

SUPREME COURT OF QUEENSLAND

CITATION: *Bluhdorn Investments Pty Ltd v Crook* [2026] QSC 246

PARTIES: **BLUHDORN INVESTMENTS PTY LTD**
ACN 643 541 646
(applicant)
v
DAVID ALEXANDER CROOK
(first respondent)
LUCA FINANCIAL PTY LTD
ACN 676 534 133
(second respondent)
NERO FINANCIAL PTY LTD
ACN 647 284 679
(third respondent)
NERO IP PTY LTD
ACN 695 120 499
(fourth respondent)
LAGUNA BUSINESS LENDING PTY LTD
ACN 698 242 540
(fifth respondent)

FILE NO/S: BS 2967/26

DIVISION: Trial

PROCEEDING: Application

ORIGINATING COURT: Supreme Court

DELIVERED ON: 12 October 2026

DELIVERED AT: Brisbane

HEARING DATE: 8 October 2026

JUDGE: Freeburn J

ORDERS: 1. Pursuant to sections 236 and 237 of the *Corporations Act 2001* (Cth), the applicant has leave to bring proceedings in the name of and on behalf of the third respondent against:

- a. the first respondent;
- b. the second respondent;
- c. the fifth respondent; and
- d. Cynthia Jane Rourke (also known as Cynthia Jane Crook),

substantially in the form of the draft claim and statement of claim exhibited to the affidavit of

Lachlan James Rieck [CFI-30] affirmed 15 September 2026.

- 2. Order 1 is conditional upon the applicant filing in the registry, within 7 days, written undertakings in the terms set out in paragraph 11 of the affidavit of Erin Louise Bluhdorn [CFI-26] affirmed 10 September 2026 and paragraph 14 of the affidavit of Nicholas Daniel Shane Bluhdorn [CFI-25] affirmed 10 September 2026.**
- 3. I will hear the parties on costs and the case management orders that are appropriate.**

CATCHWORDS: CORPORATIONS – MEMBERSHIP, RIGHTS AND REMEDIES – MEMBERS’ REMEDIES AND INTERNAL DISPUTES – PROCEEDINGS ON BEHALF OF COMPANY BY MEMBERS AND OTHERS – STATUTORY DERIVATIVE ACTION – where the applicant seeks leave to bring a derivative action in the name of the third respondent (Nero Financial) against the existing first (Mr Crook), second (Luca Financial) and fifth respondents (Laguna) and a new proposed party, Mrs Crook – where Mr and Mrs Crook own equal shares in Luca Financial with Mr Crook as its sole director – where the applicant and Luca Financial own equal shares in Nero Financial with Mr Crook as its sole director – where Nero Financial earns commission from lenders upon arranging finance for its clients – where the applicant alleges that Mr Crook diverted approximately \$2.4 million of Nero Financial’s income to bank accounts controlled by him – where the respondents oppose the application on grounds that the applicant is not acting in good faith and that it is not in the best interests of the company that the applicant be granted leave – whether leave should be granted under sections 236 and 237 of the *Corporations Act 2001* (Cth)

Corporations Act 2001 (Cth), s 236, s 237, s 1317E

Reggi v Reggi Investments Pty Ltd [2025] QSC 343, considered

Swansson v RA Pratt Properties Pty Ltd (2002) 42 ACSR 313; [2022] NSWSC 583, cited

Vigliaroni v Concrete Precast Systems Pty Ltd [2009] VSC 253, considered

Vrig v Boyle (1995) 7 NZCLC 260; [1995] 3 NZLR 763, cited

COUNSEL: S W Trewavas for the applicant
S T Carius for the respondents

SOLICITORS: Gibbs Wright Litigation Lawyers for the applicant
SLF Lawyers for the respondents
W T Fitzgerald for the proposed new party

