FEDERAL COURT OF AUSTRALIA

Keith, in the matter of Aequitas Limited (in liq) [2019] FCA 1314

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| File number: | NSD 1059 of 2019 |
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| Judge: | **GLEESON J** |
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| Date of judgment: | 30 July 2019 |
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| Date of publication of reasons: | 19 August 2019 |
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| Catchwords: | **CORPORATIONS** – replacement of liquidators –application to replace liquidators with partners of firm of previous liquidators – orders made |
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| Legislation: | *Corporations Act 2001* (Cth) s 473A, Sch 2 s 90‑15 |
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| Cases cited: | *Free & Ors* [2010] NSWSC 1079  *In the matter of Ambridge Investments Pty Limited & Ors* [2015] NSWSC 1671  *In the matter of* *Columbia Private Holdings Pty Ltd and other companies* [2017] NSWSC 1859  *In the matter of Equiticorp Australia Limited (in liquidation) and other companies* [2017] NSWSC 1456  *In the matter of Kukulovski, Arnautovic & Crisp* [2015] NSWSC 2040  *In the matter of Richard James Porter and David Ian Mansfield* [2012] NSWSC 220  *Naudi, in the matter of ACN 156 335 787 Pty Ltd (in liq)* [2017] FCA 815 |
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| Date of hearing: | 30 July 2019 |
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| Registry: | New South Wales |
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| Division: | General Division |
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| National Practice Area: | Commercial and Corporations |
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| Sub-area: | Corporations and Corporate Insolvency |
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| Category: | Catchwords |
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| Number of paragraphs: | 23 |
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| Solicitor for the Plaintiffs: | Stuart McKenzie of Colin Biggers & Paisley |

ORDERS

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|  | | NSD 1059 of 2019 |
| IN THE MATTER OF AEQUITAS LIMITED (IN LIQUIDATION) (ACN 002 944 845) | | |
| BETWEEN: | GREGORY JOHN KEITH  First Plaintiff  PAUL ANDREW BILLINGHAM  Second Plaintiff  SHAUN CHRISTOPHER MCKINNON (and others named in the Schedule)  Third Plaintiff | |

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| JUDGE: | GLEESON J |
| DATE OF ORDER: | 30 July 2019 |

THE COURT ORDERS THAT:

1. Direct the plaintiffs to file electronically the affidavit of Stuart William McKenzie sworn 30 July 2019 by 5.00 pm today.
2. Pursuant to s 90-15 of the *Insolvency Practice Schedule (Corporations)* (**IPS**), being Schedule 2 to the *Corporations Act 2001* (Cth) (**Act**), the first plaintiff cease forthwith to be the liquidator of the following companies:
   1. Aequitas Limited (in liquidation);
   2. Group Corporate Services Pty Ltd (in liquidation);
   3. InvestmentSource Corporation Pty Ltd (in liquidation);
   4. Property Corporate Services Pty Ltd (in liquidation); and
   5. Vilacon Corporation Pty Ltd (in liquidation).
3. Pursuant to s 473A of the Act and s 90-15 of the IPS, the fourth plaintiff be appointed as liquidator of the following companies:
   1. Aequitas Limited (in liquidation);
   2. Group Corporate Services Pty Ltd (in liquidation);
   3. InvestmentSource Corporation Pty Ltd (in liquidation);
   4. Property Corporate Services Pty Ltd (in liquidation); and
   5. Vilacon Corporation Pty Ltd (in liquidation).
4. Pursuant to s 90-15 of the IPS, the second plaintiff cease forthwith to be the liquidator of the following companies:
   1. Rubicon Asset Management Limited (in liquidation);
   2. Galestar Pty Ltd (in liquidation);
   3. Zambito Pty Ltd (in liquidation);
5. Pursuant to s 90-15 of the IPS, the fifth plaintiff be appointed as liquidator of Rubicon Asset Management Limited (in liquidation).
6. Pursuant to s 473A of the Act and s 90-15 of the IPS, the fifth plaintiff be appointed as liquidator of the following companies:
   1. Galestar Pty Ltd (in liquidation); and
   2. Zambito Pty Ltd (in liquidation).
7. Pursuant to s 90-15 of the IPS, the sixth plaintiff and seventh plaintiff be appointed jointly and severally together with the existing liquidator, the third plaintiff, as liquidators of:
   1. Multifix Constructions (QLD) Pty Limited (in liquidation); and
   2. Stone Benches Pty Limited (in liquidation).
8. Pursuant to s 90-15 of the IPS, anything authorised by the Act to be done by the third plaintiff, sixth plaintiff and seventh plaintiff as the joint and several liquidators of the companies set out in order 7 above may be done by any of them.
9. Pursuant to s 90-15(2)(a) of the IPS, the fourth plaintiff, fifth plaintiff, sixth plaintiff and seventh plaintiff, each in respect of each company of which they are liquidator pursuant to orders 3, 5, 6 and 7 above, notify creditors of their appointments (including that the cost of the application was borne by Grant Thornton and not the creditors of the relevant company) and provide an update on the status of the external administration within 28 days of the date of this order.
10. No order as to costs.
11. Grant liberty to the plaintiffs to apply for further orders or relief in connection with the orders made today.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

