

NOTICE OF FILING

Details of Filing

Document Lodged:	Affidavit - Form 59 - Rule 29.02(1)
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	15/10/2024 7:19:02 PM AEDT
Date Accepted for Filing:	15/10/2024 7:19:09 PM AEDT
File Number:	NSD1020/2024
File Title:	AN APPLICATION BY JONATHON SHERWOOD KEENAN & ORS
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink, reading "Sia Lagos". The signature is fluid and cursive, with the first letters of "Sia" and "Lagos" being capitalized and prominent.

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 59
Rule 29.02(1)

Affidavit

Federal Court of Australia
District Registry: New South Wales
Division: General

No.

IN THE MATTER of PROSPERO MARKETS PTY LTD (IN LIQUIDATION)
ACN 145 048 577

JONATHON SHERWOOD KEENAN and others

First Plaintiff

Affidavit of: **Jonathon Sherwood Keenan**
Address: BRI Ferrier, Level 26, 25 Bligh Street, Sydney NSW 2000
Occupation: Registered Liquidator
Date: 15 / 10 / 2024

CONTENTS

Document number	Details	Paragraph	Page
1.	Affidavit of Jonathon Sherwood Keenan sworn on October 2024.	1 – 31	1 - 6
2.	Exhibit JSK-2	5	1 - 48

I, Jonathon Sherwood Keenan, Registered Liquidator of BRI Ferrier, Level 26, 25 Bligh Street, Sydney NSW 2000, say on oath:

- I am the first plaintiff and a joint and several liquidator of Prospero Markets Pty Ltd (in Liquidation) ACN 145 048 577 (**Company**), together with the second plaintiff, Peter Paul Krejci and third plaintiff, Andrew John Cummins of BRI Ferrier (together, the **Plaintiffs** or the **Liquidators**).

Filed on behalf of Jonathon Sherwood Keenan, Peter Paul Krejci and Andrew John Cummins as Liquidators of Prospero Markets Pty Ltd (in Liquidation), Plaintiffs

Prepared by Adam Cutri, Partner

Law firm Bartier Perry Lawyers

Tel +61 2 8281 7800

Fax +61 2 8281 7838

Email litigation@bartier.com.au

Ref DRD 242964

Address for Service

BARTIER PERRY
Level 25, 161 Castlereagh Street, Sydney NSW 2000
Email: litigation@bartier.com.au

[Version 3 form Approved 2 May 2019]


2. I am authorised to swear this affidavit on behalf of the Plaintiffs and the Company.
3. I previously swore an affidavit in these proceedings which was filed on 31 July 2023 (**First Affidavit**) and accompanied by exhibit JSK-1 (**Exh JSK-1**).
4. This affidavit is filed:
 - (a) in support of the early hearing date sought by the Plaintiffs; and
 - (b) to provide an update on the liquidation since my First Affidavit and Exh JSK-2.
5. Shown to me at the time of swearing this affidavit is an electronic, paginated bundle of documents marked 'Exhibit JSK-2' (**JSK-2**). When I refer to documents throughout this affidavit, I do so by reference to the page numbers in the top-right hand corner of JSK-2.
6. I believe that the facts in this affidavit are true to the best of my knowledge and belief. Where I rely on knowledge and information for the facts deposed in this affidavit, in each case I state the source of my knowledge and identify the information relied on.

Client Demands for Distributions

7. Since the beginning of the Liquidation on 10 April 2024 and particularly in the last month since the case management hearing on 19 September 2024, the Liquidators have received a high volume of telephone and email communications from Company clients requesting distributions of the 'Client Money' as soon as possible.
8. At page 2 of JSK-2 is a file note dated 3 October 2024 prepared by a staff member of BRI Ferrier in relation to calls received from clients between 19 August 2024 and 10 September 2024 complaining about the delay in distributing the 'Client Money'.
9. At pages 3 to 24 of JSK-2 is a bundle of emails received by the Plaintiffs between 12 April 2024 and 11 October 2024 from clients demanding distribution of the 'Client Money'. On 6 and 7 October 2024, we received a series of emails, in identical terms, from eight individual clients. To avoid an unnecessarily large exhibit, I include only one example of such email.
10. Based on my review of those emails, I observe that (without limitation):
 - (a) several clients refer to financial hardship as the basis for demanding distributions of the 'Client Money' as soon as possible (see pages 4, 8, 11, 14, 19, 22, 24 of JSK-2); and
 - (b) querying the availability of compensation for the delay in distributing the 'Client Money' (see page 2 of JSK-2).



 Witness



 Deponent

11. By reason of the matters deposed above, the Plaintiffs respectfully seek the earliest hearing date for the amended originating process filed on 20 September 2024, before the end of the 2024 Court term if possible.

Ongoing Costs

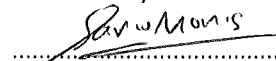
12. The Liquidators anticipate the following additional costs (without limitation) which will likely be incurred by them between the date of this affidavit until such time as the Court determines the current application and the client distribution process commences to include:
- (a) IT infrastructure for the MT4 platform and server maintenance costs are estimated to be approximately AUD\$50,000/month. However, retaining the external facilities may be challenging due to the commercial terms in the supplier agreements and licence restrictions, including termination costs which will be triggered in due course;
 - (b) Link Market Services with managing creditor data and issuing ongoing notices by way of Email Blasts, at \$3,000 (plus GST) fee per each 'Email Blast' (estimated to be an additional \$15,000 plus GST until the directions sought by the Liquidators in this proceeding are obtained); and
 - (c) professional remuneration for continuing to deal with numerous client and creditor enquiries by email and telephone, which may be additional \$10,000 to \$20,000 per month or more. The costs are driven by the enquiries and requirements to respond given the Company financial service offering.

Notification of 19 September 2024 Orders

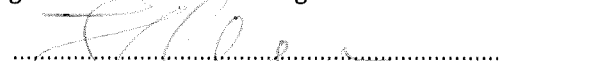
13. At pages **25 to 26** of JSK-2 is a copy of an 'Email Blast' dated 11 October 2024 issued by the Liquidators providing an update on the case management hearing and orders dated 19 September 2024 (with the attached orders and stamped amended originating process omitted). Updates were also provided to ASIC, the AFP and each of the persons previously contacted regarding possible representative defendant appointments.

Huang & Zhang Defendants

14. Order [2] dated 19 September 2024 by Her Honour Justice Cheeseman states, "*Ms Yuya Huang and Mr Lei Zhang be joined as defendants to the proceeding.*"
15. At pages **27 to 30** of JSK-2 is correspondence exchanged between Bartier Perry and Ausjuris Legal dated 9 to 10 October 2024 regarding the defendants' subpoenas and in which Ausjuris Legal states (amongst other things), "*As to the hearing dates, our clients respect and agree that the earliest available hearing dates should be sought.*"



 Witness



 Deponent

16. At pages **31 to 32** of JSK-2 is correspondence exchanged between Bartier Perry and Ausjuris Legal dated 11 October 2024 regarding production of documents sought by Ausjuris Legal in respect of its clients' subpoenas.

Contradictor

17. At pages **33 to 44** of JSK-2 is a transcript of the case management hearing before Her Honour Justice Cheeseman on 19 September 2024 in these proceedings.
18. I observe that on page 11 of the transcript (at page **43** of JSK-2), Her Honour states that:

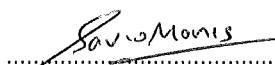
I encourage your instructors to submit - as soon as they can sensibly do so – a timetable to appoint a contradictor, outlining the scope on which the contradictor is to perform that role.

Include a capacity for the contradictor to approach if the contradictor takes the view that the remit should be broader, and if that can be done before 17 October, I will dispense with the need for a case management so that the parties aren't put to the expense, but I think if you can make your inquiries, identify who the contradictor will be, precisely what their role will be. And if there is ability before they're formally appointed to liaise with them on the scope, then that will make the process move more efficiently forward.


19. The Liquidators have identified W Advisers as suitable legal practitioners to act as contradictor in these proceedings. I am informed by Bartier Perry and believe that, on 8 October 2024, a brief with observations and documents was provided to W Advisers by Bartier Perry.
20. Additionally, on 10 October 2024, I attended a preliminary video conference with Mr David de Mestre, Senior Associate employed by Bartier Perry, and Mark Wilson and Nicholas Parsons from W Advisers to discuss the scope of the contradictor's joinder.
21. At page **45** of JSK-2 is an email shown to me by Bartier Perry dated 10 October 2024 from W Advisers stating, "*As discussed on the call earlier, we are happy to accept the appointment. We will be in touch early next week to discuss orders to deal with the scope of the contradictor appointment and a timetable for hearing.*"

Update on Investigations, Recoveries and Adjudications

22. The Liquidators' progress set out at paragraphs [125] to [141] of my First Affidavit has continued since 31 July 2024 as set out below.



