

# **Report to Creditors**

under Insolvency Practice Rule 70-40

## **Gordon Ebbitt Pty Limited (In Liquidation)**

**ACN 615 431 402**

3 October 2019

Peter Krejci  
Liquidator

BRI Ferrier (NSW) Pty Ltd ABN 97 128 947 848  
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## **DISCLAIMER**

This Report and the statements made herein have been prepared, based on available books and records, information provided by the Company's directors and officers, and from my own enquiries.

Whilst I have no reason to doubt the accuracy of the information provided or contained herein, I reserve the right to alter my opinion or conclusions should the underlying data prove to be inaccurate or materially change after the date of this Report.

In undertaking my investigations in relation to the affairs of the Company, and the preparation of this Report to Creditors, I have necessarily made forecasts of asset realisations and am required to estimate the ultimate quantum of creditor claims against the Company.

Neither I, as Liquidator, nor any member or employee of this firm undertakes responsibility in any way whatsoever to any person in respect of any errors in this Report arising from incorrect information provided to this office, or necessary estimates and assessments made for the purposes of this Report.

Any creditor that has material information in relation to the Company's affairs, which they consider may affect my investigation, should forward details to this office as soon as possible.

## 1 EXECUTIVE SUMMARY

As you are aware, I was appointed Liquidator of Gordon Ebbitt Pty Ltd (In Liquidation) (“the Company”) on 3 July 2019 pursuant to an order of the Federal Court of Australia. The petitioning creditor in the winding up is the Deputy Commissioner of Taxation (“ATO”).

This report has been prepared in accordance the Rule 70-40 of the Insolvency Practice Rules (Corporations) 2016 (“IPR”). I provide hereunder a summary of the conduct of the Liquidation over the past 3 months.

The Director of the Company, Mr Sacelarios Alexious (“the Director”) has provided me with a Report on Company Activities and Property (“ROCAP”) and books and records of the Company. To date, he has co-operated with my enquiries into the Company’s affairs.

I intend to lodge a report with ASIC pursuant to Section 533(1) of the Corporations Act 2001 (“the Act”). This report to ASIC is a legislative requirement of all liquidations, and it identifies potential offences and breaches of the Act by Directors and Officers of the Company. The report is confidential and is not available to creditors. ASIC will review my Report and advise if they require any further information or if I am able to proceed to finalise the Liquidation.

There is currently no prospect of a dividend being paid from this Liquidation. I am currently without funds to conduct any further investigations.

Should creditors be interested in funding my further investigations they are requested to contact my office within 28 days for further details regarding possible recovery actions.

### 1.1 PREVIOUS REPORTS TO CREDITORS

This report should be read in conjunction with my previous Circular to Creditors dated 30 July 2019 (“the Circular”). Information in the Circular will not be repeated unless required.

### 1.2 DECLARATION OF INDEPENDENCE, RELEVANT RELATIONSHIPS AND INDEMNITIES

I refer to the Declaration of Independence, Relevant Relationships and Indemnities (“DIRRI”) enclosed in the Circular and note that there has been no changes to same.

### 1.3 PURPOSE OF THE REPORT

I provide the following Report to Creditors in accordance the Rule 70-40 of IPR:

- An estimated amount of assets and liabilities of the Company;
- My opinion as to what happened to the business of the Company;
- The progress of the Liquidation, including inquiries that have been undertaken to date;
- Possible further inquiries and/or recovery actions (if any); and
- The likelihood of a dividend being paid in the liquidation.

