



ANGAS SECURITIES LIMITED ABN 50 091 942 728
AUSTRALIAN FINANCIAL SERVICES LICENCE NO. 232 479

12 February 2018

MARKET UPDATE ON CONTESTED CIVIL PROCEEDINGS UNDERWAY

The Company is the subject of proceedings brought in South Australia and New South Wales by parties associated with failed borrowers and a former consultant. Defending these proceedings has put the Company to some expense. Cost orders and security for cost orders have been obtained wherever possible.

1. CLAIMS BROUGHT OR INSTIGATED BY JAMES MICHALAKAS

1.1 James Michalakas v Angas Securities - District Court of South Australia No 2376 of 2012

On 4 April 2013, the District Court dismissed a legal claim brought against the Company by James Michalakas in November 2012. Angas Securities applied to the Court for summary judgment.

Claim for losses allegedly incurred by Mr Michalakas after his companies, Garden Estate Christies Pty Ltd and Garden Estate Hackham Pty Ltd, were placed in receivership. These companies controlled retirement estates at Christies Beach and Hackham. Each company had relied on Angas Securities for funding to purchase the properties.

The District Court found that Mr Michalakas had been made bankrupt at the time he brought the action. His Bankruptcy trustee informed the court that he did not intend to pursue any action against Angas Securities. Summary judgment in the action was granted in favour of Angas Securities.

In his judgment, Master Norman said:-

- Angas Securities was "facing a very large claim with associated inconvenience, embarrassment and cost in circumstances where the claim is untenable and cannot succeed".
- "The plaintiff had an opportunity of attending to make submissions but his solicitor elected not to do so, although given the opportunity."
- "The actions of the defendant are not an attempt to take advantage of the plaintiff's bankruptcy because even if he were not bankrupt, his claim would be untenable."

1.2 Jennifer Michalakas v Angas Securities - Supreme Court of South Australia No 1637 of 2013

On 13 May 2014, the Supreme Court dismissed the application by the wife of James Michalakas (who was appointed director in his place) for leave to commence proceedings against Angas Securities on behalf of Garden Estate Hackham Pty Ltd (Receivers and Managers Appointed).

In his judgment, Master Withers said:-

- "In my view, the plaintiff (Mrs Michalakas) fails to establish good faith."
- "I am not satisfied that the plaintiff has established that is in the best interest of the company for permission to be given for the proposed proceedings to be instituted."

Mrs Michalakas appealed against this ruling to the Full Court.

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1.3 Jennifer Michalakas v Powell and Duncan as Receivers of Garden Estate Hackham Pty Ltd - Supreme Court of South Australia (2014) Full Court

On 28 November 2014 the Full Court dismissed the appeal brought by Mrs Michalakas against the Masters ruling. It was found that Mrs Michalakas had failed to provide sufficient evidence that the proposed proceedings demonstrated that there was a serious question to be tried or that such proceedings would be in the best interest of Garden Estate Hackham.

In her Reasons for Judgment published on behalf of Full Court, Justice Vanstone observed:-
"The elliptical form in which loss is pleaded denies the claim of any prospect of success. The draft statement of claim pleads that the residence contracts model was abandoned and that the facility was instead divided into community titles. There is no pleading as to the capital gains or income stream which Garden Estate would have derived from its residence contracts scheme. The draft statement of claim pleads that, even on the community title model, the land so subdivided could have been sold at a great profit over the purchase price of the facility, but fails to plead how the conduct of Angas Securities caused the failure of the model. In any event, no supportive evidential material is identified by Mrs Michalakas. The evidentiary deficits entirely undermine the contention that the proposed case is viable."

1.4 Garden Estate Hackham Pty Ltd & Garden Estate Christies Pty Ltd v Angas Securities, Duncan and Powell – Supreme Court of South Australia No 1215 of 2016

On 21 September 2016, further proceedings were issued in respect of the same subject matter without notice to Angas Securities. The proceedings were served on Angas Securities one year later. James had been discharged from his bankruptcy.

