Federal Court of Australia

District Registry: Queensland

Division: General

No: QUD312/2022

JOHN RICHARD PARK AND JOANNE DUNN AS JOINT AND SEVERAL ADMINISTRATORS OF ELLUME LIMITED ACN 141 767 660 (ADMINISTRATORS APPOINTED) and another named in the schedule
Applicants

EVANGAYLE PTY LTD ACN 615 224 256 AS TRUSTEE FOR THE JONES FAMILY TRUST NO 3 and others named in the schedule
Respondents

ORDER

JUDGE: JUSTICE DOWNES

DATE OF ORDER: 28 November 2022

WHERE MADE: Brisbane

THE COURT ORDERS THAT:

1. The time for the hearing of this application is abridged to 9.30 am on 28 November 2022.

2. Pursuant to section 90-15 of the *Insolvency Practice Schedule (Corporations)* (being Schedule 2 to the *Corporations Act 2001* (Cth) (**Act**)), the First Applicants are justified, and would otherwise be acting reasonably in:

   (a) entering into, and performing, a written agreement entitled “Deed of Variation” with the Respondents, (being exhibit "JRP-20" to the affidavit of John Richard Park sworn on 24 November 2022) (**Deed of Variation**); and

   (b) drawing down funds pursuant to the Deed of Variation.

3. Pursuant to section 447A of the Act,

   (a) the liabilities of the First Applicants, in their capacity as the joint and several voluntary administrators of the Second Applicant, pursuant to the terms of the

Deed of Variation be limited in the manner provided for by the Deed of Variation;

(b) the operation of section 443A(2) of the Act is modified, insofar as it applies to the liability of the First Applicants, in their capacity as the joint and several voluntary administrators of the Second Applicant, so as to permit the liability of the First Applicants to be limited in the manner provided for in the Deed of Variation;

(c) the operation of section 443A(1) of the Act is modified, insofar as it applies to the liability of the First Applicants, in their capacity as the voluntary administrators of the Second Applicant, so that if:

(i) the property and assets of the Second Applicant are insufficient to satisfy any debts or liabilities incurred by the First Applicants arising out of, or in connection with, the Deed of Variation (including the repayment of the money borrowed, interest thereon and borrowing costs); or

(ii) the indemnity in favour of the First Applicants pursuant to section 443D of the Act is otherwise insufficient to meet any amount for which the First Applicants may be liable arising out of, or in connection with, the Deed of Variation (including the repayment of the money borrowed, interest thereon and borrowing costs),

the First Applicants will not be personally liable under sections 443A(1)(d) to (f) of the Act or otherwise to repay such debts or to satisfy such liabilities to the extent of that insufficiency.

4. Within seven days of the making of these orders, the First Applicants are to take all reasonable steps to give notice of these orders to:

(a) the Australian Securities and Investments Commission; and

(b) the creditors of the Second Applicant (including any persons claiming to be creditors of the Second Applicant), by means of a circular,

(c) to be sent by email to those creditors, or persons claiming to be creditors, for whom the First Applicants have an email address; and

(d) to be sent by ordinary post to those creditors, or persons claiming to be creditors, for whom the First Applicants do not have an email address.

5. Any person who can demonstrate a sufficient interest to vary or discharge order 2 or order 3 above (including any creditor of the Second Applicant) has liberty to apply to the Court on three business days' written notice to the Applicants.

6. Liberty to the Applicants to apply.

7. The Applicants' costs of and incidental to the application be costs in the administration of the Second Applicant and be paid out of the assets of the Second Applicant.

Date that entry is stamped: 28 November 2022

Sia Lagos
Registrar

Schedule

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Second Applicant	ELLUME LIMITED ACN 141 767 6610 (IN ADMINISTRATION)
Second Respondent	GLENCAIRN BAY INVESTMENTS PTY LTD ABN 23 633 771 404 AS TRUSTEE FOR THE GLENCAIRN BAY INVESTMENT TRUST
Third Respondent	MA & KA INVESTMENTS PTY LTD ACN 600 309 626 AS TRUSTEE FOR THE MA & KA INVESTMENT TRUST
Fourth Respondent	BRAND BROTHERS HOLDINGS PTY LTD ACN 637 303 952 AS TRUSTEE FOR THE BRAND BROTHERS HOLDINGS TRUST