 Witness



 Deponent

MT4 AU Client Database Claims

23. The responses received by the Liquidators, through Link Market Services, to requests for proofs of debt as at 15 October 2024, as an update to paragraph [90] of my First Affidavit, specifically:

Client / Creditor Type	Potential number of creditors	Number of proofs of debt lodged	Total amount of proofs of debt to date (\$)
Clients in the MT4 AU Clients Database	2,374	785	\$19,450,007.25
Persons from the MT4 Offshore Database who contacted the Liquidators	53	28	\$4,902,741.00
Employee claims	56	48	\$1,379,760.73
Trade & other creditors	38	19	\$3,357,010.08

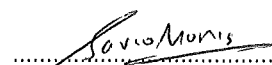
24. As stated in paragraph [91(d)] of my First Affidavit, several clients on the Company MT4 AU Database lodged proofs of debt claiming a higher balance than recorded in the Company's MT4 records (explained at paragraphs [27] and [78] of my First Affidavit) where, in general, the clients have not deducted the losses incurred on trades and/or withdrawals.
25. Those clients provided varying reasons in support of their claims exceeding the MT4 records.
26. After an exchange of correspondence, a number of those clients have submitted revised reduced proofs of debt to reflect the entitlements recorded in the Company's MT4 values therefore reducing the number of clients with discrepancies.


Singapore Recovery

27. I refer to paragraphs [139] to [140] of my First Affidavit in which I depose to the Liquidators' application for foreign recognition of the appointment orders of the Federal Court of Australia as required by CGS-CIMB Securities prior to returning the Company's funds in the amount of AUD\$399,050.91 as at 14 May 2024.

28. By way of update on that application:

- (a) the Liquidators' local Singapore agents filed the application in the High Court of Singapore on about 8 October 2024; and


 Witness


 Deponent

- (b) at pages **46 to 47** of JSK-2 is a copy of a judicial notice from the High Court of Singapore indicating that a case conference in the Liquidators' application will occur at 2.30 pm (Singapore time) on 7 November 2024.

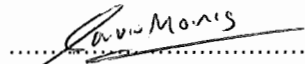
Company's Australian Financial Services Licence

29. I refer to paragraphs [24] to [26] of my First Affidavit regarding the Company's AFSL licence.
30. On 25 September 2024, ASIC notified the Liquidators of an order made pursuant to s 915B(3)(b) of the *Corporations Act 2001* (Cth) cancelling the Company's AFSL subject to the condition that "*Under s915H of the Corporations Act, ASIC specifies that the licence continues in effect, as though the cancellation had not happened, until 25 March 2026 for the purposes of s912A(1)(g), s912B and s981M of the Corporations Act.*"
31. At page **48** of JSK-2 is a copy of a letter received by the Liquidators' lawyers from ASIC on 15 October 2024 regarding the return of client money.

Sworn by the deponent
at Sydney NSW
in New South Wales
on 15 / 10 / 2024
Before me:

)
)
)
)


.....
Signature of deponent


.....
Signature of witness

Name of witness:

SAVIO MAURICE MONIS

Qualification of witness: ~~Lawyer~~ / Justice of the Peace

Registration NO. 256525

.....
Witness

.....
Deponent

Rule 29.02

Certificate identifying exhibit

Federal Court of Australia

No. NSD1020/2024

District Registry: New South Wales

Division: General

IN THE MATTER of PROSPERO MARKETS PTY LTD (IN LIQUIDATION)
 ACN 145 048 577

JONATHON SHERWOOD KEENAN and others

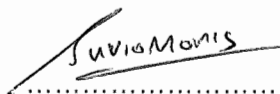
First Plaintiff

This is the exhibit marked "JSK-2" produced and shown to **Jonathon Sherwood Keenan** at the
 time of swearing his affidavit this day of October 2024.

Exhibit "JSK-2"

Electronic paginated bundle of documents

Before me:



SAVIO MAURICE MONIS

Solicitor / Justice of the Peace

Registration No. 256525

Filed on behalf of Jonathon Sherwood Keenan, Peter Paul Krejci and Andrew John Cummins as Liquidators of
 Prospero Markets Pty Ltd (in Liquidation), Plaintiffs

Prepared by Adam Cutri, Partner

Law firm Bartier Perry Lawyers

Tel +61 2 8281 7800

Fax +61 2 8281 7838

Email litigation@bartier.com.au

Ref DRD 242964

Address for Service**BARTIER PERRY**

Level 25, 161 Castlereagh Street, Sydney NSW 2000

Email: litigation@bartier.com.au

File note

To: John Keenan and Katherine La

From: Nicole Feng

Date: 3/10/2024

Matter: Prospero Markets Pty Ltd ("the Company")

Subject: Phone conversations re clients' complaints of delaying dividend distribution

Date	Client	Content
19 Aug 2024	Fulai Sun (Flynn)(employee)	The employee called to ask about the progress of hearing application and received complaints from clients that the process took long.
22 Aug 2024	Yok Meng Yap (MT4 number: 20006761)	The client called to confirm whether documents are sufficient for adjudication and complained the whole process took long.
2 Sept 2024	FUJIA ACADEMY PTY LTD (MT4 number: 20006389, 20006602, 20006715)	The client asked the progress of adjudication and complained the process took long. They have financial difficulty as a company since they are owed a big amount of money. He asked whether there is compensation for delay of distribution
10 Sep 2024	Chen Chunlei (MT4 number:10006112)	NF discussed with her regarding the manual verification process. The client complained the process took long and it's not easy for her to get documents certified in China

From: Karren Zhao
Sent: Friday, 19 April 2024 3:22:40 PM
To: Prospero Markets
Subject: Re: Urgent: Prosperomarkets client - Request for Withdrawal of Funds from My MT4 Account No. 20000162; Name: Da Zhao
Attachments: Da Zhao_Form 535.pdf, April 2024 Monthly Statement.pdf

Hi Mankirth,
Documents attached as requested.
Thank you for assisting me through the phone.
Best regards,
Karren Zhao

On Thu, Apr 18, 2024 at 9:41 AM Prospero Markets <prosperomarkets@brifnsw.com.au> wrote:

Dear Karren,

Thank you for your email.

Please find attached a Proof of Debt Form for your completion.

Please complete the form and return it to prosperomarkets@brifnsw.com.au. Please provide a copy of your latest MT4 statement so we have confirmation of your equity position.

As we are in the preliminary stages of our appointment, we are uncertain as to the timing of the return of funds.

We will issue a short report in the next couple of weeks to confirm our appointment. We will also provide updates on our website <https://briferrier.com.au/about-us/current-matters/prospero-markets-pty-ltd>

Should you have any further queries, please do not hesitate to contact me.

Regards,

Mankirth Mandair

Intermediate Accountant



We have moved, please note our new address below.

A Level 26, 25 Bligh Street, Sydney NSW 2000

P GPO Box 7079, Sydney NSW 2001

T 1300 291 012 (toll free) or + 61 2 8044 0530 (international)

E prosperomarkets@brifnsw.com.au | W www.briferrier.com.au



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From: Karren Zhao <[REDACTED]>
Sent: Friday, April 12, 2024 2:49 PM
To: Prospero Markets <prosperomarkets@brifnsw.com.au>
Subject: Urgent: Prosperomarkets client - Request for Withdrawal of Funds from My MT4 Account No. 20000162; Name: Da Zhao

Hi,

I am writing as one of your clients who has been investing with Prosperomarket since 2022. My MT4 account number is 20000162. Unfortunately, with the forced halt in trading and freezing of clients' accounts, my current balance of \$25,681.75 remains inaccessible.

I am experiencing significant financial hardship as a single mother with two young children, compounded by a sharp increase in my mortgage payments this year. Therefore, I urgently request the immediate withdrawal of the funds from my account.

Please let me know what additional information you may require to process this request. You can contact me at [REDACTED] or via my regular used email at [REDACTED].

Thank you for your prompt attention to this matter. I look forward to hearing from you soon.