On 25 January 2018 the Chief Justice of South Australia (who had presided over the Full Court which dismissed the appeal brought by Jennifer Michalakas) heard an application by Angas Securities to strike out the proceedings. The following substantive orders were made by the Chief Justice:-

- The statement of claim is struck out;
- The proceedings are stayed until further order;
- The director of the plaintiff companies must provide security for any adverse cost orders that might be made against the companies in the sum of \$20,000 by payment into Court, or in another form agreed by the defendants, by close of business on 23 February 2018;
- The parties have liberty to apply on the question of security.

2. CLAIM BROUGHT BY WARREN ANDERSON FAMILY TRUST

2.1. MCDS Group Nominees Pty Ltd v Angas Securities, Duncan and Powell – Supreme Court of NSW No 193433 of 2016

Owston Nominees No 2 Pty Ltd (In Liquidation) (Receivers and Managers Appointed) ("Owston") as trustee of the Warren Anderson Trust borrowed funds from Angas Securities and defaulted on the loan. Messrs Duncan & Powell were appointed Receivers and Managers. They appointed Bonhams to conduct an auction of Owston's antiques, paintings and other valuables at the Overseas Passenger Terminal at Sydney Harbour on 25, 26 & 27 June 2010. Mr Anderson failed in his attempt to restrain the auction. His request for an injunction was refused. The auction proceeded and more than \$15 million was realized. The remaining asset of Owston was Fernhill Estate at Mulgoa, NSW.

Following the Bonhams auction, Owston was wound up on 12 November 2010 by the Supreme Court of Western Australia. Despite being an undischarged bankrupt, Mr Anderson purported to remove Owston as Trustee of the Warren Anderson Trust and appoint MCDS Group Nominees Pty Ltd ("MCDS") as Trustee. MCDS lodged caveats over Fernhill Estate and commenced proceedings against Angas Securities in June 2016 being six years less one day from the Bonhams auction.

On 13 October 2016 Justice Darke made an order that the MCDS caveat be removed. He observed:-

"It is relevant to note, in considering the strength of the plaintiffs' claims, that despite the fact that aspects of the receivership have previously been the subject of litigation in which either or both of Owston and Mr. Anderson were parties, there has not previously been any dispute that Owston was significantly in debt to Angas. It was not contended in such litigation that there was no debt owing at the time any of the receivers were appointed. It was not contended in such litigation that no power of sale has arisen. The earlier litigation includes proceedings in 2012 in which Mr. Anderson unsuccessfully sought to restrain Angas from exercising its power of sale over the property.

I note that the plaintiffs also suggest that the sale process being undertaken by Angas amounts to a "Fire Sale". I am unable to accept that suggestion, which in my view is not made out on the evidence of Mr. Anderson to which I was referred to in this regard. On the contrary, the weight of evidence suggests that Angas has made considerable efforts over many years to sub-divide and then proceed to sell the property. The evidence shows that Angas has undertaken significant work in relation to the sub-division, marketing and sale of the property over a number of years. Preventing completion of the two contracts will of course have a detrimental impact upon the purchasers under those contracts".

Angas Securities then applied for an order that MCDS provide security for its costs. The sole director of MCDS (Mr Anderson's daughter) gave evidence that the Warren Anderson Trust has no capacity to pay the money sought as security for costs. On 25 November 2016 Justice Rein stayed the action until MCDS paid the sum of \$305,000 into Court. He stated in his judgment:-

"I do not think it is appropriate to require the defendants to defend this case without the prospect of a fund from which they could recoup their costs from the plaintiff should they successfully defend the proceedings having regard to MCDS's position as an impecunious corporate trustee, the weakness of MCDS's case and the extensive proceedings upon which MCDS wishes to embark."

2.2. MCDS Group Nominees Pty Ltd v Angas Securities, Duncan and Powell – Supreme Court of NSW No 367160 of 2016

The Warren Anderson Trust brought an appeal against the security for costs order. A hearing was listed in the Court of Appeal on the 26 May 2017 in which MCDS sought leave to appeal against the security for costs application. This was discontinued on the day before the hearing.

