

I, Kevin Lee Christensen, solicitor on record for the Applicants, hereby certify that the Applicants grounds of appeal are suitable for publication pursuant to paragraph 27 of Practice Note SC CA 01.

Signed: 
20 November 2025

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

[AMENDED DRAFT] NOTICE OF APPEAL

COURT DETAILS

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

TITLE OF PROCEEDINGS

First appellant	AMPLE SKILL LIMITED
Number of appellants	10
First respondent	GEOFFREY REIDY, ANDREW BARNDEN AND PAULA SMITH IN THEIR CAPACITIES AS THE JOINT AND SEVERAL LIQUIDATORS OF BALAMARA RESOURCES LIMITED (IN LIQUIDATION) (ACN 061 219 985)
Number of respondents	3

PROCEEDINGS IN THE COURT BELOW

Title below	In the matter of Balamara Resources Limited (in liquidation)
Court below	Supreme Court of New South Wales
Case number below	2024/00220393
Dates of hearing	21 May 2025, 5 June 2025
Material date	13 June 2025
Decision of	Black J

FILING DETAILS

Filed for	Ample Skill Limited, Bright Agile Limited, Derek Lenartowicz, Jonathan Leung, Maxwell Newton Singapore Pte Ltd, Michael Anthony Hale, Michael Ralston, Signature Litigation LLP, Spacyznki, Szczepniak, Wickel, Gozdowska sp.l, Western Mining Pte Ltd, Appellants
Legal representative	Lee Christensen CX Law
Legal representative reference	24081
Contact name and telephone	lee@cxlaw.com.au Tel. +61 8 6381 0432
Contact email	lee@cxlaw.com.au

HEARING DETAILS

This notice of appeal is listed for directions at

TYPE OF APPEAL

Other (Corporations List Judge)

DETAILS OF APPEAL

1. This appeal is brought under 101(1)(a) of the *Supreme Court Act 1970* (NSW).
2. Leave to appeal was granted on _____.
3. The appellant has not filed a notice of intention to appeal.
4. The appellant appeals from the whole of the decision below.

APPEAL GROUNDS

(All paragraph references in this notice are to paragraphs in the judgment *In the matter of Balamara Resources Limited (in liquidation)* [2025] NSWSC 618 (J), unless otherwise noted)

1. The primary judge erred in granting leave to the Liquidators (as defined in J[1]) to call further evidence, after evidence had closed and the Liquidators were presenting oral submissions in reply (Transcript page 63, lines 28, 43-46; *In the matter of Balamara Resources Limited (in liq)* (NSWSC, Black J, 21 May 2025) (ex tempore)).
 - 1A. The primary judge erred in admitting into evidence paragraphs 25, 26 and the words “In addition to the above prejudice” at the start of paragraph 27 of the Affidavit of Andrew Barnden affirmed 27 May 2025.
2. The primary judge erred in finding that the Liquidators’ reasons for refusing to comply with the Direction (as defined in J[1]) included the matters set out in the last sentence of paragraph J[69] (**Work Minimisation Reason**).
3. The primary judge ought to have found that the Work Minimisation Reason did not form part of the Liquidators’ reasons for refusing to comply with the Direction (**Refusal**) at the time of the Refusal and was instead a retrospective justification for the Refusal.
4. Alternatively, the primary judge ought to have found that, to the extent the matters set out in paragraphs 26 to 27 of the Third Affidavit of Andrew Barnden affirmed 27 May 2025 (reproduced at J[64]) formed part of the Liquidators’ reasons for refusing to comply with the Direction at the time of the Refusal, the opinion was not reasonable, or alternatively was an opinion that no reasonable person in the Liquidators’ position could hold because:
 - (a) a liquidator should not minimise his or her work pending the calling of a meeting at which a resolution for his or her removal is to be put to creditors where the liquidator considers that doing so would be prejudicial to the interests of creditors; and
 - (b) further or alternatively, the Liquidators intended to minimise their work for a period of at least 8 weeks regardless of whether they complied with the Direction or refused to comply with the Direction.

