

**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

INTERLOCUTORY PROCESS

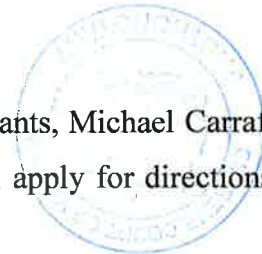
Date of document: 31 August 2017
Filed on behalf of: The Plaintiffs
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A. DETAILS OF APPLICATION

This application is made under sections 439A, 447A and 447D of the *Corporations Act 2001* (Cth) (the **Corporations Act**), section 37 of the *Supreme Court Act 1986* (Vic), section 39 of the *Partnership Act 1958* (Vic), section 63 of the *Trustee Act 1958* (Vic) and in reliance upon the court's inherent jurisdiction.

On the facts stated in the supporting affidavit(s), the applicants, Michael Carrafa, Peter Gountzos and Richard John Cauchi, (the **Administrators**), apply for directions and/or declarations in respect of the following questions:



1. Did Victoria Station Corporation Pty Ltd (administrators appointed) (**VSCPL**) relevantly conduct the business of the group of entities and retail outlets operating under the brand, trading and registered business names of “Victoria Station”, “Victoria Station Clearance”, “Kate Hill”, “Victoria Station Always Something New” and “Victoria Station Corporation” (the **Business**):
 - (a) in its own right, for and on its own behalf;
 - (b) as appointed manager of the “Victoria Station Corporation” partnership between Michael Hartz Pty Ltd (as trustee of the Michael Raiter Family Trust) (**MHPL** and the **MRF Trust** respectively) and Paul Hartz Pty Ltd (as trustee of the Paul Raiter Family Trust) (**PHPL** and the **PRF Trust** respectively) (the **VSC Partnership**) which was established by the partnership agreement between VSCPL, MHPL, PHPL and Victoria Station Services Pty Ltd (**VSSPL**) dated 27 August 2003 (the **Partnership Agreement**); or
 - (c) on some other basis?
2. Did VSSPL relevantly enter into leases of the various premises from which the Business was conducted:
 - (a) in its own right, for and on its own behalf;
 - (b) as appointed agent of VSCPL, and if so:
 - (i) for and on behalf of VSCPL itself; or
 - (ii) for VSCPL in its capacity as manager of the VSC Partnership, and therefore for and on behalf of the VSC Partnership, or
 - (c) as trustee under the Victoria Station Services Trust established by deed made on 4 July 1996 for and on behalf of the trustees of the MRF Trust and the PRF Trust?
3. Are the assets held by the Administrators beneficially owned by:
 - (a) VSCPL; or
 - (b) the VSC Partnership?
4. If questions 1(b), 2(b)(ii) and 3(b) are answered in the affirmative, such that the court finds that the Business was conducted, and the leases were entered into and

the assets are held on behalf of the VSC Partnership, then are those assets to be distributed:

- (a) in accordance with the *Partnership Act 1958* (Vic) and the Partnership Agreement, and therefore on a *parri passu* basis amongst unsecured creditors after deduction of the Administrators' costs and expenses;
- (b) in accordance with the Corporations Act, such that the statutory priorities under sections 556, 560 and 561 apply (as a matter of course in the liquidation of VSCPL, VSSPL, MHPL and PHPL (together, the **Companies**), or in any Deed of Company Arrangement by operation of section 444DA; or
- (c) on some other basis?

In addition to the directions and/or declarations sought in relation to the above questions, the Administrators seek the following ancillary orders:

- A. To the extent necessary, and pursuant to section 439A(6) of the Corporations Act, the time for convening the second meeting of creditors of the Companies is extended up to and including four weeks following the court's determination of this application.
- B. Pursuant to 447A(1) of the Corporations Act, the second meeting of creditors of the Companies pursuant to section 439A of the Act may be held together or separately at any time during, or within five business days after the end of the convening period as extended by the court, provided the Administrators have given notice of the meeting.
- C. Pursuant to section 39 of the *Partnership Act 1958* (Vic), the court decrees the dissolution of the VSC Partnership by application of the Administrators for and on behalf of MHPL and PHPL.
- D. Pursuant to section 37 of the *Supreme Court Act 1986* (Vic) and rules 39.02 and 39.05 of the *Supreme Court (General Civil Procedure) Rules 2015*, the Administrators be appointed without security as receivers and managers over all of the assets and undertaking of (collectively, the **Assets**):
 - (i) of the VSC Partnership;
 - (ii) of the Companies; and/or