## 2 STATUTORY INFORMATION

The following is a summary of the Company's statutory and business details obtained from the ASIC database, the Personal Property Securities Register ("PPSR") database, and the Company's records:

### 2.1 COMPANY DETAILS

<b>Company Name</b>	Gordon Ebbitt Pty Ltd
<b>Registered Address</b>	Unit 19, 68 Sir John Young Crescent WOOLLOOMOOLOO NSW 2011
<b>Principal Place of Business</b>	Same as above
<b>Incorporation Date</b>	19 October 2016
<b>A.C.N</b>	615 431 402
<b>A.B.N</b>	39 615 431 402

### 2.2 COMPANY OFFICE HOLDERS

Name	Position	App Date	Cease Date
Sacelarios Alexiou	Director/Secretary	19/10/2016	Current

### 2.3 SHAREHOLDINGS

Name	Share Class	No. of Shares	Fully Paid Up	Status
Sacelarios Alexiou	ORD	100	Yes	Current

### 2.4 REGISTERED SECURITY INTERESTS

A search of the PPSR Register indicates there are no security interests registered on the PPSR.

<b>All Present and After Acquired Property Interests</b>	Rockstone Group Pty Ltd (1) LTDC Pty Ltd / Elon Asset Management Pty Ltd (1)
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Please refer to Section 3.2.1 for further comments.

## 3 ESTIMATED AMOUNTS OF ASSETS AND LIABILITIES

The Director has provided a Report on Company Activities and Property ("ROCAP") detailing the Company's financial position as at the date of my appointment and I have reported same to ASIC. Based on my investigations and information from the Petitioning Creditor, I provide below a summary of the Company's financial position.

Gordon Ebbitt Pty Ltd (In Liquidation)			
	Report Ref.	ROCAP as at 3 July 2019 (\$)	Liquidator's Estimated Realisable Value (\$)
<b>Assets</b>			
Cash and Cash Equivalents	3.1.1	Nil	Nil
Real Property	3.1.2	Nil	Nil
Other Assets	3.1.3	Nil	Nil
<b>Total Assets</b>		<b>-</b>	<b>-</b>
<b>Liabilities</b>			
Secured Creditors	3.2.1	6,192,103	6,957,447
Priority Creditors	3.2.2	Nil	Nil
Unsecured Creditors	3.2.3	1,414,590	1,414,325
<b>Total Liabilities</b>		<b>7,606,693</b>	<b>8,371,772</b>
<b>Net Assets/(Deficiency)</b>		<b>(7,606,693)</b>	<b>(8,371,772)</b>

### 3.1 ASSETS

#### 3.1.1 Cash and Cash Equivalents

On appointment, I wrote to major financial institutions notifying them of the Liquidation and requesting information regarding any bank accounts held in the name of the Company.

To date, I have identified one (1) bank account the Company maintained with Westpac Banking Corporation ("Westpac"). Westpac has advised the bank account had a nil balance as at the date of appointment and was subsequently closed on 11 September 2019.

No further bank accounts have been identified based on responses received to date.

#### 3.1.2 Real Property

The Company was the previous proprietors of the real property located at 75-77 Kellick Street, Waterloo NSW 2017 ("Waterloo Property").

Below is a timeline of the Company's dealings in respect to the Waterloo Property:

- On 22 December 2016, the Company submitted a Development Application Proposal ("DA Proposal") to the City of Sydney Council for the development of a building containing 7 apartments on the site;
- On 27 June 2017, the City of Sydney Council approved the Company's DA Proposal;
- On 12 July 2017, LTDC Pty Ltd / Elon Asset Management Pty Ltd ("the Mortgagees") advanced \$3,456,000 to the Company;
- On 12 July 2017, the Company purchased the Waterloo Property from Eliodoro & Zaida Pereira for \$3,005,000;
- On 22 August 2017, a caveat was lodged on the title of Waterloo Property by Fast Commercial Loans. The caveat was subsequently withdrawn on 27 September 2017;

- On 12 September 2017, a caveat was lodged on the title of Waterloo Property by Mr Ignatius Gavrilidis. The caveat was subsequently withdrawn on 24 September 2017. The Director has advised in the ROCAP that Mr Gavrilidis is an unsecured creditor in the Liquidation for \$500,000;
- On 27 December 2017, an advert was published by LJ Hooker Commercial – St George for the auction of the Waterloo Property. It appears that a result was not achieved from the auction;
- On 8 March 2018, an advert was published by LJ Hooker Commercial – St George for the sale of the Waterloo Property;
- On 14 August 2018, the Waterloo Property was sold to Xinte Investment Pty Ltd for \$2,970,000.

