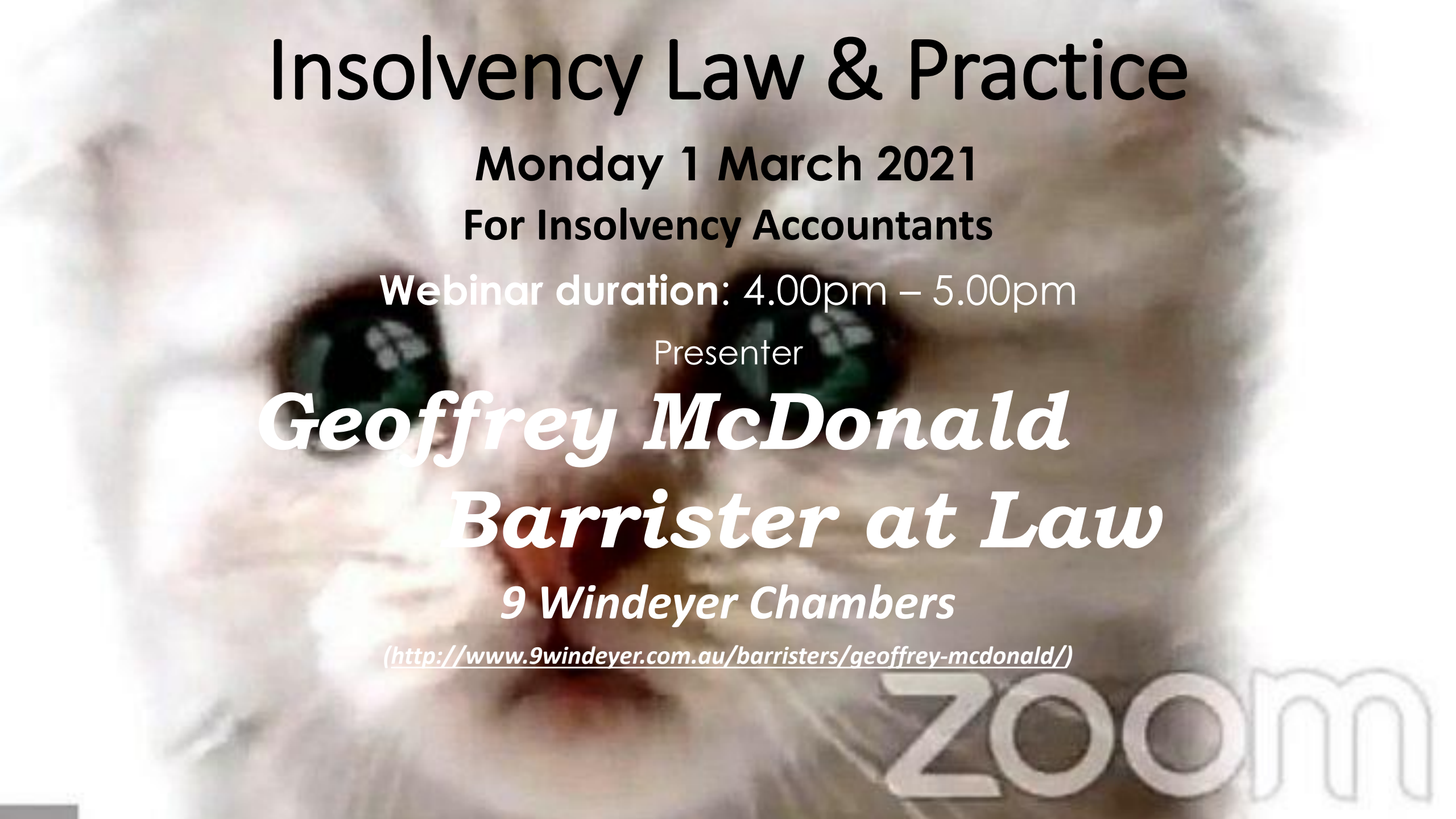
Insolvency Law & Practice

Monday 1 March 2021

For Insolvency Accountants

Webinar duration: 4.00pm – 5.00pm

Presenter



Geoffrey McDonald

Barrister at Law

9 Windeyer Chambers

(http://www.9windeyer.com.au/barristers/geoffrey-mcdonald/)

