tucker's control of the trust assets. In paragraph - - -

HIS HONOUR: Sorry, that - sorry, you've - you said there were two points, so the second is the - - -

MR COOPER: The potential operation - - -

HIS HONOUR: - - - Bankruptcy Act.

MR COOPER: The bankruptcy point, yes, your Honour.

1. Counsel for the respondents returned to the issue at the end of the hearing, when the following exchange occurred:

MR O'BRIEN: There has been, we say, at the last minute after lunch, an additional line, which is not supported by any affidavit material, that this is what they want to investigate, that there is some channelling of profits into these various entities that they seek the financial statements from. That's not the basis on which they've sworn up these documents were wanted, and we've come along to meet the case that they said that they were going to prosecute. They swore up that they wanted these documents - - -

HIS HONOUR: Okay. Well, do you need more time to meet this case? Is that what you're saying?

MR O'BRIEN: Well, the reason I raise it is because the - while there was that line in the written submissions, when Mr Cooper got up today, he did not mention that point. He mentioned that there were two grounds on which they said the orders should be maintained. The first was that, in fact, Mr Tucker had some influence over these discretionary trusts.

HIS HONOUR: I'm still a bit lost, Mr O'Brien. We're just - what exactly do you want me to do? Ignore something or give you more time or what?

MR O'BRIEN: Yes. Well, what we want is for the application to make it clear that we met the application based on the fact that the financial statements were being sort [sic] to ascertain the worth of Mr Tucker - to make it clear that that's the application that we came to meet.

HIS HONOUR: Well, I'm not so sure you can dictate that, because it's the - as you pointed out at the start, it's a rehearing. They start all over again and they make out the case before me. I will decide the case based on the material that has been put before me to which I've been referred, the submissions that have been made by both parties.

MR O'BRIEN: Well, perhaps I can deal with it this way, your Honour. Mr Cooper made submissions that there were two - orally he made submissions that the grounds on which he was relying upon to maintain the orders about the production of these documents was - in relation to discretionary trusts was that Mr Tucker had, in effect, control of or influence over these trusts, and that was sufficient to meet the test, and also because of Part IVA of the *Bankruptcy Act*. Now, what needs to be clarified is that that's the basis on which they were seeking it, and that the - what we say is the throwaway line in the submissions is not the basis.

HIS HONOUR: Well, except that the sundry other documents he also relied upon.

MR O'BRIEN: I'm only - sorry. I should make clear I'm only talking about the financial documents that are - that this relates to.

