

OUTCOME DETAILS

**Supreme Court - Civil
at Supreme Court Sydney
on 6 April 2018**

2017/00347082-001 / Summons: Nakali Pty Limited v SURFSTITCH GROUP LIMITED

1. Order pursuant to s 440D of the Corporations Act 2001 (Cth) giving the plaintiff such leave as is required for me to make the following orders.

2. Vacate the directions listing before me on 30 April 2018 and list the matter for directions at 9.30am on 3 May 2018.

3. Note the undertaking and make orders in accordance with pars 1, 2 and 3 in accordance with the Order document, initialled by Stevenson J, dated today and placed with the papers.

ORDER

1. Pursuant to s 486 of the Corporations Act 2001 (Cth) ("the Act"), s 90-15 of Schedule 2 to the Act and s 247A(1) of the Act, the Plaintiff, its legal representatives and any service provider (including but not limited to a photocopying services provider) retained by it and who has signed an undertaking in the form set out in Schedule A to this order, be authorised to inspect and make copies of the books of the Defendant referred to in Schedule A to the TW McConnell Notice of Motion on or before 27 April 2018.

2. The Plaintiff's legal representatives be at liberty to disclose the books of the Defendant or copies of them obtained pursuant to order 1 above to the following persons, provided that those persons have first signed an undertaking in the form set out in Schedule A to this order:

a. the Plaintiff's litigation funder, Vannin Capital Operations;

b. Vannin Capital (Australia) Pty Limited;

c. any expert or service provider retained by the Plaintiff (including but not limited to an accountant) engaged in or for this proceeding.

3. The Plaintiff be given leave to uplift, inspect and copy all documents produced by KPMG and the Australian Securities and Investments Commission in response to the subpoenas issued by this Court in Proceedings 2017/193375.

2017/00347082-001 / Summons: Nakali Pty Limited v SURFSTITCH GROUP LIMITED

This matter is listed for Directions on 3 May 2018 9:30 AM before the Supreme Court - Civil at Supreme Court Sydney.

The following hearing dates are vacated:

30 Apr 2018 09:30 AM

Reason: By Consent

Justice J Stevenson

Signed

Date

Form 1

ORDER**COURT DETAILS**

Court	Supreme Court of New South Wales
Division	Equity Division
List	Commercial
Registry	Sydney
Case number	2017/00347082

TITLE OF PROCEEDINGS

Plaintiff	Nakali Pty Limited ACN 062 473 830
Defendant	SurfStitch Group Limited ACN 602 288 004

PREPARATION DETAILS

Person seeking orders	Nakali Pty Limited, Plaintiff
Filed in relation to	Notice of Motion dated 9 March 2018 filed by the plaintiffs in Supreme Court of New South Wales Proceeding 2017/00193375 (the TW McConnell Notice of Motion)
Legal representative	Joseph Scarcella, Johnson Winter & Slattery
Legal representative reference	C1058
Contact name and telephone	Joseph Scarcella, (02) 8247 9639
Contact email	joseph.scarcella@jws.com.au

THE COURT ORDERS:

- 1 Pursuant to sections 486 of the *Corporations Act 2001* (Cth) (**the Act**), section 90-15 of Schedule 2 to the Act and section 247A(1) of the Act, the Plaintiff, its legal representatives and any service provider (including but not limited to a photocopying services provider) retained by it and who has signed an undertaking in the form set out in Schedule A to this order, be authorised to inspect and make copies of the books of the Defendant referred to in Schedule A to the TW McConnell Notice of Motion on a ~~date (to be agreed) within one week after delivery, by the Plaintiff's solicitors to the Defendant's solicitors of a written request for inspection.~~ **on or before 27 April 2018.**
- 2 The Plaintiff's legal representatives be at liberty to disclose the books of the Defendant or copies of them obtained pursuant to order 1 above to the following persons, provided that those persons have first signed an undertaking in the form set out in Schedule A to this order:

✱ 6.2.18

- (a) the Plaintiff's litigation funder, Vannin Capital Operations;
- (b) Vannin Capital (Australia) Pty Limited;
- (c) any expert or service provider retained by the Plaintiff (including but not limited to an accountant) engaged in or for this proceeding.

3 The Plaintiff be given leave to uplift, inspect and copy all documents produced by KPMG and the Australian Securities and Investments Commission in response to the subpoenas issued by this Court in Proceeding 2017/00193375.

4 The proceeding be adjourned for further directions to a date to be fixed (not before 30 April 2018).

5 Such further or other order as the Court considers appropriate.

SEAL

Court seal:

Signature:

Capacity:

Date:

NOTICE

Subject to limited exceptions, no variation of a judgment or order can occur except on application made within 14 days after entry of the judgment or order.

SCHEDULE A

CONFIDENTIALITY UNDERTAKING

In this undertaking:

Court means the Supreme Court of New South Wales.

Plaintiff means Nakali Pty Limited ACN 062 473 830.

Proceeding means New South Wales Supreme Court proceeding with plaintiff Nakali Pty Limited and defendant SurfStitch Group Limited with proceeding number 2017/00347082.

SurfStitch means the defendant, SurfStitch Group Limited (Administrators Appointed) (ACN 602 288 004)

1. I, *[name]*, of *[address]*, undertake to SurfStitch and the Court that, subject to Court order or unless required by law, I will not without the prior written consent of SurfStitch disclose, directly or indirectly, documents identified by the Plaintiff's solicitors or counsel as confidential (being documents identified by SurfStitch as confidential and notified as such to the Plaintiff's solicitors) (**Confidential Documents**) or their contents or substance (**Confidential Information**) to any person or body other than:
 - (a) solicitors and counsel acting for the Plaintiff in the Proceeding; or
 - (b) an officer of this Court or as otherwise directed by an order of this Court.
2. I undertake to clearly mark any annexure to any report that I produce that contains Confidential Documents or Confidential Information as 'confidential' and to only disclose those annexures to persons referred to in 1(a) and (b).
3. I further undertake to SurfStitch that, within 28 days of the conclusion of the Proceeding (including any appeal), I will destroy all copies of the Confidential Documents and upon request from King & Wood Mallesons provide written confirmation to King & Wood Mallesons of the endeavours undertaken by me to destroy the Confidential Documents.
4. I acknowledge that my obligations under this Confidentiality Undertaking are in addition to any other obligation, express or implied, that I may have to SurfStitch

or the Court.

5. I agree that I will immediately inform SurfStitch if I disclose, without authorisation consistent with this undertaking, any Confidential Documents or Confidential Information.
6. The above undertakings and agreement are subject to any Court order and any disclosure required by law.
7. Nothing in this Confidentiality Undertaking prevents the use of a Confidential Document or Confidential Information for the purpose of the Proceeding, provided that it is used in accordance with this Confidentiality Undertaking.

Dated:

Signed: