



Federal Court of Australia

District Registry: Western Australia

Division: General

No: WAD262/2023

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION

Plaintiff

BRITE ADVISORS PTY LTD ACN 135 024 412

Defendant

ORDER

JUDGE: JUSTICE O'SULLIVAN

DATE OF ORDER: 21 December 2023

WHERE MADE: Perth

For the purposes of this Order:

"13 December Orders" means the Orders made by this Court on 13 December 2023.

"Beneficiary" means individuals whose superannuation and pension funds are under management by the defendant.

"Brite Group Entity" means any entity that is an associated entity (as that term is defined in the *Corporations Act 2001* (Cth)) of the defendant.

"Client AuM" has the meaning ascribed in Order 1 of the 13 December Orders.

"Corporate Receivers and Managers" has the meaning ascribed in Order 1 of the 13 December Orders.

"Corporate Trustees" means the superannuation and pension fund trustee clients of the defendant.

"Data Systems" means all data systems used in the conduct of the business associated with the Client AuM and includes, without limitation, the G-Suite and Salesforce.



"*G-Suite Data*" means all data contained on the Google Workspace cloud-based storage account held with respect to the Brite Group Entities.

"*Investigative Accountants*" has the meaning ascribed in Order 1 of the Orders made by this Court on 9 November 2023

"*Property*" means all real or personal property, assets or interests in property of any kind, within or outside Australia and includes any property held otherwise than as sole beneficial owner (for example, as trustee for, as nominee for, or otherwise on behalf of or on account of, another person, or in a fiduciary capacity) and for the avoidance of doubt includes all such property held on behalf of, or on account of, the defendant whether directly or indirectly by any entity.

THE COURT ORDERS THAT:

Confidentiality

1. Pursuant to FCR 2.32, until 5:00pm (ACDT) on 6 February 2024, the Fourth Affidavit of Linda Methven Smith affirmed on 20 December 2023 be marked confidential, remain sealed upon the Court file and be kept confidential save as to the Corporate Receivers and Managers, their legal advisors, the Plaintiff and its legal advisors.

Books and records

2. The directors of the defendant are to immediately:
 - (a) deliver up, or cause to be delivered up, to the Corporate Receivers and Managers all G-Suite Data;
 - (b) provide the Corporate Receivers and Managers, or cause them to be provided, access to all Data Systems;
 - (c) direct each Brite Group Entity to immediately:
 - (i) deliver up to the Corporate Receivers and Managers all Property within its possession, custody or control, including the G-Suite Data and data contained on the Data Systems; and
 - (ii) grant the Receivers and Managers full access to all Data Systems;
 - (d) direct Mark Donnelly and Francois Vauville to immediately:
 - (i) provide, or cause to provide, to the Corporate Receivers and Managers with "super admin" access to the Data Systems; and



- (ii) take, or cause to be taken and provided immediately, to the Corporate Receivers and Managers, an electronic image of the G-Suite Data;
 - (e) direct Mark Donnelly and Richard Lissenden to provide or cause to be provided immediately to the Corporate Receivers and Managers, any and all books and records relating to the Client AuM and any other Property within their possession, custody or control; and
 - (f) direct any third party provider involved in the provision of any Data Systems relating to the Client AuM to provide immediately to the Corporate Receivers and Managers with access to and books and records in relation to such Data Systems.
3. The requirement to provide an undertaking as to damages be dispensed with.

Directions as to superannuation and pension withdrawal requests

4. The Corporate Receivers and Managers would be acting properly and are justified in, for the purposes of exercising their powers under Order 1(k) of the 13 December Orders:
- (a) subject to sub-paragraphs 4(b) to 4(f), assessing and processing only regular superannuation and pension withdrawals that were in place as at 9 November 2023 (being the date of appointment of the Investigative Accountants);
 - (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 Corporate Receivers and Managers for a superannuation or pension withdrawal to submit that request to the relevant Corporate Trustee for that Corporate Trustee to make to the Corporate Receivers and Managers on the Beneficiary's behalf; and
 - (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 Corporate Receivers and Managers consider, in their sole discretion, is necessary to demonstrate to the satisfaction of the Corporate Receivers and



Managers that it is appropriate for the requested withdrawal be processed by the Corporate Receivers and Managers under Order 1(k) of the 13 December Orders; and

- (f) paying any superannuation or pension withdrawal that the Corporate Receivers and Managers deem appropriate to process in accordance with Order 1(k) of the 13 December Orders as varied and supplemented by these orders, from Client AuM.

