[2006] QSC 367

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

ROBIN A/J

No BS5334 of 2006

IN THE MATTER OF CONTRABART MANAGEMENT PTY LTD
(ACN 101 254 997)

KAYE MAREE RYAN — Applicant

and

CONTRABART MANAGEMENT PTY LTD
(ACN 101 254 997) — Respondent

BRISBANE

..DATE 08/11/2006

ORDER

CATCHWORDS: Corporations Act s444B(2) - application for extension of time for execution of deed of company arrangement pending determination of challenge to the underlying resolution refused.

HIS HONOUR: The parties are agreed that the winding up application now adjourned until today ought to be adjourned for a further 15 days. There's been an amendment of the application permitted by Justice Atkinson to add a claim for an order:

> "Terminating the deed of company arrangement made in respect of the above company and the subject of a resolution at the meeting of creditors of the respondent held on 20th October 2006."

There is also now sought an order reversing the acceptance of proof of debt submitted by a company called Contrabart Trade Exchange Pty Ltd in the amount of $400,000 by the administrators, Ms Carter and Mr Bettles, and an order setting aside the above mentioned resolution.

The deed of company arrangement referred to does not yet exist. I am told there is Federal Court authority to the effect that relief of the kind sought as quoted above cannot be obtained unless there is an executed deed.

The contentious feature of the agreed adjournment is that Mr Coulsen, representing the administrators, seeks further time under section 444B(2) of the Corporations Act for the execution of the deed to occur. It is the obligation of his clients as administrators of the deed to prepare an instrument setting out the terms of it. See section 444A(3).

They are anxious to save the costs of preparation of the deed, estimated at $2000 if, on the adjourned date, 23rd of November 2006, the other relief sought by the amendment permitted by her Honour should be obtained. Those costs will make a big hole in the sum of $15,000, which interested parties propose to bring in for possible distribution under the deed of company arrangement under which payment of costs which would have priority.

Mr Thompson, for Ms Ryan, the applicant for winding up, objects to any extension of time being granted, fearful that his client, if unsuccessful in getting the resolution set aside, will face an exercise of having to set aside the deed, assuming it later comes to be executed.

The considerations are not the same in respect of the added claims for relief. Section 600A, which establishes the basis on which resolutions may be set aside if there has been voting by some "related entity" in a way not permitted. I accept from Mr Thompson that, notwithstanding coincidence of names and personalities involved, it may not be a straightforward task to establish there has been voting by a related entity.

While at one point attracted to Mr Coulsen's urging the Court to avoid the wasting of costs, it seems to me that, in the end, Mr Thompson's approach is right. His client is an admitted creditor in the sum of $200,000 paid as a deposit on the purchase of property which she never obtained.

If the deed of company arrangement is to prove effective to defeat her application for winding up, which is difficult to anticipate given the illusory amount of financial return she might get (something like two cents in the dollar, perhaps, at the best), her position, which appears meritorious from the point of view of obtaining some sort of satisfaction, however pyrrhic, would become much more parlous. She is entitled to pursue winding up as a matter of principle, and should not have an additional unwanted day in court foisted upon her. Should she have extra costs imposed on her to save costs for others?

The modest amount of $15,000 is offered as part of some ploy to defeat the winding up application. I would expect that those associated with the enterprise, if they thought it worth their while, would be prepared to provide the administrators with whatever funding they need to attend to their obligations in relation to preparation of the deed, and, perhaps, execution of it (if they judge that is in the company's interests, or the interests of relevant persons) within the ordinary time allowed. I do not think the Court should grant the indulgence sought in these circumstances.

So the only order is, adjourn the application for winding up to 23rd of November 2006, by consent. Costs reserved.
