

Penrice Soda Holdings Limited (Administrators Appointed)
ACN 109 193 419

Penrice Soda Products Pty Ltd (Administrators Appointed)
ACN 008 206 942

Penrice Pty Ltd (Administrators Appointed)
ACN 108 970 421

PSP SPV Pty Ltd (Administrators Appointed)
ACN 097 756 413

Penrice Finance Pty Ltd (Administrators Appointed)
ACN 098 082 458

Penrice Holdings Pty Ltd (Administrators Appointed)
ACN 008 125 835

Penrice Soda JV Pty Ltd (Administrators Appointed)
ACN 161 918 396

(together referred to as “the Penrice Group”)

Update to Administration

I refer to my appointment with Thea Eszenyi and Peter Anderson as joint and several Administrators of the Penrice Group on 11 April 2014.

Our application to Court to secure funding for the Administration was filed on 15 April 2014 and today we received the Court’s approval in respect of that funding. The orders require me to provide you with the following documents, which are attached to this letter:

- 1 A statement prepared by the Administrators’ lawyer, Thomson Geer summarising the funding facility arrangements;
- 2 A copy of the originating process dated 16 April 2014; and
- 3 A copy of the orders made by the Federal Court on 17 April 2014.

These documents have been posted on both the McGrathNicol website (www.mcgrathnicol.com) and Penrice website (www.Penrice.com.au).

Should you have any queries, please contact Andrew Harding on (08) 8468 3700.

Dated: 17 April 2014



Sam Davies
Joint and Several Voluntary Administrator

Enclosure(s):

1. Statement prepared by Thomson Geer summarising the funding facility arrangements
2. Copy of originating process dated 16 April 2014
3. Copy of orders made by the Federal Court on 17 April 2014

17 April 2014

PENRICE SODA HOLDINGS LIMITED (Administrators Appointed) and subsidiaries (the Group)

The purpose of this note is to provide a statement to creditors of the Group or any of its entities, of the basis on which the Administrators have obtained funding from two financial institutions and the essential terms of those funding arrangements.

The Funding

The Administrators of the Group have obtained approval from two financiers in order to provide funding to the Administrators during the period of the Administration of the Group. Without this funding, the Group could not trade and the Administrators would be required to cease trading the Group's business. The two arrangements are:

- 1 a facility of a four month duration with National Australia Bank Limited (**nab**) pursuant to which nab provides a \$3 million facility to the Administrators. The facility is the subject of the existing security granted by the Group in favour of nab, and further though the Administrators' statutory indemnity and lien to recover such amounts from the assets of the Group and which is referred to below. The formal agreement relating to the nab facilities is in the process of being negotiated; and
- 2 a debt factoring facility with Bibby Financial Services Australia Pty Ltd, (**Bibby**) pursuant to which Bibby provides a maximum amount of funding of \$4 million. The actual amount of the funding available under this arrangement will be determined by the amount of the book debts that are rendered by the Administrators from 11 April 2014 – the date of their appointment – and the aggregate exposure of the facility provided by Bibby and the facility it previously provided prior to 11 April 2014 (that is, the \$4 million facility limit applies across both the pre-appointment facility and the facility with the Administrators). The documents in respect of the Bibby facility have been agreed.

The manner in which the facilities will be drawn is related. The initial funding of the Group will come from the nab facility. Once invoices commence to be rendered and become the subject of the Bibby facility, then the money from the Bibby facility will be available to the Group to reduce the level of the nab facility and also to provide continuing funding for the operation of the Group.

The Order of the Federal Court

The Administrators on 15 April 2014 filed an Originating Process in the Federal Court to obtain orders such that they would not have any personal liability in respect of these funding arrangements if the amounts borrowed could not be repaid from assets under their control and to which their statutory lien and indemnity applied. A copy of that Originating Process has been posted on the Administrators' web site.

The Court made orders on 17 April 2014 under which:

1. the Administrators were exempted from such personal liability;
2. they were permitted to draw not more than:
 - \$2.10 million under the nab facility; and
 - \$1.75 million under the Bibby facilityUntil Tuesday 29 April 2014, being the day after the creditor's meeting which is to be held on 28 April 2014.
3. The matter is before the Court again on 29 April 2014 at 2.15pm;
4. The Administrators, or any other interested party, including any creditor, can apply to bring the matter before the Court again on short notice.