- [1] The applicant, Bluhdorn Investments Pty Ltd, seeks an order pursuant to section 237(1) of the *Corporations Act 2001* (Cth) that it have leave to bring proceedings in the name of the third respondent, Nero Financial Pty Ltd, against the first respondent, Mr Crook, the second respondent, Luca Financial Pty Ltd, the fifth respondent, Laguna Business Lending Pty Ltd and Cynthia Jane Rourke, who is also known as Cynthia Jane Crook (**Mrs Crook**).
- [2] Mrs Crook, a proposed defendant, appeared by her solicitor, Mr W T Fitzgerald, who informed the court that she neither consented to nor opposed the joinder in the event that the application under section 237(1) was successful.
- [3] The respondents opposed the order under section 237(1). The grounds of opposition were relatively narrow.
- [4] Before considering the grounds on which the application was resisted, it is necessary to explain the nature of the case. This can be done by reference to counsel for the applicant's submissions.¹

The Nature of the Dispute

- [5] Mr Crook has been the sole director of Nero Financial since 13 October 2021. Bluhdorn Investments and Luca Financial each hold one of its two shares. Luca Financial is owned equally by Mr and Mrs Crook and has Mr Crook as its sole director.²
- [6] Nero Financial earns commissions from lenders when it arranges finance for clients. Its invoices direct debtors to pay debts into its Westpac account ending in 112. On 18 June 2026, Mrs Bluhdorn (the sole director of the applicant, Bluhdorn Investments) found invoices issued in the name of Nero Financial that directed debtors to pay debts into a different account ending in 411. That second account is Mr Crook's account. In January 2023, Mr Crook had emailed a financier from Nero Financial's shared inbox asking that a commission be paid to "*a different account of Nero Financial*" and attached his own banking details.³
- [7] Bank statements produced under subpoena show the scale of this diversion of the income of Nero Financial. The draft statement of claim exhibited to Mr Rieck's affidavit pleads that money owing to Nero Financial and paid by third parties into accounts controlled by Mr Crook total not less than \$2,390,925:
 - (a) \$1,640,626 into his Westpac account over four years;
 - (b) \$253,336 into an account ending in 4799 held by him and Mrs Crook, or by Mrs Crook alone;
 - (c) \$361,659 into Luca Financial's account;
 - (d) \$105,604 into his UBank account; and
 - (e) \$29,700 into Laguna's account.

¹ The statement of the facts was not contested for the purposes of this application but there may be contests regarding the facts at trial.

² Applicant's submissions at [3].

³ Applicant's submissions at [4].

- [8] A further \$260,813 was paid out of Nero Financial's own accounts into Mr Crook's 4799 account and Luca Financial's account, \$40,000 was paid from Nero Financial's account to the solicitors defending him in this proceeding, and \$111,923 was drawn by him from a Dynamoney facility guaranteed by Mrs Bluhdorn.⁴
- [9] Counsel for Bluhdorn Investments raises four further issues.
- [10] *First*, in May 2026, Luca Financial invoiced a lender \$405,000 for commissions on a transaction of a client of Nero Financial and received \$334,837. *Second*, while he was the sole director of Nero Financial, Mr Crook incorporated Laguna (a competing brokerage), downloaded Nero Financial's entire client database and client files, and Nero Financial's client files and a client's brokerage invoice went to Laguna. The Laguna email describes Mr Crook as "*our director ... who's also the director of Nero*". *Third*, payslips were issued in the name of Nero Financial to Mrs Crook, who has never worked for it, recording the payment of \$154,000 in wages for the year to date; Nero Financial's payroll shows no payment to her. *Fourth*, Mr Crook has admitted a number of the transactions and has continued to take money from Nero Financial's account since giving his undertaking to the Court on 8 July 2026.⁵
- [11] The diversion of Nero Financial's funds, if that is established at trial, is a serious matter. Mr Crook's response is as follows:

"80. Given the ongoing and apparent relationship breakdown with Nicholas Bluhdorn, together with the minimal value he was providing to Nero Financial and impact it was having on the business of Nero Financial, I established Laguna in or around June 2026. I took this action due to the following:

- a. The departure of Chris Cook, which I believe was intended by Nicholas Bluhdorn;
- b. The replacement of lead generation, marketing and IT services previously provided by 2iC and/or Bluhdorn Group given their historical poor performance;
- c. The actions taken by Nicholas Bluhdorn in contacting existing clients and members of Nero Financial in an attempt to discredit Nero Financial, myself and my relevant business network;
- d. The actions taken by Nicholas Bluhdorn in seeking to actively divert business away from Nero Financial to his other finance companies; and
- e. The reputational harm caused by Nicholas Bluhdorn in relation to approaching staff with the intention of discrediting both myself and Nero Financial."⁶

⁴ Applicant's submissions at [5].

