



McGrathNicol

5 March 2024

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Brite Advisors Pty Ltd (In Liquidation) (Receivers and Managers Appointed)
ACN 135 024 412
(Brite Advisors)

Application - Federal Court of Australia WAD 13 of 2024
AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION V BRITE ADVISORS PTY LTD
ACN 135 024 412 (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION)

I refer to the appointment of Rob Kirman and I as court-appointed receivers and managers (**Receivers and Managers**) of Brite Advisors pursuant to the orders of Justice O'Sullivan of the Federal Court of Australia on 6 February 2024.

Pursuant to those orders, the Receivers and Managers have liberty to apply to the Court.

We hereby give you notice that the Receivers and Managers have, on 5 March 2024, filed an application with the Federal Court of Australia which seeks orders to enable the Receivers and Managers to appoint an interim fund manager to manage risks, preserve assets and otherwise protect the interests of beneficiaries in relation to the client assets under management (**Client AuM**) held on trust by the Receivers and Managers (**Application**).

A copy of the minute of proposed orders sought in respect of the Application is **attached** for your information. Please note that the Receivers and Managers also seek orders that the materials filed in support of the Application may be published on our website.

The hearing of the Application is listed for Wednesday 6 March 2024 at 1.45pm (AWST).

Any further enquiries may be directed to the Receivers and Liquidators at briteadvisors@mcgrathnicol.com.

Yours faithfully

Linda Smith
Liquidator
Receiver and Manager

Enclosures:

- 1 Court Orders dated 6 February 2024
- 2 Orders sought in respect of the Application



Federal Court of Australia

District Registry: Western Australia

Division: General

No: WAD13/2024

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION

Plaintiff

BRITE ADVISORS PTY LTD ACN 135 024 412

Defendant

ORDER

JUDGE: JUSTICE O'SULLIVAN

DATE OF ORDER: 06 February 2024

WHERE MADE: Adelaide

THE COURT ORDERS THAT:

1. Leave be granted to the plaintiff, who is released from the implied undertaking to the extent necessary, to rely on all of the documents filed in related proceedings, WAD 262/2023, save for:
 - (a) the confidential affidavit affirmed by Linda Methven Smith on 20 December 2023; and
 - (b) any affidavit or report filed by Ms Smith marked confidential.
2. Pursuant to s 461(1)(k) of the *Corporations Act 2001* (Cth) (**Corporations Act**), the defendant is wound up on just and equitable grounds.
3. Pursuant to s 472(1) of the Corporations Act, Linda Smith and Robert Kirman of McGrathNicol are appointed joint and several liquidators of the defendant (**Liquidators**).
4. The defendant is to pay the plaintiff's cost of the proceedings, and such costs as taxed or agreed be reimbursed out of the property of the defendant in accordance with s 466(2) of the Corporations Act.
5. Pursuant to s 57 of the *Federal Court of Australia Act 1976* (Cth), Linda Smith and Robert Kirman of McGrathNicol are appointed, jointly and severally, as receivers and managers (**Receivers**) over the property, assets and undertakings held by the Defendant on trust for another (**Trust Assets**).
6. The need for the Receivers to file a guarantee under rr 14.21 and 14.22 of the *Federal Court Rules 2011* (Cth) is dispensed with.
7. The Receivers are authorised to take possession of, preserve, maintain and sell the Trust Assets.