The Presenter's background

Insolvency Accountant

1982 at Peter Rodgers and Associates

1983 worked with Rod Sutherland and Rick Jirsch

1987 became a partner, the youngest ever of an accounting firm, on my 23rd birthday

1988 became a registered liquidator, on my 24th birthday

Also registered as an auditor, tax agent and then Trustee in bankruptcy

I was a leader in the uptake of the new law in 1993; Voluntary Administrations

What will come of VAs with the new law on Restructuring Plans and SBRPs?

As Albert Einstein once said "the fate of the old one, recognises the culture of the young"

WINDEYER CHAMBERS 9

The Presenter's background

I went to the Bar in the late 1990s.

By then, Love & Rodgers had become Hall Chadwick and I soon became National Chairman.

From those beginnings, many insolvency firms have grown or many have employed staff who have had the experience of working with me.

I approach my work, as a relatively senior and experienced Barrister, with a deep grounding in the world of insolvency. What I do have, are a very particular set of skills, skills I have acquired over a very long career.

When I gave evidence to the Senate Enquiry on Insolvency, I mentioned the observation of a friend about insolvency accountants;

"Geoffrey has to swim with sharks. Sometimes he gets bitten by them, and sometimes he gets mistaken for being one."

Barrister

Insolvency Law & Practice

Web site: Geoffrey McDonald — 9 Windeyer Chambers

Past papers: List.docx (google.com)

Family business: http://www.helpingclients.com.au/geoffrey.php

Due to the relatively short duration of this Webinar, you will find that the presentation will bring issues to your attention, rather than answer all the questions and the PowerPoint paper will be a helpful resource for future guidance when issues arise (to be posted on the 9 Windeyer Website).

Please ask questions throughout, the Webinar, using the Zoom facility.

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Insolvency Law & Practice

Outline of Insolvency Law & Practice Webinar (1 hour on Monday 1 March 2021)

For INSOLVENCY ACCOUNTANTS

1. Out with the new and in with the old laws; or not?
2. Small Business Restructuring Practitioners and their Plans
3. Recent Superior Court cases
4. Phoenix Companies
5. Creditor defeating transactions
6. Other Proposed changes in law and practice
7. Developments with ASIC, AFSA and ARITA

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1. Out with the new and in with the old laws; or not?

For the period from 24 March 2020, to 31 December 2020, the insolvency laws were changed to;

- Increase the current minimum threshold for creditors issuing a statutory demand on a company under the Corporations Act 2001 from $2,000 to $20,000.
- Extend the statutory timeframe for a company to respond to a statutory demand from 21 days to six months.
- Increase the threshold for the minimum amount of debt required for a creditor to initiate bankruptcy proceedings from its current level of $5,000 to $20,000 (BNs changed to $10,000).
- Increase the time a debtor has to respond to a bankruptcy notice from 21 days to six months.
- Relieve directors of their duty to prevent insolvent trading with respect to any debts incurred in the ordinary course of the company's business (but not waive any related criminal provisions which involve intent, such as dishonesty or fraud).

Corporations Amendment (Corporate Insolvency Reforms) Act 2020

1. Out with the new and in with the old laws; or not?

CORPORATIONS ACT 2001 - SECT 588GAAA

Safe harbour--temporary relief in response to the coronavirus

(1) Subsection 588G(2) does not apply in relation to a person and a debt incurred by a company if the debt is incurred:

(a) in the ordinary course of the company's business; and

(b) during:

(i) the 6-month period starting on the day this section commences; or

(ii) any longer period that starts on the day this section commences and that is prescribed by the regulations for the purposes of this subparagraph; and

(c) before any appointment during that period of an administrator, or liquidator, of the company.

1. Out with the new and in with the old laws; or not?

Safe Harbour

"As we have previously highlighted, safe harbour is not a 'state' or 'status' that a company enters. It is a set of actions which may offer protection to directors from insolvent trading liabilities in the event the company ends up in liquidation."