⁵ Applicant's submissions at [6].

⁶ Affidavit of David Alexander Crook affirmed 31 August 2026 (**Mr Crook's Affidavit**) at [80].

- [12] That is not really a direct contest as to the facts alleged,⁷ but rather an explanation as to why took these steps. On one view he says he was provoked.
- [13] Of course, neither party contends that the court should decide these issues on this application. The issue is whether Nero Financial should be allowed to bring the proceeding. A draft claim and statement have been prepared.⁸

The Five Requirements

- [14] Section 237(2) states that:

- “(2) The Court must grant the application if it is satisfied that:
- (a) it is probable that the company will not itself bring the proceedings, or properly take responsibility for them, or for the steps in them; and
 - (b) the applicant is acting in good faith; and
 - (c) it is in the best interests of the company that the applicant be granted leave; and
 - (d) if the applicant is applying for leave to bring proceedings—there is a serious question to be tried; and
 - (e) either:
 - (i) at least 14 days before making the application, the applicant gave written notice to the company of the intention to apply for leave and of the reasons for applying; or
 - (ii) it is appropriate to grant leave even though subparagraph (i) is not satisfied.”

- [15] The only subparagraphs contested here were (b) and (c).

Good Faith

- [16] So far as good faith is concerned, the two limbs are whether the applicant honestly believes a good cause of action exists with reasonable prospects, and whether leave is sought for a collateral purpose.⁹
- [17] As to the first limb, I accept the submissions for Bluhdorn Investments that Mrs Bluhdorn has sworn to the facts and exhibited the documents behind its claim. On the evidence, Bluhdorn Investments’ only interest in a recovery is in its half share in Nero Financial. And, Bluhdorn Investments has offered what the authorities treat as the clearest evidence of good faith: an indemnity for its costs and any adverse order, as a condition of leave.¹⁰

⁷ There is a contest as to whether Mrs Crook was paid wages. Mr Crook says the payslips “*were simply draft Xero payroll records addressed to Cynthia Rourke. Further, they were never issued and payments in relation to same were never paid to Cynthia Rourke*”: Mr Crook’s Affidavit at [134].

⁸ This is exhibit LJ1 to Mr Rieck’s Affidavit affirmed 15 September 2026.

⁹ *Swansson v RA Pratt Properties Pty Ltd* (2002) 42 ACSR 313; [2022] NSWSC 583 at [26].

¹⁰ Applicant’s submissions at [10].

[18] I would add that further evidence of Bluhdorn Investments' good faith is that Bluhdorn has already prepared a proposed claim and statement of claim. That it is willing to proceed promptly is another factor demonstrating good faith.

[19] The submissions for the respondents on this issue are rather tepid:

“36. The willingness to provide an indemnity (even if it has sufficient value) does not **of itself** demonstrate that Bluhdorn Investments is acting in good faith; this must be examined in conjunction with other factors.

37. In circumstances such as the present case, the Court should **carefully consider whether there is a collateral purpose**. A collateral purpose need not amount to an abuse of process.

38. It is submitted that the Court **may not** be satisfied that the proposed action is being brought for a proper purpose because: (a) the action sought to be brought appears to be unnecessary and excessive to protect Bluhdorn Investments' legitimate interests as a departing shareholder; (b) Mr and Mrs Bluhdorn control or have an interest in a number of entities in the same industry and this places them in a position of conflict when it comes to conducting the litigation in the best interests of the Company.”¹¹ [emphasis added]

[20] As to those submissions:

- (a) Bluhdorn Investments does not suggest that the willingness to provide an indemnity is itself sufficient; other factors are obviously relevant.
- (b) It is true that the court should carefully consider whether there is a collateral purpose; but here that careful consideration is in a context where the respondents do not identify any particular collateral purpose in Bluhdorn Investments' application for leave.
- (c) Because the merits of the proposed claim have not yet been determined, and it is difficult to make an assessment of the prospects of the proposed claim from this distance, the court cannot conclude that the proposed action appears to be “*unnecessary and excessive*”.
- (d) In fact, on the evidence tendered thus far, the proposed claim looks to at least have prima facie prospects in a context where serious claims are made, and some evidence has been led in support of those claims.
- (e) Whilst the respondents may wish to characterise Bluhdorn Investments as “*a departing shareholder*” that characterisation more than likely reflects the respondents' wishes rather than Bluhdorn Investments legal status; and the context is that oppression proceedings have been brought by two warring camps and, in resolving the dispute, a wide variety of relief is available to the court under section 233 of the *Corporations Act 2001* (Cth).
- (f) The position of conflict is not identified; Bluhdorn Investments certainly has an interest in prosecuting the claims of the company that, for example, Mr

¹¹ Respondents' submissions at [36]-[38].

Crook has breached his directors' duties; that interest has not been shown to conflict with and duties owed by Bluhdorn Investments or those behind it.

- [21] In the circumstances I am satisfied that the requirement of good faith has been made out.

In the best interests of the company

- [22] Section 237(2)(c) requires the court to be satisfied, not that the proposed derivative action may be, appears to be, or is likely to be, in the best interests of the company but, rather, that it is in its best interests.¹²
- [23] The inquiry into whether the proposed action is in the best interests of the company will normally require the applicant to adduce evidence of:
- (a) the character of the company;
 - (b) the business of the company;
 - (c) whether the substance of the redress which the applicant seeks to achieve is available by means which does not require the company to be brought into litigation against its will; and
 - (d) the ability of the defendant to meet at least a substantial part of any judgment in favour of the company in the proposed derivative action so that the court may determine whether the action would be of any practical benefit to the company.¹³
- [24] In *Vrij v Boyle*, Fisher J held that, rather than conducting an interim trial on the merits of the case, the appropriate test is “*that which would be exercised by a prudent business person in the conduct of his or her own affairs when deciding whether to bring a claim*”.¹⁴ This requires a person to take into account matters such as “*the amount at stake, the apparent strength of the claim, likely costs and the prospect of executing any judgment*”.¹⁵
- [25] It can be in the best interests of a company that the applicant be granted leave even if the applicant is able to seek redress through means other than a derivative action.¹⁶ However, where the applicant does have some other form of relief available, this can be a relevant factor for the court when deciding whether the application is in the best interests of the company.¹⁷
- [26] Recently, in *Reggi v Reggi Investments Pty Ltd*, Cooper J decided that it was not in the best interests of the company that the applicant be granted leave under section 237.¹⁸ His Honour took that view because the issue the applicant wanted the court to consider in the proposed derivative proceeding was whether his wife, another director

¹² *Swansson* (supra) at [56].

¹³ *Ibid.*

¹⁴ [1995] 3 NZLR 763 at 765; (1995) 7 NZCLC 260, 844 at 260,847 (HC); *Ford, Austin & Ramsay's Principles of Corporations Law*, LexisNexis at [10.240].

¹⁵ *Ibid.*

¹⁶ *Ford, Austin & Ramsay* (supra).

¹⁷ *CIP Group Pty Ltd v So* (2022) 164 ACSR 566; [2022] FCA 1490 at [38]; *Ford, Austin & Ramsay* (supra).

¹⁸ [2025] QSC 343.

of the company, had contravened her fiduciary and statutory duties. That was an issue which the Federal Circuit and Family Court of Australia (Division 2) would consider in property settlement proceedings between the two separated directors.

- [27] However, there are obviously some differences between, on the one hand, a case like *Reggi* where the separated spouses were already litigating in the Family Court proceedings the division of land and commercial warehouses acquired and developed during their marriage, and, on the other hand, a case like the present where there has been a commercial relationship and there are serious allegations of breach of duty involving more than \$2 million and the establishment of a rival organisation. In fact, some of the funds alleged to have been diverted are said to have been paid to Mrs Crook who is not a party to the oppression proceedings but is a proposed party to the company's proceedings if leave is granted.

