[2004] QSC 400

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Date: 3 November, 2004

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

WHITE J

No BS9447 of 2004

IN THE MATTER OF PROFESSIONAL ADMINISTRATION CENTRES PTY LTD

JOHN LINDSAY BICKFORD — Applicant

and

PROFESSIONAL ADMINISTRATION CENTRES PTY LTD (ACN 100 200 324) — Respondent

BRISBANE

..DATE 01/11/2004

JUDGMENT

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HER HONOUR: On 28th September 2004, Mr Petroulias, the director of the respondent company, appointed Mr McLeod and Mr Schmierer as administrators of the company pursuant to section 436A(1) of the Corporations Act. He was of the view that the company was insolvent.

The assets of the company at that time and as has subsequently been determined by the administrators was approximately $16,000 and the liabilities of the company as revealed in the director's report as to affairs was in excess of $2 million. The applicant, a firm of solicitors, claims to be a creditor in an amount today of approximately $85,000. At the time of the relevant meetings, it was, I think, approximately $74,000.

The first meeting of creditors was held on 5th October 2004. There were two creditors present by proxy being corporations and they were by far the majority creditors of the corporation.

Those creditors have submitted formal proofs of debt in excess of $1.9 million. The applicant was not present at the meeting and had not then filed a proof of debt. The applicant appeared in Mr Petroulias' report as to affairs to the administrator in the sum of $74,000. Accordingly, the applicant has received all the relevant notices.

Mr Petroulias put forward a proposal for a deed of company arrangement under which he offered to put an additional sum of money into a fund for distribution to the creditors. The

administrators recommended that the creditors accepted that proposal. It might be said as an aside that under a winding up, which is the application brought by the applicant today for the appointment of provisional liquidators pending a winding up of the company, that it looks most unlikely that the creditors would receive anything.

On 15th October the administrators convened the second meeting of creditors as required under the provisions of the Act. That was for the 25th October 2004 at 11.00 a.m. at the offices of the administrators and it is that meeting which is at the heart of this application, because if there was, as Mr Coulsen for the applicant contends, no meeting within the meaning of the regulations to the Corporations Act, then the administration ceased and there would be no impediment in bringing this application to wind up the company.

The situation immediately prior to the second meeting of creditors was that the administrators had received proofs of debt from four creditors, two of whom had attended the first meeting by proxy.

The notice of the second meeting which was sent out by the administrators requested creditors to provide any proof of debt and lodge proxies by 22nd October; that is the Friday immediately prior to the meeting, and at the end of that notice indicated that any queries or assistance could be obtained from an assistant to the administrator, a Ms Tey.

It is not contended for the administrators that that was in any way mandatory, but it might be thought convenient and courteous to reply to the request.

Mr McLeod left his office at 9.15 a.m. on the morning of 25th October. He deposes that he had received, as at that time, no other appointment of proxy form from any creditors. He deposes that all of the creditors who had at that time submitted proofs of debt with his office could only participate in the meeting by proxy as three of them were companies and the other an association.

He was therefore of the view at that time that the meeting was unlikely to achieve a quorum. One of the proxies submitted for the second meeting of creditors was found by him to be invalid. There is no suggestion that his conclusion on that proxy was erroneous.

At about 10 to 11, Mr McNeill, a solicitor with the applicant firm of solicitors, attended at the administrator's office. Although, according to Ms Tey, she requested Mr McNeill to show her the proof of debt and the proxy, he did not do so. He had conversations with Ms Tey, who indicated to him that since there was no quorum, the meeting would be adjourned for a week in accordance with the provisions of the regulations. He left the offices at 11.25 a.m.

Mr McLeod returned to the office at 11.30. According to Mr McLeod's affidavit, no other person purporting to represent

any creditor attended at the office between 11.00 a.m. and 11.30 a.m. that morning. It seems that at 11.35 a.m. representatives of the large creditors arrived at the offices of the administrators, having mistakenly thought that the meeting was convened for 11.30.

The administrator formed the view that there was no quorum present for the second meeting of creditors and that by force of regulation 5.6.16(4) the meeting was automatically adjourned to the same day in the next week at the same time and place and a meeting notice was then sent to the creditors.

Today is that adjourned meeting day and at the meeting held at 11.00 o'clock this morning the creditors voted for a deed to be entered into. The meeting was attended by a representative of the applicant.

Mr Coulsen argues that it was necessary that a meeting actually commence, take place or in some physical way be manifest so that the chair, Mr McLeod, could direct his mind to the question whether there was a quorum, make a decision, recording the fact that there was not a quorum and the meeting would thereby be adjourned.

There are a number of points that are taken by Mr Schwarz for the administrators and Mr Milder, who appears for Mr Petroulias and the respondent company.

The first question was whether Mr McNeill was entitled to appear on behalf of the applicant. The persons who are entitled to vote under 5.6.23 of the regulations is a person under sub (b) who has lodged with the chairperson of the meeting or with the person named in the notice convening the meeting as the person who may receive particulars of the debt or claim, those particulars and if required a formal proof of the debtor claim. The chair had required a formal proof of debt.

Temporarily, it seems to me, a creditor can lodge the necessary documents up until the commencement of the actual meeting and fulfil the requirement that he or she has lodged those documents.

That did not occur here. Mr Coulsen would argue it is a circular argument, it did not occur because there was no meeting at which or prior to which they could have been tendered to the chairperson of the meeting and that Ms Tey was not such a person as set out in the document.

There may be something in that argument but Mr McNeill left five minutes before the 30 minutes which the regulations allow for the holding of the meeting from the time for which notice was given. He had, in effect, precluded himself from lodging the proof of debt, but that seems to me to be irrelevant against the provisions of 5.6.16(4) which provides that if within 30 minutes after the time appointed for a meeting, a quorum is not present or the meeting is not otherwise

sufficiently constituted, the meeting is adjourned to the same day and the next week at the same time and place, and that is precisely what occurred.

A quorum was not present or alternatively, the chairperson for the meeting was not present and it was accordingly insufficiently constituted and by operation of the law, the meeting was adjourned.

It would be an odd circumstance that if a person who was to chair the meeting collapsed and was taken ill immediately prior to the meeting so that some other person could not be appointed before the expiration of 30 minutes or things of that kind would automatically mean that in some way the administration would cease. The regulations must mean what they state, literally.

Accordingly, I am of the view that the operation of 5.6.16(4) came into play and there is no suggestion that the adjourned meeting held today was not otherwise regular. Accordingly, I would dismiss the application to wind up the respondent company and the application for the appointment of provisional liquidators.

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HER HONOUR: It seems to me to be no reason why the costs ought not to follow the event in this case. It was an argument in a sense that was a construction argument. The

applicant has been unsuccessful. Had it been successful, of course, a different course would have flowed but I see nothing in the conduct of the liquidators or the respondent which suggests that they should not have their costs of and incidental to the application, to be assessed on the standard basis.

Thanks for your assistance, gentlemen.