5. The primary judge erred in finding that “good faith” in r 75-250 of the Insolvency Practice Rules (Corporations) 2016 (Cth) (**IPR**) means merely that the liquidator in fact formed the opinion and did so at the conclusion of, or as a result of, a genuine attempt to inform himself or herself of the relevant considerations and undertook a genuine assessment of those matters in coming to that conclusion (J[44]).
6. The primary judge ought to have found that “good faith” in r 75-250 of the IPR also requires that the liquidator’s opinion be a reasonable one, or alternatively that it not be an opinion that no reasonable person in the liquidator’s position could hold.
7. The primary judge ought to have found that, to the extent it was formed, the Liquidators’ opinion that the Direction was vexatious was not formed in good faith because it was not reasonable, or alternatively was an opinion that no reasonable person in the Liquidators’ position could hold.
8. The primary judge erred in drawing from the lack of evidence of the reasons why the Directing Creditors wished to put a resolution for the removal of the Liquidators an adverse inference against the Directing Creditors (J[15], [18]).
9. The primary judge erred in taking into account in determining the applications the absence of stated reasons why the Directing Creditors wished to put a resolution for the removal of the Liquidators.
10. The primary judge erred in finding that the Liquidators formed the requisite opinion that the Direction was so substantially prejudicial to the interests of creditors or a third party as to outweigh the benefits of complying with the Direction (J[76], [78]).
11. The primary judge ought to have found that, to the extent it was formed, the Liquidators’ opinion that that the Direction was so substantially prejudicial to the interests of creditors or a third party as to outweigh the benefits of complying with the Direction was not formed in good faith because it was not reasonable, or alternatively was an opinion that no reasonable person in the Liquidators’ position could hold.
12. The primary judge erred in finding that the Directing Creditors (as defined in J[1]) were required to identify the benefits of complying with the Direction (J[75]).
13. The primary judge erred in finding that there were no benefits of complying with the Direction (J[76]).
14. The primary judge erred in finding that any benefit of complying with the Direction was likely substantially outweighed by the Liquidators’ opinion as to disadvantages of complying with the Direction (J[76]).

15. The primary judge erred in finding that the Liquidators could take into account that the Direction was unreasonable in determining the benefits of complying with the Direction, in order to determine whether the Direction was unreasonable (J[75], [76]).
16. The primary judge erred in finding that the anticipated consequences of the removal of the Liquidators were proper matters to be taken into account in determining whether the Direction was unreasonable within the meaning of r 75-250 of the IPR (J[26], [32], [73], [78]).
17. The primary judge erred in making the direction sought by the Liquidators that they were justified in refusing to convene the meeting (J[88]).
18. The primary judge erred in declining to make an order under s 90-15 of the *Insolvency Practice Schedule (Corporations)*, being Schedule 2 to the *Corporations Act 2001* (Cth) (**IPS**), directing the Liquidators to convene a meeting (J[91]).
19. The primary judge erred in finding that the Court's discretion under s 90-15 of the IPS, should not be exercised, merely because on the Liquidators' opinion the Direction was deemed to be unreasonable under s 75-15 of the IPR (J[91]).
20. The primary judge erred in finding that the Direction was unreasonable (J[91]).

ORDERS SOUGHT

1. Appeal allowed.
2. Orders of the court made on 13 June 2025 be set aside.
3. In their place, order that:
 - (a) the first respondents' Interlocutory Process dated 20 December 2024 be dismissed;
 - (b) the first respondents convene a meeting of creditors of Balamara Resources Limited (in liquidation) (**Company**) for the purpose of the creditors of the Company resolving, if they see fit, the following resolutions:
 - (i) pursuant to section 90-35(1)(a) of the *Insolvency Practice Schedule (Corporations)*, being Schedule 2 to the *Corporations Act 2001* (Cth) (**Schedule**), each of Geoffrey Reidy, Paula Smith and Andrew Barnden be removed forthwith as the liquidators of the Company; and
 - (ii) pursuant to section 90-35(1)(b) of the Schedule, that each of Clifford Rocke, Jimmy Trpceviski and Andrew John Spring be appointed the joint and several liquidators of the Company in the stead of Geoffrey Reidy, Paula Smith and Andrew Barnden; and

(iii) the first respondents pay the appellants' costs.

4. The first respondents pay the appellants' costs of the appeal.

UCPR 51.22 CERTIFICATE

The right of appeal is not limited by a monetary sum.

SIGNATURE OF LEGAL REPRESENTATIVE

This notice of appeal does not require a certificate under clause 4 of Schedule 2 of the Legal Profession Uniform Law Application Act 2014.

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

Signature

Capacity

Date of signature

Solicitor on record

11 July 2025

Note:

1. This notice must be served personally unless non-personal service under UCPR 10.18 is permitted.
2. A copy of this notice must be filed in the court below in accordance with UCPR 51.42.

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 NSW, 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 APPLICANTS

FIRST APPLICANT

Name: **AMPLE SKILL LIMITED**
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25 Harbour Road
Wan Chai, Hong Kong

SECOND APPLICANT

Name: **BRIGHT AGILE LIMITED**
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THIRD APPLICANT

Name: **DEREK LENARTOWICZ**
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FOURTH APPLICANT

Name: **JONATHAN LEUNG**
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FIFTH APPLICANT

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TENTH APPLICANT

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DETAILS ABOUT RESPONDENTS

FIRST RESPONDENT

Name **GEOFFREY REIDY, ANDREW BARNDEN AND PAULA SMITH
IN THEIR CAPACITIES AS THE JOINT AND SEVERAL
LIQUIDATORS OF BALAMARA RESOURCES LIMITED (IN
LIQUIDATION) (ACN 061 219 985)**

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SECOND RESPONDENT

Name **BALAMARA RESOURCES LIMITED (IN LIQUIDATION) (ACN
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THIRD RESPONDENT

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