Bluhdorn's Primary Argument

- [28] There is considerable force in Bluhdorn Investments' primary submission here that an action by a company against one of its directors or officers to recover compensation for that officer's breach of duty is the paradigm of an action in the company's interests.¹⁹ Professor Ramsay describes the approach of the law in this way:

“...the power to control the management of a company, its property and affairs is typically vested by the company's constitution in the board of directors. With this power comes the opportunity for fraud and mismanagement. Anyone who entrusts their property or affairs to another person is at risk of suffering loss by the other person's wrongdoing. The shareholders of companies are often especially vulnerable, because they are frequently passive investors who do not follow the company's progress on a day-to-day basis. Their vulnerability is all the more acute if they are numerous and not organised.

The law responds to the directors' position of temptation and the vulnerability of shareholders **by subjecting the directors to strict fiduciary and statutory duties.**”²⁰

- [29] That response of the law is reflected in these sections of the *Corporations Act 2001* (Cth):
- (a) section 180 - a duty to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise in the corporation's circumstances;
 - (b) section 181 – a duty to exercise their powers and duties in good faith in the best interests of the corporation and for a proper purpose;

¹⁹ See *Vigliarone v Concrete Precast Systems Pty Ltd* [2009] VSC 253 at [29] followed in *MG Corrosion Consultants Pty Ltd v Vinciguerra* (2011) 82 ACSR 367; [2011] FCAFC 31 at [60].

²⁰ Ramsay, *Company Directors: Principles of Law and Corporate Governance*, 2nd edition, 2023 LexisNexis at [5.2].

- (c) section 182 - a prohibition on directors improperly using their position to gain an advantage for themselves or someone else or to cause detriment to the corporation; and
- (d) section 183 – a duty not to improperly use information obtained as a director to gain an advantage for themselves or someone else or to cause detriment to the corporation.

[30] Those duties are all civil penalty provisions.²¹ Further, a director commits an offence if they are reckless or dishonest and fail to discharge their duties in good faith in the best interests of the corporation or for a proper purpose or otherwise breach the duties in sections 181 to 183.²²

[31] The fiduciary and other statutory duties are positive duties of loyalty owed by the director to the company. The company has an obvious interest in ensuring that those duties imposed on directors are fulfilled and, if breached, are subject to proceedings to remedy the breach.

An Alternative Remedy?

[32] Against that powerful consideration, the respondents make this submission:

“30. **First**, the dispute concerns a small, closely held proprietary company. The relationship between the shareholders has broken down. Bluhdorn Investments seeks to extract itself from the Company by having its shares purchased at a value that takes account of the alleged oppressive conduct. Mr Crook seeks to remain in the Company and purchase the shares at a fair value. The powers under s 233 of the Act, which allow for the expert valuation of shares in such circumstances, have not been shown to be inadequate in the present case. Whilst the existence of an alternative oppression remedy does not necessarily exclude a grant of leave, the existence of such a remedy is a factor against it and a significant one in the present case.”

[33] Whilst the first and second sentences are obviously correct,²³ I reject the balance of the submission. It is one-dimensional to characterise the commercial relationship between the parties as simply one where Bluhdorn Investments seeks to extract itself by a sale of its shares at a satisfactory price. If the central case to be prosecuted by Nero Financial is that a director of that company has wrongly misappropriated the company’s assets to himself, and to others, then the company has a legitimate legal as well as commercial interest in seeking to have the assets restored to the company.

[34] The directors’ statutory duties ought not be so lightly dismissed merely because there are oppression proceedings on foot.

²¹ See s 1317E of the *Corporations Act 2001* (Cth).

²² Ibid.

²³ This is obviously a relatively small enterprise and ‘closely held’.

