

**IN THE FEDERAL COURT OF AUSTRALIA
NEW SOUTH WALES DISTRICT REGISTRY**

No. NSD 1846 of 2008

**IN THE MATTER OF A.B.C LEARNING CENTRES LIMITED (ADMINISTRATORS
APPOINTED) (RECEIVERS AND MANAGERS APPOINTED)
ACN 079 736 664 AND THE COMPANIES REFERRED TO IN SCHEDULE 1**

**PETER WALKER AND GREGORY
MOLONEY (IN THEIR CAPACITY AS
VOLUNTARY ADMINISTRATORS OF
A.B.C LEARNING CENTRES LIMITED
(ADMINISTRATORS APPOINTED)
(RECEIVERS & MANAGERS
APPOINTED) ACN 079 736 664 AND
THE COMPANIES LISTED IN
SCHEDULE 1**

FIRST
PLAINTIFFS/APPLICANTS

**A.B.C LEARNING CENTRES LIMITED
(ADMINISTRATORS APPOINTED)
(RECEIVERS & MANAGERS
APPOINTED) ACN 079 736 664 AND
THE COMPANIES LISTED IN
SCHEDULE 1**

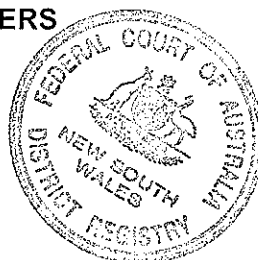
SECOND PLAINTIFFS

**MURRAY SMITH AND CHRISTOPHER HONEY
AND JOHN CRONIN IN THEIR CAPACITY AS
THE JOINT AND SEVERAL RECEIVERS AND MANAGERS
OF A.B.C LEARNING CENTRES LIMITED
(ADMINISTRATORS APPOINTED)
(RECEIVERS AND MANAGERS APPOINTED)
AND THE COMPANIES LISTED IN SCHEDULE 1**

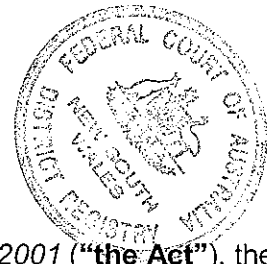
FIRST DEFENDANTS/RESPONDENTS

ORDERS

Judge: Justice Emmett
Date of order: 21 August 2009
Where made: Sydney



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Ref: SGH/SXJ: 512815
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THE COURT ORDERS THAT:

- (1) Pursuant to section 447A(1) of the *Corporations Act 2001* ("**the Act**"), the period within which the Administrators of A.B.C Learning Centres Limited (Administrators Appointed) (Receivers and Managers Appointed) and the companies listed in Schedule 1 to these orders ("**Schedule 1**") must convene meetings of creditors under section 439A of the Act be extended up to and including 31 March 2010.
- (2) Pursuant to section 447A(1) of the Act the meetings of the creditors of A.B.C Learning Centres Limited (Administrators Appointed) (Receivers and Managers Appointed) and the companies listed in Schedule 1 required by section 439A of that Act may be held at any time during the period up to, or within 5 business days after the end of, 31 March 2010 notwithstanding the provisions of section 439A(2) of the Act.
- (3) Liberty to apply be granted to any person, including any creditor of the Second Plaintiffs or the Australian Securities and Investments Commission, who can demonstrate sufficient interest to make such application as he, she, or it may be advised to vary or discharge these orders on 48 hours notice being given to the First Plaintiffs/Applicants and to the Court.
- (4) The First Plaintiffs/Applicants' costs and expenses of this Application be costs and expenses of the Administration of A.B.C Learning Centres Limited (Administrators Appointed) (Receivers and Managers Appointed) and the companies listed in Schedule 1.
- (5) The First Plaintiffs/Applicants pay one-third of the costs of Orchard Capital Investments Pty Ltd ("**Orchard**") and Austock Fund Management Ltd and Austock Property Management Ltd (together "**Austock**").
- (6) The Amended Interlocutory Process filed by the First Plaintiffs/Applicants on 19 August 2009 be otherwise dismissed.
- (7) The Interlocutory Process filed by Orchard on 21 July 2009 be dismissed with no order as to costs
- (8) The Interlocutory Process filed by Austock on 30 July 2009 be dismissed with no order as to costs.
- (9) The proceeding be listed for directions on Friday, 6 November 2009.

