Federal Court of Australia

Australian Securities and Investments Commission v A One Multi Services Pty Ltd [2021] FCA 1297

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| File number: | QUD 338 of 2021 |
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| Judgment of: | **DERRINGTON J** |
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| Date of judgment: | 21 October 2021 |
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| Date of publication of reasons: | 26 October 2021 |
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| Catchwords: | **CORPORATIONS** – investigation by Australian Securities and Investments Commission – *ex parte* application for appointment of receivers, asset preservation orders, disclosure orders and travel restriction orders – whether it is necessary or desirable that orders be made – interim orders made |
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| Legislation: | *Corporations Act 2001* (Cth) s 1323  |
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| Cases cited: | *Australian Securities and Investments Commission v Australian Investors Forum Pty Ltd* (2003) 44 ACSR 503*Australian Securities and Investments Commission v Burke* [2000] NSWSC 694*Australian Securities and Investments Commission v Krecichwost* (2007) 64 ACSR 411*Australian Securities and Investments Commission v Ludgates Corporate and Investment Advisory Services Pty Ltd* (2003) 21 ACLC 1366*Australian Securities Commission v AS Nominees Ltd* (1995) 18 ACSR 459*In the matter of Courtenay House Capital Trading Group Pty Ltd* [2017] NSWSC 467*In the Matter of Trio Capital Limited (in liq)* [2012] NSWSC 1595 |
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| Division: | General Division |
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| Registry: | Queensland |
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| National Practice Area: | Commercial and Corporations |
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| Sub-area: | Regulator and Consumer Protection |
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| Number of paragraphs: | 46 |
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| Date of hearing: | 21 October 2021 |
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| Counsel for the Plaintiff: | Mr M Steele |
|  |  |
| Solicitor for the Plaintiff: | Australian Securities and Investments Commission |

ORDERS

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|  | QUD 338 of 2021 |
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| BETWEEN: | AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSIONPlaintiff |
| AND: | A ONE MULTI SERVICES PTY LTD (ACN 612 839 540)First DefendantARYN HENRY HALASecond DefendantHEIDI ELIZABETH WALTERSThird Defendant |

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| order made by: | DERRINGTON J |
| DATE OF ORDER: | 21 october 2021 |

NOTES

In these Orders:

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| **Books:**  | includes a register, any other record of information, financial reports or financial records however compiled or recorded or stored, a document, papers, records, books of account, ledgers, journals, banking records, computer records, or other documents of any type whatsoever recording or evidencing any dealings of any of the Defendants in relation to the Business. |
| **Business:** | means all activities and arrangements whereby the First, Second or Third Defendants, whether by themselves or any of them, or by their servants, agents or employees, elicited or obtained funds from investors for the ostensible purpose of reinvesting, trading with and/or otherwise dealing with such funds for the purpose of providing a return to investors on the funds invested. |
| ***Corporations Act*:** | means *the Corporations Act 2001* (Cth). |
| **Dealing:** | includes:(a) removing, causing, procuring, assisting or permitting any Property in the possession or under the control of the Defendants to be removed from Australia or from the jurisdiction of this Court; and/or(b) selling, charging, mortgaging, encumbering, securing, diminishing, disposing of, parting with possession, making any declaration of trust in relation to, exercising any power to vary or modify any trust deed or any interest under any trust in relation to the Defendants’ Property. |
| **Digital Currency:** | means property, as defined under section 9 of the *Corporations Act*, that is a digital currency, virtual currency, cryptocurrency or similar. |
| **Investor Funds:** | means monies provided to the Defendants or any of them, whether directly, or through any of the other Defendants, or any of the Defendants’ authorised agents, servants and/or representatives for the ostensible purpose of reinvesting, trading with and/or otherwise dealing with such funds for the purpose of providing a return to investors on the funds invested. |
| **Property:** | means property as defined under section 9 of the *Corporations Act*, including, by virtue of subsection 1323(2A) of the *Corporations Act*, any property held otherwise than as sole beneficial owner, and for the avoidance of doubt includes Digital Currency. |

THE COURT ORDERS THAT:

Filing and service of process

1. The Plaintiff have leave to file the affidavit of Jessica Mary Latimer affirmed on 20 October 2021 (**First Latimer Affidavit**), the supplementary affidavit of Jessica Mary Latimer affirmed on 20 October 2021 (**Second Latimer Affidavit**) and the affidavit of Meaghan Lesley Brooks sworn on 19 October 2021 (**Brooks Affidavit**).
2. Service of the originating process filed on 20 October 2021 (**Originating Process**) is dispensed with.
3. The Originating Process is returnable instanter.
4. The time for service of the Originating Process, the First Latimer Affidavit, the Second Latimer Affidavit and the Brooks Affidavit on the First, Second and Third Defendants is abridged to 5:00 pm AEST on 25 October 2021.