Sincerely,

Karren Zhao

VCID:9e649dba-f10b-4a04-a576-a876403f1f2a.

From: Savio Monis
Sent: Wednesday, 26 June 2024 4:03:05 PM
To: Qíng Lin
Cc: Pauline Yeow; Katherine La; Hugh Matthews; Mankirth Mandair
Subject: RE: Prospero Markets Pty Ltd (In Liquidation), Creditor lodge number: P243297

Dear Ms Lin

Thank you for your email and apologies for the delay in providing you a response.

I can confirm that we have received proof of debt lodged on the online portal. Should we require any further information in regard to your claim, we will contact you for the same.

The liquidators will be issuing their Statutory Report to Creditors on 10 July 2024 and further details on distribution of the claims will be advised in this report.

Should you have any further queries, please do not hesitate to contact me.

Kind Regards

Savio Monis
Manager



We have moved, please note our new address below.

A Level 26, 25 Bligh Street, Sydney NSW 2000
P GPO Box 7079, Sydney, NSW, 2001
D +61 2 8263 2355 **T** +61 2 8263 2333
E smonis@brifnsw.com.au **W** www.briferrier.com.au



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From: Qing Lin <[REDACTED]>
Sent: Friday, June 14, 2024 10:16 AM
To: Savio Monis <smonis@brifnsw.com.au>
Cc: John Keenan <jkeen@brifnsw.com.au>; Pauline Yeow <pyeow@brifnsw.com.au>; Katherine La <kla@brifnsw.com.au>; Hugh Matthews <hmatthews@brifnsw.com.au>; Mankirth Mandair <mmandair@brifnsw.com.au>; Julia Wheeler <Julia.Wheeler@asic.gov.au>
Subject: Re: Prospero Markets Pty Ltd (In Liquidation), Creditor lodge number: P243297

Hi Savio,

Time is gone very quickly, since 11/04 you started processing of liquidity of Prospero, it's already been more than 2 months. I lodged application form on around 12/04 and logged creditor's portal by your request on about 10/05. Could you please let me know if my lodgement is checked all right? When could you please process the clients claims to release our money?

Kind regards
Qing

Sent from my iPhone

On 6 May 2024, at 11:04, Savio Monis <smonis@brifnsw.com.au> wrote:

Dear Ms Lin

We understand your situation has become difficult and urgent.

We will be issuing our initial report to creditors on 8 May 2024. A copy of this report will be sent to you.

This report amongst other things will include information on the timing and quantum of returns to clients.

Should you have any further queries, please do not hesitate to contact me.

Kind Regards

Savio Monis
Manager

<image001.jpg>

We have moved, please note our new address below.

A Level 26, 25 Bligh Street, Sydney NSW 2000
 P GPO Box 7079, Sydney, NSW, 2001
 D +61 2 8263 2355 T +61 2 8263 2333
 E smonis@brifnsw.com.au W www.briferrier.com.au

<image002.png>

<image003.gif>

<image004.png>

<image005.png>

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From: Qing Lin <[REDACTED]>
Sent: Wednesday, May 1, 2024 11:17 AM
To: Savio Monis <smonis@brifnsw.com.au>
Cc: John Keenan <jkeen@brifnsw.com.au>; Pauline Yeow <pyeow@brifnsw.com.au>; Katherine La <kla@brifnsw.com.au>; Hugh Matthews <hmatthews@brifnsw.com.au>; Mankirth Mandair <mmandair@brifnsw.com.au>; Julia Wheeler <Julia.Wheeler@asic.gov.au>
Subject: Re: Prospero Markets Pty Ltd (In Liquidation)

Savio,

My situation has become more and more difficult and urgent. I do need my money back ASAP.

Regards
 Qing

Sent from my iPhone

From: Lia Qiu
Sent: Wednesday, 31 July 2024 6:40:11 PM
To: Prospero Markets
Subject: Re: id verification issue

Thank you for your reply, the documents that I provided are original and authentic. I do not understand for what reason I need to get them Jp certified. In addition, this process has been proceeding since May and it has been three months. I am out of patient now, Since I have been politely cooperating with your work for so much time, I need it to be done before the end of next week.

Please get my funds back to my account before I propose a report.

Thank you

Liyuan

On Tue, Jul 30, 2024 at 10:36 Prospero Markets <prosperomarkets@brifnsw.com.au> wrote:

Dear Madam,

Thank you for your email.

Please be advised that the documents that you have provided are not JP certified,

Please get your passport and energy bill certified by one of the below parties.

1. Justice of the Peace
2. Notaries
3. Lawyers
4. Judges or magistrates
5. Embassy representative
6. Police Officers
7. Medical Doctors
8. Government Representatives

Should you have any further queries, please do not hesitate to contact me.

Regards,

Mankirth Mandair

Intermediate Accountant



We have moved, please note our new address below.

A Level 26, 25 Bligh Street, Sydney NSW 2000

P GPO Box 7079, Sydney NSW 2001

T 02 8263 2333 | **D** 02 8263 2375

E mmandair@brifnsw.com.au | **W** www.briferrier.com.au



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From: Prospero Markets
Sent: Friday, 2 August 2024 10:24:21 AM
To: [REDACTED]
Subject: RE: Prospero Markets PTY Limited (In Liquidation) - Jia Jun Shen
Attachments: Statutory Report to Creditors.pdf

Hi Ricky

We are working hard to make continued progress on this liquidation, thanks for your patience up to this point.

I've attached the most recent update for creditors.

Should you have any further queries, please do not hesitate to contact me.

Regards,

Ben Dixon

Intermediate Accountant

BRI Ferrier

We have moved, please note our new address below.

A Level 26, 25 Bligh Street, Sydney NSW 2000

P GPO Box 7079, Sydney NSW 2001

T 1300 291 012 (toll free) or +61 2 8044 0530 (international)

E prosperomarkets@brifnsw.com.au | W www.briferrier.com.au

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From: rickyshen <[REDACTED]>
Sent: Friday, August 2, 2024 9:57 AM
To: Prospero Markets <prosperomarkets@brifnsw.com.au>
Subject: Re: Prospero Markets PTY Limited (In Liquidation) - Jia Jun Shen

Dear Ben

Hope you are doing well.

Just wondering when can I receive my money back? Because I have home loans and bills to pay. My financial situation could not hold for longer.

Please let me know when you can release my money. Thank you

Regards

Ricky SHEN

在 2024年6月22日, 03:15, ricky shen <[REDACTED]> 写道 :

Dear Ben

I have uploaded certified bank statement copy as required in the link portal. Thank you!

Best regards

Jia SHEN

发自我的 iPad

在 2024年6月18日, 下午2:26, Prospero Markets

<prosperomarkets@brifnsw.com.au> 写道 :

Dear Jia

We have received your POD claim for Prospero Markets PTY Ltd, however there are some additional documents which are required to move forward with your claim.

Can you please upload the following to the Link Portal:

1. **Certified** bank statement copy (by stamp & signature)

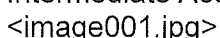
Please reply to confirm when you have uploaded these documents to the Link Portal.

Should you have any further queries, please do not hesitate to contact me.

Regards,

Ben Dixon

Intermediate Accountant

<

We have moved, please note our new address below.

A Level 26, 25 Bligh Street, Sydney NSW 2000

P GPO Box 7079, Sydney NSW 2001

T 1300 291 012 (toll free) or +61 2 8044 0530 (international)

E prosperomarkets@brifnsw.com.au | W www.briferrier.com.au

<

Sydney | Melbourne | Adelaide | Perth | Brisbane | Cairns |

Townsville | Auckland

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VCID:e4dbb1bc-a3d6-4087-bcca-c01f1eeb1acf.

From: Prospero Markets
Sent: Tuesday, 3 September 2024 9:39:27 AM
To: 'Kerry Zheng'
Subject: RE: Fund withdraw

Dear Sir,
 Thank you for your email.
 Our adjudication team will review your documents and will advise if they are all correct or will contact you if additional documents are required.
 In regards to the dividend distribution, we are still waiting on the court to provide us with a direction as to how and when we can pay the creditors.
 Please be advised that we have done everything within our power to speed up this process and it is now up to the court on how they proceed with this matter.
 Should you have any further queries, please do not hesitate to contact me.

Regards,

Mankirth Mandair

Intermediate Accountant

BRI Ferrier

We have moved, please note our new address below.

