

FEDERAL COURT OF AUSTRALIA

Krejci, in the matter of Union Standard International Group Pty Limited (in liq) (No 7) [2022] FCA 890

File numbers: NSD 754 of 2020

Judgment of: **JAGOT J**

Date of judgment: 25 July 2022

Date of publication of reasons: 29 July 2022

Catchwords: **BANKRUPTCY AND INSOLVENCY** — application by liquidators to conduct public examinations — examinations required due to complex company affairs, significant sum of money unaccounted for and current marginal returns to creditors — application granted

Legislation: *Corporations Act 2001* (Cth) s 981H, sch 2 (*Insolvency Practice Rules (Corporations) 2016*) ss 90-15(1), 90-15(4)
Trustee Act 1925 (NSW) s 63

Cases cited: *Carter Holt Harvey Woodproducts Australia Pty Ltd v the Commonwealth* [2019] HCA 20; (2019) 268 CLR 524
Krejci, in the matter of Union Standard International Group Pty Limited (in liq) [2021] FCA 1483
Re Addstone Pty Ltd (In Liq) [1997] FCA 1043; (1997) 25 ACSR 357
Re Ansett Australia Limited (No 3) [2002] FCA 90; (2002) 115 FCR 409
Re KSK Holdings (Australia) Pty Ltd (In Liq) [2019] NSWSC 1463
Re One.Tel [2014] NSWSC 457; (2014) 99 ACSR 247

Division: General Division

Registry: New South Wales

National Practice Area: Commercial and Corporations

Sub-area: Corporations and Corporate Insolvency

Number of paragraphs: 8

Date of hearing: 25 July 2022
Counsel for the Applicant: Mr M Rose
Solicitor for the Applicant: Hall & Wilcox

ORDERS

NSD 754 of 2020

IN THE MATTER OF UNION STANDARD INTERNATIONAL GROUP PTY LIMITED (IN LIQUIDATION) (ACN 117 658 349)

PETER PAUL KREJCI AND ANDREW JOHN CUMMINS AS VOLUNTARY ADMINISTRATORS OF UNION STANDARD INTERNATIONAL GROUP PTY LIMITED (IN LIQUIDATION) ACN 117 658 349
Applicant

ORDER MADE BY: JAGOT J

DATE OF ORDER: 25 JULY 2022

THE COURT ORDERS THAT:

1. Pursuant to section 90-15(1) of Schedule 2 – Insolvency Practice Rules (Corporations) 2016 (**IPS**) to the *Corporations Act 2001* (Cth) (**Act**), that the Applicants (**Liquidators**) are justified in paying their remuneration (subject to approval by creditors, the Committee of Inspection or the Court), costs and expenses (including legal costs and disbursements) in connection with this application and the proposed public examinations described in the affidavit of Peter Paul Krejci sworn on 22 July 2022 out of the funds held by Union Standard International Group Pty Ltd (in liquidation) (ACN 117 658 349) (**Company**) on statutory trust pursuant to section 981H of the Act.
2. Pursuant to section 90-15(1) of the IPS and section 63 of the *Trustee Act 1925* (NSW), that the Liquidators are justified in paying the remuneration referred to in order 1 above upon the making of a resolution by the Committee of Inspection of the Company approving that remuneration or alternatively upon approval by the Court of that remuneration.
3. The applicants have leave to make any applications for the issue of examination summonses and the production of documents in the first instance to Justice Jagot.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

JAGOT J:

1 These reasons concern an application principally pursuant to s 90-15(1) of Sch 2 – *Insolvency Practice Schedule (Corporations) 2016* (the **IPS**) to the *Corporations Act 2001* (Cth) (the **Act**) seeking an order that the liquidators are justified in paying their remuneration, (subject to approval by creditors, the **Committee** of Inspection or the Court), costs and expenses in connection with this application and proposed public examinations as described in the evidence of Mr Peter Paul Krejci, liquidator, out of funds held by the company on statutory trust pursuant to s 981H of the Act.

2 The background circumstances to the making of this application are partly recorded in my previous decision of *Krejci, in the matter of Union Standard International Group Pty Limited (in liq)* [2021] FCA 1483, and otherwise, are set out in two affidavits (one of which is confidential) of Mr Krejci.

3 I have also been provided with written submissions on behalf of the liquidators which identify the relevant circumstances and statutory powers, as well as the relevant considerations which, in the liquidators’ submission, support the appropriateness of the making of the order as sought, having regard to the matters set out in s 90-15(4) of the IPS.