GLEESON J:

1. On 30 July 2019, I made orders which had the effect of changing the liquidators of 10 companies presently in the course of being wound up by various partners of the firm Grant Thornton Australia Limited (**Grant Thornton**).
2. These are my reasons for making the orders.
3. The orders were sought by an originating process filed on 5 July 2019 and supported by affidavits made by the following persons on the following dates:
4. The first plaintiff, Gregory John Keith, sworn 28 June 2019.
5. The second plaintiff, Paul Andrew Billingham, sworn 26 June 2019.
6. The third plaintiffs, Shaun Christopher McKinnon, sworn 26 June 2019.
7. The fourth plaintiff, Andrew Stewart Reed Hewitt, sworn 21 June 2019.
8. The fifth plaintiff, Said Jahani, affirmed 26 June 2019.
9. The sixth plaintiff, Cameron Alexander Crichton, affirmed 26 June 2019.
10. The seventh plaintiff, Graham Robert Killer, affirmed 26 June 2019.
11. Stuart William McKenzie, solicitor, sworn 30 July 2019.

# Background to application

1. Mr Keith was the liquidator of each of the following five companies:
2. Aequitas Limited (in liquidation) from April 2007;
3. Group Corporate Services Pty Ltd (in liquidation) from March 2004;
4. InvestmentSource Corporation Pty Ltd (in liquidation) from March 2004;
5. Property Corporate Services Pty Ltd (in liquidation) from March 2004; and
6. Vilacon Corporation Pty Ltd (in liquidation) from September 2004.
7. In July 2015, Mr Keith was appointed as Chief Executive Officer of Grant Thornton. He has not accepted any external administration appointments since that appointment and does not intended to do so in the future. In his affidavit, Mr Keith addressed the work that he has done to date and the work he considers still remains to be completed in each of the five liquidations.
8. Given his responsibilities as CEO and his intention to cease to maintain his registration as a liquidator with the Australian Securities and Investments Commission (**ASIC**), Mr Keith decided that it was prudent and in the best interests of the creditors of the five companies for him to cease to be liquidator and to be replaced by one of his partners, Mr Hewitt.
9. Mr Hewitt, a registered liquidator, consented to his appointment as liquidator of the five companies.
10. Mr Billingham was the liquidator of each of the following three companies:
11. Rubicon Asset Management Limited (in liquidation) (**Rubicon**) from October 2009;
12. Galestar Pty Ltd (in liquidation) from March 2012 (**Galestar**); and
13. Zambito Pty Ltd (in liquidation) from March 2012 (**Zambito**).
14. On 1 January 2019, Mr Billingham was appointed as the Office Chair of Grant Thornton in New South Wales. Like Mr Keith, he has not accepted any external administration appointments since his appointment as Office Chair and does not intended to do so in the future. In addition, Mr Billingham intends to work solely in Grant Thornton’s consulting practice in the future and to cease to maintain his ASIC registration as a liquidator.
15. Mr Billingham’s evidence was that, due to continuing complexities in the liquidation of Rubicon and entities for which it is responsible, it is not clear when the liquidation will be finalised. Mr Billingham also identified tasks to be completed in the liquidations of Galestar and Zambito. In the circumstances, Mr Billingham also considered that it was prudent and in the best interests of the creditors of the three companies for him to cease to be liquidator and to be replaced by one of his partners, Mr Jahani.
16. Mr Jahani, also a registered liquidator, consented to his appointment as liquidator of the five companies.
17. Mr McKinnon had given notice of his resignation from Grant Thornton and his employment with the firm ended on 31 July 2019. He proposed that Mr Crichton and Mr Killer be appointed as joint and several liquidators of the following two companies:
18. Multifix Constructions (QLD) Pty Ltd (in liquidation) (**Multifix**); and
19. Stone Benches Pty Ltd (in liquidation) (**Stone Benches**).
20. Mr McKinnon was appointed as liquidator of Multifix in February 2019. He was appointed with Stephen Dixon as joint and several liquidators of Stone Benches in February 2018. Mr Dixon retired from his position as liquidator in June 2018, when he resigned from Grant Thornton’s partnership.
21. Investigations are continuing in the Multifix liquidation. In the Stone Benches liquidation, all of the assets have been realised and it is now necessary to review proofs of debt, calculate the dividend payable, pay that dividend to creditors, engage in statutory reporting, and finalise the liquidation. Mr McKinnon considered that it was in the best interests of the creditors of Multifix and Stone Benches that Mr Crichton and Mr Killer (both registered liquidators) be appointed for reasons set out in his affidavit, particularly that this would be the most cost effective course in the light of his intended resignation as liquidator.
22. Mr Crichton and Mr Killer consented to the proposed appointments.
23. ASIC was advised of the substance of the orders sought on 16 June 2019. Its officer, Ms Hu, stated AISC’s view that creditors should be notified of the appointment of the replacement liquidators (including that the costs of the application were borne by Grant Thornton and not the creditors of the relevant companies) and should also be provided with an update on the status of the relevant external administration.