Australian Restructuring Insolvency and Turnaround Association (ARITA)

1. Out with the new and in with the old laws; or not?

Simplified Liquidation Process

Guide; Simplified liquidation | ASIC - Australian Securities and Investments Commission

Where a liquidator has been appointed pursuant to a creditor's voluntary liquidation and they consider on reasonable grounds that the company meets the eligibility criteria, the liquidator may choose to adopt the small business liquidation process rather than the standard creditor's voluntary liquidation process.

- **the liquidator is not required to submit a section 533 report to ASIC on potential misconduct unless there are reasonable grounds that misconduct has occurred.**
- **the liquidator is not required (entitled) to hold formal creditor's meetings and can instead distribute information to creditors, and proposals for voting, electronically.**
- **the unfair preference voidable transaction provisions are restricted to prevent the liqu pursuing claims against unrelated entities.**

1. Out with the new and in with the old laws; or not?

Simplified Liquidation Process

In order for a company to be eligible for the simplified liquidation it must satisfy a number of requirements under the legislation including:

- The company must already be in liquidation pursuant to a creditor's voluntary liquidation.
- The company must have liabilities less than $1 million.
- The company must have its tax lodgements up to date (returns, notices, statements and applications as required by taxation laws).
- Creditors may also request in writing that the liquidator not follow the simplified liquidation process within 20 days* of the event triggering the simplified liquidation process, and the liquidator must cease the simplified liquidation process if the eligibility criteria are no longer met.

1. Out with the new and in with the old laws; or not?

Unfair preference claims are not to be pursued if:

a. >3 months before liquidation

b. <$30,000

AICM;

Expand to all liquidations

Also a comment re; SBRP

"The risks are too high to continue to provide trade credit to an entity undergoing restructure. This may reduce the ability to restructure and save businesses/jobs."

1. Out with the new and in with the old laws; or not?

Under the Retail and Other Commercial Leases (COVID-19) Regulation 2020 (and the Retail and Other Commercial Leases (COVID-19) Regulation (No 3) 2020) commercial leases entered into before 24 April 2020 where the lessee (a) qualifies for the jobkeeper scheme; and (b) has turnover of less than $5M (under Regulation No. 3), are 'impacted leases' and protections are afforded to lessees until 31 March 2021

See also Victorian COVID-19 Omnibus (Emergency Measures) (Commercial Leases and Licences) Regulations 2020 (Regulations)

See Retail and Commercial Leases – Extension of Covid-19 Relief – Gavin Parsons And Associates

2. Small Business Restructuring Practitioners and their Plans ("SBR Process")

Guide; Restructuring and the restructuring plan | ASIC - Australian Securities and Investments Commission

Total Number of Appointments in Australia in two (2) months to 28 February 2021; 3 (see below)

NOTICE OF APPOINTMENT OF RESTRUCTURING PRACTITIONER FOR A COMPANY

Company details

Company:	Southside Staffing Solutions Pty Ltd
ACN:	168 259 970
Status:	**Registered**
Appointment Date:	24 February 2021

Appointment Details

Notice is hereby given that Darren John Vardy was appointed restructuring practitioner(s) for the company under section 453B(1) on 24 February 2021.

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2. Small Business Restructuring Practitioners and their Plans

Conflict of Interest

ARITA; It appears that government contemplates that a firm's prior involvement will not prohibit a registered liquidator from taking an appointment as RP, noting that the debt limit under s456C is only for the person (RP) – not the person's firm or company.

It is the role of the RP to advise the company and assist the company to prepare a restructuring plan, which is distinct to other external administrators.

At this stage, ARITA will not apply section 3 Independence of the COPP: Insolvency to appointments as RP.

Seminar by McDonald; Association of Independent Insolvency Practitioners, 19 May '20

Topic: "To Appoint an External Administrator, or Not"

2. Small Business Restructuring Practitioners and their Plans

Conflict of Interest

The Restructuring Practitioner is to assist the company in the preparation of a restructuring plan.

The RP is to make a Declaration, which includes a declaration or certificate as to whether the company is likely to be able to discharge the obligations created by the plan

as and when they become due and payable.