THE COURT DIRECTS THAT:

- (10) Pursuant to Section 447D of the Act that the First Plaintiffs/Applicants shall give notice of these orders and directions by publishing a copy of these orders and directions on the website of the firm Ferrier Hodgson, www.ferrierhodgson.com, within 2 business days of the making of these orders.
- (11) Pursuant to Section 447D of the Act that the First Plaintiffs/Applicants shall prepare and circulate an interim report to the creditors of the Second Plaintiffs summarising on a group basis the current status of the administration of the Second Plaintiffs noting that this report will not be a

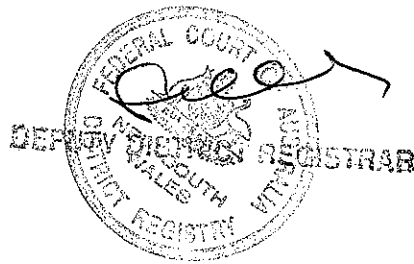
final report nor will it make any recommendations as required by Section 439A of the Act.

- (12) Pursuant to Section 447D of the Act that the First Plaintiffs/Applicants shall circulate the interim report to creditors by placing a copy of it on the website of the firm Ferrier Hodgson, www.ferrierhodgson.com.

THE COURT NOTES:

- (13) The undertakings given to the Court on behalf of the First Defendants (“**the Receivers**”) by their Counsel in paragraphs 1 and 2 of the Proposed Conditions of Order in Schedule A (“**Schedule A**”).
- (14) The agreements between the Receivers and Austock and the undertakings given by the Receivers to Orchard and Austock as set out at paragraphs 3 to 11 of Schedule A.

Date that entry is stamped: 25 AUG 2009



Schedule 1
All in Administration
Receivers and Managers Appointed



Company Name	ACN
A.B.C. Learning Centres Limited	079 736 664
Child Care Centres Australia Limited	100 250 646
Hutchinson's Child Care Services Limited	100 493 874
Kids Campus Limited	099 815 472
Peppercorn Management Group Limited	087 155 860
A.B.C. Canadian Holdings Pty Limited	126 839 941
A.B.C. Corporate Care Pty Limited	098 738 928
A.B.C. Developmental Learning Centres Pty Limited	010 788 502
A.B.C. Early Childhood Training College Pty Limited	069 159 566
A.B.C. Education Services Pty Limited	107 310 743
A.B.C. Employment Services Pty Limited	130 442 394
A.B.C. European Holdings No.1 Pty Limited	122 710 123
A.B.C. European Holdings No.2 Pty Limited	122 710 132
A.B.C. European Holdings No.3 Pty Limited	128 132 829
A.B.C. Land Holdings Pty Limited	108 964 227
A.B.C. Learning Centres Finance Pty Limited	125 820 395
A.B.C. New Ideas Pty Limited	112 237 377
A.B.C. Queensland Pty Limited	129 029 769
A.B.C. USA Holdings Pty Limited	121 360 147
A.B.C. USA Property Holdings No.1 Pty Limited	126 641 665
A.B.C. USA Property Holdings No.2 Pty Limited	126 641 674
Childcare Development Solutions Pty Limited ATF the Childcare Development Solutions Unit Trust	107 241 181
DPPA Pty Limited	114 743 092
Fiel Pty Limited	096 172 075
FutureOne Pty Limited	009 221 470
HCCS Operations Pty Limited	097 846 707
Kids Campus (W.A.) Pty Limited	112 150 099
Kids Campus Australia Pty Limited	104 407 187
Kids Campus Holdings Pty Limited	107 379 751
Klendo Pty Limited	098 366 968
Marshen Pty Limited	101 400 104
Peppercorn Holdings No.1 Pty Limited	095 599 250
Peppercorn Holdings No.2 Pty Limited	099 074 781
Peppercorn Holdings No.3 Pty Limited	100 679 374
Peppercorn Holdings No.4 Pty Limited	101 236 766
Peppercorn Holdings No.5 Pty Limited	103 201 136
Peppercorn Holdings No.6 Pty Limited	103 210 751
Premier Early Learning Centres Pty Limited	100 831 856
Select Child Care Management Pty Limited	093 925 056



