

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL COURT
CORPORATIONS LIST**

S CI 2017 01896

**IN THE MATTER OF VICTORIA STATION CORPORATION PTY LTD ACN
104 082 797 (ADMINISTRATORS APPOINTED) & Ors**

**MICHAEL CARRAFA, PETER GOUNTZOS & RICHARD JOHN CAUCHI IN
THEIR CAPACITY AS JOINT AND SEVERAL ADMINISTRATORS OF
VICTORIA STATION CORPORATION PTY LTD ACN 104 082 797 (IN ITS
OWN CAPACITY AS THE PARTNERSHIP MANAGER OF THE "VICTORIA
STATION CORPORATION PARTNERSHIP" (TRADING AS "VICTORIA
STATION", "KATE HILL" AND "VICTORIA STATION CLEARANCE")
(ADMINISTRATORS APPOINTED) & Ors**

Plaintiffs

DEPARTMENT OF EMPLOYMENT

Interested Party/Contradictor

FURTHER SUPPLEMENTARY AFFIDAVIT OF MICHAEL CARRAFA

Date of document: 20 December 2017
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I, **MICHAEL CARRAFA** of Level 17, 200 Queen Street, Melbourne in the State of Victoria, Registered and Official Liquidator, **SINCERELY DECLARE AND AFFIRM** as follows:


1. I am a Registered and Official Liquidator and Executive Director at SV Partners.
2. I refer to the following affidavits filed in support of the interlocutory process filed in this proceeding on 31 August 2017:
 - a. affidavit of Peter Gountzos affirmed on 31 August 2017;
 - b. affidavit of Michael Carrafa affirmed on 13 September 2017;
 - c. affidavit of Michael Carrafa affirmed on 19 September 2017; and
 - d. affidavit of Michael Carrafa affirmed on 14 November 2017.



3. I adopt the definitions used in those affidavits, including where I refer to **VSCPL**, **VSSPL**, **MHPL**, the **MRF Trust**, **PHPL**, the **PRF Trust**, the **Companies**, the **VSC Partnership** and the **Administrators**.
4. I am one of the Joint and Several Administrators of the Companies, being VSCPL, VSSPL, MHPL and PHPL.
5. I make this further supplementary affidavit to provide clarity on the origin of the VSC Partnership and the Companies, and their subsequent management and financial position following the Administrators' appointment.

A. Origin of the VSC Partnership

6. The structure of the VSC Partnership (as set out in paragraph 6 of Mr Gountzos' affidavit of 31 August 2017) was created for the purposes of establishing a new business structure for the continued retail sale of travel goods.
7. Prior to the existence of the VSC Partnership, the sale of travel goods was conducted through the "Victoria Station" business operated by Victoria Station Travel Goods and Handbags Pty Ltd ACN 007 285 672 ("**VS Travelgoods**").
8. The VSC Partnership was created and set up in late 2003 by:
 - a. incorporating MHPL, PHPL and VSCPL;
 - b. registering various business names associated with the VSC Partnership;
 - c. formalising the VSC Partnership through a Partnership Agreement between MHPL, PHPL, VSCPL (all of which were incorporated on 17 March 2003) and VSSPL (which was incorporated on 28 June 1996); and
 - d. appointing VSCPL as the partnership manager of the VSC Partnership in the conduct of the Victoria Station business.
9. During the course of our investigations, the Administrators verified the structure of the VSC Partnership and have been able to determine its origin and how the VSC Partnership commenced its business.



10. During the period from 2003 to 2017, the assets held by VS Travelgoods were progressively transferred to the VSC Partnership for valuable consideration paid by VSCPL on behalf of the VSC Partnership. The transfer of the assets was recorded in the VSC Partnership's books and related to the transfer of stock (with the liability attaching to the stock), employment contracts and supplier contracts (as set out in paragraphs 13 to 24 of Mr Gountzos' affidavit of 31 August 2017, and exhibits thereto).
11. In reviewing the books and records of the VSC Partnership, the Administrators have been able to make an informed assessment of the business structure and origin of the Victoria Station business. A summarised chronology of the origin of the VSC Partnership and the Companies is now produced and shown to me and marked with the letters "MC-17".
12. Additionally, in our review of the books and records of the VSC Partnership, the Administrators have been able to determine that:
 - a. VSCPL did not appear to hold any assets in its own right; and
 - b. VSCPL did not receive any remuneration or other reward and benefits for its role as a manager of the VSC Partnership.

B. Establishment and funding of the VSC Partnership

Commencement of the VSC Partnership

13. VSCPL appears to have acted in the capacity of appointed manager of the VSC Partnership from the date of its incorporation on 17 March 2003, notwithstanding the partnership itself was not formally established until the Partnership Agreement was executed by VSCPL, MHPL, PHPL and VSSPL several months later, on 27 August 2003 (exhibit PG-1 to Mr Gountzos' affidavit of 31 August 2017).
14. For example, VSCPL's financial statements for the financial year ending 30 June 2003 (being several months prior to execution of the Partnership Agreement) disclose:



- a. they were prepared as part of the “special purpose financial report of the **partnership**” (emphasis added);
 - b. the statements and financial report of the partnership were prepared on the basis of “information provided by the partners”;
 - c. “partners’ funds” of \$34,218.35; and
 - d. distributions of 50% of the partners’ funds to each of the MRF Trust and the PRF Trust.
15. Additionally, the “Partnership Tax Return” for the partnership identified as the “Paul Raiter Family Trust & Michael Raiter Family Trust”, (tax file number 791 663 803) for the year ended 30 June 2003 discloses:
- a. “proprietors’ funds” of \$34,218.35, mirroring the figure in the financial report of the partnership; and
 - b. distributions to the PRF Trust and the MRF Trust as partners.

Now produced and shown to me and marked with the letters “MC-18” and “MC-19” are true copies of the financial statements and the Partnership Tax Return respectively.

16. Despite some inconsistencies (for example those referred to in paragraphs 22 and 23 of Mr Gountzos’ affidavit of 31 August 2017), it would appear that the VSC Partnership comprising MHPL and PHPL (as trustees for the MRF Trust and the PRF Trust respectively):
- a. also operated as a partnership under the name of the “Paul Raiter Family Trust & Michael Raiter Family Trust”;
 - b. submitted tax returns as the “Paul Raiter Family Trust & Michael Raiter Family Trust”, using tax file number 791 663 803; and
 - c. owned various business names under which the Business traded, which were registered with the Australian Business Register (an extract of which is exhibit PG-2 to Mr Gountzos’ affidavit of 31 August 2017):

- i. under the ABN 20 116 780 644;
- ii. registered to the entity “The Michael Raiter Family Trust & The Paul Raiter Family Trust”;
- iii. as a “Family Partnership”; and
- iv. using the trading name “Victoria Station Corporations Pty Ltd”.

17. Additionally, the Australian Taxation Office records the entity “The Michael Raiter Family Trust & The Paul Raiter Family Trust” as:

- a. associated with the tax file number 791 663 803 and the ABN 20 116 780 644; and
- b. operating under the account name “Victoria Station Corporation Pty Ltd”.

Now produced and shown to me and marked with the letters “MC-20” is a true copy of the Australian Taxation Office’s Business Portal containing the information identified at sub-paragraphs (a) and (b) above.

18. At the time of the Administrators’ appointment, there were a number of security interests registered in relation to VSCPL on the Personal Property Securities Register (PPSR), primarily by Westpac. Two of the Westpac PPSR registrations additionally identified VSCPL and the ABN 20 116 780 644 as the “grantor”

Now produced and shown to me and marked with the letters “MC-21” is a true copy of a PPSR search for VSCPL dated 2 May 2017 identifying the ABN 20 116 780 644 as additional grantor at pages 9 and 10 (which have since been discharged).

19. The Administrators and our staff have together reviewed all files obtained since our appointment and spoken with the directors of the Companies as part of our investigations into the operation of the VSC Partnership, the Companies and VS Travelgoods. The only partnership agreement we have identified is that establishing the VSC Partnership, being the entity which appears to be the ultimate owner of all assets held by the Companies for and on its behalf. For the reasons stated above, the Administrators consider the VSC Partnership operated:

- a. from at least the date of incorporation of its manager VSCPL on 17 March 2003; and
- b. under the names of the VSC Partnership and “The Michael Raiter Family Trust & The Paul Raiter Family Trust” / “The Paul Raiter Family Trust & Michael Raiter Family Trust”.