Directions as to trading costs

- 5. In the period up to 5:00pm (ACDT) on 6 February 2024, the Corporate Receivers and Managers are acting properly and are justified in paying from the Property, including the Client AuM:
 - (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 Corporate Receivers and Managers consider necessary to pay in order to continue to carry on the business of the defendant; and
 - (c) trading expenses incurred by any Brite Group Entity which the Corporate Receivers and Managers 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.

Costs and expenses of Investigative Accountants and Corporate Receivers and Managers

- 6. Order 4 of the Orders made by this Court on 9 November is vacated.
- 7. Order 4 of the 13 December Orders is vacated.
- 8. Subject to order 9 below, in the exercise of their powers, the Corporate Receivers and Managers are acting properly and justified in paying from the Property, their and the Investigative Accountants reasonable costs and expenses properly incurred in the performance of their duties arising in or otherwise in connection with their appointments as Investigative Accountants and Corporate Receivers and Managers in such sum as a Registrar of the Court considers appropriate.



9. For the purposes of order 8 above, the Corporate Receivers and Managers are to submit to a Registrar of the Court in such form as the Registrar directs and at no more than 14 day intervals, their claim and the claim of the Investigative Accountants for costs and expenses

Remuneration of the Corporate Receivers and Managers for their appointment as Investigative Accountants

10. Subject to order 11 below in the exercise of their powers, the Corporate Receivers and Managers are acting properly and are justified in paying from the Property, the Investigative Accountants' reasonable remuneration properly incurred in the performance of their duties arising in or otherwise in connection with their appointment as Investigative Accountants in such sum as a Registrar of the Court considers appropriate.
11. For the purposes of order 10 above, the Corporate Receivers and Managers are to submit to a Registrar of the Court in such form as the Registrar directs and at no more than 14 day intervals, any claim for the Investigative Accountants' remuneration.
12. The Corporate Receivers and Managers be indemnified from the Property against any claim, liability, proceedings, cost, charge or expense however arising and whether past, present or future, fixed or ascertained, actual or contingent, known (actually or contingently) or unknown which they may properly incur or be subject to as a result of or in connection with their appointment as Investigative Accountants.
13. For the avoidance of doubt, the entitlement of the Corporate Receivers and Managers to be paid or indemnified from the Property under orders 10 and 12 is not restricted or in any way limited by whether they are acting as receivers of property which is held beneficially or non-beneficially and they are entitled to treat the Property as a single combined pool of property for those purposes.

Remuneration of the Corporate Receivers and Managers

14. Subject to order 15 below in the exercise of their powers, the Corporate Receivers and Managers are acting properly and are justified in paying from the Property, their reasonable remuneration, properly incurred in the performance of their duties arising in or otherwise in connection with their appointment as Corporate Receivers and Managers, in such sum as a Registrar of the Court considers appropriate.



15. For the purposes of order 14 above, the Corporate Receivers and Managers are to submit to a Registrar of the Court in such form as the Registrar directs and at no more than 14 day intervals, any claim by them for their remuneration.
16. The Corporate Receivers and Managers be indemnified from the Property against any claim, liability, proceedings, cost, charge or expense however arising and whether past, present or future, fixed or ascertained, actual or contingent, known (actually or contingently) or unknown which they may properly incur or be subject to as a result of or in connection with their appointment.
17. For the avoidance of doubt, the entitlement of the Corporate Receivers and Managers to be paid or indemnified from the Property under orders 14 and 16 above is not restricted or in any way limited by whether they are acting as receivers of property which is held beneficially or non-beneficially and they are entitled to treat the Property as a single combined pool of property for those purposes.

Notice of orders to third parties

18. The Corporate Receivers and Managers are to serve forthwith by email a copy of these orders on:
 - (a) each of the Corporate Trustees;
 - (b) each of the directors of the defendant; and
 - (c) each of Mr Mark Donnelly, Mr Francois Vauville and Mr Richard Lissenden.

General

19. There be liberty to any party to these proceedings and to the Corporate Receivers and Managers to apply to the Court on 48 hours' notice.
20. The Receivers and Managers' reasonable costs and expenses of this application be payable from the Property in such sum as may be approved by the Registrar of the Court.
21. The matter is adjourned to a case management hearing at 11:30am (ACDT) on 6 February 2024.

Date that entry is stamped: 22 December 2023


Registrar