

4 August 2017

**TO CREDITORS**

Dear Sir/Madam

**Killarnee Civil & Concrete Contractors Pty Ltd (In Liquidation)**  
**ACN 085 230 486 (the Company)**  
**ATF for the Thompson Family Trust**

**Liquidator's Application to the Federal Court of Australia (WAD 181/2016)**  
**- Further Re-amended Originating Process dated 29 May 2017**

We refer to our recent Circular to Creditors dated 19 July 2017 providing an update on the Liquidator's application to the Federal Court of Australia (**FCA**).

In reviewing our Circular, it is possible that the description of the directions and declarations sought by us in the proceeding may not have been articulated in full. For the sake of completeness, we summarise below the directions and declarations sought by us:

1. directions as to whether the secured creditor, Westpac Banking Corporation has a priority in the preference claim recover to the extent of the amounts paid to the employees by the Administrators / Liquidators; and
2. an order that any sale of the assets of the Thompson Family Trust (**Trust**) which have already taken place be deemed to be a sale within the power of the Liquidator and the Company as the trustee of the Trust; and
3. an order that the Company through its Liquidator be permitted to realise all Trust assets; and
4. a declaration that the Trust assets (including sale proceeds of any Trust assets) are assets in the winding up of the Company to be applied in accordance with the priority afforded by sections 555, 556, 560 and 561 of the Corporations Act (**the Act**); and
5. a direction that the Trust assets be dealt with by the Liquidator as assets in the winding up of the Company and accounted for accordingly; and
6. as an alternative to items 4 and 5 above, a direction be given that it is proper for the Liquidator to distribute the Trust Assets to unsecured creditors of the Trust *pari passu* after providing for the costs of administration.

A copy of the further re-amended Originating Process dated 29 May 2017 is enclosed.

This Circular should be read in conjunction with our previous circular/report to creditors on 19 July 2017, 16 May 2016, 19 July 2016, 9 September 2016 and 8 March 2017. Copies of the circulars and reports are available on the Ferrier Hodgson website at [www.ferrierhodgson.com](http://www.ferrierhodgson.com).

The Full Court of the FCA will hear the questions on the trust issues on **10 and 11 August 2017** at 10.15am AWST. Should creditors require any further details in relation to the proceeding, please contact Nirav Shah ([Nirav.Shah@fh.com.au](mailto:Nirav.Shah@fh.com.au)) or Yvonne Liew ([Yvonne.Liew@fh.com.au](mailto:Yvonne.Liew@fh.com.au)) of this office on (08) 9214 1444.

Creditor(s) who have any objection to the orders sought by the Liquidator are advised to inform the Liquidator in writing and provide the ground(s) of your objection (including any relevant supporting documents, where applicable) as soon as possible. Alternatively, if you wish to be heard, you must file a notice of appearance, in the prescribed form, with the Federal Court Registrar and serve a copy of it on the Liquidator.

If you have any further queries in relation to this matter or the conduct of the liquidation generally, please contact either Nirav Shah ([Nirav.Shah@fh.com.au](mailto:Nirav.Shah@fh.com.au)) or Yvonne Liew ([Yvonne.Liew@fh.com.au](mailto:Yvonne.Liew@fh.com.au)) of this office on (08) 9214 1444.

Yours faithfully

**Killarnee Civil & Concrete Contractors Pty Ltd**



**Martin Jones**  
Joint and Several Liquidator

Encl

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 16/05/2017 2:02:58 PM AWST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

### Filing and Hearing Details

|                            |   |
|----------------------------|---|
| Document Lodged:           | Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2                    |
| File Number:               | WAD181/2016   |
| File Title:                | In the matter of Killarnee Civil & Concrete Pty Ltd (in liquidation)                              |
| Registry:                  | WESTERN AUSTRALIA REGISTRY - FEDERAL COURT OF AUSTRALIA   |
| Reason for Listing:        | Directions  |
| Time and date for hearing: | 29/05/2017, 9:45 AM   |
| Place:                     | Court 1, Level 7, Peter Durack Commonwealth Law Courts Building Level 6, 1 Victoria Avenue, Perth |



A handwritten signature in blue ink, appearing to read 'Warwick Soden'.

