

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



IN THE MATTER OF VICTORIA STATION CORPORATION PTY LTD ACN 104 082 797 (ADMINISTRATORS APPOINTED) & Ors (according to the Schedule attached)

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 (according to the Schedule attached)

Plaintiffs

ORDER

ASSOCIATE JUDGE: The Honourable Associate Justice Gardiner

DATE MADE: 25 September 2017

ORIGINATING PROCESS: Originating Process filed on 22 May 2017

HOW OBTAINED: Interlocutory Process filed on 31 August 2017

ATTENDANCE: Mr S. D. Hay and Ms R. T. Zambelli counsel for the plaintiffs

OTHER MATTERS: This order is signed by an Associate Judge pursuant to r 60.02(2) of the *Supreme Court (General Civil Procedure) Rules 2015* (the **Rules**).

Pursuant to r 77.05 of the Rules, a Judge of the court has referred the matters the subject of this order to an Associate Justice.

THE COURT ORDERS THAT:

Further hearing of application for directions

1. The further hearing of the plaintiffs’ interlocutory process is adjourned to 10:30am on 16 October 2017.



2. As soon as is practicable, the plaintiffs cause to be circulated to known creditors of the companies identified in the Schedule (**Companies**):
- a. a copy of these authenticated orders; and
 - b. a letter in the form set out in schedule A to these orders,
- by email, if the plaintiffs have an email address for the creditor, or by way of correspondence to the creditor's last known address, and make those documents available on the plaintiffs' website.
3. Any party wishing to be heard at the hearing of the plaintiffs' interlocutory process:
- a. may appear at 10:30am on 16 October 2017 and make submissions; and
 - b. must, if he, she or it seeks to rely upon affidavit material, file and serve on the plaintiffs such affidavit material by 4:00pm on 11 October 2017.

Contradictor

4. The plaintiffs' solicitors must:
- a. engage independent counsel to act as contradictor at the hearing of the plaintiffs' interlocutory process; and
 - b. provide the independent counsel with all materials necessary to enable him or her to act as contradictor –
- unless another suitably qualified person or entity engages counsel to act as contradictor at the hearing of the plaintiffs' interlocutory process by 4:00pm on 29 September 2017.
5. Counsel acting as contradictor is directed to file and serve an outline of submissions by 4:00pm on 9 October 2017.

Deferral of second meeting of creditors

6. Pursuant to section 447A(1) of the Corporations Act, the time for convening the second meeting of creditors of the Companies is further extended up to and including 8 February 2018.
7. Any further application to further extend the convening period shall be heard on 1 February 2018 at 10:30am in Court 5, 436 Lonsdale Street, Melbourne.



Concurrent meetings

8. Pursuant to 447A(1) of the Corporations Act, Part 5.3 of the Act is to operate in relation to each of the Companies so that notwithstanding section 439A of the 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 that the plaintiffs have given notice of the meeting.
9. The costs of the plaintiff's interlocutory process, including the costs of today's application be costs in the administration of the Companies.

DATE AUTHENTICATED: 25 September 2017




THE HON. ASSOCIATE JUSTICE GARDINER

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



Schedule A

Our ref: MC/PG/LI/2.4

[insert date] September 2017

TO THE CREDITOR AS ADDRESSED

Dear Sir/Madam

**VICTORIA STATION CORPORATION PTY LTD
(IN ITS OWN CAPACITY AND IN ITS CAPACITY AS THE PARTNERSHIP MANAGER OF
"THE VICTORIA STATION CORPORATION PARTNERSHIP")
(FORMERLY TRADING AS "VICTORIA STATION", "KATE HILL" AND "VICTORIA
STATION CLEARANCE")
(ADMINISTRATORS APPOINTED)
ACN 104 082 797
ABN 20 116 780 644**

**VICTORIA STATION SERVICES PTY LTD (AS TRUSTEE FOR "VICTORIA STATION
SERVICES TRUST")
(ADMINISTRATORS APPOINTED)
ACN 074 633 533
ABN 14 546 176 624**

**MICHAEL HARTZ PTY LTD
(AS TRUSTEE FOR "THE MICHAEL RAITER FAMILY TRUST")
(ADMINISTRATORS APPOINTED)
ACN 104 083 598**

**PAUL HARTZ PTY LTD
(AS TRUSTEE FOR "THE PAUL RAITER FAMILY TRUST")
(ADMINISTRATORS APPOINTED)
ACN 104 084 693**

Introduction

1. I refer to our previous notice to creditors dated 6 September 2017, a copy of which was sent to you via post and/or email if you have provided us with your email address.
2. The notice to creditors, along with copies of the documents we have filed with the court, are available via our designated website portal in the administration of the above named companies (**Companies**). The portal address is <https://svpartners.com.au/victoria-station-corporation-court-application/> and will be updated with future documents as and when they are filed with the court. If you wish to be kept apprised of new material filed with the court you should check this portal regularly, or alternatively contact our office on the details provided below.
3. The purpose of this notice is to provide you with further information about the nature of the application presently being considered by the court.
4. As you will be aware from our previous notices, there are significant complexities in the administrations, and in particular the manner in which the Companies and the Victoria Station Corporation Partnership (**Partnership**) conducted the business with which you



are familiar. That business operated under the trading names "Victoria Station", "Kate Hill", "Victoria Station Clearance" and "Victoria Station Always Something New".