A Level 26, 25 Bligh Street, Sydney NSW 2000

P GPO Box 7079, Sydney NSW 2001

T 02 8263 2333 | D 02 8263 2375

E mmandair@brifnsw.com.au | W www.briferrier.com.au

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From: Kerry Zheng <[REDACTED]>
Sent: Sunday, September 1, 2024 11:31 PM
To: Prospero Markets <prosperomarkets@brifnsw.com.au>
Subject: Fund withdraw

Hi,

I had updated all documents I got. I think it should be enough to prove my account is eligible for withdrawal. Can I proceed to next step? Its very difficult time for me now. I have no money to continue my life. Please get it solve.

Regards,
Kerry

From: Aaron Wei
Sent: Sunday, 6 October 2024 6:13:31 PM
To: Prospero Markets
Subject: Requesting update

Hi Team

How are you?

I am writing to request an update for our fund. When will it be released? We were told by you it was going to be from September to November, now half of the time has been passed, could you give me an update so we don't wait blindly

Kind regards

Aaron

From: Amanda Wang
Sent: Sunday, 6 October 2024 6:50:30 PM
To: Prospero Markets
Cc:

Subject: URGENT - Request Court Order for the Court hearing held on 19 September 2024 - Prospero in Liquidation
Importance: High

Dear Team,
I hope this email finds you well.

To my understanding, there was a hearing held on the 19th September 2024 regarding client funds distribution application.

To date, we are yet to receive any updates, including the associated Court Order from BRI Ferrier.

Lately, we overheard from some BRI Ferrier staff that the Court Order had proposed no funds to be released until BRI Ferrier completes further investigation and is able to proving to the Court where **ALL** clients' money was coming from, including oversea clients.

If this is true, we have a large group of local clients (cc'd a few in this email), who residing in Australia, we are in disagreement with the above and would like to sign a Petition and appeal the Court Order.

We puzzled to understand why **LOCAL Creditors'** funds Releasing Application are not being treated with urgency or being prioritized.

Firstly, we live locally, we are in Australia, I am sure you will agree with me, it takes a lot lesser of your time and efforts to investigate a Local client's case, in comparison to an Oversea case. For Local cases, it's much easier for BRI team to find out where our money was coming from, you can get in contact with us easily, or verifying our money are clean and was legally earned. Further, those creditors who residing oversea and non Australian, their country's tax system, financial system, and government law system are totally different to what we had in Australia and those systems DO NOT sync.

In another word, how would BRI be able to even dig to the bottom of where their money was coming from or justifying their funds are legal earnings. It's a nightmare and it's an impossible mission.

Therefore, why should us, those innocent local creditors like myself, being putting into an endless and hopeless waiting queue and suffering as a result of the aforementioned.

Can you please provide us the associated Court Order for the hearing held on 19 September 2024 at 9:30am, to my knowledge, we can appeal a decision of Federal Court within 28 days of the date of Court decision.

Last but not least, could BRI Ferrier lawyer assist us with filing the Petition and have it presenting to the Court on our behalf?

Can you kindly advise what BRI can do to assist local creditor like myself in the current situation?

Can BRI filing our emails and present to the Court to hear our says?

Or, should we consult our own legal advices?

Can we contact the Court directly, or, do we have to engage a lawyer prior to contacting the Court.

I look forward to your prompt response.

Can you please **REPLY ALL** to keep the others cc'd in this email in the loop of your response?

Thank you.

Kind regards,

Amanda Wang

From: Shenle Hu
Sent: Sunday, 6 October 2024 6:38:16 PM
To: Prospero Markets
Subject: Prospero Markets liquidation

Dear Prospero Market Liquidation Team,

It has been a year since my trading account with Prospero Markets was frozen. The same situation as many other Prospero Markets' clients. During this period, we experienced a lot of difficulties and anxieties, both financially and psychologically. Many times before we were told that the case moved forward and our fund would be released but again and again our hope disappeared. We, as a group of Prospero Markets' clients, are writing this petition to formally express our request that the liquidation team put this case in the court at an earliest date possible to seek the court order to release our fund.

Yours Faithfully

Shenle Hu & many other clients

From: David Wei
Sent: Monday, 7 October 2024 12:15:23 PM
To: Prospero Markets
Subject: URGENT - Request Court Order for the Court hearing held on 19 September 2024 - Prospero in Liquidation

Dear Team,

I hope this email finds you well.

My name is FENG WEI. I am writing to ask for the estimated schedule of money withdrawal. To my understanding, there was a hearing held on the 19th September 2024 regarding client funds distribution application.

To date, we are yet to receive any updates, including the associated Court Order from BRI Ferrier.

Lately, we overheard from some BRI Ferrier staff that the Court Order had proposed no funds to be released until BRI Ferrier completes further investigation and is able to proving to the Court where ALL clients' money was coming from, including oversea clients.

If this is true, we have a large group of local clients (cc'd a few in this email), who residing in Australia, we are in disagreement with the above and would like to sign a Petition and appeal the Court Order.

We puzzled to understand why LOCAL Creditors' funds Releasing Application are not being treated with urgency or being prioritized.

Firstly, we live locally, we are in Australia, I am sure you will agree with me, it takes a lot lesser of your time and efforts to investigate a Local client's case, in comparison to an Oversea case. For Local cases, it's much easier for BRI team to find out where our money was coming from, you can get in contact with us easily, or verifying our money are clean and was legally earned. Further, those creditors who residing oversea and non Australian, their country's tax system, financial system, and government law system are totally different to what we had in Australia and those systems DO NOT sync.

In another word, how would BRI be able to even dig to the bottom of where their money was coming from or justifying their funds are legal earnings. It's a nightmare and it's an impossible mission.

Therefore, why should us, those innocent local creditors like myself, being putting into an endless and hopeless waiting queue and suffering as a result of the aforementioned.

Can you please provide us the associated Court Order for the hearing held on 19 September 2024 at 9:30am, to my knowledge, we can appeal a decision of Federal Court within 28 days of the date of Court decision.

Last but not least, could BRI Ferrier lawyer assist us with filing the Petition and have it presenting to the Court on our behalf?

Can you kindly advise what BRI can do to assist local creditor like myself in the current situation?

Can BRI filing our emails and present to the Court to hear our says?

Or, should we consult our own legal advices?

Can we contact the Court directly, or, do we have to engage a lawyer prior to contacting the Court.

I look forward to your prompt response.

Thank you.

Kind regards,
FENG WEI

From: [REDACTED]
Sent: Thursday, 10 October 2024 6:34:00 PM
To: Prospero Markets
Subject: Re: Prospero Markets Pty Ltd (In Liquidation) - Court Application Update

Hi,

This has been taking too long. New defendants do not have any relation with the clients, I am the victim in this case who have been waiting for a year to get my money back. The financial system is so wrong. Now have to wait till after Christmas and don't know when I can have my money back. There is sufficient money in the company's clients account and that's good enough to release isn't it? Also all those submitted transaction history and other documents can prove the correct amount. New cases are accepted by Philip and is on the news, how come there is still delay in processing our money. I need to have my money back ASAP. Please provide an update thx .

Hong

Sent from my iPhone

From: Linjian Chen
Sent: Thursday, 10 October 2024 5:11:54 PM
To: Prospero Markets
Subject: Re: Prospero Markets Pty Ltd (In Liquidation) - Court Application Update

I understand the difficulties you are experiencing. However, we as clients, have had our funds stranded for a very long time, will you come to understand us? You will be paid accordingly for your liquidation work, while we the clients, will lose a day's money for every day of delay, and since you have promised your clients in July that the liquidation will be completed in September-November, you should have done it. It is incomprehensible to me that you are unable to fulfill your promise and that you are making our clients suffer the consequences.

发自我的iPhone

From: jianguo dai
Sent: Friday, 11 October 2024 8:09:26 AM
To: Prospero Markets
Subject: Re: Prospero Markets Pty Ltd (In Liquidation) - Court Application Update
Attachments: image003.jpg, image004.png, image005.gif, image006.png, image007.png, image007.png

Dear Sir/Madam,

I am writing to you in a state of extreme distress and desperation. My funds have been frozen for over a year due to your company's liquidation and regulatory actions by Australian authorities. This prolonged freeze has placed an unbearable financial burden on my family and me, especially in the current economic climate.

The rising cost of living, coupled with high interest rates, has added to our already strained finances. As a parent, I have the God-given responsibility to care for my children, and without access to these funds, it has become nearly impossible to provide for their most basic needs—such as food, school fees, and medical care. In this time of difficulty, I am also battling depression, and the weight of these financial struggles is severely affecting my mental and emotional well-being.

I appeal to you not just as a business, but as fellow human beings who understand the sanctity of family and the moral responsibility we all have. God calls us to be stewards of the well-being of our loved ones, and as a parent, I am doing everything in my power to fulfill this sacred duty. However, I am now at a point where I cannot do so without your help. The funds that have been frozen are not just numbers in an account—they represent the means by which I can fulfill the calling that God has placed on me to care for my family.

Please, I humbly ask you to reflect on the gravity of my situation. I am pleading for the release of my funds so that I may fulfill my God-given duty to protect and provide for my family. The delay in accessing these funds is not only hindering our survival but also intensifying the emotional and spiritual burden I carry as a parent. I trust in God's mercy, but I also believe that human compassion plays a vital role in relieving the suffering of others.

I beg you to consider this appeal with empathy and urgency, and release the frozen funds that my family desperately needs to survive. Your help will be an answer to my prayers and allow us to regain some stability in this incredibly challenging time.

Thank you for your understanding, compassion, and prompt action. I sincerely hope for a swift resolution, as my family's well-being and my health are in jeopardy.

Yours sincerely,

From: Prospero Markets
Sent: Thursday, 10 October 2024 3:26:44 PM
Subject: Prospero Markets Pty Ltd (In Liquidation) - Court Application Update
Attachments: Orders dated 19 September 2024 made by Justice Cheeseman.PDF, Amended Originating Process filed on 20 September 2024.PDF

Dear Creditor

Prospero Markets Pty Ltd (In Liquidation)
A.C.N. 145 048 577 ("the Company")

We refer to our recent email update issued on 5 September 2024, which provided details of our application to the Federal Court of Australia to approve the intended distribution process (proceeding NSD1020/2024). We provide below a brief update on that application.

A case management hearing for the Liquidators' application was held before the docket Judge, Justice Cheeseman on 19 September 2024. The following orders were made:

1. The Plaintiffs be granted leave to file the amended originating process substantially in the form provided to the Associate to Cheeseman J by email on 3 September 2024.
2. Ms Yuya Huang and Mr Lei Zhang be joined as defendants to the proceeding.
3. The matter be listed for a case management hearing on 17 October 2024.

In accordance with those orders, we have filed an amended originating process. We **attach** a copy of the sealed orders dated 19 September 2024 and the sealed amended originating process filed on 20 September 2024.

Further, during the case management hearing, Justice Cheeseman directed us to identify and appoint a contradictor to act in the proceedings. The contradictor's role will be to assist the Court by making counterarguments against us as Liquidators and presenting a balanced view on issues involving competing interests (such as (i) whether our remuneration and legal fees are paid out of trust funds or general liquidation funds, (ii) whether the trust funds should be converted into AUD and, if so, from what date, and (iii) our 'Proposed Distribution Process' generally. Contradictors are commonly joined to proceedings of this nature where there are no defendants.

We have identified legal representatives, W Advisers, as a suitable contradictor for these proceedings. We have instructed our legal representatives (Bartier Perry) to brief and engage with W Advisers with a view to joining them to the proceedings as contradictor and agreeing on timetable orders to advance the proceedings to final hearing.

The combined effect of the Court ordering that defendants are joined, and the requirement to appoint a contradictor, will result in delays to the distribution process and additional costs being incurred. Unfortunately, this means that we are unable to distribute the client monies by November 2024, as previously foreshadowed.

We will provide more specific information on the updated timeframe for the distribution to clients once the timetable is set with the Court.

The next case management hearing is set for 9.30 am on 17 October 2024, which will take place in person at the Federal Court of Australia in Sydney. We remain focussed on distributing the client monies as soon as possible. To that end, and whilst ultimately in the Court's hands, we intend to seek the earliest available hearing dates in 2024 (with the contradictor's agreement and availability if possible) at the next case management hearing to minimise the delays in distributing the client monies. We have instructed our legal representatives to prepare evidence in support of the request for an early hearing date to be relied on at the next case management hearing.

We recommend that any interested parties seeking to be heard at the case management hearing obtain independent legal advice and communicate with the Court.

Regards,

Jonathon Keenan, Andrew Cummins and Peter Krejci
Joint & Several Liquidators



We have moved, please note our new address below.

A Level 26, 25 Bligh Street, Sydney NSW 2000
P GPO Box 7079, Sydney NSW 2001
T 1300 291 012 (toll free) or + 61 2 8044 0530 (international)
E prosperomarkets@brifnsw.com.au | W www.briferrier.com.au



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VCID:28e834bf-7773-4224-8131-4097ab06be84.



Bartier Perry Pty Ltd
Level 25, 161 Castlereagh St
Sydney NSW 2000 Australia

PO Box 2631
Sydney NSW 2001

T +61 2 8281 7800
ABN 30 124 690 053
bartier.com.au

Ausjuris Legal
Level 17, 123 Pitt Street
Sydney NSW 2000

9 October 2024

Our ref DRD 242964

Email: austin.yeung@ausjurislegal.com.au

Dear Mr Yeung

**Prospero Markets Pty Ltd (in Liquidation)
Federal Court of Australia Proceedings no. NSD1020/2024**

1. We refer to previous correspondence and the abovementioned proceedings.
2. We also enclose a sealed copy of the plaintiffs' amended originating process filed on 25 September 2024 which corrects minor infelicities in the first iteration of the originating process.
3. Further, despite order [2] dated 19 September 2024 joining your clients as defendants to the proceedings, we note that no notice of acting has been filed or served.
4. Please attend to filing and serving a notice of acting as soon as possible and also provide an update on whether leave has been granted to your clients to file and serve the subpoenas referred to during the case management hearing on 19 September 2024.
5. The Liquidators reserve all rights with respect to any subpoenas filed and served by your clients and as to costs generally.
6. Further, during the case management hearing, Justice Cheeseman directed the Liquidators to identify and appoint a contradictor. The Liquidators have identified W Advisers as a suitable contradictor and have instructed their legal representatives to brief and engage with W Advisers with a view to joining them to the proceedings as contradictor and agreeing on timetable orders to advance the proceedings to final hearing.
7. We will provide more specific information on the contradictor's estimated costs, impact on estimated outcomes and the anticipated timing for distributing client money once the contradictor's estimate and preliminary views on scope are obtained.
8. The Liquidators remain aware of the desire to return client money as soon as possible. To that end, in light of increased contact received from clients and creditors (and whilst ultimately in the Court's hands), the Liquidators intend to seek the earliest available hearing dates in 2024 (with the contradictor's agreement and availability if

179138981 - 242964 (DRD)

Prospero Markets Pty Ltd (In Liquidation)

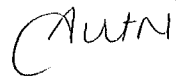
possible) at the next case management hearing to seek to reduce any further delay in returning client money to entitled clients. The Liquidators have instructed their legal representatives to prepare evidence in support of the request for an early hearing date to be relied on at the next case management hearing.

9. Please contact us if you wish to discuss.

Yours faithfully
Bartier Perry



David de Mestre | Senior Associate
D 9259 9620 F 8281 7838
ddemestre@bartier.com.au



Adam Cutri | Partner
D 8281 7873 F 8281 7838 M 0403 888 669
acutri@bartier.com.au

From: Austin Yeung <austin.yeung@ausjurislegal.com.au>
Sent: Thursday, October 10, 2024 3:36 PM
To: David de Mestre <DdeMestre@bartier.com.au>
Cc: Gavin Stuart <GStuart@bartier.com.au>; Adam Cutri <ACutri@bartier.com.au>
Subject: Re: NSD1020/2024 - AN APPLICATION BY JONATHON SHERWOOD KEENAN & ORS [BP-BPWSD.B.FID1755657]

Dear Colleagues,

Our counsel asked us to convey his apology for the delay as he was unexpectedly caught up in an urgent matter in the past few weeks. We expect to progress the request for leave to issue subpoena/s this upcoming weekend.

As to the hearing dates, our clients respect and agree that the earliest available hearing dates should be sought.

Subject to the Court's convenience, to your availability and the contradictor's availability, we advise that our counsel is unavailable 5-28 April 2025. Whilst we do not expect the Liquidators and/or the court to avoid this period for the sole purpose of accommodating our counsel's availability, we respectfully request that our clients' preference in avoiding the hearing being listed during this period be taken into consideration when listing dates are proposed.