The Reforms entitle the directors to rely on the advice of the Restructuring Practitioner. The advice is expressly to include the preparation of a restructuring plan.

The Restructuring Practitioner must, when forming an opinion on the company's likelihood of discharging the obligations under the plan (as part of the Declaration), in effect, provide advice to creditors. The advice is about that same plan, which he or she assisted the company prepare.

"officer" of a corporation means: (g) a trustee or other person administering a compromise or arrangement made between the corporation and someone else.

2. Small Business Restructuring Practitioners and their Plans

Conflict of Interest

ARITA Technical Paper

General law independence standards of Australian liquidators and administrators

Mark Wellard, Legal Director, 18 October 2017

"If one were to reduce the judgment of O'Callaghan J in Ten Network to one key statement of principle, it might be the proposition that as a potential administrator, you can 'pre-plan' a process, but you cannot 'pre-pack' an outcome".

2. Small Business Restructuring Practitioners and their Plans

Remuneration

ARITA

Fees for restructure are a fixed fee approved by directors prior to appointment. Fees for plan are a percentage of payments to creditors as set out in the proposal. These methods cannot be changed.

Usual rules on remuneration applies if the RP undertakes work in relation to court proceedings with the written consent of the company and method has been set (for the restructure – prior to the appointment, for the plan – as part of the proposal). If no method is approved up front, there is no ability to have remuneration approved after the fact.

QUERY; What role would be undertaken by the RP in defending a winding up applicatio
as they are not "in control" of the debtor company and arguably acting outside their scope.

2. Small Business Restructuring Practitioners and their Plans

Eligibility criteria;

- **Liabilities are under $1m, excluding employee entitlements.**

(check for any related parties loans, third party financing facilities)

- **The Company has not been subject to a simplified liquidation or SBRP in the previous 7 years.**
- **Directors, including former directors acting in the preceding 12 months, have not been involved in a simplified liquidation or small business restructure in the previous 7 years.**
- **Tax obligations are up to date**

(20 days to meet tax lodgment obligations).

- **Employee entitlements are up to date**

(20 days to meet outstanding employee entitlements including superannuation)

2. Small Business Restructuring Practitioners and their Plans

Within five (5) days, the director must provide the restructuring practitioner with a declaration stating that:

- The company has not entered into a voidable transaction under section 588FE of the Corporations Act 2001, excluding unfair preferences, in the event the company is wound up, and
- the director believes on reasonable grounds that the company meets the eligibility criteria, and why.

A plan is accepted if more than 50 percent of the creditors by value that vote, vote to accept the plan. Related party creditors (that is those linked to the company, its directors or its shareholders) are not entitled to vote on a restructuring plan.

"Part IX for Companies"

2. Small Business Restructuring Practitioners and their Plans

Restructuring Proposal Statement – Approved Form

Corporations Act 2001, Section 455B, Corporations Regulations 2001, Reg 5.3B.16(2)(b) and Reg 5.3B.65

B. Important Information about restructuring plans

1. Deciding whether to accept a Plan

A decision about whether a restructuring plan should be accepted is made by affected creditors who receive the following documents from a restructuring practitioner in relation to a company:

a. **the company's restructuring plan;**

b. **restructuring plan standard terms;**

c. **the company's restructuring proposal statement**

d. **a declaration from the restructuring practitioner about whether the eligibility criteria for restructuring are met, whether the company is likely to be able to discharge the plan obligations, and statements about the practitioners belief about the completeness of information set out in the company's restructuring proposal statement;**

2. Small Business Restructuring Practitioners and their Plans

Restructuring Proposal Statement – Approved Form

Corporations Act 2001, Section 455B, Corporations Regulations 2001, Reg 5.3B.16(2)(a) and Reg 5.3B.65

Mandatory Information

1. Company property to be dealt with under the Plan
2. How company property is to be dealt with under the Plan
3. If asset sales are included in 2. above, then;

a. How the assets will be valued

b. The method of sale and any proposed marketing plan

c. Who will undertake the sale process

d. If the sale is to a related party – the relationship

2. Small Business Restructuring Practitioners and their Plans

Restructuring Plan Standard Terms (s 455B and Reg 5.3B.27)