5. You may also recall that the second creditors' meeting was scheduled to take place within five business days of the end of the convening period on 2 October 2017. The convening period has now been further extended by the court, so that the second creditors' meeting is to be held within five business days of 8 February 2018. We will notify you separately once the date, time and place have been fixed for that meeting.

Issues at play

6. Those of you who are former employees and trade creditors of the business primarily dealt with the corporate entity **Victoria Station Corporation Pty Ltd**. Those of you who are landlords of premises from which the business traded primarily dealt with the corporate entity **Victoria Station Services Pty Ltd**.
7. Based upon the structure implemented by the directors of the Companies in 2003 (including the agreement establishing the Partnership, and the manner in which the profits and losses and taxation returns of the business were treated and prepared since then), we consider you were dealing with **Victoria Station Corporation Pty Ltd** and/or **Victoria Station Services Pty Ltd** acting for and on behalf of the Partnership.
8. That is the position we are contending for in our application to the court filed on 31 August 2017. An alternate construction would be that **Victoria Station Corporation Pty Ltd** and/or **Victoria Station Services Pty Ltd** were engaging with you as employees, trade creditors and/or landlords in their own right, on their own behalf.

The difference between these two approaches has a significant legal consequence which will impact the financial distribution made to creditors.

Significance of the court's determination

9. If the business was conducted by the Partnership, all creditors will rank equally, and receive a distribution of available funds on what is known as a "*pari passu*" basis. That is to say, that if:

- (a) all accepted creditor claims totalled \$100; and
- (b) the realised assets available for distribution totalled \$30,

you would each receive 30 cents in the dollar of the value of your accepted claim, irrespective of whether you are an employee, a trade creditor or a landlord.

10. However, if the various corporate entities are found to have been acting independently, for and on their own behalf, the court is likely to direct that any distribution be made in accordance with the statutory priorities identified in the *Corporations Act 2001* (Cth). That legislation affords a special priority to employees, meaning that employees would receive payment of their claims ahead of the other trade and landlord creditors. For example, if:

- (a) all accepted creditor claims totalled \$100;
- (b) employee claims totalled \$30, other creditors' claims totalled \$70; and
- (c) the realised assets available for distribution totalled \$30,

the employees would receive payment of 100 cents in the dollar and, in that scenario, there would be no funds remaining for distribution to the other creditors. If employee claims totalled more than \$30, they would receive less than 100 cents in the dollar. If employee claims totalled less than \$30, the surplus would be available for distribution to the remaining creditors in equal proportions.



11. These figures are purely illustrative, and designed to simplify the comparison of distribution on a *pari passu* basis with distribution subject to the Corporations Act priorities in order to assist your understanding of the consequences of the administrators' application to the court. There are additional complexities which would be factored into any distribution depending on the court's direction which are not included in the examples at paragraphs 8 and 9 above. Further, there are other options available to the court which might result in a different distribution outcome. This letter is not intended to be exhaustive, but is intended to explain the core issues as we see them arising in the application.
12. Presently, the administrators hold approximately \$5.9 million in funds they have realised from trading the businesses following their appointment on 2 May 2017. Against this, we have received employee claims totalling approximately \$2.3 million and other unsecured creditor claims totalling approximately \$15.4 million.
13. The administrators are still forming a view on the creditor claims lodged, and some of these may be rejected. Additionally, there may be further recoveries available to the administrators which would increase the pool of funds available for distribution to creditors.
14. Whether the court ultimately directs there to be a distribution to creditors on a *pari passu* basis, or subject to the Corporations Act, the administrators are seeking that their reasonable costs and expenses of conducting the administrations and realising the assets for the benefit of creditors be paid in priority to any distribution, in accordance with accepted legal principles.

What to do if you wish to be heard

15. The court has directed the hearing of this matter be listed before Justice Robson at 10:30am on Monday 16 October 2017 in the Supreme Court at 210 William Street, Melbourne, Victoria. The court room will be allocated late on Friday 13 October 2017, and available via the "Daily Hearing List" link on the Supreme Court website: <http://www.supremecourt.vic.gov.au>.
16. Any creditor wishing to be heard at the hearing may appear on 16 October 2017. If a creditor wishes to rely on documentary or other sworn evidence at that hearing, he or she **must** prepare an affidavit and ensure it is filed with the court and served on the administrators by 4:00pm on 11 October 2017. If the creditor is a corporation, it will need to be represented by a solicitor, unless the court grants special dispensation.

How to keep informed of developments

17. I confirm that all documents filed with the court on behalf of the administrators are available via our designated website portal <https://svpartners.com.au/victoria-station-corporation-court-application/> which will be updated with all future documents. Should you not have access to the internet, or wish to receive hard copies of those documents, please contact either Mr Simon Krampel or Ms Lisa Isaac of this office on +61 3 9669 1100 or by email to simon.krampel@svp.com.au or lisa.isaac@svp.com.au.

Yours faithfully

MICHAEL CARRAFA
JOINT AND SEVERAL ADMINISTRATOR