Yours Faithfully,

Austin M. C. Yeung | Lawyer

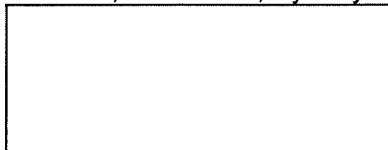
Mobile: 04 6688 8053

Office: 02 8328 1818

Email: austin.yeung@ausjurislegal.com.au

Website: ausjurislegal.com.au

Level 17, 123 Pitt St, Sydney NSW 2000 Australia



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On Wed, Oct 9, 2024 at 4:53 PM David de Mestre <DdeMestre@bartier.com.au> wrote:

Dear Mr Yeung

We attach our letter of today's date with its attachment regarding the abovementioned proceedings.

Regards

David

DAVID DE MESTRE

Senior Associate

Bartier Perry Pty Limited

D +61 2 9259 9620

ddemestre@bartier.com.au | [Website](#) | [LinkedIn](#) | [X \(formerly Twitter\)](#)

Level 25, 161 Castlereagh Street, Sydney NSW 2000



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From: David de Mestre
Sent: Friday, October 11, 2024 4:24 PM
To: Austin Yeung <austin.yeung@ausjurislegal.com.au>
Cc: Gavin Stuart <GStuart@bartier.com.au>; Adam Cutri <ACutri@bartier.com.au>
Subject: RE: NSD1020/2024 - AN APPLICATION BY JONATHON SHERWOOD KEENAN & ORS [BP-BPWSD.B.FID1755657]

Dear Mr Yeung

We are instructed to produce an unredacted copy of the document appearing at page 300ff of Exhibit JSK-1 in response to a valid notice to produce served by your client under rule 20.31 of the *Federal Court Rules 2011* (Cth).

Please serve the notice to produce as soon as possible to avoid unnecessary delay.

Regards

David

DAVID DE MESTRE
Senior Associate
Bartier Perry Pty Limited

D +61 2 9259 9620
ddemestre@bartier.com.au | [Website](#) | [LinkedIn](#) | [X \(formerly Twitter\)](#)
 Level 25, 161 Castlereagh Street, Sydney NSW 2000



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From: Austin Yeung <austin.yeung@ausjurislegal.com.au>
Sent: Friday, October 11, 2024 11:32 AM
To: David de Mestre <DdeMestre@bartier.com.au>
Cc: Gavin Stuart <GStuart@bartier.com.au>; Adam Cutri <ACutri@bartier.com.au>
Subject: Re: NSD1020/2024 - AN APPLICATION BY JONATHON SHERWOOD KEENAN & ORS [BP-BPWSD.B.FID1755657]

Dear Colleagues,

We are presently working on requests to issue subpoenas.

We have identified that one key piece of information is the address(es) of the cryptowallets referred to on Page 300 of Exhibit JSK-1.

We understand that for good reasons, those addresses have been redacted.

We respectfully request a copy of the unredacted version. The purpose of this request is that we can issue subpoenas against individuals who we suspect may have information about the ownership of the cryptowallets.

It is also our preliminary understanding that by knowing the address, any member of the public will be able to gain access to the distributed ledger, and if our clients' deposits can be matched with the ledgers associated with the cryptowallets, then it will be conclusively proven that our clients' deposits did not form part of funds presently sitting in the Australian client accounts which the Liquidators are seeking orders to distribute.

We look forward to your prompt response.

Yours Faithfully,

Austin M. C. Yeung | Lawyer

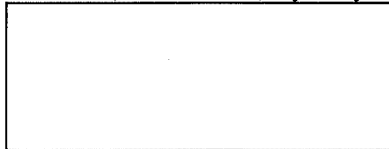
Mobile: 04 6688 8053

Office: 02 8328 1818

Email: austin.yeung@ausjurislegal.com.au

Website: ausjurislegal.com.au

Level 17, 123 Pitt St, Sydney NSW 2000 Australia



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Ordered by: Stephanie Youkhana

For: Bartier Perry Solicitors

Email: syoukhana@bartier.com.au

TRANSCRIPT OF PROCEEDINGS

O/N H-1961842

FEDERAL COURT OF AUSTRALIA

NEW SOUTH WALES REGISTRY

CHEESEMAN J

No. NSD 1020 of 2024

AN APPLICATION BY JONATHON SHERWOOD KEENAN and OTHERS

SYDNEY

9.44 AM, THURSDAY, 19 SEPTEMBER 2024

MS H. MANN appears for the applicants

MR R. CHEN appears for the interested parties

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MS H. MANN: Your Honour, Mann - that's M-a-double-n - for the applicants.

5 HER HONOUR: Thank you, Ms Mann.

MR CHEN: Your Honour, my last name is Chen, C-h-e-n. I appear for the interested parties.

10 HER HONOUR: Thank you, Mr Chen.

MR CHEN: Your Honour, can I hand up some short minutes proposed by the interested parties?

15 HER HONOUR: Yes. Has Ms Mann seen a copy of those?

MR CHEN: Yes.

20 HER HONOUR: Thank you, Mr Chen. Can you start by just giving me an outline of how your clients are interested in the proceedings? I understand they've lodged a proof of debt.

MR CHEN: Yes.

25 HER HONOUR: But they - can you give me a bit more background.

MR CHEN: Yes. Your Honour, my understanding of the originating process is that, amongst other things, the plaintiff seeks a direction that they be justified in releasing certain money held on trust - - -

30 HER HONOUR: Yes.

35 MR CHEN: - - - and those money are proposed - if the orders are made, those monies are to be distributed to what the plaintiffs describe as the Australia-based customers of the company liquidation. My clients are non-Australia-based customers. At present, my clients contend that there is a possibility that they may also have a claim in the trust money that is sought to be released. Therefore, if your Honour makes the orders as requested in the originating process, then my clients would lose out their potential claim against the trust money. So that's how my clients
40 are interested.

HER HONOUR: And, in terms of there's a broader - can you tell me if this is correct - there's a broader class of non-Australian-based creditors and your clients are only two of those?

45 MR CHEN: Correct, your Honour.

HER HONOUR: All right.

MR CHEN: My understanding is that presently - and my learned friend could
correct me if I'm wrong. Presently my client's claim as to value is about at least 70
5 per cent of the - - -

HER HONOUR: Broader class of non-Australian?

MR CHEN: Correct.
10

HER HONOUR: Right.

MR CHEN: Yes. That's my understanding if - - -

15 HER HONOUR: All right.

MR CHEN: Of how I read the affidavit.

HER HONOUR: All right. And take me through the - Ms Mann, the orders that
20 have just been handed to me - - -

MS MANN: Yes, your Honour.

HER HONOUR: Are these consented to or - - -
25

MS MANN: Order 1, yes, your Honour, because that's originating process.

HER HONOUR: That's your order. Yes.

30 MS MANN: The remainder - it's a fairly leisurely timetable, but from what I gather
from what Mr Chen fairly said is his clients have - he himself needs some time to
work out what the position actually is.

HER HONOUR: Yes.
35

MS MANN: On what I currently know from solicitors' correspondence, I think that
position is misguided in this part of the proceedings.

HER HONOUR: You think it's the wrong party.
40

MS MANN: I think it's a misguided position just in the sense, your Honour, that
what Mr Chen just outlined - what we're seeking, your Honour, is directions as to the
process - how to distribute the trust fund. That's fair enough. One of the steps in that
is a process equivalent to a proof of debt only in relation to trust money, where Mr
45 Chen's clients will have a chance to put in their claim and on - - -

HER HONOUR: And it will be adjudicated on by the - - -

MS MANN: And what we currently know, it would be rejected.

HER HONOUR: Yes.

5 MS MANN: That's also fair, but then in that process that we're proposing there is a step of rejection notice and then a period for people not satisfied with what occurred in the rejection, like Mr Chen's clients, to bring the matter to court to be decided. So we say what is being raised is a problem for that part of the process, not for the
10 current stage where we're simply seeking directions as to how the process should proceed.

HER HONOUR: Right.

15 MS MANN: And if there is a rejection and if that matter is brought to court - - -

HER HONOUR: It's at that stage that discovery through subpoenas, etcetera, could be managed.