A restructuring plan made by a company is taken to include all the following terms:

a) all admissible debts and claims rank equally;

b) if the total amount paid by the company under the plan in respect of those debts or claims is insufficient to meet those debts or claims in full, those debts or claims will be paid proportionately;

c) a creditor is not entitled to receive, in respect of an admissible debt or claim, more than the amount of the debt or claim;

d) the amount of an admissible debt or claim will be ascertained as at the time immediately before the restructuring began; and

e) if a creditor is a secured creditor … ("shortfall")

Note: A restructuring plan is void to the extent that it is inconsistent with any of the matters set out above.

3. Recent Superior Court cases

Family law

The Full Court of the Family Court determined that a lump sum payable under property settlement Orders made by the Family Court was not a provable debt and that the solvent wife continued to have a claim against the bankrupt husband's assets, which did not vest in the husband's trustee

(see http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FamCAFC/2020/279.html)

3. Recent Superior Court cases

Insolvency Practitioners

A. On 20 November 2020, the NSW Court of Appeal upheld the decision refusing the applicants leave to sue the court-appointed liquidator in negligence: *Aardwolf Industries LLC v Tayeh* [2020] NSWCA 301 and stressed the requirement to obtain leave.

B. It is now common practice in large administrations for Orders to be made modifying the manner in which notice of meetings of creditors are given: see, for example, *Strawbridge, Re Virgin Australia Holdings Ltd (admins apptd)* [2020] FCA 571 at [27]-[29].

C. There are many successful applications for the appointment of a Liquidator to be receiver of trust assets: see, for example, *Re Aberdeen All Farm Pty Ltd (in liq)* [2020] NSWSC 770; *Re Glenvine Pty Limited (in liq)* [2020] NSWSC 866; *Structum Pty Ltd v CWCN Pty Ltd* [2020] NSWSC 1314 and *In the matter of Parkway One Pty Limited (No.2)* [2020] NSWSC 191.

3. Recent Superior Court cases

D. The remuneration paid to a liquidator under an indemnity agreement has not been the subject of judicial consideration or determination in Australia. I consider that the subject matter of the direction, namely a proposal not to seek approval for his remuneration from the court, is a matter which calls for the exercise of legal judgment. Such a direction is one on which directions are often sought and given.

BELL GROUP NV (IN LIQ); EX PARTE TREVOR [No 3] [2020] WASC 322 (7 September 2020)

E. In the distribution of personal assets of a bankrupt, the "hotchpot" principle applies;

"108. … one liquidation may, by statute (such as s 116(3) of the Insurance Act …), have within it separate funds to be administered. Where that is so, and where the claims (even if to be met out of particular funds at successive stages) are claims of equal degree the appropriate approach is by way of hotchpot, involving treatment of claims of equal degree as if in several concurrent windings up of the same entity in different jurisdictions."

Commissioner of Taxation v Lane [2020] FCAFC 184 (6 November 2020) *(Hotchpot – Wikipedia)*

3. Recent Superior Court cases

F. "I pause to note that the reference to "work properly performed by the external administrator" in s 60-20(3) is not necessarily to be read as requiring that that work be performed by the external administrator personally, as distinct from work that the external administrator has caused staff to perform". ***In the matter of Karim Pty Ltd (in liq) [2020] NSWSC 1603***

G Confidentiality; ***"Pursuant to s 37AF(1)(b)(iv) of the Federal Court of Australia Act 1976 (Cth) and on the ground that it is necessary to prevent prejudice to the proper administration of justice, the deed of assignment (identified as xxx) are to remain confidential and are prohibited from disclosure to any person, except pursuant to an order of the Court, until 30 June 2021".*** ***Nicols, in the matter of Anatax Pty Ltd (in liq) [2020] FCA 1320***

H. If an application is made for "directions" under s90-15, the court is likely to require that the external administrator has at least formed a view as to what he or she proposes to do, as to that which he or she seeks a direction.

