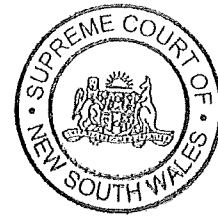


FILED

24 JUL 2025



Form 105 (version 7)
UCPR 51.16, 51.18, 51.20

AMENDED NOTICE OF APPEAL

COURT DETAILS

Court Supreme Court of New South Wales, Court of Appeal
Registry Sydney
Case number 2025/00021338

TITLE OF PROCEEDINGS

Appellant Michael Birch

First respondent Luke Bunbury
Number of respondents 4

PROCEEDINGS IN THE COURT BELOW

Title below In the matter of 1derful Pty Ltd (No 2)
Court below Supreme Court of New South Wales
Case number below 2023/00353008
Dates of hearing 24-25 September 2024, 1, 2, 8, 10, 11, 15 October 2024
Material date 23 December 2024
Decision of Justice Black

FILING DETAILS

Filed for Michael Birch, applicant
Filed in relation to Whole decision below
Legal representative Stefan Briggs; SMB Law
Legal representative reference SMB:23484
Contact name and telephone Stefan Briggs; (02) 8089 0260
Contact email sbriggs@smblaw.com.au

TYPE OF APPEAL

Corporations – Damages

DETAILS OF APPEAL

- 1 This appeal is brought under section 101(1) of the Supreme Court Act 1970.
- 2 This notice of appeal is not filed pursuant to leave to appeal.
- 3 The appellant has filed and served a notice of intention to appeal, which was served on the last of the prospective respondents on 17 January 2025.
- 4 The appellant appeals from the whole of the decision below.

*This and the following
6 pages are the
appellant's grounds of
appeal for publication
pursuant to paragraph 27
of Practice Note
No. SC CA 1*

STEFAN BRIGGS
Solicitor for
Appellant.

APPEAL GROUNDS

- 1 The primary judge erred in finding that Third and Fourth Respondents had proved that they had suffered any loss.
- 2 The primary judge erred in finding that the Third and Fourth Respondents had proved that they had suffered loss when:
 - a. the evidence, in particular expert evidence, upon which they sought to establish their case was not accepted;
 - b. it was not the case that they could not have established a case on loss, in particular:
 - i. by establishing the assumptions upon which the expert evidence was based;
 - ii. by reference to reliable expert evidence, prepared having regard to principles applicable to the valuation of start-up businesses;
 - c. they had not sought to put their case by reference to statements made by the Second Defendant until closing, which was even then in effect only at the invitation of the primary judge and only described by the Respondents as a "final final fallback position".
- 3 The primary judge erred in holding that statements made by the Second Defendant to a third party (Mr Kopp) as to the value of the business amounted to a contemporaneous assessment of the value of the business (at not less than \$2 million or at all).
- 3A. The primary judge erred in holding that the Second Defendant was conscious of the uncertainty arising from the need to reinstate the Mastercard Agreement and of the prospects of its renewal and that he must have known that this matter was of real importance to FIFO Capital as a second-ranking creditor.
- 3B. The primary judge erred in holding that the Second Defendant's \$2 million figure likely reflected an implicit assessment of the prospect that the renewal of the MasterCard Agreement could be achieved and that he recognised that value would be increased when and if that was achieved.
- 4 The primary judge erred in holding that evidence given by a third party (Mr Kopp) as to statements made by the Second Defendant to that person could be relied upon and were sufficient to prove damages against the Appellant:
 - a. generally;

- b. when statements had been given as to the value of the assets being at least \$2 million when a valuation of assets is different from a valuation of a business;
 - c. when the only explicit statements for which evidence was given were as to the value of assets;
 - d. when the basis of those statements and the assumptions upon which they were based were not explored, established or found on the evidence;
 - e. when the knowledge, experience and expertise of the Second Defendant in relation to making assessments as to value (in relation to this business and generally) was not explored, established or found on the evidence;
 - f. when the only relevant finding as to the Second Defendant's knowledge, experience and expertise was that he was a sophisticated participant in the transaction.
- 5 The primary judge erred in holding that there was a real incentive for the Second Defendant to reach an accurate commercial valuation when his incentive was rather for the transaction to proceed, which depended upon the business having a significant value and a potentially larger value and being able to raise funds to pay its secured creditors.
- 6 The primary judge erred in holding that the Third and Fourth Respondents had suffered loss when there was a mechanism for the price to be adjusted in accordance with the value of the business.

ORDERS SOUGHT

- 1 Appeal allowed
- 2 Orders 7 and 9 of the court below be set aside insofar as they concern the Third Defendant and in their place order that:
- a. the proceedings against the Third Defendant otherwise be dismissed;
 - b. the Plaintiffs pay the costs of the Third Defendant.
- 3 The Respondents pay the Appellant's costs.

UCPR 51.22 CERTIFICATE

I certify under UCPR 51.22(2) that the amount in issue in this appeal exceeds the specified amount under section 101(2)(r) of the *Supreme Court Act* 1970.

SIGNATURE OF LEGAL REPRESENTATIVE

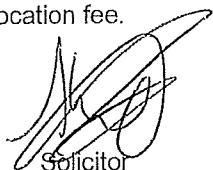
I certify under clause 4 of Schedule 2 to the Legal Profession Uniform Law Application Act 2014 that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in these proceedings has reasonable prospects of success.

I have advised the appellant that court fees will be payable during these proceedings. These fees may include a hearing allocation fee.

Signature

Capacity

Date of signature



Solicitor

24 July 2025

NOTICE TO RESPONDENT

If your solicitor, barrister or you do not attend the hearing, the court may give judgment or make orders against you in your absence. The judgment may be for the orders sought in the notice of appeal and for the appellant's costs of bringing these proceedings.

Before you can appear before the court, you must file at the court an appearance in the approved form.

HOW TO RESPOND

Please read this notice of appeal very carefully. If you have any trouble understanding it or require assistance on how to respond to the notice of appeal you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the notice of appeal from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

Court forms are available on the UCPR website at www.ucprforms.nsw.gov.au or at any NSW court registry.

REGISTRY ADDRESS

Street address	Supreme Court of New South Wales, Court of Appeal Law Courts Building Queen's Square Level 5, 184 Phillip Street Sydney NSW 2000
Postal address	GPO Box 3 Sydney NSW 2001
Telephone	1300 679 272

PARTY DETAILS

A list of parties must be filed and served with this notice of appeal.

FURTHER DETAILS ABOUT APPELLANT**Appellant**

Name	Michael Birch
Address	Unit 18, 4 - 8 Darley Street Manly NSW 2095

Legal representative for the appellant

Name	Stefan Briggs
Practising certificate number	55101
Firm	SMB Law
Contact solicitor	Stefan Briggs
Address	Level 2, Unit 204, 67 Castlereagh Street Sydney NSW 2000

DX address	N/A
Telephone	02 7923 3207
Fax	N/A
Email	sbriggs@smblaw.com.au
Electronic service address	sbriggs@smblaw.com.au

DETAILS ABOUT RESPONDENT**First respondent**

Name	Luke Bunbury
Address	C/- Vobis Equity Attorneys Level 1, 60 Park Street Sydney NSW 2000

Second respondent

Name	St Jean CF Pty Ltd
Address	Hristian Fox, Level 8, 65 York Street Sydney NSW 2000

Third respondent

Name	1derful Pty Ltd
Address	Level 1, Hudson Street Redfern NSW 2016

Fourth respondent

Name	The 1derful Group Pty Ltd
Address	Level 1, Hudson Street Redfern NSW 20126