

IN THE SUPREME COURT OF NEW SOUTH WALES

No 252832 of 2015

DIVISION: EQUITY

REGISTRY: SYDNEY

CORPORATIONS LIST

IN THE MATTER OF BANKSIA SECURITIES LIMITED (IN LIQUIDATION)  
(RECEIVERS AND MANAGERS APPOINTED)  
ABN: 45 004 736 458

**THE TRUST COMPANY (NOMINEES) LIMITED**  
**ABN 14 000 154 441**  
Plaintiff

### **INTERLOCUTORY PROCESS**

#### **A. DETAILS OF INTERLOCUTORY APPLICATION**

This interlocutory application is made under rule 26.4 of the *Uniform Civil Procedure Rules 2005* (NSW) (**UCPR**), paragraph 4 of the Orders of the Honorable Justice Black made on 29 February 2016, section 283HB of the *Corporations Act 2001* (Cth) and the inherent jurisdiction of the court.

On the facts stated in the supporting affidavits, the applicant, Mr John Ross Lindholm in his capacity as special purpose receiver of Banksia Securities Limited (Receivers and managers Appointed) (In Liquidation) (**Banksia**) (**Special Purpose Receiver**), applies for the following relief:

#### *Settlement with the Elliott Entities*

1. An order that the Special Purpose Receiver has the power to settle all claims against Alexander Christopher Elliott, Pina Gabrielle Elliott, Maximillian Edward Elliott in his personal capacity and as executor of the deceased estate of Mark Edward Elliott, Edward Elliott, Olivia Elliott, Elliott Legal Pty Ltd, MCM (Mt

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Filed on behalf of: The Special Purpose Receiver/Liquidator

Prepared by:

**Maddocks**

Lawyers

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Ref: STK:MZG6207696

Attention: Sam Kingston

Buller) Developments Pty Ltd and Decoland Holdings Pty Ltd (together the **Elliott Entities**), on behalf of debenture-holders on the terms set out in the binding and conditional deed of settlement dated 22 December 2023 (**Elliott Settlement Deed**).

2. A direction that the Special Purpose Receiver is justified in settling all claims on behalf of debenture-holders against the Elliott Entities, including by taking no further steps to enforce the Remitter Judgment on behalf of debenture-holders against the Elliott Entities, on the terms set out in the Elliott Settlement Deed.

#### *Settlement with Mr Zita*

3. An order that the Special Purpose Receiver has the power to settle all claims against Anthony Zita (**Mr Zita**), on behalf of debenture-holders on the terms set out in the binding and conditional deed of settlement dated 27 February 2024 (**Zita Settlement Deed**).
4. A direction that the Special Purpose Receiver is justified in settling all claims on behalf of debenture-holders against Mr Zita, including by taking no further steps to enforce the Remitter Judgment on behalf of debenture-holders against Mr Zita, on the terms set out in the Zita Settlement Deed.

#### *Settlement with Mr Symons*

5. An order that the Special Purpose Receiver has the power to settle all claims against Michael William Loosemore Symons (**Mr Symons**), on behalf of debenture-holders on the terms set out in the binding and conditional deed of settlement dated 4 March 2024 (**Symons Settlement Deed**).
6. A direction that the Special Purpose Receiver is justified in settling all claims on behalf of debenture-holders, including by taking no further steps to enforce the Remitter Judgment on behalf of debenture-holders against Mr Symons on the terms set out in the Symons Settlement Deed.

#### *Additional Claims*

7. A direction that the Special Purpose Receiver is justified in not commencing any proceeding or bringing any claims on behalf of debenture-holders against

the Legal Practitioners' Liability Committee in relation to the policies of insurance held by Mr O'Bryan, Mr Symons, Elliott Legal, Mr Timbos and Portfolio Law.

8. A direction that the Special Purpose Receiver is justified in taking no further steps on behalf of debenture-holders to recover the judgment debt owed by Portfolio Law Pty Ltd under the Remitter Judgment.

### *Funding*

9. A direction that the Special Purpose Receiver was justified and acted reasonably in making each of the payments identified at paragraph 115 of the affidavit of John Ross Lindholm sworn 21 October 2024 from the funds held by the Special Purpose Receiver, each being a payment in respect of his remuneration or of the costs and expenses of the receivership.
10. A direction that the Special Purpose Receiver is justified and acting reasonably in paying any future unpaid remuneration, costs and expenses incurred in respect of the conduct of the special purpose receivership:
  - (a) in the first instance, from any funds representing unrepresented payments from previous distributions made to debenture-holders; and
  - (b) otherwise, from any other funds held by the Special Purpose Receiver.

### Remuneration

11. An order that the remuneration of the Special Purpose Receiver for the period 1 March 2022 to 30 April 2023 be approved and fixed in the sum of \$102,762.00 plus GST.
12. An order that the remuneration of the Special Purpose Receiver for the period 1 May 2023 to 30 November 2023 be approved and fixed in the sum of \$39,877.00 plus GST.
13. An order that the remuneration of the Special Purpose Receiver for the period 1 December 2023 to 31 July 2024 be approved and fixed in the sum of \$55,898.50 plus GST.

### Final Distribution

14. A direction that all sums received by the Special Purpose Receiver pursuant to the settlement referred to in paragraphs 1, 3 and 5 of this application be distributed to all debenture-holders of Banksia pari passu.
15. An order that the Special Purpose Receiver distribute such further amounts as he deems appropriate to the debenture holders of Banksia pursuant to his statutory duties as liquidator of Banksia.
16. An order that costs incurred by the Special Purpose Receiver in respect of the Final Distribution are costs incurred in the special purpose receivership.

#### Unpresented Payments

17. An order that, at the time of the Special Purpose Receiver's discharge, the Special Purpose Receiver is justified in distributing the remaining proceeds of any unpresented payments to a registered charitable organisation at the discretion of the Special Purpose Receiver.

#### Other matters

18. Such further or other orders as the Court thinks fit.

Date: 22 October 2024

  
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*Signature of applicant making this application or  
applicant's legal practitioner*

This interlocutory application will be heard by the Supreme Court of New South Wales at Law Courts Building, Queens Square, 184 Phillip Street, Sydney at \_\_\_\_\_ on \_\_\_\_\_ 2024.

#### **B. NOTICE TO RESPONDENT(S) (IF ANY)**

TO: N/A

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence.

Before appearing before the Court, you must, except if you have already done so or you are the plaintiff in this proceeding, file a notice of appearance, in the prescribed form, in the registry and serve a copy of it on the plaintiff in the originating process.

*Note: Unless the Court otherwise orders, a respondent that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.*

**C. FILING**

This interlocutory process is filed by Maddocks Lawyers for the applicant.

*Maddocks*

**D. SERVICE**

The applicant's address for service is Maddocks, Collins Square, Tower 2, Level 25, 727 Collins Street, Melbourne, Victoria, 3008.

It is intended to serve a copy of this interlocutory process on each respondent and on any person listed below:

The Australian Securities and Investments Commission of Level 7, 120 Collins Street, Melbourne VIC 3000.