**Receiver orders**

1. Pursuant to sections 1323(1)(h) and (3) of the *Corporations Act*, effective on and from 11:59 pm AEST on 21 October 2021, John Ross Lindholm of KPMG, 727 Collins Street, Melbourne, Victoria and Timothy James Michael of KPMG, 71 Eagle Street, Brisbane, Queensland be appointed as joint and several receivers and/or receivers and managers (**Receivers**) of the Property of each of the First and Second and Third Defendants, until further order, for the purpose of:
	1. identifying, collecting and securing the Property of the First, Second and Third Defendants held for the purposes of the Business;
	2. ascertaining the amount of the Investor Funds received by the First, Second or Third Defendants;
	3. identifying any dealings with, payments of, or distributions by or uses made of the Investor Funds by the First, Second or Third Defendants;
	4. identifying any Property purchased or acquired with Investor Funds;
	5. recovering Investor Funds; and
	6. providing a report to the Court within 28 days in relation to the matters referred to in sub-paragraphs (a) to (e) above.
2. The Receivers shall have the following powers:
	1. the powers set out in subsections 420(2)(a), (b), (e), (f), (g), (k), (n), (o), (p), (q), (r), (t) and (u) of the Corporations Act and can exercise those powers in respect of the Property of the First and Second and Third Defendants as if, in the case of the Second and Third Defendants, the Second and Third Defendants were corporations; and
	2. the power to apply to the Court for directions or further orders.
3. The Defendants shall immediately deliver up to the Receivers all the books, records and other papers including, but not limited to, all files, computer records and data in their possession, custody or control which relate to the Business or to the Property of the Defendants.
4. The Plaintiff shall, upon the request of the Receivers, deliver up to the Receivers copies of the First Latimer Affidavit, the Second Latimer Affidavit and the Brooks Affidavit.
5. The Receivers’ reasonable costs and expenses be payable from the Property of the First and Second and Third Defendants.

**Asset prevention orders**

1. Subject to Order 12 below, pursuant to section 1323 of the *Corporations Act*, until further order, the First and Second and Third Defendants, by themselves and their servants, agents and employees are restrained from:
	1. removing, or causing or permitting to be removed from Australia all or any of the Property of any of the Defendants;
	2. selling, charging, mortgaging or otherwise dealing with, disposing of and/or diminishing the value of all or any of the Property of any of the Defendants;
	3. causing or permitting to be sold, charged, mortgaged or otherwise dealt with, disposed of, or diminished in value, all or any of the Property of any of the Defendants;
	4. without limiting the terms of sub-paragraphs (a) to (c) above, incurring liabilities including, without limitations, liabilities incurred either directly or indirectly, through the use of a credit card, a credit facility, a drawdown facility or a re-draw facility; and
	5. without limiting the terms of sub-paragraphs (a) to (d) above, withdrawing, transferring or otherwise disposing of any monies or Digital Currency available in any account with any bank, building society, cryptocurrency exchange, recorded in any blockchain or other financial institution (in Australia and elsewhere), in which the Defendants have any legal or equitable interest.
2. Further to the Orders 6, 7 and 8 above, subject to Order 12 below, and without limiting the terms of Order 10 above, the First and Second and Third Defendants are to do all things necessary to effect forthwith, or at least before 5:00 pm AEST on 23 October 2021, the transfer of control over any and all Digital Currency held by the Defendants to the Receivers, including but not limited to providing the Receivers with:
	1. all relevant credentials and passwords for access to any cryptocurrency held by the Defendants, including but not limited to, the public and private keys and / or seed string for any soft or cold wallet held or controlled by the Defendants;
	2. any and all authentication devices required to facilitate access, operation or control of any cryptocurrency held or controlled by the Defendants;
	3. all relevant credentials and passwords for access to the authentication devices or systems, including email, SMS or mobile apps, that facilitate access, operation or control of cryptocurrency held or controlled by the Defendants; and
	4. any cold wallet device containing cryptocurrency held or controlled by the Defendants together with that device’s access code.

The information to be provided by the Defendants to give effect to this Order may, amongst other means, be provided to the Receivers in person, by contacting the Receivers by telephone (John Ross Lindholm on 0419 307 879 or Timothy James Michael on 0412 090 170) or by email addressed to jlindholm@kpmg.com.au or tmichael2@kpmg.com.au.