SCHEDULE A
PROPOSED CONDITIONS OF ORDER

1. The Receivers undertake to the Court to commence the sale process immediately.
2. The Receivers undertake to the Court to use their best endeavours to follow the sale timing set out in paragraph 124 of Mr Honey's affidavit.
3. Austock and Orchard are to be invited to meet with the short-listed bidders during the same period of time that management presentations and site visits are proposed.
4. Subject to Austock and Orchard giving to the Receivers and ABC appropriate confidentiality undertakings, in respect of each premises leased to ABC by Austock or Orchard and from which ABC operates a childcare centre, the Receivers undertake to Austock and Orchard:
 - (a) to provide Austock and Orchard with such information as the Receivers are able to procure from a bidder to determine whether it should give its consent to an assignment of the lease from ABC to a particular bidder, including but not limited to information documenting:
 - (i) the proposed structure of the purchasing entity, including details of its officers, senior management and major shareholders;
 - (ii) experience in managing childcare centres and evidence of their capacity to meet the various licensing conditions for the operation of a childcare centre; and
 - (iii) the financial position of the purchasing entity and its capability to fund its acquisition of the ABC Group, to comply with the lease obligations including paying rental and to fund any lease requirements for bank guarantees or other security.
 - (b) to allow Austock and Orchard a reasonable period of time to consider such information before requesting its consent to an assignment of the lease(s);
 - (c) that, after the receipt of initial expressions of interest, to provide to each of Austock and Orchard an update regarding the progress of the sale campaign, being a summary sheet that identifies in relation to their premises:
 - (i) the number of expressions received;
 - (ii) the identity of the bidders; and
 - (iii) their premises in respect of which expressions have been received and in respect of each such centre the number of expressions.
 - (d) that, after the Receivers have identified their short-list of bidders, to provide regular updates regarding the progress of the sale campaign, being a summary sheet that identifies in relation to Austock or Orchard premises:



- (i) the identity of each bidder, by reference to their name and Australian Business Number (if applicable); and
 - (ii) the identity of the childcare centre(s) the subject of each bidder's bid.
 - (e) Austock and Orchard may communicate with the short-listed bidders during the sale process as outlined in paragraph 3.
 - (f) that Austock and Orchard may, in respect of each premises it owns and from which ABC operates a premises under a lease, with the prior approval of the Receivers (which approval is not to be unreasonably withheld) place such information as it may desire in the data room prepared by the Receivers for the purpose of bidders undertaking due diligence in respect of the sale.
 - (g) up to five nominees each of Austock and Orchard will be permitted access to the data room, however, such access is to be restricted to that information which is directly relevant to childcare centres operated from a premises leased to ABC by Austock or Orchard.
5. The Receivers undertake to use their best endeavours to procure a sale for all of the childcare centres operated by them from premises leased from Austock or Orchard.
 6. The Receivers undertake that in respect of each Austock or Orchard premises leased to an ABC entity, they will cause the ABC entity to continue to use or occupy or be in possession of the premises, and on each trading day operate at the premises the business of a licensed child care centre, until the completion of the sale of the centre, provided that if no satisfactory offer is received in respect of the centre then not before 28 February 2010 the Receivers may cause the relevant ABC leasing entity to cease to use and occupy the premises after 28 February 2010 but they must only do so upon the provision of eight weeks prior notice in writing to the responsible entity of the lessor and until expiry of the notice period will on each trading day operate at the premises the business of a licensed child care centre and pay such rent and other amounts due under the lease for the premises.
 7. The Receivers undertake that if notice is provided in accordance with 6 above, they will agree if requested by Austock or Orchard to transfer the business operated from the centre to a nominee of Austock or Orchard on the terms of paragraph 2 of the undertaking attached to Exhibit CJH11 to the affidavit of Christopher John Honey sworn 17 August 2009 in these proceedings or as otherwise agreed, and will use their best endeavours to complete that transfer before the expiration of the notice period.
 8. The sale by the Receivers of any child care centre operated from a premises leased to ABC by Austock or Orchard will be advertised and sold on the basis of the assignment of the lease without variation, unless Austock or Orchard agrees with a purchaser to vary the terms of a lease.
 9. In respect of each premises leased to an ABC entity by Austock or Orchard and from which ABC operates a childcare centre, the Receivers undertake that they will use best endeavours to cause ABC to comply with its repair and maintenance obligations and comply with essential services regulations so that the premises remain in a fit state to operate as a child care centre.

10. The Receivers must respond, in good faith and expeditiously to any written notice received from Austock or Orchard of any specific maintenance, safety or essential service issue at any Austock or Orchard premises, by either:
- (a) rectifying the alleged problem as soon as is practicably possible; or
 - (b) advising the relevant landlord, in writing, as to why they do not consider the notice justified or why they do not propose to comply with it.
11. The Receivers will use their best endeavours to ensure that within 21 days ABC employs or contracts an appropriately qualified person to advise ABC in relation to compliance with essential services regulations at all of its centres and to continue to employ or contract that person, or other similarly qualified person, until the earlier to occur of:
- (a) the Receivers ceasing to use, occupy or be in possession of the centre; or
 - (b) 31 March 2010.