The Director has provided a settlement adjustment sheet as at 18 September 2018, detailing how proceeds from the sale of the Waterloo Property were distributed as per below:

Cheque Details	(\$)
LTDC Pty Ltd	2,623,220
Commissioner of State Revenue	25,267
City of Sydney Council	18,542
Sydney Water	5,628
Salerno Law	15,000
<b>Total</b>	<b>2,687,657</b>

I have written to LJ Hooker Commercial – St George to identify how deposit funds of \$260,000 have been distributed. My investigations reveal that the Mortgagees received a total of \$2,854,880 from the sale of the Waterloo Property.

I conducted NSW Title searches upon my appointment which shows Xinte Investment Pty Ltd still being the current proprietors of the Waterloo Property. My investigations reveal that on 17 April 2019 the current proprietors submitted a new DA Proposal to the City of Sydney Council.

### 3.1.3 Other Assets

On appointment, I wrote to Roads and Maritime Services (NSW) (“RMS”) requesting information regarding any motor vehicles held in the name of the Company. I note that the RMS search has identified no motor vehicles registered in the name of the Company.

I also wrote to major utility providers notifying them of the Liquidation and requesting information regarding any accounts held in the name of the Company.

I have not identified any other asset(s) in the name of the Company to date.

## 3.2 LIABILITIES

### 3.2.1 Secured Creditors

#### 3.2.1.1 LTDC Pty Ltd / Elon Asset Management Pty Ltd

I have been advised that LTDC Pty Ltd / Elon Asset Management Pty Ltd (“the Mortgagees”) provided a loan to the Company for the purchase of the real property located at 75-77 Kellick Street, Waterloo NSW.

The Mortgagees have advised that as at the date of my appointment, the payout figure in respect to their securities totalled \$6,957,447.

Based on the books and records provided to date the terms of the loan agreement between the Mortgagees and the Company are as below:

- ▲ On 12 July 2017, the Mortgagees executed a loan agreement with the Company ("Loan Agreement");
- ▲ The Mortgagees advanced a total of \$3,456,000 to the Company. The repayment date was set at 3 months from the advance date i.e. 12 October 2017 bearing an interest rate of 3% per month (or 6% per month in the event of a default);
- ▲ The monthly repayments to the Mortgagees were calculated to be \$103,680 per month (or \$207,360 per month in the event of a default); and
- ▲ The Director and Xtra Property Group Pty Ltd were Guarantors for the Loan Agreement.

To date, the Mortgagees have received a total of \$3,275,821 from the Company being interest payments in respect of the Loan Agreement and proceeds from the sale of the Waterloo Property.

I have been advised that on 7 May 2019 the Mortgagees filed a Statement of Claim in the Supreme Court of NSW against the Company and the Guarantors for \$6,196,450.

#### 3.2.1.2 Rockstone Group Pty Ltd

I have yet to be advised of the nature of the security for Rockstone Group Pty Ltd.

#### 3.2.2 Priority Creditors

The Director has advised that the Company did not employ any staff and I am not aware of any entitlements owed to employees.

However, if there are any other outstanding entitlements, employees are eligible to apply to the Federal Government, which has established a safety net scheme known as the Fair Entitlements Guarantee scheme ("FEG"). FEG is administered by the Attorney-General's Department ("the Department") for eligible employees who have been terminated as a result of their employer's insolvency and are owed entitlements.

To obtain further information, please contact our office or alternatively, please visit the FEG website at <https://www.ag.gov.au/industrial-relations/fair-entitlements-guarantee/Pages/default.aspx>.