ARITA conference 12 November 2020, Justice Ashley Black NSWSC

3. Recent Superior Court cases

I. The decision in *Jahani (liquidator) v Commissioner of Taxation* [2020] FCA 1642 is an example of a recent trend where courts are appointing referees to determine the question of insolvency.

J. The Federal Court has made orders granting leave to deed administrators to transfer shares in a company from its members to a third party in accordance with the terms of the DOCA, noting unfair prejudice to members as the key consideration: *Dickerson, in the matter of McWilliam's Wines Group Ltd (subject to Deed of Company Arrangement) (No 3)* [2020] FCA 1564 and *Virgin Australia (No 9)* [2020] FCA 1652 (10 November 2020).

3. Recent Superior Court cases

Conflict

K. "8. Habrok's principal complaint against the administrators is that having assisted GCY to formulate a turnaround plan in late 2018 when FTI were consultants to GCY, the administrators pursued their plan for the DOCA with single-minded determination during the administration. 452.. But the fact is that FTI did not give detailed advice on the safe harbour plan. And it only gave generic advice on restructuring options (and again at [464], [478], [494]) "

Habrok (Dalgaranga) Pty Ltd v Gascoyne Resources Ltd [2020] FCA 1395 (29 September 2020)

L. 14. "… It is, however, significant that Mr Thatcher was describing Mr Cant to a third party, and potential participant in the sales process, as a "friendly administrator", and promoting his ability to effect the transaction in the manner he proposed, which would plainly undermine any prospect that a sale process would maximise the value of assets in respect of the companies."

In the matter of Pages Equipment Holdings Pty Ltd (admin apptd) [2020] NSWSC 959

3. Recent Superior Court cases

Complying with demands/requests of creditors (case M)

"13. The liquidator is of the preliminary opinion that the Direction is not reasonable on the basis that:

(a) calling a meeting of creditors for the purpose of voting on a resolution to remove him as liquidator at this juncture would substantially prejudice the interests of one or more creditors or a third party, and that prejudice outweighs the benefits of complying with the Direction; and/or

(b) the Direction is vexatious.

40. In my view, the fact that the liquidation is at an early stage is a matter which may be taken into account, (as a) transfer to another liquidator would be less problematic, involve less duplication, result in lower costs being incurred by creditors, than if the liquidation was at a more advanced stage. In that sense it would be less prejudicial to creditors. This is a matter which should also be taken into account by the liquidator."

3. Recent Superior Court cases

Complying with demands/requests of creditors (case M)

"66. In the present context the liquidator's opinion should be informed by the fact that:

- the stated purpose of the proposed meeting is to remove and replace the liquidator not merely to remove the liquidator;

- the relevant text of the Schedule and the Rules show that related friendly creditors have equal voting rights to unrelated creditors;

- the liquidation is at an early stage, although this is a factor which cuts both ways;

- while there are no funds currently in the liquidation (other than pursuant to the funding agreement), the funding agreement appears to bind a replacement liquidator

- Creditor appears to be offering to provide $10,000 towards the cost of the meeting

- a replacement liquidator would have duties to the Court and to creditors."

3. Recent Superior Court cases

Complying with demands/requests of creditors (case M)

"67. Senior counsel for the liquidator submitted that the Court is part way through a process for the giving of judicial advice prior to the formation of a concluded opinion by the liquidator. I accept that characterisation."

AXF Group Pty Ltd & Anor v AXF Holdings Pty Ltd & Ors [2020] VSC 375

3. Recent Superior Court cases

Complying with demands/requests of creditors (case N)

"36. In sum, in considering a request for document production under the Insolvency Practice Schedule, the administrators must establish that it is 'not reasonable' to comply with the request. In order to do so, the administrators must establish that they, acting in good faith, held any of the opinions in r 70-15(2) of the Insolvency Practice Rules."