8. The Receivers have the power:

- (a) to do all things (including, but not limited to, the signing of any documents) for the realisation of the Trust Assets;
- (b) provided by s 420 of the Corporations Act as if the reference therein to 'the corporation' were to the trust on which the Trust Assets are held, together with the powers that a liquidator has in respect of property of a company (in its role as legal owner and trustee) pursuant to s 477(2) of the Corporations Act;
- (c) without limiting the powers granted pursuant to paragraphs 8(a) and (b), and subject to paragraph 11, to do all things necessary to attend to the following identified tasks:
 - (i) the identification of the Trust Assets and the trust liabilities;
 - (ii) the identification of trust creditors and distinguishing them from non-trust creditors (if any);
 - (iii) the ascertaining of the state of the accounts between the beneficiaries and the trustee;
 - (iv) assessing any request of a client of the Defendant for a superannuation or pension withdrawal and if deemed appropriate by the Receivers processing the withdrawal;
 - (v) the recovering of, or attempting to recover, the Trust Assets, including debts due to the trust(s);
 - (vi) the taking of possession of, collecting and protecting the Trust Assets;
 - (vii) the carrying on of any business of the trust on which the Trust Assets are held;
 - (viii) the realisation, or attempted realisation, of the Trust Assets;
 - (ix) the distribution of any proceeds of realisation to meet the claims of the creditors or persons whose debts were incurred in relation to the trust(s); and
 - (x) any matter in the administration of the trust(s) which is ancillary to the above to the extent to which it had to be undertaken for the purposes of the identified tasks.

9. In the period up to 5:00pm (ACDT) on 4 March 2024, the Receivers would be acting properly and are justified in, for the purposes of exercising their powers under paragraph 8 of these orders:

- (a) subject to sub-paragraphs 9(b) to 9(f), assessing and processing only regular superannuation and pension withdrawals that were in place as at 9 November 2023;
- (b) declining to assess or process any request for a superannuation or pension withdrawal to the extent that processing the requested withdrawal would result in the total withdrawals processed for an



individual beneficiary on and from 9 November 2023 to exceed 30% of the value of the beneficiary's investment recorded in Salesforce as at 9 November 2023;

- (c) directing any beneficiary that makes a request of the Receivers for a superannuation or pension withdrawal to submit that request to the relevant Corporate Trustee for that Corporate Trustee to make to the Receivers on the beneficiary's behalf;
 - (d) declining to assess or process any request for a superannuation or pension withdrawal received directly from a beneficiary, unless the beneficiary is unrepresented by a Corporate Trustee;
 - (e) requiring any request for a superannuation or pension withdrawal by a Corporate Trustee to be accompanied by such other information as the Receivers consider, in their sole discretion, is necessary to demonstrate to the satisfaction of the that it is appropriate for the requested withdrawal be processed by the Receivers under Order 8(c)(iv); and
 - (f) paying any superannuation or pension withdrawal that the Receivers deem appropriate to process in accordance with Order 8(c)(iv), from Trust Assets.
10. In the period up to 5:00pm (ACDT) on 4 March 2024, the Receivers are acting properly and are justified in paying from the Trust Assets:
- (a) trading expenses incurred by the defendant on and from 9 November 2023;
 - (b) trading expenses incurred by the defendant prior to 9 November 2023 but which the Receivers consider necessary to pay in order to continue to carry on the business of the defendant; and
 - (c) trading expenses incurred by any entity that is an 'associated entity' (as that term is defined in the Corporations Act) of the defendant which the Receivers and consider necessary to pay in order to perform and continue to perform their duties arising in or otherwise in connection with their appointment,
- to the extent that the cash held in the defendant's Westpac Operating Accounts is insufficient to meet those expenses.
11. Save for as permitted by these orders (including the orders and directions that apply in these proceedings by virtue of paragraph 9 above), the Receivers are justified and would be acting properly in not distributing any Trust Assets, or any part of them, to or for the benefit of any person asserting a claim to the Trust Assets (including the underlying individual beneficiaries) until further direction or order of the Court.
12. Subject to further order of the Court, WAD262/2023 and WAD13/2024 be case managed together.



Remuneration, costs and expenses

13. The Liquidators shall be entitled to reasonable remuneration properly incurred in the performance of their duties arising in connection with their appointment and in the exercise of their powers as may be approved by the Court on the application of the Liquidators to a Registrar (in such form as the Registrar directs and at no more than 14 day intervals), together with all costs and expenses, to be paid from the property of the defendant.
14. The Receivers shall be entitled to reasonable remuneration properly incurred in the performance of their duties arising in connection with their appointment and in the exercise of their powers as may be approved by the Court on the application of the Receivers to a Registrar (in such form as the Registrar directs and at no more than 14 day intervals), together with all costs and expenses, to be paid from Trust Assets.
15. There be liberty to any party to apply to the Court on 48 hours' notice.
16. There be liberty to the Liquidators and Receivers to apply to the Court on 48 hours' notice.