- (iii) of MHPL and PHPL as bare trustees of the MRF and PRF Trusts, and the Administrators' costs and expenses are to be fixed by reference to reasonable work undertaken at the hourly rates ascribed to the Administrators and their staff (the **Administrators' Schedule of Rates**) and the actual disbursements incurred by the Administrators.
- E. Pursuant to section 37 of the *Supreme Court Act 1986* (Vic) and rules 39.02 and 39.05 of the *Supreme Court (General Civil Procedure) Rules 2015* and section 63 of the *Trustee Act 1958* (Vic), in dealing with the Assets, the Administrators jointly and severally have:
- a. the powers that a liquidator has in respect of property of a company pursuant to s 477(2) of the Corporations Act; and
 - b. the power to sell and convert into cash any of the Assets.
- F. The Administrators are granted an indemnity for their reasonable costs and expenses since their appointment, and continuing, in relation to:
- (i) all work undertaken in identifying, securing and realising Assets;
 - (ii) all work incidental to identifying, securing and realising Assets;
 - (iii) their general administration work in relation to their appointment over the Companies;
 - (iv) this proceeding including, without limitation, this application and the Administrators' previous application for an extension of the convening period as ordered by the court on 24 May 2017; and
 - (v) their role as receivers and managers pursuant to their appointment by the court,
- such costs and expenses to be determined by reference to the Administrators' Schedule of Rates and the actual disbursements incurred by the Administrators.
- G. The Administrators' costs and expenses are secured by an equitable charge over the assets of (a) VSCPL, (b) the VSC Partnership, and/or (c) MHPL and PHPL as trustees of the MRF and PRF Trusts as the case may be, and such costs and expenses are to be paid in priority to distribution to the general body of creditors (whether that be on a *pari passu* basis or otherwise).

- H. As soon as practicable, the Administrators are to give notice to the creditors of the Companies of the terms of these orders by email, if the Administrators have an email address for the creditor, or by way of correspondence sent to the creditors' last known address in cases where email addressees are not held.
- I. Any person affected by these orders may apply to the court to vary these orders by application on or before four weeks following the court's decision on this application.
- J. Such further or other order as the court deems fit.

Date: 31 August 2017

MGA Lawyers

MGA LAWYERS
 Solicitors for the Plaintiffs

This interlocutory application will be heard by ASSOCIATE JUDGE at
 _____ [address of Court] at 1030 *am/*pm on 20/9/17 [date].
 Court TBA Ground Floor, 436 Lonsdale Street

B. NOTICE TO RESPONDENT(S) (IF ANY)

TO:

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence.

Before appearing before the Court, you must, except if you have already done so or you are the plaintiff in this proceeding, file a notice of appearance, in the prescribed form, in the office of the Prothonotary and serve a copy of it on the plaintiff in the originating process.

Note: Unless the Court otherwise orders, a respondent that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

SCHEDULE OF PARTIES

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

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

and

**IN THE MATTER OF VICTORIA STATION SERVICES PTY LTD ACN 074 633 533
(ADMINISTRATORS APPOINTED)**

and

**IN THE MATTER OF MICHAEL HARTZ PTY LTD ACN 104 083 598
(ADMINISTRATORS APPOINTED)**

and

**IN THE MATTER OF PAUL HARTZ PTY LTD ACN 104 084 693 (ADMINISTRATORS
APPOINTED)**

**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)**

First Plaintiffs

**MICHAEL CARRAFA, PETER GOUNTZOS & RICHARD JOHN CAUCHI IN THEIR
CAPACITY AS JOINT AND SEVERAL ADMINISTRATORS OF VICTORIA
STATION SERVICES PTY LTD ACN 074 633 533 (AS TRUSTEE FOR "VICTORIA
STATION SERVICES TRUST") (ADMINISTRATORS APPOINTED)**

Second Plaintiffs

**MICHAEL CARRAFA, PETER GOUNTZOS & RICHARD JOHN CAUCHI IN THEIR
CAPACITY AS JOINT AND SEVERAL ADMINISTRATORS MICHAEL HARTZ PTY
LTD ACN 104 083 598 (AS TRUSTEE FOR "THE MICHAEL RAITER FAMILY
TRUST") (ADMINISTRATORS APPOINTED)**

Third Plaintiffs

**MICHAEL CARRAFA, PETER GOUNTZOS & RICHARD JOHN CAUCHI IN THEIR
CAPACITY AS JOINT AND SEVERAL ADMINISTRATORS OF PAUL HARTZ PTY
LTD ACN 104 084 693 (AS TRUSTEE FOR "THE PAUL RAITER FAMILY TRUST")
(ADMINISTRATORS APPOINTED)**

Fourth Plaintiffs