

IN THE SUPREME COURT OF NEW SOUTH WALES

No 1629 of 10a.

EQUITY DIVISION:

SYDNEY REGISTRY:

IN THE MATTER OF TUMUT RIVER ORCHARD MANAGEMENT PTY LIMITED
(in liquidation) ACN: 003 501 611

HP MERCANTILE PTY LIMITED
ACN 097 362 877)
Plaintiff

TUMUT RIVER ORCHARD MANAGEMENT PTY LIMITED (in liquidation)
ACN: 003 501 611

Defendant

AMENDED ORIGINATING PROCESS-Amended pursuant to orders made on 24

March 2009

A. DETAILS OF APPLICATION

This application is made under section 474B 500(2) of the *Corporations Act 2001* (Cth). The nature of the proceeding is an application for leave to join the Defendant to District Court Sydney Registry proceedings numbers 2742 of 2004, 2743 of 2004 and 2748 of 2004 as well as for an order that the Plaintiff be given a general grant of leave allowing a specified class of proceedings to be brought against the Defendant..

On the facts stated in the supporting affidavit, the plaintiff seeks orders that:

1. Pursuant to section 500 of the Corporations Act, leave be granted to commence proceedings against the Defendant by joining it as a defendant to any proceeding filed, or to be filed in the future, by the Plaintiff against any of the persons named in the schedule to this Originating Process where such proceedings concern a claim to recover a debt which was initially owed to the Defendant and subsequently assigned by it.
2. Any leave granted in accordance with paragraph 1 be subject to conditions including that:
 - a) the Plaintiff shall indemnify the Defendant for any reasonable costs and expenses incurred by the Defendant as a result of its joinder to such proceedings provided that the Defendant does not file a defence in any

such proceedings or joins in any issue in respect of such proceedings:
and

b) That the Defendant have liberty to apply on 7 days notice to the Plaintiff
for the revocation of any leave granted in accordance with paragraph 1.

3. Alternatively, pursuant to section 471B 500 of the *Corporations Act 2001* (Cth), leave be granted to the plaintiff to begin proceedings against the Defendant by joining it as a defendant to District Court NSW proceedings numbers 2742 of 2004, 2743 of 2004, 2748 of 2004 and 3117 of 2006.
4. Any further order that the Court determines to be necessary.
5. Costs but only if this application is opposed by the Defendant.

Filed on behalf of: the Plaintiff

Prepared by: Versace McKenzie Lawyers, Level 13, 210 George Street, SYDNEY, NSW 2000

DX: 10188 SYDNEY STOCK EXCHANGE

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Email: dean@vmlawyers.com.au

REF: Attention Dean McKenzie

Date: ~~20 February 2008~~

9 April 2009.

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Dean McKenzie
Solicitor for the plaintiff

This application will be heard by the Supreme Court of New South Wales at Law Courts Building, Queens Square, Sydney , NSW at*am/*pm on

B. NOTICE TO DEFENDANT

TO: TUMUT RIVER ORCHARD MANAGEMENT PTY LIMITED (in liquidation)
ACN: 003 501 611 of Level 28/31 Market Street, Sydney, NSW 2000.

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff.

Note: Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

C. FILING

Date of filing:



- 9 APR 2009

9 April 09

This originating process is filed by Dean McKenzie of Versace McKenzie for the plaintiff.

D. SERVICE

The plaintiff's address for service is c/- Versace McKenzie DX 10188 SYDNEY STOCK EXCHANGE

It is intended to serve a copy of this originating process on the defendant.