Date that entry is stamped: 6 February 2024

Sia Lagos
Registrar

Federal Court of Australia

District Registry: Western Australia

Division: General

No: WAD13/2024

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION

Plaintiff

BRITE ADVISORS PTY LTD ACN 135 024 412 (RECEIVERS AND MANAGERS APPOINTED)

Defendant

**COURT APPOINTED RECEIVER AND MANAGERS'
MINUTE OF PROPOSED ORDERS**

JUDGE: JUSTICE O'SULLIVAN

DATE OF ORDER: March 2024

WHERE MADE: Adelaide

THE COURT ORDERS THAT:

Managing Client AuM

1. Linda Smith and Robert Kirman of McGrathNicol (**Receivers and Managers**) would be acting properly and are justified in, for the purposes of exercising their powers under Order 8 of the 6 February 2024 orders, taking the following steps.
 - (a) Causing the Defendant to engage a suitability qualified interim fund manager (**Interim Fund Manager**) to:
 - (i) provide financial services on behalf of the Defendant;
 - (ii) monitor the property, assets and undertakings held by the Defendant on trust for another (**Trust Assets**);
 - (iii) provide advice to the Receivers and Managers relating to the Trust Assets and related issues; and
 - (iv) take any action, on instruction from the Receivers and Managers, in relation to dealing with Trust Assets and in accordance with subparagraph (b) below.
 - (b) Instructing the Interim Fund Manager to take any action which the Receivers and Managers consider appropriate to manage risks associated

with the Trust Assets, to maintain or preserve the Trust Assets or which are otherwise appropriate to protect the interests of the beneficiaries of the Trust Assets or a segment of the Trust Assets. Such action can include, but is not limited to, the following:

- (i) rebalancing the Trust Assets or a segment of the Trust Assets (through buying assets, selling assets, or both), with the aim of adjusting the risk profile of the Trust Assets, or that segment of the Trust Assets, such that it better reflects the overall risk mandated by the investment mandate or mandates applicable to the Trust Assets or that segment of the Trust Assets;
 - (ii) investing Trust Assets held as cash, with the aim of adjusting the risk profile of the Trust Assets, or the segment of the Trust Assets, with which that cash is associated, such that it better reflects the overall risk mandated by the investment mandate or mandates applicable to the Trust Assets or that segment of the Trust Assets.
- (c) Managing the Trust Assets on an aggregated basis and for the benefit of the beneficiaries as a whole
2. The Receivers and Managers would be acting properly and are justified in refusing to act on specific trading instructions received from individual beneficiaries, or the Corporate Trustees on behalf of beneficiaries.

Asset Preservation Orders

3. Order 6 of the orders made in WAD262/2023 on 13 December 2023 be varied by adding the words "*,or any person with custody or control of the Property of the Defendant,*" in the chapeau after the word employees.
4. The asset preservation orders made in WAD262/2023, as amended by order 3 above, shall not prevent the Receivers and Managers from dealing with the Trust Assets, as contemplated by order 1 above, where they consider such dealing appropriate:
- (a) to manage risks associated with the Trust Assets;
 - (b) to maintain or preserve the Trust Assets; or
 - (c) otherwise to protect the interests of one or more beneficiaries of the Trust Assets.

General

5. Order 9 of the orders made in this matter on 6 February 2024 be amended by deleting the words "*4 March 2024*" and replacing them with "*1 May 2024*".
6. Order 10 of the orders made in this matter on 6 February 2024 be amended by deleting the words "*4 March 2024*" and replacing them with "*1 May 2024*".
7. The Receivers and Managers be authorised to publish the Receivers and Managers' report to the Court dated 4 March 2024, on the creditor website established by them with respect to their appointments, with such redactions as permitted by the Court.