

IN THE SUPREME COURT OF NEW SOUTH WALES

No. of 2022

DIVISION: Equity

REGISTRY: Sydney

**IN THE MATTER OF THE ABORIGINAL COMMUNITY BENEFIT FUND NO 2
PTY LIMITED (IN LIQUIDATION) ACN 054 951 923**

DAVID STIMPSON AS LIQUIDATOR OF THE ABORIGINAL COMMUNITY
BENEFIT FUND PTY LIMITED ABN 57 055 222 565

Plaintiff

THE ABORIGINAL COMMUNITY
BENEFIT FUND PTY LIMITED (IN LIQUIDATION) ACN 054 951 923 AS
TRUSTEE OF THE ABORIGINAL
COMMUNITY BENEFIT FUND NO 2 ABN 36 097 168 003

Defendant

ORIGINATING PROCESS

A. DETAILS OF APPLICATION

This Application is made pursuant to Section 67 of the Supreme Court Act 1970 (NSW), Section 473A and 1318 of the Corporations Act 2001, Section 90-15 of the Insolvency Practice Schedule (Corporations) (IPS) being Schedule 2 to the Corporations Act 2001 (NSW) Section 6 Trustee Act 1925 (NSW) and Rule 26 of the Uniform Civil Procedure Rules 2005 (NSW).

The Plaintiff is the sole liquidator of The Aboriginal Community Benefit Fund Pty Ltd (in liquidation) ACN 055 222 565.

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The Plaintiff seeks orders to be appointed Liquidator of ABORIGINAL COMMUNITY BENEFIT FUND NO 2 PTY LIMITED (IN LIQUIDATION) ACN 054 951 923 and take control of the Trust property known as THE ABORIGINAL COMMUNITY BENEFIT FUND NO 2 ABN 36 097 168 003.

On the facts stated in the supporting affidavit, the Plaintiff seeks the following directions and orders:

1. A order appointing David Michael Stimpson as liquidator of **ABORIGINAL COMMUNITY BENEFIT FUND NO 2 PTY LIMITED (IN LIQUIDATION) ACN 054 951 923** in leau of William Roland Robson.
2. A direction pursuant to Section 90-15 of the Insolvency Practice Schedule (Corporations) (**IPS**) being Schedule 2 to the *Corporations Act 2001*, the Plaintiff is justified andacting reasonably in proceeding on the basis that:
 - a) The Aboriginal Community Benefit Fund Pty Ltd ABN 57 055 222 565 carried on business in its capacity as trustee of The Aboriginal Community Benefit No.2 Fund Trust ("the Trust");
 - b) All of ACBF2 property is held by it as trustee of the Trust; and
 - c) The Trust's creditors are creditors whose debts have been incurred by the ACBF2 in its capacity as trustee of the Trust.
3. An order pursuant to section 6 of the *Trustee Act 1925* (NSW) that the Plaintiff be appointed as trustee of the Trust with the necessary powers to enable the Plaintiff to wind up the Trust, including the powers to:
 - a) carry on the business of the Trust;
 - b) sell or otherwise dispose of, in any manner, all or any part of the Trust Property;
 - c) compromise any claim made against the Defendant in its capacity as trustee of the Trust or against the Trust Property on any terms the

Plaintiff sees fit;

- d) bring any claim against any party on behalf of the Trust; and
 - e) execute any tax returns, financial statements or other documents relating to the Trust.
 - f) otherwise administer the Trust in terms of the Funeral Funds Act 1979 (NSW).
4. An order pursuant to section 90-15 of the IPS that the Plaintiff is able to rely on his statutory powers as liquidator of the Defendant pursuant to section 477 of the *Corporations Act 2001* (Cth) to take all necessary steps to wind up the Trust pursuant to paragraph 2 above and the Funeral Funds Act 1979 (NSW).
 5. In the alternative to Orders 2 and 3 above, an order appointing the Plaintiff as receiver and manager to the assets and undertaking of the Trust with the necessary powers under Order 2(a)- (f) above.
 6. A direction pursuant to s 1318 of the *Corporations Act 2001* (Cth) and s 90-15 of the IPS that the Plaintiff is justified and otherwise acting reasonably in proceeding on the basis that:
 - (a) the Plaintiff is entitled to be paid his remuneration, costs and expenses properly incurred from the date of his appointment as liquidator in preserving, realising or getting in the Trust Property, or in conducting the winding up of the Defendant (Remuneration and Expenses) from the Trust Property; and
 - (b) the Remuneration and Expenses include the remuneration, costs and expenses of and incidental to this Application and are to be paid in accordance with the priority specified in section 556 of the

Corporations Act 2001 (Cth).

7. An order that the Plaintiff's remuneration, costs and disbursements (including legal costs) of and incidental to this Application be paid from Trust Property on an indemnity basis.
8. Liberty to apply.
9. Such further or other orders as this Honourable Court sees fit.

Date: 30 March 2022



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*Paul Richard McCann
Cornwalls NSW
As Town Agents for
Craig Mitchell Hall
Hall Lawyers:*

This Application will be heard by the Supreme Court of New South Wales at Law Courts Building 184 Phillips Street Sydney at 10.00 am on 4 April 2022.

B. FILING

Date of filing:

This originating process is filed by Hall Lawyers for the Plaintiff.

E. SERVICE

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