1. Orders 10 and 11 above do not prevent:
	1. the First or Second or Third Defendants from paying or otherwise incurring a liability for ordinary living and operating expenses up to an amount of eight hundred dollars ($800) per week each;
	2. the First or Second or Third Defendants from paying or otherwise incurring a liability for costs reasonably incurred in these proceedings and any criminal proceedings arising from the Plaintiff’s investigation into the affairs of the First or Second or Third Defendants; and
	3. any bank, building society or financial institution from exercising any right of set-off which it may have in respect of a facility afforded by it to the First or Second or Third Defendants prior to the date of this Order.

**Disclosure orders**

1. Except to the extent that a claim of privilege against self-incrimination or civil penalty privilege is made, the First Defendant, by a proper officer, is to deliver or cause to be delivered to the Plaintiff and any Receivers appointed by the Court, by 9:45 am AEST on the date which is 14 days after service of this Order, a full and detailed affidavit sworn or affirmed by a proper officer of the First Defendant setting out:
	1. the name and address of any bank, building society or other financial institution at which there is an account in the name of or under the control of the First Defendant, together with the number of such account, the name of such account and the balance of that account;
	2. a list of the locations for all cryptocurrency held or controlled by the First Defendant together with the public access keys for any soft or cold wallets held or controlled by the First Defendant and the nature and amount of the cryptocurrency held in any such wallets;
	3. a list of any escrow accounts which hold cryptocurrency on the First Defendant’s behalf;
	4. the name and address of any person or persons indebted to the First Defendant and the amount of the indebtedness;
	5. an itemised inventory of the First Defendant's assets and liabilities;
	6. an itemised inventory of any and all Property whether real or personal owned or controlled by the First Defendant or in which the First Defendant has any legal or beneficial interest;
	7. in respect of any of the Property of the First Defendant which has been given as security for any debt, the details of that Property and the nature of the security and the debt so incurred; and
	8. a comprehensive and detailed list of all persons who, in the period 1 January 2019 to the date of this Order, have provided monies to the First Defendant or any entity associated with it for the purpose of investing in the Business, such list to include particulars of:
		1. the name, address and other contact details of each such person;
		2. the amount(s) paid by such person identifying the date or dates on which payment was received;
		3. the manner in which each payment was received, and how that money or part thereof, was expended or applied; and
		4. the amount calculated by the First Defendant as presently owing to each such person arising out of operation of the Business (including a full statement of debits and credits relating to such person’s investment).
2. Except to the extent that a claim of privilege against self-incrimination or civil penalty privilege is made, the Second Defendant is to deliver or cause to be delivered to the Plaintiff and any Receivers appointed by the Court, by 9:45 am AEST on the date which is 14 days after service of this Order, a full and detailed affidavit sworn or affirmed by the Second Defendant setting out to the best of the Second Defendant’s knowledge or belief:
	1. the name and address of any bank, building society or other financial institution at which there is an account in the name of or under the control of the Second Defendant, together with the number of such accounts, the name of any such account and the balance of any such account;
	2. a list of the locations of all cryptocurrency held or controlled by the Second Defendant together with the public access keys for any soft or cold wallets held or controlled by the Second Defendant and the nature and amount of the cryptocurrency held in any such wallets;
	3. a list of all escrow accounts which hold cryptocurrency on behalf of the Second Defendant;
	4. the name and address of any person or persons indebted to the Second Defendant and the amount of the indebtedness;
	5. an itemised inventory of the Second Defendant's assets and liabilities;
	6. an itemised inventory of any and all Property whether real or personal owned or controlled by the Second Defendant or in which the Second Defendant has any legal or beneficial interest; and
	7. in respect of any of the Property of the Second Defendant which has been given as security for any debt, the details of that Property and the nature of the security and the debt so incurred.
3. Except to the extent that a claim of privilege against self-incrimination or civil penalty privilege is made, the Third Defendant is to deliver or cause to be delivered to the Plaintiff and any Receivers appointed by the Court, by 9:45 am AEST on the date which is 14 days after service of this Order, a full and detailed affidavit sworn or affirmed by the Third Defendant setting out to the best of the Third Defendant’s knowledge or belief:
	1. the name and address of any bank, building society or other financial institution at which there is an account in the name of or under the control of the Third Defendant, together with the number of such accounts, the name of any such account and the balance of any such account;
	2. a list of the locations of all cryptocurrency held or controlled by the Third Defendant together with the public access keys for any soft or cold wallets held or controlled by the Third Defendant and the nature and amount of the cryptocurrency held in any such wallets;
	3. a list of any escrow accounts which hold cryptocurrency on the Third Defendant’s behalf;
	4. the name and address of any person or persons indebted to the Third Defendant and the amount of the indebtedness;
	5. an itemised inventory of the Third Defendant's assets and liabilities;
	6. an itemised inventory of any and all Property whether real or personal owned or controlled by the Third Defendant or in which the Third Defendant has any legal or beneficial interest; and
	7. in respect of any of the Property of the Third Defendant which has been given as security for any debt, the details of that Property and the nature of the security and the debt so incurred.
4. In the event that the First or Second or Third Defendant wishes to object to compliance with Orders 13 or 14 or 15 above, on the basis that compliance may tend to incriminate the Defendant or make the Defendant liable to a civil penalty, the relevant Defendant is to, in accordance with section 128A of the *Evidence Act 1995* (Cth):
	1. prepare, file and serve on the Plaintiff an affidavit disclosing so much of the information required to be disclosed by Orders 13, 14 or 15 to which no objection is taken;
	2. prepare an affidavit containing so much of the information required to be disclosed by Orders 13, 14 or 15 to which objection is taken and deliver it to the Court in a sealed envelope; and
	3. prepare, file and serve on the Plaintiff a separate affidavit setting out the basis of the objection.