2.3. MCDS Group Nominees Pty Ltd v Angas Securities, Duncan and Powell – Supreme Court of NSW No 367160 of 2016

On December 2017, the Warren Anderson Trust paid \$305,000 into Court as directed by Justice Rein. The proceedings remain stayed. It is now up to Warren Anderson Trust to take a further step in the proceedings

3. CLAIM BROUGHT BY TERMINATED CONSULTANT PAUL CUBELIC

3.1 Notice of Termination

Angas served notice on Paul Cubelic of Cubelic Holdings Pty Ltd ("Cubelic") who had agreed to provide certain consultancy services to ASL to commercialise bio-credit opportunities at Fernhill ("the Services").

3.1.1. Angas says that:

- Cubelic agreed to provide the consultancy services in a "professional, efficient, diligent and competent manner...lawfully...with due care and skill and to the best of (his) knowledge and expertise" ("**Obligations**").
- Cubelic would receive remuneration from Angas for providing the consultancy services ("**the Remuneration**").

- Cubelic had the use of and used ASL's intellectual property relating to Fernhill ("**the Intellectual Property**").
- Cubelic had the use of and used ASL's confidential information relating to Fernhill ("**the Confidential Information**").
- It could terminate Cubelic's Services by notice in writing "*immediately and without further notice if (Cubelic) engage(d) in an act of dishonesty.*"
- It was an implied term of the Consultancy Agreement that Cubelic would refrain from acting in a manner where his personal interests conflicted with those of Angas.

3.1.2. Angas contends that Cubelic engaged in the following conduct while performing the Services:

Cubelic caused offers ("**the Cubelic Offers**") to be made to purchase properties comprising Fernhill ("**the Fernhill Properties**") at prices well below market value in circumstances where:

- He knew that Angas had already negotiated sales of some of the Fernhill Properties and was well advanced in dealings in respect of others
- Cubelic represented that the Fernhill Properties were "*assets with very low percentage of income yield with Biobanking restrictions*".
- Cubelic did so with intimate knowledge of the properties because of his access to and use of the Commercial Information, the Confidential Information and the Intellectual Property.
- Cubelic made contact with Angas stakeholders in a manner which actively undermined the steps that Angas was taking to obtain full market value for the Fernhill properties.

3.1.3. Angas told Cubelic that his conduct was dishonest, improper and in conflict with his role as a consultant to Angas because:-

- Cubelic did not seek the permission of Angas to make the Cubelic Offers nor to make contact with Angas Stakeholders and discuss sale of the Fernhill Properties.
- Cubelic did not seek the permission of Angas to disclose the Commercial Information in the Cubelic Offers.
- The Cubelic Offers refer to the Commercial Information which was done by Cubelic solely for the purpose of negotiating a sale of the Fernhill Properties for a price that favoured Cubelic's interests and not the interests of Angas.
- Cubelic's attempts to undermine the negotiations by Angas could only have been for the purpose of disposing of existing arrangements Angas had for the sale of the Fernhill Properties to enable him to then promote the Cubelic Offers as an alternative.

3.1.4. Angas gave notice to Cubelic that it has terminated the Consultancy Agreement and reserved its rights in respect of any loss or damage it may have suffered in consequence of the conduct.

3.2. Cubelic Holdings Pty Ltd v Angas Securities – Supreme Court of NSW No 258682 of 2017

These proceedings were commenced by Cubelic seeking his remuneration. Cubelic disputes that Angas had the right to terminate his consultancy. Because Cubelic operated through a trust structure, Angas queried the capacity of the plaintiff to meet an adverse cost order. It was agreed that Cubelic should pay \$50,000 into court as security for costs. Cubelic made his payment on 22 December 2017.

The Cubelic action is being defended by Angas. It will now proceed to mediation once both parties have fulfilled the usual procedures of the Court.

A handwritten signature in black ink, appearing to read 'A. Luckhurst-Smith', with a long horizontal flourish extending to the right.

Andrew Luckhurst-Smith
Executive Chairman
ANGAS SECURITIES LTD