- [35] Counsel for the respondents placed emphasis, in both his written and oral submissions, on the contention that the remedies for oppression in section 233 have not been shown to be “*inadequate*” in the present case.²⁴
- [36] *First*, an applicant for leave under section 237(1) is not required to shoulder such a burden. An assessment of what is in the best interests of the company does not compel the applicant to demonstrate that the section 233 remedies are “*inadequate*”.
- [37] *Second*, the focus of this submission is the idea that, because the shareholders are engaged in an oppression battle, and the court has the wide remedies available to it under section 233, there is no need for the company, Nero Financial, to pursue the sole director for breaches of his statutory duties and to pursue recovery of the company’s assets wrongly disbursed. The problem with the contention is that it fuses and (perhaps) confuses the interests of the company and the interests of the shareholders of the company. It may also obscure that there are various types of interests involved in an order that permits derivative proceedings to be brought on behalf of a company.²⁵
- [38] With one exception (discussed below) it is certainly true that there is a prospect that a form of appropriate relief may be fashioned under section 233 so as to suit the separate interests of both equal shareholders, that is, Bluhdorn Investments and Luca Financial. But the commercial interests of each shareholder are not the same as the interests of the company itself. Nero Financial has its own legitimate legal and commercial interests. In cases where serious breaches of the director’s statutory duties are alleged it may well be appropriate to give leave to ensure that those serious breaches of duty are litigated and that the company has a proper opportunity to seek redress, including, for example, recovery of the company’s assets.
- [39] The exception is that the oppression proceedings will not permit the court to make orders for recovery of property alleged to have been transferred to Mrs Crook. She is not a party to those proceedings, but she is proposed as a party to the claim to be brought by Nero Financial. That problem, in part at least, illustrates the limitation in leaving the parties to fight out the oppression proceedings without giving the company direct recourse to recover its property.
- [40] *Third*, the fiduciary and other statutory duties of loyalty owed by the director to the company (discussed above) have been described as cardinal duties.²⁶ It would be an error in approach to put aside a company’s claim of breaches of those duties, and its claim to recovery of its assets, merely on the basis that commercial parity between the shareholders may be able to be achieved through oppression remedies.

Other Arguments

- [41] The respondents argue that the expansion of the proceedings will have an adverse effect on the business. There is little doubt that the proceedings and the underlying dispute between the two camps is likely to have an impact on Nero Financial’s profitability. The effect of giving leave will be to expand the scope of the proceeding.

²⁴ Respondents’ submissions at [30].

²⁵ At the least legal and commercial interests are involved.

²⁶ See, for example, *Austin & Black's Annotations to the Corporations Act* at [2D.180].

It is hard to accept that that expansion justifies the company declining to pursue the serious breaches of the director's statutory duties that are alleged.

- [42] Mr Crook proposes to counterclaim that he has not been paid all reasonable remuneration to which he is entitled. That carries with it a risk that the proceeding will further expand. Again, the fact that the company is mired in litigation carries a risk of an impact on the company's profitability. But there is no satisfactory evidence that the further expansion will be significant. Of course, there is a significant interest in the parties each bringing their disputes to court. From Nero Financial's point of view there is little point in the litigation proceeding with only some of the claims each makes against the other.
- [43] The respondents argue that it is not in the best interests of Nero Financial for Bluhdorn Investments to commence proceedings on Nero Financial's behalf. It is argued that Bluhdorn Investments is controlled by Ms Bluhdorn who was not part of the original business venture and has never been involved in day-to-day management.
- [44] It is difficult to see why Mrs Bluhdorn's relative lack of history with the enterprise is a disadvantage.²⁷ The case to be brought by Nero Financial will be a largely documentary case that will no doubt be prepared by competent solicitors who will take proofs of evidence from relevant witnesses.
- [45] Finally, the respondents make this submission:

“34. *Fifth*, whilst it is true that undertakings have been offered to avoid the Company incurring costs in prosecuting the proposed action and purporting to shield the Company from the impact of an adverse costs order, such undertakings must be scrutinised. There is reason to doubt the adequacy of the undertakings for what is likely to be a significant increase in the costs of the litigation.”²⁸

- [46] I do not accept that there is good reason to doubt the adequacy of the undertaking. Mrs Bluhdorn is willing to expose her personal assets. She has, as it is frequently put, come out from behind the corporate veil. The significant asset she has exposed is her interest in Nero Financial – which is the entity at the core of the dispute. It is a significant personal undertaking. Mr Crook has not exposed his own interest in this way.

Conclusions

- [47] For the reasons stated, the application to commence proceedings on behalf of Nero Financial should be allowed. I will hear the parties on costs and the case management orders that are appropriate.

²⁷ There may even be advantages in Ms Bluhdorn's lack of history with the enterprise.

²⁸ Respondents' submissions at [34].