#### 3.2.3 Ordinary Unsecured Creditors

My investigations indicate that Ordinary Unsecured Creditors are owed approximately \$1.41M.

Below is a breakdown of Unsecured Creditor claims received to date:

Unsecured Creditors	ERV Amount (\$)
Ordinary Unsecured Creditors	938,289
Statutory Creditors	282,388
Related Party Creditors	193,648
<b>Total Estimated Unsecured Creditors</b>	<b>1,414,325</b>



Should creditors who have not already done so, wish to lodge their claim with this office, please complete the Formal Proof of Debt form, attached as **Annexure 1**, and return same together with documentary evidence to support your claim.

### 3.2.3.1 Ordinary Unsecured Creditors

Based on the proofs received to date and available records, Ordinary Unsecured Creditor claims as at the date of this Report total \$938,289.

This amount is subject to change if further proofs of debt are lodged.

### 3.2.3.2 Statutory Creditors

The ATO being the petitioning creditor has submitted a proof of debt for \$282,388 based on the Running Balance Account as at the date of appointment. ATO's claim relates to unpaid GST liabilities arising from the sale of the Waterloo Property and subsequent penalties and interests.

The ATO has also advised that the following lodgements remain outstanding:

- Income Tax Return for the year ended 30 June 2017 to 2020; and
- Monthly Business Activity Statements for the months February to July 2019.

### 3.2.3.3 Related Party Creditors

The Director has advised in the ROCAP of the below related party claims:

Related Creditors	ERV Amount (\$)
Pappas Alexiou Pty Ltd	43,648
Xtra Curator Waterloo Ltd	150,000
<b>Total Related Party Creditors</b>	<b>193,648</b>

At this stage, I have not received sufficient information to substantiate these claims.

## 4 LIQUIDATOR'S OPINION AS TO WHAT HAPPENED TO THE BUSINESS

I have identified the following reasons for failure:

- Insufficient capital to service the Loan Agreement; and
- Failure to respond and comply with the ATO statutory demand.

Due to the information available, I am not aware of any other circumstances that led to the Company's failure.

## 5 UPDATE ON PROGRESS OF THE LIQUIDATION

### 5.1 INVESTIGATIONS UNDERTAKEN

#### 5.1.1 Books and Records (S286)

On appointment, I issued demands to the Director to deliver Company books and records to my office. To date, I have been provided copies of the Company's financial statements and other relevant books and records to enable me to conduct my investigations.

My preliminary view is that the Company has kept sufficient books and records to meet the requirements of Section 286 of the Act.

### 5.2 VOIDABLE TRANSACTIONS

To date I have conducted preliminary investigations into the affairs of the Company to ascertain whether there are any transactions that appear to be voidable, or other causes of action available whereby money, property or other benefits may be recoverable by a liquidator.

Voidable transactions include transactions such as unfair preferences, uncommercial transactions, unfair loans, unreasonable director related transactions and circulating security interests created within six months before the relation-back day, which is the date of the appointment of the Liquidator.

These transactions usually relate to the period six (6) months prior to the date of my appointment; however in certain circumstances, this period can be extended to four (4) years in relation to transactions with related entities and up to ten (10) years in relation if the transactions were entered into with related parties with the intention of fraud.

I have not identified any voidable transactions at this stage.

### 5.3 INSOLVENT TRADING

Directors have a duty to prevent insolvent trading by a company, if:

- A person is a director of a company at the time when the company incurs a debt; and
- The company is insolvent at that time or becomes insolvent by incurring that debt; and
- There are reasonable grounds for suspecting that the company is insolvent, or would so become insolvent; and
- The person, or a reasonable person in a like position, is aware at that time there are such grounds for so suspecting.

Subject to defences available; the director is required to compensate the company an amount equal to the amount of loss or damage. If the director's failure to prevent the company incurring the debt was dishonest, it may be a criminal offence.

### 5.4 INSOLVENCY

One important element of liability for Insolvent Trading is if, and when, the Company became insolvent.