"46. The issue of privilege which Mr Gladman was required to consider in coming to his opinion raised a difficult issue of law. Accordingly, in my opinion, for an administrator with no legal training to hold an opinion in good faith about what the law of privilege requires, the administrator must establish reliance on some reasonable basis for coming to the legal opinion he or she is required to form. Without being exhaustive, that basis could include taking legal advice, or establishing that the administrator instructed himself or herself on the relevant legal principles

3. Recent Superior Court cases

Complying with demands/requests of creditors (case N)

"69. I acknowledge that Mr Gladman may have formed the opinion that production of the (valuation report prepared for the administrators) by Lonergan Edwards materials would substantially prejudice PRF Holdco's interests. However, Pacreef has offered to undertake to the court to use those documents solely for the purposes of this proceeding. Pacreef is also privy to a substantial portion of that confidential information. I am satisfied that if an undertaking were in place, the prejudice to PRF Holdco would be minimal. I am not satisfied that Mr Gladman has established his opinion was based on a reasonable basis."

Re Pacific Biotechnologies Ltd [2020] VSC 636

4. Phoenix Companies

Treasury Laws Amendment (Combating Illegal Phoenixing) Act 2020

Summary

- introduce new criminal offences and civil penalty provisions for company officers that fail to prevent the company from making creditor-defeating dispositions and other persons that facilitate a company making a creditor-defeating disposition;
- allow liquidators to apply for a court order in relation to a voidable creditor-defeating disposition;

4. Phoenix Companies

- enable the Australian Securities and Investments Commission to make orders to recover, for the benefit of a company's creditors, company property disposed of or benefits received under a voidable creditor-defeating disposition (see section 588FGAA "ASIC may order undoing of effect of creditor-defeating dispositions by company being wound up");
- prevent directors from improperly backdating resignations or ceasing to be a director when this would leave a company with no directors;

4. Phoenix Companies

From 18 February 2021 the effectiveness of a director's resignation will be dependent on when he/she lodges the resignation form with ASIC. If it is lodged over 28 days after the resignation, then the date of lodgement is the date of resignation.

Any resignation of a director of a company does not take effect if, on the date of that resignation, the company does not otherwise have at least one other director. Furthermore, any resolution purporting to remove a director, in circumstances where there is no other director available, will be void (section 203CA).

Guide; Resigning or removing a company director | ASIC - Australian Securities and Investments Commission

5. Creditor Defeating Transactions

Corporations Act; Section 588FDB "Creditor-defeating disposition"

(1) A disposition of property of a company is a creditor-defeating disposition if: (a) the consideration payable to the company for the disposition was less than the lesser of the following at the time the relevant agreement (as defined in section 9) for the disposition was made or, if there was no such agreement, at the time of the disposition:

(i) the market value of the property;

(ii) the best price that was reasonably obtainable for the property, having regard to the circumstances existing at that time; and

(b) the disposition has the effect of:

(i) preventing the property from becoming available for the benefit of the company's creditors in the winding-up of the company; or

(ii) hindering, or significantly delaying, the process of making the property available for the benefit of the company's creditors in the winding-up of the company.

5. Creditor Defeating Transactions

Corporations Act; 588GAC Procuring creditor-defeating disposition

(1) A person must not engage in conduct of procuring, inciting, inducing or encouraging the making by a company of a disposition of property that results in the company making the disposition of the property …, if:

(i) the company is insolvent;

(ii) the company becomes insolvent because of the disposition or a number of dispositions made at the time of the disposition;

(iii) less than 12 months after the disposition, the start of an external administration (as defined in Schedule 2) of the company occurs as a direct or indirect result of the disposition;

(iv) less than 12 months after the disposition, the company ceases to carry on business altogether as a direct or indirect result of the disposition; and

Note 1: Failure to comply with this subsection is an offence: see subsection 1311(1).

6. Other Proposed changes in law and practice

"12 Month Bankruptcy"

On 30 November 2017, pursuant to a report of the Senate Standing Committee for Selection of Bills, the Senate referred the provisions of the Bankruptcy Amendment (Enterprise Incentives) Bill 2017 (BAEI bill) to the Senate Legal and Constitutional Affairs Legislation Committee (the committee). On 7 December 2017, the provisions of the Bankruptcy Amendment (Debt Agreement Reform) Bill 2018 (BADAR bill) were referred to the committee through a similar means.