4 In *Carter Holt Harvey Woodproducts Australia Pty Ltd v the Commonwealth* [2019] HCA 20; (2019) 268 CLR 524 at [166], Gordon J referred to the currently applicable statutory language in s 90-15(1), “...the court may make such orders as it thinks fit in relation to the external administration of the company”, which is broad in its terms. The relevant principles include that:

- (1) it is appropriate that liquidators be able to seek the making of an order in the terms as currently sought in order to ensure that they are protected against claims that they have acted unreasonably or inappropriately or in breach of any duty in undertaking the proposed conduct (in this case, the proposed examinations) provided they make full and fair disclosure of all the relevant facts and circumstances to the Court: *Re Ansett Australia Limited (No 3)* [2002] FCA 90; (2002) 115 FCR 409 at [44] per Goldberg J;
- (2) this principle is subject to the requirement that the order sought does not merely relate to the making of some business or commercial decision which is specifically a matter

for the liquidators within the exercise of their discretion and without there being any particular legal issue raised for consideration or other circumstance relevant to the propriety or reasonableness of the decision: see in particular, *Re Ansett* at [65] per Goldberg J;

- (3) as observed by Mansfield J in *Re Addstone Pty Ltd (In Liq)* [1997] FCA 1043; (1997) 25 ACSR 357 at 363, consistently with the observations above:

While the court is reluctant to give directions when purely commercial considerations are relevant to the liquidator's decision ... there will be circumstances where it is or may be appropriate to do so. One of those circumstances may be where the liquidator's proposed decision is the subject of criticism by a particular creditor or creditors.

- (4) to the same effect, Brereton J in *Re One.Tel* [2014] NSWSC 457; (2014) 99 ACSR 247 at [35] said that:

the court should not make a direction the effect of which is to exonerate the liquidator from personal liability in respect of a commercial judgment ... unless it is satisfied that the liquidator's decision is, in all the circumstances, a proper one.

- (5) in *Re KSK Holdings (Australia) Pty Ltd (In Liq)* [2019] NSWSC 1463 at [18], Rees J made observations to the same effect, noting that it was not necessary that there in fact be a current attack on the propriety or reasonableness of the liquidator's decision for the Court to make such a direction, but the Court may choose to do so where there is the prospect of such an attack.

5 In this case, the evidence and the written submissions for the liquidators identify the relevant circumstances which, in my view, make it appropriate that the Court make the orders sought. Without unnecessarily traversing the background in this matter, the current position is as follows:

- (1) the liquidators have received a substantial number of formal proofs of debt;
- (2) despite multiple applications to the Court, the liquidators' inquiries have and continue to be hampered (apparently) by the actions of related companies and persons;
- (3) subsequent to the orders I made on 14 December 2021 (giving effect to my reasons for judgment of 26 November 2021), the further inquiries of the liquidators disclose that, in all likelihood, there will be a very marginal return to the creditors;

- (4) the information that the liquidators have obtained thus far indicates substantial and serious questions about the workings of the company and the actions of multiple individuals and other corporate entities with which the company has had dealings;
- (5) without further information to understand the nature of those dealings, as noted, the return to creditors will be very marginal, in circumstances where there are serious questions about the dealings of the company and further investigations by way of the proposed public examinations are considered by the liquidators to be in the best interests of creditors; and
- (6) while the estimate of costs likely to be incurred in the carrying out of the proposed public examinations is substantial (in excess of \$1 million excluding GST), the seriousness of the issues raised in respect of the company's dealings and the other circumstances justify the liquidators in reaching the conclusion that the proposed public examinations represent the best opportunity for further information to be gathered and potentially for claims and recoveries to be made in the best interests of creditors. In this regard, I accept that the affairs and dealings of the company are complex and it appears that steps have been taken to frustrate and delay the liquidators' investigations, but nevertheless, those investigations have exposed that an extremely large sum of up to approximately \$585 million cannot be accounted for in the dealings of the company.

6 In these circumstances, I accept that while the costs of the public examinations as proposed are significant, they reflect the large number of persons proposed to be examined, the need to obtain documents and information from a large number of third parties, and the complexity of the company's affairs. Having regard to the *de minimis* estimated return to creditors otherwise, the costs of the proposed public examinations will not materially affect the returns to those creditors, given the overwhelming quantum of their claims.

7 It is also relevant that notice of this application has been given to the creditors of the company and none have objected. Further, the company's Committee (which includes representatives from the various classes of creditors), on the evidence, has been provided with regular reports from the liquidators detailing their progress in the liquidation as well as the proposed public examinations. The Committee has indicated its support for the proposed public examinations to be completed as expeditiously as possible and has not raised any objections to the use of the trust funds currently held for that purpose.

8 In these circumstances, I am satisfied that I should make orders as sought by the liquidators pursuant to s 90-15(1) of the IPS.

I certify that the preceding eight (8) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Jagot.

Associate:

Dated: 29 July 2022