**Travel restraint orders**

1. Pursuant to section 1323(1)(k) of the *Corporations Act*, until further order, the Second Defendant and the Third Defendant are restrained from leaving or attempting to leave Australia.
2. Pursuant to section 1323(1)(j) of the *Corporations Act*, until further order, the Second Defendant is to deliver up to the Registry of this Court, all passports in his name which are in his possession, custody or control and any airline tickets concerning any travel arrangements made for the twelve (12) month period commencing from the date of this Order.
3. Pursuant to section 1323(1)(j) of the *Corporations Act*, until further order, the Third Defendant is to deliver up to the Registry of this Court, all passports in her name which are in her possession, custody or control and any airline tickets concerning any travel arrangements made for the twelve (12) month period commencing from the date of this Order.
4. The documents delivered up to the Registry pursuant to Orders 18 and 19 above are to be held by the Registry until further order.
5. Pursuant to section 1323(1)(j) of the *Corporations Act*, in the event that the Second Defendant cannot locate any passport, he is to:
	1. give notification to the Australian Passport Office, or other relevant authorities responsible for the issue and control of Australian passports, confirming that he has lost his passport; and
	2. file an affidavit within 14 days of the date of this Order stating that fact and exhibiting a copy of the notification sent.
6. Pursuant to section 1323(1)(j) of the *Corporations Act*, in the event that the Third Defendant cannot locate any passport, she is to:
	1. give notification to the Australian Passport Office, or other relevant authorities responsible for the issue and control of Australian passports, confirming that she has lost her passport; and
	2. file an affidavit within 14 days of the date of this Order stating that fact and exhibiting a copy of the notification sent.

**Service of Orders on Third Parties**

1. To the extent necessary, the Plaintiff has leave to give to:
	1. the relevant authorities that record, control and regulate the ownership of real property;
	2. the relevant authorities that record, control and regulate the ownership of motor vehicles;
	3. the relevant authorities that record, control and regulate the ownership of maritime vessels and craft;
	4. any bank, building society, cryptocurrency exchange or other financial institution through which, to the best of the Plaintiff’s belief, Property belongs to the First or Second or Third Defendant;
	5. any other person or entity, holding or controlling Property, which, to the best of the Plaintiff’s belief, belongs to the First or Second or Third Defendant;
	6. the relevant authorities that issue and control passports; and
	7. the Australian Border Force;

notice of the making of any of the foregoing interim orders by giving a copy of the minute of the orders to a person apparently in the employ of any such entity or person.

**Non-publication orders**

1. Pursuant to sections 37AF(1)(a) and (b) and 37AG(1)(a) of the *Federal Court of Australia Act 1976* (Cth), in order to avoid prejudice to the proper administration of justice, the publication or disclosure of the following is prohibited until 11:00 am AEST on 22 October 2021, except to enable the Plaintiff to serve the Defendants, provide copies of the material to the Receivers pursuant to Order 8 and provide copies of the Orders to the entities set out in Order 23 for the purpose of enforcing the Orders:
	1. any ex-parte orders obtained by the Plaintiff;
	2. this Originating Process;
	3. the First Latimer Affidavit (including the exhibits to that affidavit);
	4. the Second Latimer Affidavit;
	5. the Brooks Affidavit (including the exhibits to that affidavit);
	6. the Receivers’ Consent; and
	7. any written submissions advanced by the Plaintiff in support of the ex-parte orders.

**General orders**

1. Costs be reserved.
2. There be liberty to any party to apply to the Commercial & Corporations List Judge on reasonable notice.
3. There be a case management hearing at 10:00 am AEST on 1 November 2021.