Again a copy of the Court's order is on the McGrathNicol and the Group's web sites.

Form 2

Originating Process

(rule 2.2)

FEDERAL COURT OF AUSTRALIA S.A. DISTRICT REGISTRY RECEIVED / FILED
16 APR 2014
Fees Paid.....
Receipt No.....

Federal Court of Australia
District Registry: South Australia
Division: General

The time before which this
Application/~~Notice of Motion~~
is to be served has been abridged
by the Court to 12.30pm on 16 April 2014

No. SAD 76 of 2014

IN THE MATTER OF: PENRICE SODA HOLDINGS LIMITED (ADMINISTRATORS APPOINTED) ACN: 109 193 419; PENRICE PTY LIMITED (ADMINISTRATORS APPOINTED) ACN: 108 970 421; AND PENRICE SODA PRODUCTS PTY LIMITED (ADMINISTRATORS APPOINTED) ACN: 008 206 942

SAMUEL CHARLES DAVIES, PETER MCKENZIE ANDERSON AND THEODORA ALICE ESZENYI AS JOINT AND SEVERAL ADMINISTRATORS OF PENRICE SODA HOLDINGS LIMITED (ADMINISTRATORS APPOINTED) ACN 109 193 419, PENRICE PTY LIMITED (ADMINISTRATORS APPOINTED) ACN 108 970 421 AND PENRICE SODA PRODUCTS PTY LIMITED (ADMINISTRATORS APPOINTED) ACN 008 206 942

Plaintiffs

A. Details of Application

This application is made under section 447A of the *Corporations Act 2001* (Cth) (**Act**).

On the facts stated in the supporting affidavit, the plaintiffs (**Administrators**) seek:

- 1 An order that this application be returnable at the earliest date and time convenient to the Court.
- 2 An order that, pursuant to s 447A of the Act, Part 5.3A of the Act is to operate in relation to Penrice Soda Holdings Limited (Administrators Appointed) ACN 109 193 419 (**PSH**), Penrice Pty Limited (Administrators Appointed) ACN: 108 970 421 (**PPL**) and Penrice Soda Products Pty Limited (Administrators Appointed) ACN 008 206 942 (**PSP**) as if s 443A(1) of the Act provided that:

Filed on behalf of:
Prepared by:
Law firm:
Tel:
Fax:
Email:
Address for service
Legal/42484225_1

The plaintiffs
Michael Barrett
Thomson Geer
+61 8 8236 1130
+61 8 8232 1961
mbarrett@tglaw.com.au
Thomson Geer, Level 7, 19 Gouger Street Adelaide SA 5000



- 2.1 the repayment of money borrowed, interest in respect of money borrowed and borrowing costs in respect of the loan made or to be made to the Administrators pursuant to an agreement between PSH, PPL, PSP and National Australia Bank Limited Ltd (**nab**) in or substantially in the form as set out in the affidavit of Samuel Charles Davies sworn on 15 April 2014 (**Davies Affidavit**) at paragraph 32 and any formal letter of offer and other transaction document to give effect thereto (**nab Agreement**) comprise debts incurred by the Administrators in the performance and exercise of their functions and powers as administrators of PSH, PPL, PSP and any subsidiaries thereof;
- 2.2 the repayment of money borrowed, interest in respect of money borrowed and borrowing costs in respect of the loan made or to be made to the Administrators pursuant to an agreement between PSH, PPL, PSP and Bibby Financial Services Australia Pty Ltd (**Bibby**) in or substantially in the form of annexure 'SCD8' to the Davies Affidavit (**Bibby Agreement**) comprise debts incurred by the Administrators in the performance and exercise of their functions and powers as administrators of PSH, PPL, PSP and any subsidiaries thereof; and
- 2.3 notwithstanding paragraphs 2.1 and 2.2 above:
- (a) if the Administrators' indemnity under s 443D of the Act is insufficient to meet any such debts incurred during the course of the administration of PSH, PPL and PSP the Administrators will not be personally liable to repay such debts to the extent of that insufficiency; and
 - (b) as to the repayment of such debts to nab and Bibby, the debts are given the same priority in the payment of any debts of PSH, PPL and PSP during the companies' administration as if it had been in liquidation and the respective debts had the priority governed and provided for under ss 556(1)(c) and 560 of the Act.