1. That reflects the extent to which the matter was raised before the primary judge over the course of a two day hearing and his Honour's final comments suggest there was uncertainty as to those documents with respect to which the issue was being raised, if at all.
2. Even in this appeal, the Liquidators have raised the matter late. As already noted, the Liquidators did not raise any failure to deal with tracing in the grounds for the application for leave to appeal, nor in the first draft notice of appeal.
3. In our view, it cannot be said fairly that the potential for tracing was squarely raised during the hearing before the primary judge. The fact that it is not addressed in the reasons for judgment is explicable on that basis.
4. The question then is whether the Liquidators should be entitled to rely on such argument now. Even accepting that Mr Tucker's answers in his examination confirm that at some time he has received proceeds from the MS Asia debt acquisition and security enforcement, in our view the Liquidators have not pointed to useful evidence or otherwise sufficiently explained why the requested documents in categories 1, 2 and 3 of the Schedule may shed light on the whereabouts of those proceeds or how they might be traced or secured for the benefit of creditors.
5. There are two particular issues. First, the superannuation trust fund documents (category 1) are sought for the period of time from 1 July 2013. The financial statements and income tax returns of the various entities are sought only for the period for the years ended 30 June 2015 and 30 June 2016. Only the 'most recent' bank statements for the entities are requested. The Liquidators have not explained why, for example, financial statements and income tax returns for only the specified later years would assist in ascertaining the whereabouts of funds relating to the debt acquisition and enforcement of securities by MS Asia, transactions that commenced in July 2012. Nor have they explained why recent bank statements would assist in that task. There is no attempt to explain the different date ranges for the different documents and the apparently deliberate time gaps.
6. There was some evidence before the primary judge that the receivers appointed by MS Asia had received proceeds from enforcement: see, for example, the receivers' 'Trial Balance as at 7 February 2017' for Equititrust attached to the affidavit of Stephen Russell filed 4 July 2017 that lists payments to secured creditors of $9,883.608.89. However, the Liquidators did not point to evidence that suggested proceeds would have been received or transferred at any particular time or only during certain periods, and we are unable on the evidence before us to ascertain why the particular time frames for each of the categories of documents were selected.
7. Second, the Liquidators have not properly explained the basis upon which tracing might be available and might result in some benefit to the creditors. The Liquidators' solicitor deposed to the nature of investigations and examinations that the Liquidators intended to carry out generally, including as to 'whether Equititrust has a claim against Mr Tucker and/or Mr Kennedy for breach of statutory or fiduciary duty in respect of their funding of the acquisition by MS Asia in July 2012 of the debt owed by Equititrust to BOSI and the associated securities' (affidavit of Mr Russell filed 4 July 2017). However, there was no real explanation even by way of submission as to how it is alleged the circumstances of Mr Tucker's involvement in the MS Asia debt acquisition may give rise to a tracing claim. It was not in issue that Mr Tucker was no longer a director of Equititrust at the time of the BOSI debt acquisition. The reference to 'inside information' in the supplementary submissions leaves us to speculate as to a number of matters, for example:
   1. what is intended by those words;
   2. the nature of any alleged subsisting duty on the part of Mr Tucker to Equititrust at the time of the acquisition; and
   3. which of Equititrust or any of the respondent entities may have incurred any loss or received traceable profits, taking into account that it was a third party (BOSI) that sold the debt and securities to MS Asia for what we assume was a mutually negotiated price.
8. Such speculation is not a safe ground for ordering production of the documents, even accepting the Liquidators' submission to the effect that it is not necessary for the Liquidators to spell out all the details of every cause of action they may wish to pursue. The fresh evidence from Mr Tucker's examination is not such that it would follow without more that a different result would have been obtained had it been available before the primary judge: *Freeman v National Australia Bank Ltd* [2003] FCAFC 200 at [65]-[67]. It is also possible that the respondents may have prepared for or approached the application as to improper purpose below differently had it been clear that the purpose of seeking the documents from the trusts extended to tracing and so went beyond the clearly identified purpose of testing the ability of Mr Tucker to meet a judgment debt.
9. For these reasons, we dismiss the appeal insofar as it asserts the primary judge erred in failing to address tracing as a basis for ordering production of the relevant documents, and we are not persuaded that the Liquidators should be permitted to now pursue production of the documents on the basis of tracing on the appeal.
10. However, that conclusion should not be taken to be a general proposition that the potential to trace money into third party entities is not a sufficient basis for the production of documents under s 597(9) of the *Corporations Act*. Investigating the value of such an exercise and the steps that might be involved may well fall within the examinable affairs of a company, depending on the circumstances. In this case, we do not consider the Liquidators have met the requisite onus such that we could determine the tracing-based application on appeal. We do not consider there is any impediment to the Liquidators bringing a further application under s 597(9) if they consider it appropriate to do so, based on evidence and properly addressing the purpose for which access to the specified documents of the trusts is sought.

## *Bankruptcy Act*

1. This aspect of the appeal can be dealt with briefly. As the Liquidators' counsel accepted, they must point to a *House v The King* error (*House v The King* [1936] HCA 40; 55 CLR 499) in the exercise of the primary judge's discretion in order to establish the ground of appeal.
2. The primary judge considered carefully the provisions in the *Bankruptcy Act* that permit a trustee in bankruptcy to apply to court to seek orders relating to property other than that of a bankrupt (s 139A, s 139CA, s 139D and s 139E). His Honour pointed to various difficulties that confront the Liquidators in seeking to rely on the potential for such orders as a basis for seeking production of the relevant documents:

(a) it would be for any trustee in bankruptcy to seek such orders, not the Liquidators;

(b) the Liquidators would not control any such application;

(c) as any proceedings against Mr Tucker had not yet been commenced then the commencement of any presumed future bankruptcy and the commencement of an examinable period are some time off, perhaps in the distant future; and

(d) there are quite complex pre-conditions to the making of orders under the identified provisions: even assuming that Mr Tucker retains his current level of control over the trusts and that the respective entities remain related entities, then it would still be necessary to establish (for example) that the trusts acquired an estate in particular property or increased their net worth and that Mr Tucker provided personal services either gratuitously or for less than arm's length value (*Pleash (No 3)* at [24]).