Section 95A of the *Corporations Act* defines solvency as follows:

*“95A(1) [when person is solvent] A person is solvent if, and only if, the person is able to pay all the person’s debts, as and when they become due and payable.*

*95A(2) [insolvent person not solvent] A person who is not solvent is insolvent”.*

Under Australian law, the test of insolvency is a “cashflow” test: it is focussed on whether, in commercial reality, a company is able to meet its liabilities as and when they fall due for payment. The forensic assessment of insolvency, and preparation of a case on insolvency, involves a thorough, and costly, examination of the Company’s business, its market, its relationships with its customers, lenders, suppliers, owners and with regulators. Where a Company has had expectations of support from related parties, that support is a factor that has to be considered in the context of insolvency.

In elaborating on the cashflow test of insolvency, the Courts have provided extensive commentary on the subject to determining insolvency. One of the leading authorities is the judgment of the Victorian Supreme Court in *ASIC -v- Plymin*, in which Justice Mandie, relying on Expert Evidence, identified the following 14 indicators of insolvency:

- ▲ Continuing Losses;
- ▲ Liquidity ratios below 1;
- ▲ Overdue Commonwealth and State taxes;
- ▲ Poor relationship with present Bank, including inability to borrow further funds;
- ▲ No access to alternative finance;
- ▲ Inability to raise further equity capital;
- ▲ Suppliers placing company on COD, or otherwise demanding special payments before resuming supply;
- ▲ Creditors unpaid outside trading terms;
- ▲ Issuing of post-dated cheques;
- ▲ Dishonoured cheques;
- ▲ Special arrangements with selected creditors;
- ▲ Solicitors' letters, summons(es), judgements or warrants issued against the company;
- ▲ Payments to creditors of rounded sums which are not reconcilable to specific invoices;
- ▲ Inability to produce timely and accurate financial information to display the company's trading performance and financial position, and make reliable forecasts.

Comprehensive forensic insolvency assessment requires the review of each of these indicators, as well as the Company’s business, to answer the question “was it able to pay its debts as and when they fell due”.

My preliminary assessment of the Company’s solvency has been primarily focused upon the records pertaining to creditors and the Australian Taxation Office. From my review I have determined the following:

- ▲ I have been provided with financial information which indicates that the Company recorded losses for the financial year ended 30 June 2017 and 2018.
- ▲ The Company’s liquidity ratio since at least July 2017 to the winding-up has been below 1.

- The Company appeared to have difficulties with obtaining finance. The Company defaulted on mortgage payments for the Waterloo Property in August 2017 and failed to satisfy the terms of the Loan Agreement.
- I have not identified any evidence of any post-dated cheques, or dishonoured cheques issued prior to our appointment.
- I have also not identified any round payments made to unsecured creditors.
- Based on my limited review, the majority of creditors' claims outstanding at the date of my appointment were incurred from August 2017 onwards. This has been based on a review of the claims of the Mortgagees.

The above, provides an ASIC v Plymin indicator of insolvency around the beginning of August 2017. I would need to conduct a cash flow test to definitively determine insolvency at that date.

## 5.5 RECOVERY OF CLAIM

In determining whether an insolvent trading claim could be pursued, a liquidator would need to have regard to the respective personal financial positions of the potential defendants. To pursue recovery of the insolvent trading claim, there would be significant costs involved in obtaining further evidence, preparing an insolvency report and conducting complex and protracted legal proceedings.

My investigations indicate that the Director does not currently hold any property interests in New South Wales and I have not identified any other significant assets of the Director. Furthermore the Mortgagees have filed a Statement of Claim totalling \$6.19M of which the Director is listed as a defendant. As such, it appears the Director is unlikely to have sufficient means to discharge any claim brought against him.

## 5.6 LITIGATION AND FUNDING

Part 5.7B of the Act gives Liquidators the right to commence certain legal proceedings to recover money, property or other benefits for the benefit of ordinary unsecured creditors of a company.