- 3 An order that, pursuant to s 447A of the Act, s 447D(1) of the Act is to operate in relation to PSH, PPL and PSP so that in an application by the Administrators for directions pursuant to s 447D(1) in relation to the nab Agreement and the Bibby Agreement, the court may give a direction that it approves the entry into the nab Agreement and the Bibby Agreement and that the Administrators may properly and justifiably give effect to the nab Agreement and the Bibby Agreement.



- 4 A direction pursuant to s 447D(1) of the Act that the Court approves the entry into the nab Agreement and the Bibby Agreement and that the Administrators may properly and justifiably give effect to the nab Agreement and the Bibby Agreement.
- 5 A direction that the Administrators cause notice of this Originating Process, a brief statement setting out the basis for seeking the orders sought in it and any Orders made by the Court in consequence, within two business days after the making of any such Orders:
 - 5.1 to be placed on the website maintained by the plaintiffs at <http://mcgrathnicol.com>; and
 - 5.2 to be sent by email to all creditors of PSH and any subsidiary thereof of which the Administrators are the administrators (including but not limited to PPL and PSP) who have provided the Administrators with an email address, and to all other creditors of PSH and any subsidiary thereof who have provided the plaintiffs with a mailing address, by mail.
- 6 An order that the costs of the Administrators in relation to this matter, be costs in the administration of PSH.
- 7 Such other orders as the Court considers appropriate.

Date: 16 April 2014



Signature of Michael Barrett

This application will be heard by the Federal Court of Australia at the Roma Mitchell Commonwealth Law Courts Building, 3 Angas Street, Adelaide SA 5000 at 3pm on

16 April 2014



B. FILING

Date of filing: 16-A-14



Signed by an officer acting with the authority
of the District Registrar

OFFICER ACTING AS DISTRICT REGISTRAR PURSUANT
TO S.37(b) OF FEDERAL COURT OF
AUSTRALIA ACT 1976

This originating process is filed by Thomson Geer for the plaintiffs.

C. SERVICE

The plaintiffs' address for service is Thomson Geer, Level 5, 19 Gouger Street, SA 5000.

It is intended to serve a copy of this originating process on any person listed below:

- 1 Westpac Banking Corporation
C/- Finlaysons
Attn: Mr Andrew Kedzior
andrew.kedzior@finlaysons.com.au
- 2 National Australia Bank Limited
C/- Finlaysons
Attn: Mr Andrew Kedzior
andrew.kedzior@finlaysons.com.au
- 3 Bibby Financial Services Australia Pty Ltd
Attn: Mr Gerald Caridis
Gillis Delaney Lawyers
GPC@gdlaw.com.au
- 4 TMPA Holdings Pty Ltd
Attn: Mr Mike Almond
Level 13, 30 Collins Street
MELBOURNE VIC 3181

Federal Court of Australia
District Registry: South Australia
Division: General

SAMUEL CHARLES DAVIES, PETER MCKENZIE ANDERSON AND THEODORA ALICE ESZENYI AS JOINT AND SEVERAL ADMINISTRATORS OF PENRICE SODA HOLDINGS LIMITED (ADMINISTRATORS APPOINTED) ACN 109 193 419 DAVIES and others named in the schedule
Plaintiff

ORDER

JUDGE: Besanko J
DATE OF ORDER: 17 April 2014
WHERE MADE: Adelaide

THE COURT ORDERS THAT

1 Pursuant to s 447A of the *Corporations Act 2001* (Cth) (**Act**), Pt 5.3A of the Act is to operate in relation to Penrice Soda Holdings Limited (Administrators Appointed) (ACN 109 193 419) (**PSH**), Penrice Pty Limited (Administrators Appointed) ACN: 108 970 421 (**PPL**) and Penrice Soda Products Pty Limited (Administrators Appointed) ACN 008 206 942 (**PSP**) as if s 443A(1) provided that:

1.1 the repayment of money borrowed, interest in respect of money borrowed and borrowing costs in respect of the loan made or to be made to the plaintiffs (**Administrators**) pursuant to an agreement between PSH, PPL, PSP, National Australia Bank Limited Ltd (**nab**) in or substantially in the form of annexure 'SCD10' to the affidavit of Samuel Charles Davies sworn on 16 April 2014 (**nab Agreement**) comprise debts incurred by the Administrators in the performance and exercise of their functions and powers as administrators of PSH, PPL, PSP and any subsidiaries thereof;

1.2 the repayment of money borrowed, interest in respect of money borrowed and borrowing costs in respect of the loan made or to be made to the Administrators



pursuant to an agreement between PSH, PPL, PSP and Bibby Financial Services Australia Pty Ltd (**Bibby**) in or substantially in the form of annexure 'SCD8' to the affidavit of Samuel Charles Davies sworn on 15 April 2014 (**Bibby Agreement**) comprise debts incurred by the Administrators in the performance and exercise of their functions and powers as administrators of PSH, PPL, PSP and any subsidiaries thereof; and

1.3 notwithstanding paragraphs 1.1 and 1.2 above:

- (a) until Tuesday 29 April 2014 the Administrators be permitted to draw down not more than:
 - (i) under the nab Agreement, \$2,100,000.00; and
 - (ii) under the Bibby Agreement, \$1,750,000.00;
- (b) subject to any application under the liberty granted in paragraph 6 herein, consideration of the ability of the Administrators to effect further draw downs under the nab Agreement and the Bibby Agreement be adjourned for further consideration to 29 April 2014 at 2.15pm;
- (c) if the Administrators' indemnity under s 443D of the Act is insufficient to meet any such debts referred to in paragraphs 1.3(a) above, or in respect of further draw downs as permitted by subsequent Order of this Court which are incurred during the course of the administration of PSH, PPL and PSP, the Administrators will not be personally liable to repay such debts to the extent of that insufficiency; and
- (d) but for the avoidance of doubt and despite paragraph 1.3(c) above, as to the repayment of such debts to nab and Bibby, the debts are given the same priority in the payment of any debts of PSH, PPL and PSP during the companies' administration as if it had been in liquidation and the respective debts had the priority governed and provided for under ss 556(1)(c) and 560 of the Act.

2 Annexure 'SCD9' to the affidavit of Samuel Charles Davies sworn 16 April 2014 be sealed and not be available for inspection until further order.



- 3 Paragraphs 3 and 4 of the Originating Process be adjourned for further consideration.
- 4 The Administrators cause notice of the Originating Process in this proceeding, a brief statement setting out the essential terms of the nab Agreement and the Bibby Agreement and the basis for seeking the orders sought in it and these Orders as soon as practicable, and in any event, within two business days:
 - 4.1 be placed on the website maintained by the Administrators at <http://mcgrathnicol.com>; and
 - 4.2 be given to all known creditors of PSH and any subsidiary thereof of which the Administrators are the administrators (including but not limited to PPL and PSP) by one of the following means:
 - (a) by hand delivery in the case of employees;
 - (b) alternatively, by email;
 - (c) in the further alternative, by mail.
- 5 The matter be listed for further hearing on 29 April 2014 at 2.15pm.
- 6 Liberty to the Administrators and any other interested party to apply on short notice.

Date that entry is stamped: 17 April 2014



Schedule

No: SAD76/2014

Federal Court of Australia

District Registry: South Australia

Division: General

Plaintiff: SAMUEL CHARLES DAVIES, PETER MCKENZIE
ANDERSON AND THEODORA ALICE ESZENYI
AS JOINT AND SEVERAL ADMINISTRATORS OF
PENRICE SODA PRODUCTS PTY LIMITED
(ADMINISTRATORS APPOINTED) ACN 008 206
942

Plaintiff: SAMUEL CHARLES DAVIES, PETER MCKENZIE
ANDERSON AND THEODORA ALICE ESZENYI
AS JOINT AND SEVERAL ADMINISTRATORS OF
PENRICE PTY LIMITED (ADMINISTRATORS
APPOINTED) ACN 108 980 421