20 MS MANN: If appropriate. And if such claims are raised, your Honour, my clients might have a real difficulty in taking any steps to distribute the trust because they obviously won't know who the group is. So that distribution might simply have to await the outcome of that dispute, if that makes sense.

25 HER HONOUR: Yes.

MS MANN: The only thing I will correct, your honour, before I forget is Mr Chen said that his clients are claiming - - -

30 HER HONOUR: 70 per cent.

MS MANN: - - - 70 per cent as to value of the, as he put it, non-Australian clients. That might be broadly right in relation to the non-Australian clients who have lodged a claim, but I understand that to be very much a minority of the broader group of the
35 non-Australian clients, of whom, on an estimate that I was provided in this evidence, there are about 20,000, and so the pool, as such, is much bigger. I'm not sure if that's making sense to your Honour right now without further background. I can elaborate if necessary.

40 HER HONOUR: I think it would be useful to have the elaboration, in terms of coming to the orders you seek in relation to process as well.

MS MANN: Yes, your Honour. Has your Honour seen the estimated outcome statement?

45 HER HONOUR: No.

MS MANN: No. It has been provided to your Honour in some form, but I have an A3 copy which just might be easier.

5 HER HONOUR: Thank you. Is this to be read with the note as to potential conflict on - relevant to the appointment of the contradictor?

MS MANN: Yes, your Honour. And this estimated outcome statement is simply something that formed part of the liquidator's report and formed part of the evidence that has been tendered. It's the liquidator's workings effectively as to how the
10 distribution of money, including the trust money, would be distributed.

HER HONOUR: Yes.

MS MANN: And there are two scenarios, just starting with that, your Honour. One
15 assumes that the costs of the distribution and the liquidator's remuneration comes out of the trust funds - those are the items in red at the top - and the other assumes that those costs come out of the general funds of the company, so they get moved further down the chain, and that's one of the issues in relation to which directions are being sought, but just coming back, and trying not to lose your Honour in all this, at the top
20 of that estimated outcome statement your Honour will see a line:

Client trust funds.

Close to \$20 million dollars.
25

HER HONOUR: Yes. Yes.

MS MANN: Nineteen and a bit. And then your Honour will see item 8:

30 *Less client liabilities.*

HER HONOUR: Yes.

MS MANN: Does your Honour see that?
35

HER HONOUR: Yes.

MS MANN: Also somewhere between 18 and 19 million. So those are, your Honour, claims of the, as Mr Chen put it, Australian clients.
40

HER HONOUR: Yes.

MS MANN: The group of clients who are all part of one, as it's referred to in the evidence, MT4 database: there's about 2000 people. Now, on that - and that is the
45 group of people who the liquidator currently thinks, and your Honour will have evidence of that, is entitled to the client money. Your Honour see almost nineteen and a bit million of money, 19 so million of claims. Now, putting that, in a sense, to

one side, there's another big group of persons, as I say, on one estimate, 20,000 people, who are part of a different database. We refer to it as the MT4 offshore database.

5 HER HONOUR: Yes.

MS MANN: Mr Chen's clients are two of those persons.

HER HONOUR: Yes.

10

MS MANN: Now, the claims relating to that database are very big. They're much bigger than that 19 million. I don't know exactly, but they go in millions.

HER HONOUR: Right.

15

MS MANN: The liquidator's current position is that those people are simply not the clients of the company and so they are not part - they might be clients of some other company in the group. There might be some money for them somewhere else, but this is simply not it. From what I've seen, Mr Chen's clients don't know or are not sure whether they were - it's not like they say, "No, we were, and we will prove it." From what I've seen, they might simply not know at the moment.

20

HER HONOUR: Yes.

25 MS MANN: And so - - -

HER HONOUR: That's as I read what has been in correspondence before the court. Thank you, Mr Chen.

30 MS MANN: And so coming back to where I started, there's a group of those people, MT4 offshore people, who have lodged "proofs of debts" to the trust money. There's not that many of them. I don't remember the exact number, but there's Mr Chen's clients and some more, and the total value of those claims, I think, is a couple of million, of which two and a bit are Mr Chen's clients.

35

HER HONOUR: Right.

MS MANN: That bigger group of the rest of the MT4 offshore clients have not - - -

40 HER HONOUR: Who have not lodged a proof - - -

MS MANN: Haven't lodged a proof of debt. The liquidators, because of the way they look at the work and what the investigations have shown, have not been serving them with any notices, have not tried to engage them in the process, and as part of the directions of this court, seek effectively a direction that they don't have to do that. They don't have to engage with that broader group. They will have to deal with the claims with people like Mr Chen's clients who have lodged and currently intend to

45

reject them, but as far as in the sense of being pragmatic and not spending the client's money on investigations and notices that will not lead anywhere on what they know, they're not proposing to engage with that wider group

- 5 That, in a sense, your Honour, is by way of background, and the reason I point that out is the way I look at what's happening here, we will have a hearing. We will decide what the process of distribution is. That will then lead to a communication with people like Mr Chen's clients as to them not having a claim, and then if they do not agree with that assessment, it would possibly lead to a dispute. Now, should that
10 dispute somehow uncover evidence that will prove to the liquidators that, in fact, they are - - -

HER HONOUR: Properly creditors, yes.

- 15 MS MANN: - - - proper creditors, there might be a wider question of what happens to all the other offshore clients.

HER HONOUR: Yes.

- 20 MS MANN: And this all might get much more complicated. So it's, in a sense, a chicken and egg situation.

- HER HONOUR: Is it - can I ask this. One of the things that came from Mr Chen's clients in the correspondence was that they be joined as a defendant now to the
25 proceeding. That would enable Mr Chen's clients to avail themselves of compulsory production under subpoena, etcetera, so that whatever investigations that Mr Chen's clients wanted to take at this point in time would not be postponed until that later phase, and it may be that it improves the efficiency of that later phase because, either having availed themselves of the subpoena process, they, taking it pessimistically,
30 conclude that they don't have a claim that's worth pursuing or, alternatively, they're ready to roll with a claim that they say they do wish to make. So - - -

- MS MANN: I understand, your Honour. And that's why I say it's a bit of chicken and egg - - -
35

HER HONOUR: Chicken and egg.

- MS MANN: - - - because I do recognise that there are two ways of looking at it. And the way I have approached and the way I structured this application is not - the
40 other way, and that's because of what I know on the evidence about the strength of those claims, on what I know.

HER HONOUR: Yes.

- 45 MS MANN: What I worry about is that allowing this to happen now in these proceedings will hijack this process and delay it.

5 HER HONOUR: I'm just wondering if they can happen concurrently in the sense that the capture of whatever documents that Mr Chen can properly identify via the subpoena process means that, while we timetable, if we join Mr Chen's clients as defendants - I understand, Mr Chen, and I will just confirm, your clients are not in a position to be - take on a role as representative defendants for that broader class, but they - - -

MR CHEN: That's correct.

10 HER HONOUR: - - - wish to be joined, themselves, to make their own inquiries - - -

MR CHEN: That's correct, your Honour.

15 HER HONOUR: - - - by the process. And if I was to make an order joining your clients today and then you then, through the court, issued such subpoenas as you are seeking to make, and you bring back to the court any - or liaise with the liquidators as your claim firms up because your position at the moment is you just don't know.

20 MR CHEN: Correct.

25 HER HONOUR: And - but otherwise, make - put in place the regime that Ms Mann's advocating for to enable the liquidators to get on with the process, and it might mean that, at some point, before the court has to determine that process, that we will know one way or another whether or not your clients are going to press the go button in terms of asserting that they are creditors, but that will be done, first, through the liquidators adjudication on your claim, but you might have some material to support it by then.

30 MR CHEN: Yes. The - and the only thing I wish to say is, what my client's currently contending in these proceedings is that they have a claim in the trust money; whereas, the proof of debt is a proof of debt for - as is currently put for an liquid - unsecured amount.

35 MS MANN: Sorry. Your Honour, that - - -

MR CHEN: Sorry. I've been told I'm wrong.

40 MS MANN: No. No. I just don't want to confuse - I've been referring to a proof of date just as an equivalent. What I mean is the documentation that claims - claim to the trust assets. So - - -

HER HONOUR: Thank you.

45 MR CHEN: Yes. So well, then we - with that clarification - yes. I have nothing to say against the parallel proceedings of the two events.

HER HONOUR: Ms Mann, how does that sit, from your point of view, in terms of logistics?