Financial Resources of the VSC Partnership

20. From our review of the files obtained by us in conducting the VSC Partnership and as Administrators of the Companies, it appears that:
 - a. in 2003 the Victoria Station Business undertook a corporate restructure, prior to which the Business was operated by VS Travelgoods and following which the Business was operated by VSCPL for and on behalf of the VSC Partnership (as explained in paragraph 18 of Mr Gountzos’ affidavit of 31 August 2017);
 - b. upon its incorporation in March 2003, VSCPL (acting for and on behalf of the VSC Partnership) progressively took over the operation of the retail stores forming part of the Victoria Station Business, and also established new retail stores, each of which were generating income in their own right;
 - c. VSCPL’s initial resources, for example to pay wages and other expenses, were derived from:
 - i. income generated from the individual retail stores;
 - ii. funds loaned to it by VS Travelgoods (as to which VSCPL’s 30 June 2003 financial statement at MC-18 indicates a loan from VS Travelgoods of \$49,152.35; and
 - iii. funding from Westpac by way of commercial hire purchase agreements for fit out, plant and equipment in relation to particular stores (in relation to which the early termination agreements are exhibited as MC-37 below); and

d. there was not a strict “swap-over” date as part of the corporate restructure, for example, some items apparently purchased for use within the Business prior to VSCPL’s incorporation on 17 March 2003 were included in the schedule of assets acquired by VSCPL in the financial statements for the financial year ending 30 June 2003 (notwithstanding the likelihood those assets were acquired by VS Travelgoods, and perhaps subsequently transferred to VSCPL on behalf of the VSC Partnership).

21. The Administrators have been unable to obtain bank statements for the VSC Partnership or any of the Companies at the time of the corporate restructure in 2003. Our office has made enquiries of Westpac, however the bank has advised it does not retain client account statements for VSC dating back to that period. Hence my observations above are based on other financial records, statements and reports forming part of the files received by the Administrators following our appointment.

22. A current search for VSCPL indicates seven registrations remain on the PPSR, again primarily registered by Westpac. Additionally, a current search for the ABN 20 116 780 644 indicates six further Westpac registrations on the PPSR for “The Michael Raiter Family Trust and The Paul Raiter Family Trust”, including in relation to goods which are likely to have been used in retail outlets operated by VSCPL for and on behalf of the VSC Partnership. The PPSR searches include a number of registrations by Westpac for hire purchase facilities, which have since been discharged, but for which Westpac has not yet removed from the PPSR.

Now produced and shown to me and marked with the letters “MC-22” and “MC-23” are true copies of the PPSR searches for VSCPL and for the ABN 20 116 780 644 dated 21 December 2017.

23. In addition to the PPSR registrations for its commercial hire purchase agreements, Westpac also holds registrations in relation to its security interests arising from fixed and floating charges over VSCPL dated 4 June 2004 and 21 April 2005 (**2004 Charge** and **2005 Charge** respectively).

Now produced and shown to me and marked with the letters “MC-24” and “MC-25” are true copies of the fixed and floating charges.

24. A review of the 2004 Charge reveals that:
- a. it is between VSCPL and Westpac Banking Corporation.
 - b. it was issued out of Westpac's Concorde branch in the State of New South Wales;
 - c. it acknowledges VSCPL owes Westpac at least \$1; and
 - d. it has been stamped with duty paid in relation to a sum secured of \$24,688.73.
25. A review of the 2005 Charge reveals that:
- a. it is between VSCPL "as trustee of Victoria Station Corporation Trust" (being an entity unknown to the Administrators) and Westpac Banking Corporation.
 - b. it was issued out of Westpac's Collins Street branch in the State of Victoria;
 - c. it acknowledges VSCPL owes Westpac at least \$1;
 - d. it does not bear any stamp or other indication that any duty has been paid
26. It is not clear to the Administrators what funds were secured by the 2004 Charge or the 2005 Charge over VSCPL. Despite the Administrators' best endeavours, we have not been able to identify any additional cash funding associated with the fixed and floating charges. We are informed by the director of VSCPL that it did have access to an overdraft with Westpac, but that the overdraft was rarely used.
27. Westpac have not made any specific demands under the 2004 Charge or the 2005 Charge in the administration of VSCPL, however it is possible that the charges were given as security for the funds advanced by Westpac under hire purchase agreements for fit out, plant and equipment in relation to particular stores opened since 2003. Westpac is maintaining its PPSR registrations in relation to the 2004 Charge and the 2005 Charge until its claims against VSCPL (acting for and on behalf of the VSC Partnership) and VSSPL (as guarantor as agent of VSCPL for and on behalf of the VSC Partnership) are satisfied.
28. The Administrators have identified hire purchase agreements for fit out, plant and equipment in relation to particular stores, including Westpac Commercial Hire Purchase Agreements in relation to premises at:

- a. 840 Wellington Street, West Perth, in the State of Western Australia dated 24 December 2003;
- b. Tapleys Hill Road, West Beach Adelaide, in the State of South Australia dated 24 December 2003; and
- c. Viscount Place, Liverpool in the State of New South Wales dated 18 February 2004,

true copies of which are now produced and shown to me and marked with the letters “MC-26”, “MC-27” and “MC-28”.

29. Finally, in addition to the 2005 Charge, the partners of the VSC Partnership – MHPL and PHPL as trustees for the MRF Trust and the PRF Trust respectively, also granted fixed and floating charges to Westpac on 21 April 2005, true copies of which are now produced and shown to me and marked with the letters “MC-29” and “MC-30”.

Payment of rent on the premises from which the Business operated

30. As explained at paragraph 37 below, all Pre-Appointment Accounts were opened in the name of VSCPL. Upon our appointment as Administrators, we wrote to various banking institutions seeking confirmation of all bank accounts held by VSCPL, VSSPL, MHPL and PHPL. The only responses received were in relation to the bank accounts held by VSCPL with Westpac.
31. I am informed and believe that in discussions with my staff, both VSCPL’s former finance manager, Ye Vun Lee and its director Michael Raiter advised that VSCPL made all rental payments for the premises from which the Business was conducted.
32. Separately, I consider the Pre-Appointment Accounts held by VSCPL identified above to be the only realistic source of payment of rent for the premises from which the Business was conducted which accords with the information given by VSCPL’s former finance manager and its director. Additionally, I have identified a number of rental payments made by VSCPL to various landlords in the banking records received by the Administrators including, for example a Westpac payment

details report dated 1 August 2014 showing rental payments to AMP Henderson Global, Colonial First State Asset Management, Direct Factory Outlets, GPT Property Management and Lend Lease Property Management, being some of the landlords of premises from which the Business operated.

Now produced and shown to me and marked with the letters "MC-31" is a true copy of Westpac payment details report dated 1 August 2014.

B. Financial Status

33. The financial position of the Administration can be broadly categorised into three separate categories, which are as follows:
- a. the bank accounts of the VSC Partnership;
 - b. the Westpac Hire Purchase Agreements; and
 - c. Bankers Undertakings.
34. During the course of the Administration of the VSC Partnership, the Administrators have been able to sell the entirety of the stock-in-trade, at retail prices, and maintained the operational *status quo* of the Victoria Station business. The proceeds of the sale of the stock-in-trade were deposited into the VSC Partnership main trading account (as set out below).

Bank Accounts

35. Prior to the commencement of the Administration, the VSC Partnership operated five accounts with Westpac Banking Corporation ("**Westpac**") and one account with the Commonwealth Bank of Australia ("**CBA**") (collectively "**the Pre-Appointment Accounts**").
36. The Pre-Appointment Accounts were as follows:
- a. Business Transaction account with CBA;
 - b. Business Flexi (Bank Guarantee) account with Westpac;
 - c. E Commerce account with Westpac (used primarily for Kate Hill online business);
 - d. Main Trading account with Westpac;

- e. Maxi Direct Corp account with Westpac;
- f. USD account with Westpac; and
- g. Business Choice everyday Rewards Visa Card accounts with Westpac.

Now produced and shown to me and marked with the letters “MC-32” are true copies of the statements for each of the Pre-Appointment Accounts as at the date of our appointment as Administrators.