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

REASONS FOR JUDGMENT

DERRINGTON J:

## Introduction

1. The application before the Court is for interim orders of a quite significant nature. The Australian Securities and Investments Commission (ASIC) seeks the appointment of receivers to the defendants’ property as well as orders preserving that property. It also seeks to impose travel restrictions on the second and third defendants. In broad terms, ASIC relies upon its investigation into the defendants in respect of suspected contraventions of ss 911A, 1041E, 1041G and 1041H of the *Corporations Act 2001* (Cth) (*Corporations Act*), as well as possible breaches of the *Criminal Code 1899* (Qld) (*Criminal Code*) and of the *Superannuation Industry (Supervision) Act 1993* (Cth).
2. For the purposes of the application, ASIC has adduced *prima facie* evidence which indicates that the defendants are involved in a business pursuant to which they have induced individuals to lend money to the first defendant, A One Multi Services Pty Ltd (A One), as a result of misleading or deceptive conduct. Further, it appears that the business also involved inducing people to lend money from their superannuation funds. In that respect, the defendants have apparently arranged for individuals to establish a self-managed superannuation fund (SMSF) and to rollover their superannuation savings from a managed or institutional fund into the SMSF from which, with the autonomy that gives them, they make loans to the first defendant, A One.
3. ASIC’s investigations to date have shown that the defendants have accumulated large amounts of monies which they have utilised for their own purposes or for making investments on their own behalf.
4. In seeking the relief which it does, ASIC relies upon the Court’s powers pursuant to s 1323 of the *Corporations Act* to make orders to protect the assets currently in the possession of the defendants from dissipation on the basis that they might be used to compensate the persons from whom the funds have been borrowed.

## Background

1. A One is a company of which Mr Hala, the second defendant, and Ms Walters, the third defendant, are each shareholders.
2. Since 17 September 2019, Mr Hala has been its sole director and secretary. Prior to that, Ms Walters had been the sole director and shareholder.
3. It is significant that Mr Hala and Ms Walters are the sole signatories on a number of A One’s bank accounts.
4. The evidence before this Court establishes that none of the defendants hold or has ever held an Australian Financial Services Licence (AFSL), none have ever been the authorised representatives of the holder of an AFSL and none are authorised to provide financial services in Australia, or, for that matter, to deal with financial products to the extent there is any difference.
5. By an affidavit of Ms Jessica Latimer, a senior manager in ASIC, evidence has been adduced as to the course of an investigation into the activities of the defendants. That investigation commenced on 18 June 2021 and was concerned with contraventions of certain provisions of the *Corporations Act* relating to the requirement to hold an AFSL (s 911A), making false or misleading statements (s 1041E), engaging in misleading or deceptive conduct (s 1041H), engaging in dishonest conduct (s 1041G), as well as s 408C of the *Criminal Code*, being the offence of fraud, and s 68B of the *Superannuation Industry (Supervision) Act*, being the promotion of illegal early release scheme. It should be mentioned that the investigation has evolved over time and, in particular, that part of the investigation in relation to a contravention of section 68B has subsequently been abandoned.
6. In any event, the evidence before the Court discloses that Mr Hala and Ms Walters made representations to individuals as being potential investors and advised them of Mr Hala’s business of investment and his alleged apparent success. It appears that Mr Hala promoted his ability to earn substantial returns on investments if money were invested in his businesses. Representations were made of his ability to generate returns of between 10% and 20% on the investment and perhaps as high as 26%.
7. As part of the process of securing investments, it is apparent that Mr Hala and Ms Walters advised many potential investors to establish their own SMSFs and to transfer existing superannuation from their managed or industry superannuation funds into the SMSFs from which they could lend money to A One. It is apparent that the defendants, through intermediaries, arranged the documentation by which these SMSFs would be established.
8. Once the funds had been transferred to the SMSF, a loan agreement was entered into with A One.
9. I mention that the investigations at this stage are in an embryonic stage. The evidence adduced suggests a pattern of behaviour of the above nature, but it must always be kept steadily in mind that full investigations have yet to be completed. Nevertheless, on the evidence presently available, it seems that very few returns, if any, have been made to investors. ASIC has conducted thorough examinations of the bank accounts of A One, in particular it has examined the activities of an A One CBA account and an A One ANZ account. It has ascertained that in the period between 1 January 2019 and 22 June 2021 a total of $25 million was deposited into those accounts.
10. An analysis of the bank records in relation to the A One CBA account and the A One ANZ account indicates the likelihood that some $18.3 million has been transferred to those accounts from individual SMSFs. This, of course, suggests the existence of a course of business or a pattern of behaviour by the defendants.
11. ASIC’s analysis of the bank accounts has shown that from 1 January 2019, approximately $2.3 million has been transferred out of the A One CBA account and the A One ANZ account to 24 SMSFs. Those SMSFs appear on the evidence presently available to belong to persons who are associated with Mr Hala and Ms Walters. Those connections have been identified because the persons involved hold or have held roles in some of the companies that Mr Hala has also held or holds, or those persons are otherwise connected with Mr Hala and Ms Walters on social media.
12. ASIC has also identified that a large number of payments totalling substantial sums have been paid from the A One ANZ account and the A One CBA account for the benefit of Mr Hala and Ms Walters personally. That money has been used for things such as investments in cryptocurrency, property, direct payments to personal bank accounts, the purchase of motor vehicles, travel, and luxury personal items.
13. ASIC has further ascertained that approximately $200,000 has been withdrawn from personal accounts of Mr Hala and Ms Walters in the Philippines in the period between 24 February 2020 and 14 July 2021.
14. Of significance in this case is the large amount of money which has been transferred into cryptocurrency accounts. On the basis of the investigations undertaken to date, it appears that Mr Hala may have in his possession “Bitcoin” to a value of between $7 million to $22 million. There is the potential that he has other funds in other cryptocurrency accounts.
15. The significant difficulty for ASIC is that, by its nature, cryptocurrency is easily transferred and moved about. Moreover, it can be moved only by persons possessed of particular codes. Presently, such codes appear to be in the possession of Mr Hala and Ms Walters.
16. As I have mentioned, ASIC’s investigations to date are in a preliminary stage. Ms Latimer deposes that further investigations are proposed which will involve the serving of statutory notices on a wide range of persons and entities. It will also involve substantial analysis of the financial dealings of the defendants. That investigation may take some time.
17. At this stage, ASIC is not in a position to quantify the potential loss or damage which might be caused to investors who have lent money to A One, Mr Hala and Ms Walters. However, to date, it has been established that at least $18.3 million has been deposited into the A One accounts controlled by Mr Hala and Ms Walters from approximately 60 SMSFs and 92 investors. Of that, $12.8 million was deposited into the A One CBA account and $5.5 million deposited into the A One ANZ account from SMSF investors.
18. ASIC has also ascertained that as at 8 July 2020 the funds held in the A One CBA account have been dissipated, including $4.8 million spent on personal expenses by Mr Hala and Ms Walters and approximately $970,000 spent on cryptocurrency exchanges. No money remains in the account and it has been closed.
19. Further, it has also been shown that as at 27 September 2021, the funds previously held in the A One ANZ account have also been dissipated. $1.5 million has been spent on personal expenses for Mr Hala and Ms Walters and $2.4 million has been spent at cryptocurrency exchanges. A sum of approximately $330,000 remains in that account.
20. In her affidavit, Ms Latimer deposes that the orders sought by ASIC on its present application are necessary or desirable to protect the interests of persons who are considered aggrieved persons within the meaning of s 1323 of the *Corporations Act* to whom A One, Mr Hala or Ms Walters are liable or may become liable to refund money and pay damages or compensation or otherwise arising from the suspected contraventions.