Dated: 16/05/2017 2:20:24 PM AWST

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 2

**Further Re-Amended Originating process amended pursuant to  
Order of Siopis J 12 May 2017**

(rules 2.2 and 15A.3)

Federal Court of Australia

WAD 181 of 2016

District Western Australia  
Registry:

Division: General

IN THE MATTER OF KILLARNEE CIVIL & CONCRETE CONTRACTORS PTY LTD (IN LIQUIDATION)

ACN: 085 230 486

**MARTIN BRUCE JONES IN HIS CAPACITY AS THE LIQUIDATOR OF KILLARNEE CIVIL & CONCRETE PTY LTD (IN LIQUIDATION)**

Plaintiff

and

**MATRIX PARTNERS PTY LTD**

Defendant

**A. DETAILS OF APPLICATION**

This application is made under 511 of the Corporations Act 2001 (Cth) (**Corporations Act**) and s. 89 of the Trustees Act 1962 (WA) for the determination of a question in the winding up of Killarnee Civil & Concrete Contractors Pty Ltd (In Liquidation) ACN 085 230 586 (**Company**).

On the facts stated in the supporting affidavit, the plaintiff claims:

1 Directions on the following questions:

- (a) Whether it would be proper for the Plaintiff to pay the debt of Westpac Banking Corporation ACN 007 467 141 (**Westpac**) (or some of it) from the Company's monies within the Plaintiffs' control in priority to the ordinary unsecured creditors of the Company.
- (b) If the above direction is yes, how much is Westpac entitled to be paid in priority.

Filed on behalf of (name & role of party) Plaintiff  
Prepared by (name of person/lawyer) Lee Christensen  
Law firm (if applicable) Lemonis/Tantiprasut  
Tel 08 9420 5000 Fax 08 9420 5001  
Email lchristensen@ltlawyers.com.au  
**Address for service** Ground Floor, 1138 Hay Street, WEST PERTH WA 6005 Ref: 17008  
(include state and postcode)

[Form approved 01/08/2011]



- 2 An order pursuant to section 89(1) of the *Trustees Act 1962 (WA)* that any sale of the assets of the Thompson Family Trust (**Trust**) which have already taken place be deemed to be a sale within the power of Martin Bruce Jones as the liquidator of the Company (**Liquidator**) and the Company as the trustee of the Trust.
- 3 An order pursuant to section 89(1) of the *Trustees Act 1962 (WA)* and section 511 of the *Corporations Act 2001 (Cth)* that the Company through its Liquidator be permitted to realise all assets of the Trust.
- 34 A declaration that the Trust assets (including the proceeds of sale of any Trust assets) (**Trust Assets**) are assets in the winding up of the Company to be applied in accordance with the priority regime established by sections 555, 556, 560 and 561 of the *Corporations Act 2001 (Cth)*.
- 5 A ~~D~~irection pursuant to section 511 of the *Corporations Act 2001* that the Trust ~~assets~~ Assets (including the proceeds of sale of any Trust assets) to unsecured creditors be dealt with by the Liquidator as assets in the winding up of the Company and accounted for accordingly.
- 46 In the alternative to ~~the declarations and directions in paragraphs 4 and 5 above~~ ~~order 4~~, a direction be given that it is proper for the ~~Plaintiff~~ Liquidator to distribute the Trust ~~a~~ Assets (including the proceeds of sale of any Trust assets) to unsecured creditors of the Trust *pari passu* after providing for the costs of administration (including the Administrators and Liquidators remuneration and expenses) only.
- 57 The costs of the application be costs of the winding up of the Company and paid from the Trust's assets.

Date:

*Lemona Tamprocut*

.....  
Signed by Lee Christensen  
Lawyer for the Plaintiff

This application will be heard by the Federal Court of Australia at Commonwealth Law Courts, 1 Victoria Avenue, Perth at .....am/pm on .....



**B. NOTICE TO DEFENDANT(S)**

**C. APPLICATION FOR WINDING UP ON GROUND OF INSOLVENCY**

NOT APPLICABLE

**D. FILING**

Date of filing: 16 May 2017

.....  
*Registrar*

This further re-amended originating process is filed by Lemonis/Tantiprasut, solicitors for the Plaintiff.

**E. SERVICE**

The plaintiff's address for service is  
C/- Lemonis/Tantiprasut  
Ground Floor  
1138 Hay Street  
WEST PERTH WA 6005

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

David Paul Cowling  
King & Wood Mallesons  
Level 61 Governor Phillip Tower  
1 Farrer Place  
SYDNEY NSW 2000  
Lawyer for the Commonwealth Department of Employment

Alistair Fleming  
Clayton Utz  
Level 27  
250 St Georges Terrace  
PERTH WA 6000  
Lawyer for Westpac Banking Corporation

Bonnie Scovell  
Edwards Mac Scovell  
Level 7  
140 St Georges Terrace  
PERTH WA 6000  
Lawyer for Matrix Partners