6. Other Proposed changes in law and practice

The purpose of the Bill is reduce the default period of bankruptcy from three years to one year, including measures to extend the income contribution obligations of discharged bankrupts for a minimum period of two years following discharge or, if extended due to non-compliance, for five to eight years.

Bankruptcy Amendment (Enterprise Incentives) Bill 2017

https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22legislation/billhome/s1097%22

6. Other Proposed changes in law and practice

Consultation - Personal Insolvency Discussion Paper

On 13 January 2021, the Assistant Minister to the Attorney-General, Senator the Hon. Amanda Stoker, announced that the Australian Government is seeking stakeholder submissions on possible changes to the bankruptcy system to inform the Government's ongoing response to coronavirus (COVID-19). You can read Minister Stoker's media release here and the full discussion paper is here.

Proposed items that are being considered include:

1. Reducing the default period of bankruptcy from the current 3 years to 1 year.
2. A review of the debt agreement process and criteria for access.
3. A review of the personal insolvency agreement process and criteria for access.
4. A review of the offence provisions.

6. Other Proposed changes in law and practice

ID Numbers

Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019

Schedule 2—Director identification numbers

The Director Identification Number (DIN) regime has been approved by parliament in Australia. All directors of companies registered under the Corporations Act will need to obtain a unique identifier. All directors will be required to confirm their identity before receiving a DIN, and there will be civil and criminal penalties for system misuse.

6. Other Proposed changes in law and practice

ID Numbers

As part of the 2020 Budget Digital Business Plan, the government announced funding to enable the full implementation of the Modernising Business Registers (MBR) program.

https://www.abr.gov.au/ ("Australian Business Register")

The MBR Program will be administered over the next four years. While there is no action required yet, we will regularly update you on our journey and communicate widely when action is required. **(Last modified 19 Oct 2020)**

As at 23 November 2020, the Application Day is presently unspecified; however, unless an earlier date is fixed by Proclamation, the new DIN regime will commence on 22 June 2022.

6. Other Proposed changes in law and practice

Increasing the Statutory Demand Threshold | Treasury.gov.au

Increasing the Statutory Demand Threshold

"Until 2010, there was alignment between the threshold for issuing a corporate statutory demand on a company and the threshold for initiating bankruptcy proceedings against an individual debtor through issuing a bankruptcy notice. In 2010, the threshold for issuing a bankruptcy notice was raised from $2,000 to $5,000. This threshold was increased again, to $10,000, on 1 January 2021."

6. Other Proposed changes in law and practice

Consultation - Licensing Debt Management Firms

On 25 September, 2020, the Treasurer announced a suite of reforms to Australia's consumer credit laws to facilitate more timely access to credit for small businesses and consumers, whilst retaining and strengthening several consumer protections.

An element of the reforms is protecting consumers from the often predatory practices of debt management firms will be a requirement to hold an Australian Credit License when they are paid to represent consumers on matters related to credit activities.

A person carries out a debt management service if the person provides 'debt management assistance' to a consumer or provides **'credit reporting assistance**' to a consumer

7. Developments with ASIC, AFSA and ARITA

Guide issued June 2020

Practical_tips_for_insolvency_professionals.pdf (ppsr.gov.au)

Apply to the Registrar for a customised report that shows historical PPSR activity for the six month period before insolvency

The Insolvency Practitioner report is not available to the general public. The Insolvency Practitioner report is charged per hour and usually costs $300.

7. Developments with ASIC, AFSA and ARITA

Inspector-General Practice Direction 4

IGPD 4 - Advertising and promotional activities of personal insolvency practitioners

"A debt agreement will let you write off debt"	This is incorrect as it is up to a creditc to write off a debt.

7. Developments with ASIC, AFSA and ARITA

Inspector-General Practice Direction 1

IGPD 1 – Independence of personal insolvency practitioners

Last updated: January 2021

4.3 However, third party referrals may compromise the independence of personal insolvency practitioners whenever there is an express arrangement or implicit expectation that:

- payment will be provided
- services will be procured[15]
- actions will/will not occur[16]

15 For example, engaging the solicitor acting for a petitioning creditor to pursue legal action to recover property.
16 For example, selling assets or pursuing voidable transactions.

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