5 MS MANN: Well, your Honour, as long as those processes are well confined and, as I understand it, the subpoenas will have to be issued with your Honour's leave.

HER HONOUR: Yes.

10 MS MANN: So there there will be - there won't be some wide-ranging discovery that - - -

15 HER HONOUR: No. It will be the usual process for - the court's usual process for application for subpoenas to be submitted using the form, identifying, attaching the proposed subpoena and, Mr Chen, I would obviously encourage you to approach that with an eye to what is really necessary to test your client's position so that, you know, we don't have to have debates about the subpoenas.

MR CHEN: Yes. Of course, your Honour.

20 HER HONOUR: All right.

MR CHEN: Yes.

25 MS MANN: On that basis, your Honour, I do not have instructions to consent to that, as your Honour can imagine, but I can see the benefit in that process, as long as it's well managed.

HER HONOUR: Yes.

30 MS MANN: As your Honour will appreciate, my client's only concern is not spending what is effectively the client's money, especially in circumstances where, for once, it seems like they have all the money and just need to distribute it.

35 HER HONOUR: Need to distribute it. And then what are the orders you're seeking today?

40 MS MANN: So, your Honour, in addition to that leave for the originating process, which I think your Honour might have seen a draft that simply fixes some infidelities in drafting in relation to where costs are being deducted, so it's nothing substantive.

HER HONOUR: Yes.

45 MS MANN: The only other issue for today, your Honour, really is that question of whether and if so, in what form there should be any contradictor in relation to what I referred to as the process issues - - -

HER HONOUR: Yes.

MS MANN: - - - direction issues. Now, your Honour may have seen in the affidavits that have been filed that after the case management before Markovic J, we have made various inquiries with creditors who were put forward by our client as potential representative defendants.

HER HONOUR: And they've come to nil, effectively.

MS MANN: As of yesterday morning, they've come to nil. Yesterday, one of the - -

HER HONOUR: Is this the gentleman with English as a second language?

MS MANN: Yes.

HER HONOUR: Yes.

MS MANN: There was some correspondence. He expressed interest in being a representative defendant, but I have some concerns given the form of that correspondence, and the - - -

HER HONOUR: I have read that correspondence.

MS MANN: Yes, your Honour. And so in light of all those circumstances, we do not think that appointment of representative defendants will be of the benefit to the process. There is a question as to whether a contradictor should be appointed simply to, in the usual way, in a sense, argue against me and point out the things that I might not see in the way it happens on ex parte applications. I know this has been done earlier this year before Patten J in Victoria - - -

HER HONOUR: Yes.

MS MANN: - - - where counsel with a firm of solicitors was appointed. That might be something that would be of assistance to the process.

HER HONOUR: Yes.

MS MANN: And the only reason, again, I'm being hesitant is because my clients remind me we will be spending the trust money, and unavoidably that pool is going to go down.

HER HONOUR: Yes.

MS MANN: But the issues are fairly confined, and I wouldn't think the contradictor - it will be a limited role unless they pick up something that I simply haven't thought about and point it out, then there is a broader issue, but - - -

HER HONOUR: And the money spent in engaging a contradictor may, in the fullness of time, save money on an appeal where there has been no contradictor - - -

MS MANN: Yes, your Honour.

HER HONOUR: - - - and someone comes out of the woodwork.

MS MANN: Because as we all know, one can think one has it right, but it's not until someone else comes with a different interest that - - -

HER HONOUR: Yes.

MS MANN: So we haven't organised that yet, your Honour, but I think that would be a useful process, and therefore sometime will be needed to simply find a person - an appropriate person. And there might be just a general order or notation as to that today. And after that, really, there's a question of a hearing date. And I appreciate it might be premature, unless your Honour's dates are very far in the future, in which case - - -

HER HONOUR: Ms Mann, what I propose to do is - and the date will be fairly far in the future into next year, but if I put this in for case management on the 17th - - -

MS MANN: Yes, your Honour.

HER HONOUR: - - - on the understanding that you have time to - sorry, the only orders I will make today are granting leave to file the amended originating process, substantially in the form provided to my associate by email on 3 September 2024. I will make an order joining Mr Chen's clients as defendants to the proceedings. I will otherwise list the matter for case management on 17 October 2024. Ms Mann, I encourage your instructors to submit - as soon as they can sensibly do so - a timetable to appoint a contradictor, outlining the scope on which the contradictor is to perform that role.

Include a capacity for the contradictor to approach if the contradictor takes the view that the remit should be broader, and if that can be done before 17 October, I will dispense with the need for a case management so that the parties aren't put to the expense, but I think if you can make your inquiries, identify who the contradictor will be, precisely what their role will be. And if there is ability before they're formally appointed to liaise with them on the scope, then that will make the process move more efficiently forward. If short minutes can be provided to chambers before 17 October to achieve that outcome, I will also liaise via chambers with the parties about the appointment of a hearing date - - -

MS MANN: Yes.

HER HONOUR: - - - which will be some time next year. All right. Thank you for your attendance, Mr Chen.

MR CHEN: Thank you.

HER HONOUR: Thank you, Ms Mann.

5

MS MANN: Thank you, your Honour.

HER HONOUR: Please call the next matter.

10

**MATTER ADJOURNED at 10.07 am UNTIL
THURSDAY, 17 OCTOBER 2024**

From: Nicholas Parsons <nicholas.parsons@wadvisers.com>
Sent: Thursday, 10 October 2024 5:35 PM
To: David de Mestre
Cc: Mark Wilson; Adam Cutri; Gavin Stuart
Subject: Re: Brief to Contradictor | NSD1020/2024 Prospero Markets Pty Ltd (in Liquidation) [BP-BPWSD.B.FID1755657]

Dear David,

Thanks for the brief and the observations.

As discussed on the call earlier, we are happy to accept the appointment. We will be in touch early next week to discuss orders to deal with the scope of the contradictor appointment and a timetable for hearing.

Regards,

Nicholas Parsons
Partner

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IN THE GENERAL DIVISION OF THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Case No.: HC/OA 1037/2024

In the matter of Part 11 of the Insolvency, Restructuring and
Dissolution Act 2018

Date: 08-October-2024

And

In the matter of Section 252 of the Insolvency, Restructuring
and Dissolution Act 2018

1. Jonathon Keenan
(Australia Passport No. RA2345861)
2. Andrew Cummins
(Australia Passport No. PB2200664)
3. Peter Krejci
(Australia Passport No. PA4477377)

...Applicant(s)

To:

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File Ref No:

Solicitor in charge: 1. MOHAMED NAWAZ KAMIL

2. Vidya Sasidharan

REGISTRAR'S NOTICE - HEARING DATE FIXED

The following hearing has been fixed:

Case No: HC/OA 1037/2024

Type of hearing: Case Conference (OA)

Date/Time of hearing: 07-November-2024 at 02:30 PM

Venue of Hearing: Chamber 2-1

EDWIN YAP
FOR REGISTRAR
SUPREME COURT
SINGAPORE

Tel No: 63321157

Email: SUPCT_Registry@judiciary.gov.sg

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Our Reference: CAS-138321-K5V5F4

By email only: acutri@bartier.com.au; ddemestre@bartier.com.au

15 October 2024

Dear Mr Cutri and Mr de Mestre

Prospero Markets Pty Ltd (ACN 145 048 577) (in liquidation) (Propsero)

1. As you are aware, on 29 February 2024, ASIC applied to the Federal Court seeking orders that Prospero be wound up on just and equitable grounds pursuant to section 461(1)(k) of the *Corporations Act 2001* (Cth) (**Corporations Act**) (**Application**).
2. As a result of the Application, on 10 April 2024, the Federal Court made orders winding up Prospero and appointing Andrew Cummins, Jonathon Keenan and Peter Krejci as joint and several liquidators.
3. As set out in the affidavit of Tracey Niemiec affirmed on 29 February 2024 and filed in support of the Application, ASIC understood that the majority of Prospero's clients were retail clients within the meaning of the *Corporations Act* and Prospero held at least \$16,856,690 AUD in client money accounts on behalf of approximately 2,498 retail clients.
4. One of ASIC's priorities in bringing the Application was to ensure that the funds were returned to clients of Prospero in an orderly and timely way. In bringing the Application, ASIC considered that the appointment of liquidators was the best way to ensure the efficient return of client funds from the client money accounts.

Yours sincerely

Chris Rowe
Senior Executive Leader
Investigation & Enforcement Action
Enforcement & Compliance