

# SUPREME COURT OF QUEENSLAND

CITATION: *Hollerer v Ansavah Pty Ltd* [2004] QSC 255

PARTIES: **SABINA BRIGITTE HOLLERER**  
(Applicant)  
v  
**ANSAVAH PTY LTD**  
**ACN 083 231 485**

FILE NO/S: 340 of 2004

DIVISION: Trial

PROCEEDING: Application

ORIGINATING COURT: Cairns Supreme Court

DELIVERED ON: 29 July 2004

DELIVERED AT: Cairns

HEARING DATE: 28 July 2004

JUDGE: Jones J

ORDER: **Orders in terms of the draft initialled by me and placed with the papers.**

CATCHWORDS: CORPORATIONS – WINDING UP – LIQUIDATIONS – APPOINTMENT OF PROVISIONAL LIQUIDATOR – CORPORATIONS LAW s472 (2)

*Kinsela and Anor v Russell Kinsela Pty Ltd* 10 ACLR 395 followed

*Re Club Mediterranean Pty Ltd* (1975) 11 SASR 481 followed

*Re Huntford Pty Ltd* 12 ACSR 274 cited

*Commonwealth v Hendon Industrial Park Pty Ltd* 17 ACSR 358 cited

COUNSEL: Mr M Jonsson for the applicant

SOLICITORS: MacDonnells Solicitors for the applicant

[1] Mrs Hollerer makes an application for the appointment of provisional liquidators of Ansavar Pty Ltd, the respondent company, on an urgent and ex parte basis.

- [2] The applicant is one of two directors and shareholders of the company, the other director and shareholder is her estranged husband, Andreas Otto Hollerer. The company formally carried on the business of a restaurant known as “Star Fish Restaurant and Bar” at Port Douglas. That business commenced in 1998 and ceased to trade on 31 January 2004 after which date the assets were sold off.
- [3] The marriage between Mr and Mrs Hollerer had broken down by December 2003 and the parties formally separated.
- [4] The respondent company operated a further business of yacht charters under the name “Bowman Sailing and Cruising” commencing in July 2002. To that end the company purchased a Bowmaster yacht for \$182,500. The deposit and periodic payments to a finance company in respect of this purchase were made from company funds. This business did not succeed and it caused a financial drain on the restaurant business in making the periodic payments. That business also ceased with the transfer of the yacht by the company to Mr Hollerer in a purported settlement of matrimonial property in early July 2004.
- [5] As part of the property settlement the matrimonial home was also sold. Of the net proceeds of that sale some \$95,000 was applied to release the securities held by a finance company over the yacht.
- [6] At the time of cessation of these businesses there were creditors of the companies whose debts cannot be satisfied by the present assets. The principal creditor is the Australian Tax Office which served a statutory Notice of Demand for the payment of a running balance deficit of \$182,519.95.
- [7] In mid-July Mr Hollerer left Port Douglas in the yacht stating his intention to leave Australia permanently, and to travel to either Indonesia or Thailand. One week ago he was known to be in the Torres Strait.
- [8] The applicant is concerned about her obligation as a director of the company and particularly the unsatisfied debts of the company at the time the yacht was sold to Mr Hollerer. The applicant has sought a winding-up of the company on just and equitable grounds and that application is set for hearing on 6 September 2004.
- [9] The urgency of the application for the appointment of provisional liquidators stems from the likelihood that Mr Hollerer will remove himself and the yacht from the jurisdiction. That outcome would defeat a proper examination of the company’s affairs including the sale of its assets, particularly the yacht. The fact that the directors and shareholders agreed to the sale does not preclude its further examination in accordance with the principles discussed in *Kinsela and Anor v Russell Kinsela Pty Ltd*<sup>1</sup>.
- [10] The power to appoint a provisional liquidator is found in s 472(2) of the *Corporations Act* 2001. That power is exercisable within the scope of a wide discretion. See *Re Club Mediterranean Pty Ltd*,<sup>2</sup> particularly per Bright J at 484:-
- “ Where the petitioning creditor makes the application and the company opposes it the court must come to a conclusion as to the degree of urgency and of need established by the

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<sup>1</sup> 10 ACLR 395

<sup>2</sup> (1975) 11 SASR 481

petitioning creditor and the balance of convenience. The circumstances will vary. Sometimes the company may be continuing to trade at a loss or to incur further liabilities. Sometimes assets may require to be protected from dissipation or from seizure or encumbrance. Sometimes the right of the company to assets or the right to exercise an option, enforce a contract, reject a claim or otherwise to act for the apparent benefit of the company may be in issue and the issue may need to be resolved or carried forward or rights may need to be protected as a matter of urgency. Sometimes the company may be paralysed by a dispute between shareholders or directors, or by some form of interim court order. Sometimes there may be a conflict of interest between a director or principal officer of the company and the company itself with regard to some right of property and that conflict may render it difficult for the company's rights to receive proper protection.

As his Honour then went on to note, his remarks did not constitute an exhaustive list for, as he said, "commercial affairs are infinitely various."

- [11] These remarks are cited with approval by Seaman J in *Re Huntford Pty Ltd*<sup>3</sup> and O'Loughlin J in *Commonwealth v Hendon Industrial Park Pty Ltd*<sup>4</sup>.
- [12] The material before me indicates that there is a very strong public interest in having the affairs of the respondent company examined by an independent liquidator. One very significant creditor has been identified and that creditor's interests have obviously not been taken into account in the directors' dealings with the assets of the company.
- [13] I am satisfied that there is a grave risk that the opportunity to effectively examine the affairs of the company will be lost if liquidators are not provisionally appointed.
- [14] I therefore make orders in terms of the draft initialled by me and placed with the papers.

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<sup>3</sup> 12 ACSR 274

<sup>4</sup> 17 ACSR 358