37. The Pre-Appointment Accounts were all opened up in the name of VSCPL and did not distinguish between the funds owned by VSCPL, VSSPL, MHPL and/or PHPL. Most funds from trading were conducted through the Main Trading Account with Westpac, however funds were also deposited into the Commonwealth Bank of Australia Business Transaction Account and the E Commerce Account with Westpac. Now produced and shown to me and marked with the letters “MC-33” is a true copy of the main trading account bank statement opened in the name of VSCPL dated 17 October 2017.
38. Following our appointment as Administrators, all of the Pre-Appointment Accounts were progressively closed (except the Business Flexi Account). Now produced and shown to me and marked with the letters “MC-34” are true copies of account closure statements for each of the Pre-Appointment Accounts.
39. The Administrators then opened new accounts with Macquarie Bank (“Macquarie”), which is the preferred bank of the Administrators’ to secure the proceeds of the Administration. The Administrators once appointed froze all Pre-Appointed accounts, allowing any credits to make their way into the accounts but stopping all debits. The Administrators have pre-allocated insolvency accounts with Macquarie, which allowed the Administrators to open three (3) Administration accounts, which are as follows:
- a. Cheque account (Administrators Trading account);
 - b. At-Call account (to invest surplus funds); and
 - c. Term Deposit account (earns interest on capital account).

(collectively “the Administration Accounts”)

Now produced and shown to me and marked with the letters “MC-35” are true copies of the bank statements for each of the Administration Accounts.

40. The Administration Accounts were all opened in the name of the VSCPL given VSCPL was the manager of the VSC Partnership and operated all of VSC Partnership’s accounts. Now produced and shown to me and marked with the letters “MC-36” is a true copy of a summary of accounts at the commencement of the Administration and the accounts as at 15 November 2017, with the respective account balances.

Westpac Hire Purchase Agreements

41. Having reviewed the books and records of the VSC Partnership it is clear that prior to the appointment of the Administrators, VSCPL maintained and subsequently discharged forty-one (41) hire purchase facilities with Westpac in the total amount of \$1,780,981.32 on 20 April 2017 and 26 April 2017. Now produced and shown to me and marked with the letters “MC-37” are true copies of Early Termination Agreements between VSCPL and Westpac dated 20 April 2017 and 26 April 2017.

Bank Guarantee

42. The Business Flexi Account with Westpac was retained by the Administrators because the cash funds in the account were specifically securing the bank guarantees and partnership business credit cards with Westpac. The bank guarantees were given by the VSC Partnership through VSSPL as an agent of VSCPL in relation to the leases of various retail premises throughout Australia. Despite VSCPL being the grantor of the bank guarantees, VSSPL was the lessee as named on the various leases.
43. The landlords were beneficiaries of the bank guarantees given by VSCPL/VSSPL and were entitled to call on their respective bank guarantees, the funds held in this account could not be disbursed to any creditor or a class of creditors. At the date of swearing this Affidavit, only two (2) bank guarantees remain unclaimed:

- a. AMP Capital Investors Limited \$22,600 (Garden City, Booragoon, WA);
and
- b. Lend Lease Funds Management Limited \$13,291.81 (Erina, NSW).

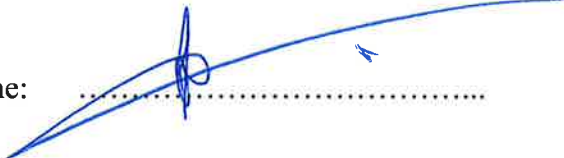
Now produced and shown to me and marked with the letters “MC-38” is a true copy of the list of bank guarantees at the time of our appointment.

44. The funds held in the Business Flexi Account have not yet been completely disbursed as a result of VSCPL/VSSPL being placed in administration and/or the VSC Partnership ceasing to trade.

Now produced and shown to me and marked with the letters “MC-39” and “MC-40” is a true copy of the Westpac Business Flexi accounts statement extracted on 10 May 2017 and 28 November 2017, respectively.

AFFIRMED at **MELBOURNE**)
in the State of Victoria this)
22nd day of December 2017)


.....
MICHAEL CARRAFA

Before me: 
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Ivan Andolfatto
Level 9, 179 Queen Street
Melbourne VIC 3000
An Australian legal practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)