# Relevant legal framework

1. The plaintiffs sought relief under s 473A of the *Corporations Act 2001* (Cth) (**Act**) and s 90‑15 of the *Insolvency Practice Schedule (Corporations)* (**IPS**), being Sch 2 to the Act. The plaintiffs did not press for relief sought in the originating process pursuant to s 1322(4) of the Act dispensing with the requirements to comply with ss 70-30, 70-35 and 70-40 of the IPS.
2. Section 90-15(1) of the IPS provides that the Court may make such orders as it thinks fit in relation to the external administration of a company. Sub-sections 90-15(3)(b) and (c) identify orders that may be made pursuant to s 90-15(1), namely, an order that a person cease to be the external administrator of the company and an order that another registered liquidator be appointed as the external administrator of the company.
3. Section 473A(1)(a) provides that a vacancy in the office of a liquidator appointed by the Court may be filled by the Court.
4. In *In the matter of Equiticorp Australia Limited (in liquidation) and other companies* [2017] NSWSC 1456 at [2], Black J noted that the orders permitting the appointment of another liquidator under s 90-15 of the IPS correspond to a longstanding power of the Court to make orders for the appointment of a new liquidator, on the resignation of an existing liquidator.
5. In *In the matter of* *Columbia Private Holdings Pty Ltd and other companies* [2017] NSWSC 1859, Brereton J explained how s 90-15 permits the Court to do things that were previously done under ss 473, 499 and 503 of the Act. Relevantly, the following principles were established under the former provisions:
6. where an appointment of liquidators was made by a court other than this Court, this Court has power to make orders under s 473 and s 503: *Naudi, in the matter of ACN 156 335 787 Pty Ltd (in liq)* [2017] FCA 815 (***Naudi***) at [18]; *In the matter of Ambridge Investments Pty Limited & Ors* [2015] NSWSC 1671at [13];
7. a sufficient ground for removal includes a case where a liquidator wishes to resign: *Naudi* at [16];
8. where a removal order is to be made because of retirement, there is a clear benefit in making orders which ensure continuity of the administration, in the case of joint and several liquidators, by having another member of the firm joint with the co-appointee whose appointment will continue: *Free & Ors* [2010] NSWSC 1079 at [6]; *Naudi* at [17]; *In the matter of Richard James Porter and David Ian Mansfield* [2012] NSWSC 220 at [5]; and *In the matter of Kukulovski, Arnautovic & Crisp* [2015] NSWSC 2040 at [7]; and
9. where a removal order is made in respect of one of two or more liquidators, there are practical advantages in making orders which ensure that the liquidation proceeds with jointly appointed liquidators: *Naudi* at [17].

# conclusion

1. On the evidence provided to the Court, I accepted that I should make orders of the kind sought, together with an order in accordance with ASIC’s view set out above.
2. As Grant Thornton indicated that it would bear the costs of the application, no order for costs was made.

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| I certify that the preceding twenty-three (23) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Gleeson. |

Associate:

Dated: 19 August 2019

SCHEDULE OF PARTIES

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|  | NSD 1059 of 2019 |
| Plaintiffs |  |
| Fourth Plaintiff: | ANDREW STEWARD REED HEWITT |
| Fifth Plaintiff: | SAID JAHANI |
| Sixth Plaintiff: | CAMERON ALEXANDER CRICHTON |