## Legislative context

1. As mentioned, ASIC principally relies upon s 1323(1) and (3) for the purposes of securing the orders in the present application. They provide:

**1323 Power of Court to prohibit payment or transfer of money, financial products or other property**

(1) Where:

(a) an investigation is being carried out under the ASIC Act or this Act in relation to an act or omission by a person, being an act or omission that constitutes or may constitute a contravention of this Act; or

(b) a prosecution has been begun against a person for a contravention of this Act; or

(c) a civil proceeding has been begun against a person under this Act;

and the Court considers it necessary or desirable to do so for the purpose of protecting the interests of a person (in this section called an ***aggrieved person***) to whom the person referred to in paragraph (a), (b) or (c), as the case may be, (in this section called the ***relevant person***), is liable, or may be or become liable, to pay money, whether in respect of a debt, by way of damages or compensation or otherwise, or to account for financial products or other property, the Court may, on application by ASIC or by an aggrieved person, make one or more of the following orders:

(d) an order prohibiting a person who is indebted to the relevant person or to an associate of the relevant person from making a payment in total or partial discharge of the debt to, or to another person at the direction or request of, the person to whom the debt is owed;

(e) an order prohibiting a person holding money, financial products or other property, on behalf of the relevant person, or on behalf of an associate of the relevant person, from paying all or any of the money, or transferring, or otherwise parting with possession of, the financial products or other property, to, or to another person at the direction or request of, the person on whose behalf the money, financial products or other property, is or are held;

(f) an order prohibiting the taking or sending out of this jurisdiction, or out of Australia, by a person of money of the relevant person or of an associate of the relevant person;

(g) an order prohibiting the taking, sending or transfer by a person of financial products or other property of the relevant person, or of an associate of the relevant person:

