



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

17 October 2018

MARKET UPDATE ON CONTESTED CIVIL PROCEEDINGS UNDERWAY

The following disclosure is made concerning recent developments arising in proceedings brought against Angas Securities in South Australia and New South Wales by parties associated with failed borrowers and a former consultant respectively.

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 by James Michalakas in November 2012 in respect of losses allegedly incurred by Mr Michalakas after his companies, Garden Estate Christies Pty Ltd and Garden Estate Hackham Pty Ltd, were placed into receivership. These companies controlled residential estates at Christies Beach and Hackham, SA. Each company had relied on Angas Securities for funding to purchase the properties. Angas Securities returned to the District Court earlier this year and obtained an order from a Master that its costs must be paid by James Michalakas.

On 12 September 2018, Judge Bochner of the District Court dismissed an appeal brought by James Michalakas against the costs order made in favour of Angas Securities by the Master. Mr Michalakas wishes to appeal against this ruling to the Supreme Court. As the costs ruling has already been the subject of an appeal, he requires leave of the Supreme Court to bring a further appeal. An application for leave to appeal was issued by James Michalakas on 10th October 2018. It will come before the District Court later this month.

1.2 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, proceedings were issued by James Michalakas in the name of the two companies which borrowed money from Angas Securities to acquire the residential estates at Hackham and Christies Beach. The proceedings were served on Angas Securities one year later. Angas Securities disputes that Mr Michalakas has the legal capacity to sue in the name of these companies as each is in receivership. Earlier proceedings brought by his wife as a director of each company were struck out by the Supreme Court. A Full Court appeal brought by Mrs Michalakas was dismissed.

On 25 January 2018 the Chief Justice of South Australia heard an application by Angas Securities to strike out the latest proceedings. The Chief Justice ordered that the Statement of Claim be struck out and that the proceedings be stayed until further order. There have been subsequent hearings this year which have concerned successive redrafts of the Statement of Claim put forward by the Companies on 20 April 2018, 1 May 2018, 18 May 2018, 4 June 2018, 17 July 2018 and 18 July 2018.

The latter version was considered by Justice Blue who ruled on 5 September 2018 that certain parts of that version of the Statement of Claim be disallowed. Reasons for Judgment have been published by His Honour. The borrower companies have now applied for leave to bring an appeal to the Full Court against the pleading rulings made by Justice Blue. The proceedings will be vigorously defended by Angas Securities on substantive grounds in any event.

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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. Owston 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.

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.

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. None has been taken.

3. CLAIM BROUGHT BY TERMINATED CONSULTANT PAUL CUBELIC

3.1 Notice of Termination

In 2017, Angas Securities served notice of termination on Paul Cubelic of Cubelic Holdings Pty Ltd ("Cubelic") who had agreed to assist Angas to commercialise bio-credit opportunities at Fernhill Estate (refer to item 2.1). Angas Securities notes that whilst Cubelic would be entitled to be paid remuneration by Angas Securities if Cubelic provided such services, it contends that Cubelic did not do so. In the meantime, Cubelic had the use of intellectual property and confidential information of Angas Securities relating to Fernhill Estate.

Angas Securities further contends that it was entitled to terminate Cubelic's services by notice in writing if Cubelic engaged in an act of dishonesty; and that it was an implied basis of the arrangement that Cubelic would refrain from acting in a manner where his personal interests conflicted with those of Angas Securities. Contrary to these obligations, Angas Securities alleges that Cubelic caused offers to be made to purchase properties comprising Fernhill Estate at prices well below market value in circumstances where:

- Cubelic knew that Angas Securities had already negotiated sales of some parts of the Fernhill Estate and was well advanced in dealings in respect of others;
- Cubelic represented that the Fernhill Estate 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 confidential information and the intellectual property of Angas Securities;
- Cubelic made contact with Angas Securities stakeholders without its permission in a manner which actively undermined the steps that Angas Securities was taking to obtain full market value for the Fernhill Estate properties; and
- Cubelic’s attempts to undermine the negotiations by Angas Securities could only have been for the purpose of disposing of existing arrangements Angas Securities had for the sale of the Fernhill Estate properties in order to enable Cubelic to then promote Cubelic’s own offers as an alternative.

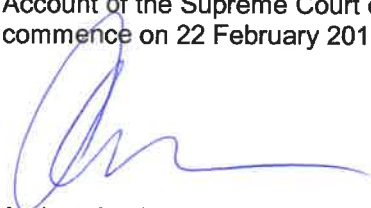
3.2 Cubelic Holdings Pty Ltd v Angas Securities – Supreme Court of NSW No 258682 of 2017

These proceedings were commenced by Cubelic following service of the Notice of Termination. Cubelic had been paid some remuneration by Angas Securities and sought an order for specific performance of the services agreement. Paul Cubelic filed an affidavit in support of the Cubelic claim to which he attached three folders of exhibits. The latter included thirty expert reports lodged in 2013 by Simon Tripp to seek rezoning of the eastern precinct of Fernhill Estate pursuant to an arrangement between Simon Tripp and Angas Securities.

In the proceedings, Angas Securities responded by filing a dozen affidavits sworn by its executive directors, present and former senior managers, the real estate agents who were marketing the sale of various properties within Fernhill Estate and the property solicitor who settled the sales of bio credits to third parties. Following service of this material, Paul Cubelic then filed a second affidavit to which he once again attached three folders of exhibits.

Cubelic claims that Angas Securities has repudiated the services agreement and has been granted leave to amend its Claim accordingly. Angas Securities has brought a Cross Claim for return of any remuneration already paid to date on the grounds that the contribution made by Cubelic, if any, to the settled bio credit sales was not sufficient to warrant this remuneration.

The parties have failed to resolve these proceedings by mediation so there will be a trial to determine the respective issues in dispute. Cubelic has paid \$250,000 as security for the costs of the Claim and Angas Securities has done likewise for its Cross Claim. These funds will be held in the Suitor’s Account of the Supreme Court of New South Wales to abide the event. The trial has been set down to commence on 22 February 2019.



Andrew Luckhurst-Smith
Executive Chairman
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