

SUPREME COURT OF QUEENSLAND

CIVIL JURISDICTION

MCMURDO J

No 9922 of 2008

OCTAVIAR LIMITED,
OCTAVIAR INVESTMENT NOTES LIMITED,
OCTAVIAR INVESTMENT BONDS LIMITED,
OCTAVIAR FINANCIAL SERVICES PTY LTD
And OCTAVIAR ADMINISTRATION PTY LTD

Applicants

and

JOHN LETHBRIDGE GRIEG and
NICHOLAS HARWOOD

Respondents

BRISBANE

..DATE 12/12/2008

ORDER

HIS HONOUR: There are five identical applications made by the administrators of Octaviar Limited, Octaviar Investment Notes Limited, Octaviar Investment Bonds Limited, Octaviar Financial Services Pty Ltd, and Octaviar Administration Pty Ltd.

The applications are to overcome the apprehended complications from the circumstances in which meetings of creditors for each of these companies were convened. The meetings are to take place next Wednesday 17 December 2008. Applications for winding-up of the companies have been adjourned for hearing on 18 December 2008. Creditors are to consider at those meetings a proposed scheme.

The convening period for each company has been previously extended so as to end on 10 December 2008. Accordingly, the meeting was required to be held within five business days after that date, or in other words, by the scheduled date, 17 December. However, a number of circumstances in combination resulted in the written notice to the company's creditors as required by section 439A(3) not being given by the end of the convening period.

The circumstances, in broad terms, were that the administrators had to consider at a very late point in the convening period a number of proposals put by various interests for a scheme or schemes, and of course, had to then make a decision and compile a report to creditors in that respect. But further, on 10 December, there was a disruption at the administrator's offices occasioned by some fire alert, which cost the administrators and their staff some hours of

valuable work time. There is evidence that creditors would have been notified either by e-mail or by the posting of notices of the meeting by the end of 10 December, but for that particular interruption.

The administrators have brought these applications out of essentially two concerns: the first is that in the circumstances, it might be considered that the administrations had come to an end because, according to section 435C(3), the meetings had not been convened according to section 439A by the time the convening period ended.

The argument which the administrators apprehend is that because no creditor was notified by the end of 10 December, by the operation of section 435C(3)(d) the administrations had then ended. To meet that concern, the administrators seek an order for a further extension of the convening period by one day.

There is a further apprehension, however, that this would not meet an argument that the meetings were not duly convened under section 439A by notices given electronically or by post on 11 December because that notification would not represent five business days' notice for the meetings scheduled for the 17th of December. Accordingly, to meet that concern, the administrators seek orders under section 447A, or alternatively, under section 1322(4).

The other concern is that the liquidators will face a challenge to the outcome of the meetings by persons claiming

that the meetings were not the subject of the full five days' notice as required by section 439A, and the administrators contend that it would be desirable for any doubt about that to be resolved now and ahead of the meetings.

Returning to the first of those matters - the extension of the convening period - by a recent amendment to section 439A, it is now expressly provided that a convening period may be extended by an order made either prior to or after the expiry of the period. The reasons which I gave on 10 October for extending the convening periods to 10 December are again relevant. It is plainly desirable to extend again the convening period by the one day which is sought, and the circumstances which I have described explain the need for that extension.

The directors of these companies have not sought to resume control of them since 10 December, and agree to the administrations continuing. Accordingly, there will be an order as is sought, extending the convening periods to 11 December 2008.

The next matter is whether an order should be made to meet the administrators' concern that the shortness of the notice would have the effect that the meetings have not been duly convened under section 439A with the consequence that by section 435C(3)(d), the administrations have come to an end.

It has been submitted for the administrators that there could be no prejudice to any creditor from receiving less than the

five days' notice of the meeting, because each was notified either by e-mail on 11 December - indeed, in the early hours of 11 December - or by Express Post, the notices being posted early on 11 December. So it is suggested that at least for most creditors, who received their notices by e-mail, they were in receipt of the relevant information at an earlier point in time than would have been the case had they received in the post that material posted on 10 December.

That may be so, but this application has been heard without the benefit of any submission from any disaffected creditor, and it would not be appropriate to preclude some argument that the shortness of the notice has prejudiced a creditor or creditors, and has had an impact upon the creditor's consideration of the proposed scheme.

The immediate concern is the apprehended argument that the administrations have come to an end. The desirable course is to make orders which would meet that contention rather than leaving these companies in a state of limbo, but which would preserve the rights of creditors to complain about the shortness of notice as part of an argument against the outcome of next week's meetings.

To that end, it will be ordered that pursuant to section 447A of the Corporations Act, section 435C(3) is to operate for each of the Octaviar companies, as if the meeting of creditors to be held on 17 December 2008 had been duly convened within the convening period as extended as under section 439A(6), and it will be further ordered - again, pursuant to section 447A -

in relation to each of the Octaviar companies that part 5.3A of the Act is to operate with the date for the convening period for each of the Octaviar companies being 11 December 2008, pursuant to section 439A(6).

The last matter concerns the state of the record from the hearing on 10 October 2008. The order which issued from the Court was incomplete, because it does not record the orders which I made extending the convening period. The orders are referred to on page 7 of the reasons for judgment of 10 October 2008, which of course have been published. There will be a further order pursuant to rule 388 of the Uniform Civil Procedure Rules that the record of the order made by the Court on 10 October 2008 be corrected as set out in a schedule to be attached to minutes of order to be prepared by the applicants.