1. The primary judge concluded that the possibility of orders being made against one or more of the trusts was too remote and too dependent on unrelated contingencies to support the Liquidators' access to the documents at the present time. There were many complexities and contingencies that may arise, none of which are relevant to the current asset or income position of the trusts. The future conduct of Mr Tucker was unknown (*Pleash (No 3)* at [25]).
2. The Liquidators pointed to no error or omission in the primary judge's reasons as to remoteness. They contended that depending on the timing of litigation, it might be possible that some of the documents they seek would fall within the examinable period should Mr Tucker become bankrupt, but accepted that the consideration of such questions was a matter of discretion. They also took issue with the prospects of some of the pre-conditions being met, and speculated that some would be satisfied.
3. However, his Honour took into account matters that were open to him and we agree that at this point in time the prospect of the relevant provisions of the *Bankruptcy Act* being relied upon by any trustee in bankruptcy is highly uncertain. Taking into account such uncertainty and taking into account the interests of those from whom documents were sought, we have not identified error in the manner in which the primary judge exercised his discretion.

## Mr Tucker's argument that *Grosvenor Hill* should be revisited

1. Counsel for Mr Tucker submitted that in any event *Grosvenor Hill* should be reconsidered and that the 'affairs of the company' should not extend to documents going to the worth of a potential defendant. Taking into account our conclusion and the fact that the respondents did not appeal from the decision in *Pleash (No 2)*, and noting that the decision in *Evans v Wainter* was a decision of the Full Court, we do not consider this to be an appropriate vehicle for further consideration of that question.

## Further interlocutory application in the appeal by Liquidators for Mr Tucker to produce documents

1. Finally, we dismiss an interlocutory application by the Liquidators under rule 20.31 of the *Federal Court Rules 2011 (Cth)* for Mr Tucker to produce documents for inspection, made on the basis that they are referred to in affidavits filed on Mr Tucker's behalf opposing leave to appeal (and it would seem later uplifted). By the interlocutory application, the Liquidators sought production of documents that fall within the ambit of those categories the subject of this appeal, and the appeal would have been rendered nugatory if the Liquidators were able to obtain the documents in that manner. In such circumstances we consider the application to have been an abuse of process.

## Determination

1. It follows that for the above reasons although we grant leave to appeal, the appeal is dismissed.

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| I certify that the preceding eighty-one (81) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justices McKerracher, Farrell and Banks-Smith. |

Associate:

Dated: 29 August 2018

**SCHEDULE**

(1) Any statement of the assets and liabilities or statement of financial position in any period from 1 July 2013 for any superannuation fund in which Mr Tucker has an interest.

(2) Financial statements and income tax returns of the following persons for the years ended 30 June, 2015 and 2016:

(a) Tucker SF Pty Ltd as trustee of the Tucker Superannuation Fund;

(b) Tuckerloan Pty Ltd;

(c) Tucker Finance Pty Ltd;

(d) Tucker Finance Pty Ltd as trustee of the Tucker Finance Trust;

(e) Tucker Property Pty Ltd;

(f) Tucker Property Pty Ltd as trustee of the Tucker Property Trust;

(g) Vikwood Pty Ltd;

(h) Vikwood Pty Ltd as trustee of the Vikwood Trust;

(i) David's Corporate Beneficiary Pty Ltd;

(j) Tucker SEPT Pty Ltd;

(k) Camp Seabee Properties Pty Ltd.

(3) The most recently received bank statements for:

(a) Tucker SF Pty Ltd as trustee of the Tucker Superannuation Fund;

(b) Tuckerloan Pty Ltd;

(c) Tucker Finance Pty Ltd;

(d) Tucker Finance Pty Ltd as trustee of the Tucker Finance Trust;

(e) Tucker Property Pty Ltd;

(f) Tucker Property Pty Ltd as trustee of the Tucker Property Trust;

(g) Vikwood Pty Ltd;

(h) Vikwood Pty Ltd as trustee of the Vikwood Trust;

(i) David's Corporate Beneficiary Pty Ltd;

(j) Tucker SEPT Pty Ltd;

(k) Camp Seabee Properties Pty Ltd.

SCHEDULE OF PARTIES

|  |  |
| --- | --- |
|  |  |
| Respondents |  |
| Fourth Respondent: | TUCKER PROPERTY PTY LTD |
| Fifth Respondent: | DAVID'S CORPORATE BENEFICIARY PTY LTD |
| Sixth Respondent: | 35 CHASELY STREET AUCHENFLOWER PTY LTD |
| Seventh Respondent: | TUCKERLOAN PTY LTD |
| Eighth Respondent: | CAMP SEABEE PROPERTIES PTY LTD |
| Ninth Respondent: | TUCKER SF PTY LTD |
| Tenth Respondent: | TUCKER SFPT PTY LTD |