

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged:	Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
Court of Filing:	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	23/01/2023 2:35:09 PM AEDT
Date Accepted for Filing:	23/01/2023 2:59:08 PM AEDT
File Number:	NSD54/2023
File Title:	IN THE MATTER OF ELLUME LIMITED (SUBJECT TO DEED OF COMPANY ARRANGEMENT) (ACN 141 767 660)
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



Sia Lagos

Registrar

Important Information

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 date of the filing of the document is determined pursuant to the Court's Rules.



Form 2 Originating process

(rules 2.2 and 15A.3)

Federal Court of Australia

District Registry: New South Wales

Division: Commercial and Corporations List

IN THE MATTER OF ELLUME LIMITED (SUBJECT TO DEED OF COMPANY ARRANGEMENT) ACN 141 767 660

JOHN RICHARD PARK AND JOANNE EMILY DUNN IN THEIR CAPACITIES AS JOINT AND SEVERAL DEED ADMINISTRATORS OF ELLUME LIMITED (SUBJECT TO DEED OF COMPANY ARRANGEMENT)

First Plaintiffs / First Applicants

ELLUME LIMITED (SUBJECT TO DEED OF COMPANY ARRANGEMENT) ACN 141 767 660

Second Plaintiff / Second Applicant

A. DETAILS OF APPLICATION

This application is made under sections 444GA and 447A of the *Corporations Act 2001* (Cth) (**Corporations Act**) and section 90-15 of the *Insolvency Practice Schedule (Corporations)* set out in Schedule 2 of the *Corporations Act (IPS)* for orders, among other things, that the First Plaintiffs, John Richard Park and Joanne Emily Dunn, in their capacities as joint and several administrators (**Deed Administrators**) of the Second Plaintiff, Ellume Limited (Subject to Deed of Company Arrangement) (ACN 141 767 660) (**Company**), be granted leave to transfer all of the existing shares in the Company to, Hough Consolidated Pty Ltd (ACN 657 651 280) (**Hough**), or its nominees.

On the facts stated in the supporting affidavit of John Richard Park to be sworn on 20 January 2023, the Plaintiffs seek the following orders:

Procedural orders

1. An order that prayers 2-7 of this Originating Process be returnable *instanter*.
2. An order, pursuant to section 447A of the *Corporations Act 2001* (Cth) (**Corporations Act**) and section 90-15 of the *Insolvency Practice Schedule (Corporations)* set out in Schedule 2 of the *Corporations Act (IPS)*, that the First Plaintiffs (**Deed Administrators**) would be justified in providing an Explanatory Memorandum (**Explanatory Statement**) for distribution to each of the creditors and members of the Second Plaintiff, Ellume Limited (Subject to Deed of Company Arrangement) (ACN 141 767 660) (**Company**).
3. An order that the Plaintiffs each give notice to each of the creditors and members of the Company of:
 - (a) the Originating Process;
 - (b) the Explanatory Statement;
 - (c) the affidavit of John Richard Park to be sworn on 20 January 2023;
 - (d) any supplementary affidavits filed by the Plaintiffs in this proceeding;

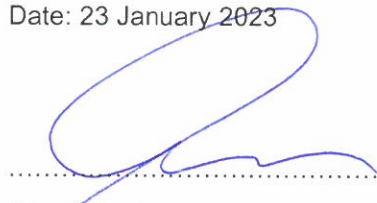
- (e) the orders made by the Court,
within 3 business days of the date of the orders, by the following methods:
 - (f) where the Deed Administrators have an email address for a creditor or member (including from the books and records maintained by the Company), by notifying each such creditor and member, via email;
 - (g) where the Deed Administrators do not have an email address for a creditor or member (or have received notification of non-delivery of a notice sent by email in accordance with paragraph (f) above) but the Deed Administrators have a postal address for that creditor or member (including from the books and records maintained by the Company), by sending the materials to each such creditor or member, via post; and
 - (h) by placing scanned, sealed copies on the website maintained by the Deed Administrators at <https://www.fticonsulting.com/creditors/ellume-limited>.
- 4. An order that any interested person wishing to appear at the hearing of this application is to file and serve on the Plaintiffs and the Australian Securities and Investments Commission a Notice of Appearance in the prescribed form and indicating the grounds of opposition by 4:00pm on 13 February 2023.
- 5. An order that any interested person who is entitled to oppose this application pursuant to section 444GA(2) of the Corporations Act may apply to be joined as a respondent to this application by no later than 4:00pm on 13 February 2023.
- 6. An order that the Plaintiffs file any further evidence upon which they intend to rely on the application, including any supplementary affidavits deposing as to any correspondence or communications received by the Deed Administrators from any interested person who is entitled to oppose this application pursuant to section 444GA(2) of the Corporations Act and any responsive correspondence or communication from the Deed Administrators, by 4:00pm on 15 February 2023.
- 7. This application be listed for hearing on 17 February 2023 at 10:00am or such other date as the Court considers appropriate.

Substantive orders

- 8. An order, pursuant to section 444GA(1)(b) of the Corporations Act, that the Deed Administrators be granted leave to transfer all of the existing shares in the capital of the Company (**Shares**) from the members (as defined in the Corporations Act) of the Company to Hough or its nominee in accordance with clause 6.3 of the deed of company arrangement dated 22 December 2022, entered into by the Deed Administrators, the Company and Hough (**Deed**).
- 9. An order pursuant to section 447A(1) of the Corporations Act and section 90-15(1) of the IPS that any of the Deed Administrators may, jointly or severally, in their capacity as Deed Administrators:
 - (a) execute share transfer forms and any other documents ancillary or incidental to effecting the transfer of the Shares referred to in Order 0; and
 - (b) enter or procure the entry of the name of Hough or its nominee into the share register of the Company in respect of all Shares transferred to Hough or its nominee in accordance with Order 0.
- 10. An order that the Plaintiffs' costs of and incidental to this application be costs and expenses in the deed administration of the Company.
- 11. An order that the Court's orders be entered forthwith.
- 12. Such further or other orders or directions as the Court considers appropriate.



Date: 23 January 2023


Signed by Ariel Borland
Solicitor for the Plaintiffs

B. NOTICE TO DEFENDANT(S) (IF ANY)

N/A

C. FILING

Date of filing:

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Registrar

This originating process is filed by Mills Oakley, solicitors for the Plaintiff.

D. SERVICE

The Plaintiffs' address for service is:

Attention: Dean Brayley
C/- Mills Oakley
Level 7, 151 Clarence Street, Sydney NSW 2000
Email: dbrayley@millsoakley.com.au

It is intended that a copy of this interlocutory process will be provided to each of the persons listed below:

Australian Securities and Investments Commission

Creditors of the Company

Members of the Company