SUPREME COURT OF QUEENSLAND

CITATION:	*In the Matter of Octaviar Limited (In Liquidation) (No. 11)* [2010] QSC 17
PARTIES:	**PUBLIC TRUSTEE OF QUEENSLAND** Applicant **v** **OCTAVIAR LIMITED (IN LIQUIDATION)** **ACN 107 069 390**
FILE NO/S:	BS 5184 of 2008
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	5 February 2010
DELIVERED AT:	Brisbane
HEARING DATE:	Written submissions
JUDGE:	McMurdo J
ORDER:	**The applications for costs by Wellington Capital Limited and OPI Pacific Finance Limited are dismissed.**
CATCHWORDS:	PROCEDURE – COSTS – APPLICATION TO WIND UP COMPANY – where creditors successfully supported adjournment of application to permit voluntary administration – whether their costs should be costs in the winding up *Corporations Act* 2001 (Cth), s 601FS(1) *Re Octaviar Limited (No. 1)* [2008] QSC 216 *Re Octaviar Limited (No. 9)* [2009] QSC 273
SOLICITORS:	McCullough Robertson on behalf of Wellington Capital Limited Russell and Company Solicitors for OPI Pacific Finance Limited

[1] There are applications by Wellington Capital Limited and OPI Pacific Finance Limited for certain orders for costs. Each seeks an order that its costs of and incidental to the hearings of 24 July, 9, 10, 12 and 15 September and 10 October 2008 and otherwise in respect of the adjournment of the application for the winding up of the company, be costs in the winding up of the company.

[2] Until 15 October 2008, the responsible entity of the Premium Income Fund was Wellington Investment Management Ltd. On that date Wellington Capital Limited became the responsible entity. It seeks provision for the costs of its predecessor upon the basis that s 601FS(1) of the *Corporations Act* 2001 (Cth) provides that the rights of the former responsible entity in relation to the fund became its rights. If an order were to be made in favour of Wellington Capital, there would have to be some further consideration of that submission. As it happens, I am not persuaded that either of these applicants should have an order for costs.

[3] The first of those hearings was a routine directions hearing. At that stage the attitude of the noteholders, represented by the Public Trustee, was not known. The outcome of the hearing on 9 and 10 September 2008 was *Re Octaviar Limited (No. 1).*[1] I was then persuaded to allow the company an opportunity to appoint administrators and the winding up application was adjourned. The company's argument was supported by each of the present applicants. The hearings of 12 and 15 September and 10 October 2008 were concerned with whether further orders should be made to permit a voluntary administration to be pursued. The outcome of those hearings was supported by the present applicants.

[4] Each was a substantial creditor with a commensurate interest in whether the company was wound up or was allowed to pursue some alternative arrangement. But further, each company had another reason to oppose a winding up, which was that it would be likely to be subject to a liquidator's investigation. I made the same observation when refusing Wellington Capital Limited its costs of the proceedings to terminate the deeds of company arrangement.[2] Further, the proper interests of these applicants, as creditors of the company, did not require them to be participants in the subject hearings in order to protect the interests of the company and creditors generally. Their case for the adjournment of the winding up application was no different from that argued for the company and subsequently its administrators.

[5] Mainly for the reason that each company had its own interest in resisting an order for the winding up of the company, I am not persuaded to grant the order for costs which is sought. Each application for costs is dismissed.

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1 [2008] QSC 216.

2 *Re Octaviar Limited (No. 9)* [2009] QSC 273 at [7].