(i) from a place in this jurisdiction to a place outside this jurisdiction (including the transfer of financial products from a register in this jurisdiction to a register outside this jurisdiction); or

(ii) from a place in Australia to a place outside Australia (including the transfer of financial products from a register in Australia to a register outside Australia);

(h) an order appointing:

(i) if the relevant person is a natural person—a receiver or trustee, having such powers as the Court orders, of the property or of part of the property of that person; or

(ii) if the relevant person is a body corporate—a receiver or receiver and manager, having such powers as the Court orders, of the property or of part of the property of that person;

(j) if the relevant person is a natural person—an order requiring that person to deliver up to the Court his or her passport and such other documents as the Court thinks fit;

(k) if the relevant person is a natural person—an order prohibiting that person from leaving this jurisdiction, or Australia, without the consent of the Court.

…

(3) Where an application is made to the Court for an order under subsection (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.

 ….

1. For the reasons which follow, the orders sought by ASIC should be made.
2. The overriding concern of s 1323 is the protection of assets for the benefit of those who might become entitled to them. It is not specifically directed to the character of a defendant’s wrongdoing: *Australian Securities and Investments Commission v Burke* [2000] NSWSC 694 [6] per Austin J. Nevertheless, both the character of the alleged wrongdoing and its extent will be relevant to the exercise of the Court’s discretion. The purpose of the section was accurately identified by Black J in *In the Matter of Trio Capital Limited (in liq)* [2012] NSWSC 1595 [5] where his Honour said that the section provides a court with powers to make orders to:

preserve the status quo pending investigation, and even before evidence necessary to establish liability has been collected, or before that liability has been established: *Re Richstar Enterprises Pty Ltd*; *Australian Securities and Investments Commission v Carey (No 3)* [2006] FCA 433; (2006) 232 ALR 577; 57 ACSR 307 at [25], followed *Australian Securities and Investments Commission v Krecichwost* [2007] NSWSC 948; (2007) 213 FLR 314; 64 ACSR 411.

1. By its terms, it is apparent that the protection of persons to whom the relevant person might become liable is achieved by securing the assets of the relevant person or corporation against whom the claims may ultimately lie. The import of the section is to provide security for those claims or for securing assets for which the corporation or relevant person may become liable to account in respect of such claims: *Australian Securities Commission v AS Nominees Ltd* (1995) 18 ACSR 459 at 511 – 512.
2. In this case, the evidence adduced before the Court is sufficient to establish that the required investigations are being carried out by ASIC in relation to acts or omissions which may constitute a contravention of the *Corporations Act*. The conduct presently disclosed gives rise to very significant concerns as to the conduct of the defendants involved.
3. It would appear that their scheme, program or business involves:
4. making misrepresentations to persons about the appropriateness of investing in A One;
5. advising those potential investors to establish SMSFs for the purposes of facilitating the use of their superannuation savings as an investment in A One;
6. engaging in the above activities without being authorised to do under s 911A of the *Corporations Act*; and
7. misappropriating for personal use the funds so received by A One and failing to make any returns on investments.
8. ASIC has satisfied the Court that the defendants may become liable to pay money to the persons who have invested with A One. The contraventions of the Act include those in respect of which ASIC is presently conducting investigations. There is more than sufficient evidence to give rise to a real likelihood that such contraventions have occurred. It should be noted, however, that no final conclusion is made with respect to that issue. It is recognised that the application is *ex parte* and that the defendants have not had any opportunity to explain their conduct, adduce evidence, or make submissions. It necessarily follows that the observations made here are of a preliminary nature.
9. Further, ASIC has established that it is necessary or desirable for the purpose of protecting the interests of the investors to make orders protecting or preserving the assets presently in the defendants’ control as those assets may be used to meet investors’ claims for damages or compensation.
10. ASIC initially seeks the appointment of receivers. Relief of that nature is the most substantial of the asset protection orders under s 1323, however, in the present case, such an order is warranted both for the purposes of identifying the assets which might be available and of preserving them. That is particularly so in light of the fact that an extremely large amount of the funds which have been accumulated by the defendants appears to have been dissipated for the personal and private use of Mr Hala and Ms Walters.
11. ASIC also points to the fact that the funds invested have been dissipated in a way that they may be difficult to trace unless a person with the power of a receiver is appointed to recover them. There is much force in that submission and it is accepted given the large investment in cryptocurrency, being an asset which is extremely liquid and easily transferred.
12. Although it must be recognised that the appointment of a receiver is dramatic, it is warranted in the circumstances of this case as has been described. The orders sought by ASIC give the receiver wide powers to acquire information for the purposes of identifying all of the assets of the defendants and that too is warranted: *Australian Securities and Investments Commission v Krecichwost* (2007) 64 ACSR 411 at 423 [49] – [53].
13. ASIC has also sought orders pursuant to s 1323(1)(d)-(g) pursuant to which the assets of the defendants will be frozen subject to provisos relating to living expenses and legal expenses. While such orders are often referred to as “lesser” orders which might be made under s 1323, it is important to keep in mind that they are also significantly intrusive into the affairs of the person against whom they are made. Nevertheless, in a case such as the present where receivers have been appointed, they are also necessary to prevent the defendants from dissipating their assets or otherwise dealing with them. In particular, this serves the statutory purpose of protecting the interests of persons who appear to have been affected by contraventions of the *Corporations Act*. As Black J said in *In the matter of Courtenay House Capital Trading Group Pty Ltd* [2017] NSWSC 467 [10], the making of such orders also furthers ASIC’s particular role in the supervision of financial markets and the maintenance of their integrity which have the effect of protecting investors.
14. In this case, attention should be focused on the central enquiry of whether it is necessary or desirable that the Court infringe upon the freedom of disposition of the defendants in relation to their property. In that consideration, it must be recognised that the assets which might be described as the defendants’ property may well be the proceeds of what, *prima facie*, appears to be a business, scheme or program operated in contravention of several important provisions of the *Corporations Act*. Whilst the property may presently be identified as being the defendants’, it is undoubted that it is property which might be used to compensate the investors who will suffer loss or damage as a result of their conduct in contravention of the Act.
15. Here there is also significant evidence of substantial dissipation of assets by the defendants. There is nothing to suggest that any investments have been made by them which might provide returns to the investors. That is particularly so in the case of A One, which the evidence suggests does not conduct any business by which any returns are generated.
16. Indeed, the evidence is that the investors have received none of the promised returns. In that respect, there is a *prima facie* case to the effect that the dispositions have been made either recklessly in disregard of the defendants or A One’s obligations under the loan agreements with investors or, as ASIC suggests, fraudulently. Whether that is so or not is yet to be decided, but there is an obvious scenario in which that conclusion might be reached if no contrary evidence is adduced. Again, no final conclusion is made on that topic and it is only possible to identify that a serious question has been raised to that effect in the case.
17. In those circumstances, the orders sought by ASIC which have the effect of preventing the defendants from dissipating their assets any further ought to be made.