Recovery actions under Part 5.7B of the Act, including voidable transactions and insolvent trading, require the Liquidator to demonstrate that the Company was insolvent at the time of the transaction. Proving insolvency may be a complex, lengthy and costly exercise.

Creditors should note that recovery actions:

- are usually expensive, lengthy and have unpredictable outcomes;
- should not be commenced unless defendants have the financial resources to satisfy any judgement; and
- must be funded out of the Company's existing assets or, where such assets do not exist, by Creditors or by external litigation funders (who are likely to require a significant share of the proceeds of any judgement as a condition of funding the litigation).

Should creditors be interested in funding my further investigations they are requested to contact my office within the next 28 days.

## 6 ESTIMATED RETURN TO CREDITORS

There have been no recoveries in the administration to date and I have been unable to pay the costs of the winding up. As such, there is not anticipated to be any dividend available for any class of creditors in this Liquidation based on current circumstances.

## 7 REPORT TO ASIC

I am required to complete an investigation into the Company's affairs and, if offences are identified, or if the Company is unable to pay its Creditors more than fifty (50) cents in the dollar, lodge a report with ASIC pursuant to Section 533 of the Act.

As no dividend is currently available for creditors, I intend to submit a confidential report to the ASIC pursuant to Section 533(1) of the Act, detailing my investigations into the affairs of the Company and the conduct of the Directors.

## 8 LIQUIDATOR'S RECEIPTS AND PAYMENTS

There have been no receipts or payments in the administration to date.

## 9 TASKS REQUIRED IN THE LIQUIDATION

As detailed above, I anticipate that the following matters will be dealt with during the Liquidation moving forward:

- Lodgement of my confidential report to ASIC pursuant to Section 533 of the Act;
- Lodging a supplementary report to ASIC, if required;
- Consider lodgements for other regulatory bodies regarding my findings;
- Statutory lodgements; and
- Finalisation tasks.

Should any creditor or interested party have any relevant information that they wish to provide me, they are requested to contact my office as soon as possible.

## 10 CREDITORS' RIGHTS

Pursuant to Clauses 70-40, 70-45, 75-15, 85-5, 90-24 and 90-35 of the Insolvency Practice Schedule (Corporations) and Rule 70-30 of the Insolvency Practice Rules (Corporations) 2016, I am required to give certain information to creditors as to their rights in the administration.

Accordingly, I attach as **Annexure "2"** further information regarding 'Creditor Rights in Liquidations'.

## 11 FURTHER INFORMATION

I attached as **Annexure "3"** an ASIC information sheet entitled "Insolvency information for directors, practitioners, employees, creditors and investors". This publication provides basic information about the

different types of external administrations, including Liquidation, and reference to further sources of information available on the ASIC website at [www.asic.gov.au](http://www.asic.gov.au).

ARITA has issued a creditor information sheet “Offences, Recoverable Transactions and Insolvent Trading” providing further information about voidable transactions. This information sheet is attached as **Annexure “4”**.

Please note that I am not required to publish notices in the print media. ASIC maintains an online notices page for external administrators to publish notices in respect of the Company. Creditors are encouraged to visit <https://insolvencynotices.asic.gov.au> throughout the liquidation to view any notices which may be published by the Liquidator in respect of the Company. These notices include:

- notices relating to appointments
- notices of meetings of creditors
- notices calling for proofs of debt and intention to declare dividends

## 12 QUERIES

The BRI Ferrier staff member responsible for this matter is as follows:

- BRI Contact: Mr Jack Li
- Phone: (02) 8263 2300
- Email: [jli@brifnsw.com.au](mailto:jli@brifnsw.com.au)
- Mailing: GPO Box 7079, Sydney NSW 2001
- Facsimile: (02) 8263 2399

Yours faithfully,

**GORDON EBBITT PTY LIMITED (IN LIQUIDATION)**



**PETER KREJCI**  
LIQUIDATOR