



Issued: 22 June 2021 3:21 PM

JUDGMENT/ORDER

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Equity General
Registry	Supreme Court Sydney
Case number	2021/00179305

TITLE OF PROCEEDINGS

First Plaintiff	PP New Pty Ltd ACN 088406437
Second Plaintiff	KordaMentha Shelf Co (APMSPSAF) Pty Ltd
First Defendant	.

DATE OF JUDGMENT/ORDER

Date made or given	22 June 2021
Date entered	22 June 2021

TERMS OF JUDGMENT/ORDER

ORDERS:

Her Honour, Ward CJ in Eq, makes the following orders:

1. Make Orders in accordance with the Short Minutes of Order provided to the Court, initialled and dated by her Honour today.

The Court orders that:

1 On the solicitors for the Plaintiffs undertaking to pay the requisite filing fee and any other fees (if any), the Plaintiffs have leave to file in Court, returnable instant:

- (a) the Summons dated 22 June 2021;
- (b) the affidavit of Bernard Colin Walrut affirmed 22 June 2021;
- (c) the second affidavit of Bernard Colin Walrut affirmed 22 June 2021; and
- (d) the affidavit of Catherine Margaret Conneely sworn 22 June 2021.

2 Pursuant to section 70 of the Trustee Act 1925 (NSW) (Trustee Act) KordaMentha Shelf Co (APMSPSAF) ACN 642 981 799 Pty Ltd of Level 31, 525S Collins Street, Melbourne VIC 3000 (New Trustee) be appointed in substitution for PP New Pty Ltd ACN 088 406 437 as trustee of the APM Security Plan Sickness & Accident Fund ABN 57 413 197 086 (Fund) trust (Trust).

3 Pursuant to section 71 of the Trustee Act that all property held on trust for the Fund under the Trust (Property) be vested in the New Trustee, including but not limited to:

- (a) 289,200 fully paid ordinary shares in Amcor Plc shares;
- (b) 289,200 fully paid ordinary shares in Orora Ltd shares;
- (c) lot 15 in deposited plan 9417 being the property located at 69 Victory Parade, Tascott NSW 2250;
- (d) lot 16 in deposited plan 9417 being the property located at 67 Victory Parade, Tascott NSW 2250; and

(e) cash assets held in the following bank accounts:

(i) bank accounts with Bank Australia for Customer Number 2055554 (in the name of Apm Sick.& Accident Fund), having numbers:

(A) 19237311;

(B) 138010423;

(C) 138010430;

(D) 138010445;

(E) 138010482;

(F) 138011168;

(G) 138011169;

(H) 138011166;

(I) 138011167; and

(J) 138011186;

(ii) bank accounts with St George Bank having numbers 000 0392345349, 000 0393455671, 000 0393754611 and 059144771 (in the name of APM Sickness and Accident Fund); and/or

(iii) bank accounts otherwise in the name of the Fund, or managed by or on behalf of the Fund.

4 Pursuant to section 81 of the Trustee Act, section 90 of the Civil Procedure Act 2005 (NSW) and rule 36.1 of the Uniform Civil Procedure Rules 2005 (NSW), the New Trustee is authorised to undertake the following course of action (Course of Action):

(a) provide notice to current and past members of the Fund (Members), creditors, claimants and contributories or potential creditors, claimants and contributories of the Fund (Claimants) and the persons who have been acting as officeholders on behalf of the Fund (together, Interested Persons) (Notice):

(i) of the orders made in this proceeding;

(ii) seeking information and documentation about the Fund and Trust;

(iii) seeking notification of any claims in respect of the Property; and

(iv) seeking the Interested Persons' opinion about the winding up of the Fund or any alternatives to winding up the Fund.

(b) issue the Notice by:

(i) sending the Notice to the known email addresses of the Interested Persons;

(ii) sending the Notice to known addresses of the Interested Persons;

(iii) publishing the Notice on KordaMentha's website being www.kordamentha.com; and

(iv) publishing the Notice in The Australian and the Sydney Morning Herald;

(c) provide the Interested Persons with not less than 28 days' notice from publication of the Notice in the Sydney Morning Herald and The Australian so as to obtain professional advice and representation in respect of any matters the subject of the Notice;

(d) after the expiration of the 28 day notice period from publication of the Notice in the Sydney Morning Herald and The Australian, bring a further application to the Court seeking directions for the convening of a meeting of the Interested Persons to consider the Fund's future (and any other consequential directions to facilitate this);

(e) for the purposes of subparagraphs (a) to (d) above:

(i) conduct a review of the books and records of the Fund and any additional information obtained after issuing the Notice;

(ii) identify the Interested Persons;

(iii) liaise with the Interested Persons and financial institutions; and

(iv) identify the Property and liabilities of the Fund, including any Property held in the name of individuals or other third parties on behalf of the Fund;

(f) obtain professional representation for the purposes of subparagraphs (a) to (e) above;

5 Pursuant to section 85 of the Trustee Act, the First Plaintiff is relieved from any personal liability for breach of trust by reason only of commencement of this proceeding.

6 Pursuant to section 93 of the Trustee Act, the First Plaintiff's costs and expenses of and incidental to this proceeding are to be paid on an indemnity basis out of the assets of the Trust.

7 Pursuant to section 93 of the Trustee Act, the Second Plaintiff's costs and expenses of and incidental to this proceeding are to be paid on an indemnity basis out of the assets of the Trust.

8 Pursuant to section 59(4) of the Trustee Act, the Second Plaintiff's future remuneration and disbursements in connection with the Course of Action are to be paid from the assets of the Trust on an indemnity basis, as and when the Second Plaintiff considers appropriate subject to order 10 below.

9 Pursuant to s.90 of the Civil Procedure Act, the Second Plaintiff make such application for advice and/or orders as it may be advised, within 120 days of the issuing of a Notice as contemplated by order 4(a) above, and any person claiming an interest in the affairs or property of the Fund and/or Trust shall be entitled to seek leave to appear in any such proceeding.

10 Pursuant to s.90 of the Civil Procedure Act, at least every 6 months from the date hereof until further or other order, the Second Plaintiff make application to the Court for review of its remuneration and disbursements paid in accordance with order 8 in the prior 6 month period.

11 The Second Plaintiff have leave to apply to Ward CJ in Eq in chambers to amend or vary the terms of orders 3, 4 or 9 if any circumstances so require.

SEAL AND SIGNATURE



Signature	J.Dermoudy (L.S.)
Capacity	Chief Clerk
Date	22 June 2021

If this document was issued by means of the Electronic Case Management System (ECM), pursuant to Part 3 of the Uniform Civil Procedure Rules (UCPR), this document is taken to have been signed if the person's name is printed where his or her signature would otherwise appear.