## Travel restrictions

1. ASIC also seeks restrictions on Mr Hala’s and Ms Walters’ entitlement to leave the country. The Court well appreciates the need to exercise caution when imposing restrictions of this nature: *In the Matter of Trio Capital Limited (in liq)* [6]*; Australian Securities and Investments Commission v Australian Investors Forum Pty Ltd* (2003) 44 ACSR 503; *Australian Securities and Investments Commission v Ludgates Corporate and Investment Advisory Services Pty Ltd* (2003) 21 ACLC 1366. However, there are significant factors in this case which render those restrictions, for the time being, somewhat important. First, the assets into which investor funds have been diverted include cryptocurrency, which cannot be dealt with other than by the persons who control the codes to access it; in this case Mr Hala and Ms Walters. They are needed as is their cooperation in order to recover those assets. It is not apparent that any order of this Court could force any third party to transfer the cryptocurrency to the receivers or any other persons.
2. It is also the case that the conduct involved in the possible contraventions is of a most serious nature. It, apparently, has involved engaging in misleading or deceptive conduct of a significant kind which, as ASIC has submitted, potentially amounts to fraudulent conduct. On the evidence adduced, it would appear that the investor funds obtained by Mr Hala and Ms Walters have been misappropriated by them for their private use and indulgence.
3. Further, it appears that Mr Hala and Ms Walters have a history of overseas travel and have connections to New Zealand. They also appear to have connections in the Philippines where a not insignificant amount of money has also been distributed.
4. ASIC officers have deposed, and I accept, that in order to fully investigate the business undertaken by A One, Mr Hala and Ms Walters, the latter two are required for the purposes of that investigation.
5. It is appropriate, for the present time, for orders to be made restricting travel by Mr Hala and Ms Walters as ASIC has sought.

## Suppression orders

1. ASIC also seeks the making of certain suppression orders in relation to the publication of this application, associated material, the determination of the Court, and its reasons. Of particular concern is that the cryptocurrency held by Mr Hala is extremely liquid and is capable of being dissipated quickly and easily and in a way which might make it difficult for ASIC or a receiver to recover it. If Mr Hala became aware of the current proceedings, there is a real risk that he will dissipate those assets and they will be irrecoverable. It is appropriate to make the orders sought in the interlocutory application, albeit for a very limited time.

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| I certify that the preceding forty-six (46) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Derrington. |

Associate:

Dated: 26 October 2021