

SUPREME COURT OF QUEENSLAND

CITATION: *Re: Hardcote P/L* [2010] QSC 9

PARTIES: **BANK OF WESTERN AUSTRALIA PTY LTD**
ACN 050 494 454
(applicant)

v

HARDCOTE PTY LTD ACN 078 032 247
(respondent)

FILE NO/S: BS 13068 of 2009

DIVISION: Trial

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 15 January 2010

DELIVERED AT: Brisbane

HEARING DATE: 15 January 2010

JUDGE: Fryberg J

ORDER: **1. The respondent, Hardcote Pty Ltd ACN 078 032 247, be wound up by the court under the provisions of the *Corporations Act 2001*.**

2. Matthew Joiner and Gerald Collins be appointed as liquidators for the purposes of the winding up.

3. Anything that is required or authorised by the *Corporations Act 2001* to be done by the liquidators is to be done by all or any of the liquidators appointed.

4. The applicant's costs of and incidental to the application, including reserved costs, be paid by the respondent out of the property of the respondent in accordance with s 556(1)(b) of the *Corporations Act 2001*.

CATCHWORDS: Corporations – Winding up – Liquidators – Appointment – In winding up by court – Who may be appointed – Appropriate

	appointee – Relevant considerations	1
COUNSEL:	M H Hindman for the applicant J J Shaw (solicitor) for the respondent	
SOLICITORS:	McCullough Robertson for the applicant Winchester Young + Maddern for the respondent	

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HIS HONOUR: This is an application to wind up the respondent company. 1

The company is presently in administration. The administrator is not the applicant. The applicant is a creditor in a sum of over \$50,000,000 by reason of a guarantee. 10

The administrators have, however, decided to recommend to creditors that the company should be wound up. The material demonstrates that all necessary advertisements have taken place. No other creditors have sought to appear on the matter and the evidence abundantly shows that the company is deemed to be insolvent and there is no reason why it should not be wound up. 20

The only dispute between the parties is as to who should be appointed as the liquidators. 30

The administrators are two accountants from Hall Chadwick, a well known national accountants firm, who I infer both live in Sydney. 40

They have instructed the respondent company to submit that they should be appointed as liquidators. In support of that argument they point out that there will be savings to the company in terms of the repeat work which new liquidators would have to do to take over the position. 50

The dollar value of such work is about \$6,000. There would

also no doubt be some time overhead incurred and other expense
by new liquidators by reason of unfamiliarity with the
situation.

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On the other hand, the applicant bank seeks the appointment of
liquidators from the firm PKF Chartered Accountants. That is
also a national accountancy firm but the two persons proposed
as liquidators reside in Brisbane.

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The applicant submits that there is, on the material, ground
for concern that the administrators may be too close to a
director of the company and that their conduct of the
administration to date suggests that there may be some
favouritism in that direction.

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I think the evidence really is very weak in that regard and
unless the matter were better ventilated I do not think that
that would be a finding that would be open on the evidence.

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The evidence does disclose that at a meeting of creditors
called by the administrator a vote was taken on the
replacement of the administrators by the accountants from Hall
Chadwick. That resolution was proposed by the present
applicant, which is the Bank of Western Australia. It was
supported by the Bank of Queensland. It was opposed by a
company called Dragonfly Industries Pty Ltd and also by
interests associated with the director.

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Because the Bank of Western Australia's claim was admitted at

only one dollar rather than over \$50,000,000, that resolution was lost but it does show that the bank was trying to replace the administrators at that stage.

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It really comes down to a question of whether the two banks should have their preferred accountant as liquidator or whether the administrators should stay on.

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In my judgment, the evidence really is fairly weak on both sides, but by a narrow margin I am persuaded that it would be preferable for the accountants from PKF to be appointed as liquidators. The fact that they are resident in Brisbane, it seems to me, outweighs the fact that there is some \$6,000 in costs which might be saved by a contrary decision.

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I will therefore make a winding up order appointing Messrs Matthew Joiner and Gerald Collins as liquidators.

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There will be an order in accordance with the draft, initialled by me and placed with the papers.

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