



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD1868/2016

**IN THE MATTER OF PUMPKIN PATCH ORIGINALS LIMITED  
(ADMINISTRATORS APPOINTED) (IN RECEIVERSHIP) ARBN 083 321 046**

**JOSEPH DAVID HAYES, ANDREW JOHN GRENFELL AND CONOR JOHN  
MCELHINNEY IN THEIR CAPACITY AS FOREIGN REPRESENTATIVES OF  
PUMPKIN PATCH ORIGINALS LIMITED (ADMINISTRATORS APPOINTED) (IN  
RECEIVERSHIP)**

Plaintiff

**PUMPKIN PATCH ORIGINALS LIMITED (ADMINISTRATORS APPOINTED) (IN  
RECEIVERSHIP) ARBN 083 321 046**

Defendant

**ORDER**

**JUDGE:** JUSTICE JAGOT

**DATE OF ORDER:** 10 November 2016

**WHERE MADE:** Sydney

**THE COURT ORDERS THAT:**

1. Pursuant to paragraph 1 of Article 17 of the Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law (**Model Law**), the voluntary administration of the defendant under Part 15A of the *Companies Act 1993* (NZ) (**NZ Proceeding**) be recognised as a "foreign proceeding".
2. Pursuant to paragraph 2(a) of Article 17 of the Model Law, the NZ Proceeding be recognised as a "foreign main proceeding".
3. Each of the plaintiffs be recognised as a "foreign representative" in relation to the NZ Proceeding for the purposes of the Model Law.
4. For the purposes of paragraph 2 of Article 20 of the Model Law and section 16 of the *Cross-Border Insolvency Act 2008* (Cth) (**Act**), the scope, and the modification or termination, of the stay and suspension referred to in paragraph 1 of Article 20 of the



Model Law be the same as would apply if the stay or suspension arose under Part 5.3A in Chapter 5 of the *Corporations Act 2001* (Cth) (**Corporations Act**), and as if:

- a. Part 5.3A of the Corporations Act applied to the defendant (as a company subject to administration under that Part); and
  - b. the plaintiffs had been appointed as administrators of the defendant for the purposes of Part 5.3A of the Corporations Act.
5. Except with the leave of the Court or the plaintiffs' written consent, and subject to the rights of, or which would apply to, any secured party, receiver, receiver and manager or controller (each as defined in the Corporations Act) under Part 5.3A of the Corporations Act if that Part applied to the defendant, including the entitlements of any secured party, receiver, receiver and manager or controller to do any act or thing in relation to the defendant or its assets, which that secured party, receiver, receiver and manager or controller is permitted or authorised to do, or which it is not restricted from doing, under that Part (together, “**Secured Party Rights**”):
- a. the commencement or continuation of individual actions or individual proceedings (including without limitation any arbitration, mediation or any judicial, quasi-judicial, administrative action, proceeding or process whatsoever) against the defendant or concerning the defendant's assets, rights, obligations or liabilities be stayed, to the extent they have not been stayed under paragraph 1(a) of Article 20 of the Model Law;
  - b. enforcement or execution of any judgment order or award against the defendant or its assets, rights and obligations be stayed, to the extent it has not been stayed under paragraph 1(b) of Article 20 of the Model Law;
  - c. the right to transfer, encumber or otherwise dispose of any assets of the defendant be suspended, to the extent this right has not been suspended under paragraph 1(c) of Article 20 of the Model Law; and
  - d. the restrictions set out in the table at the end of section 440B of the Corporations Act apply in relation to the exercise of the rights of any person in property of the



defendant, or other property used or occupied by, or in the possession of, the defendant.

6. Subject to Secured Party Rights, the administration, realisation and distribution of all of the defendant's assets located in Australia be entrusted to the plaintiffs, until they cease to be foreign representatives in relation to the NZ Proceeding or until the conclusion of the NZ Proceeding (whichever is earlier).
7. Subject to Secured Party Rights, and until the plaintiffs cease to be foreign representatives in relation to the NZ Proceeding or the until conclusion of the NZ Proceeding (whichever is earlier), all powers available to an administrator appointed under Part 5.3A of the Corporations Act be made available to the plaintiffs in respect of the property of the defendant located in Australia, as if that Part applied to the defendant and the plaintiffs had been appointed as administrators of the defendant under that Part..
8. Each creditor, or person claiming to be a creditor, of the defendant have liberty to apply on 3 days' notice.
9. In respect of Rule 15A.7 of the *Federal Court (Corporations) Rules 2000* (Cth), within 5 business days of the making of orders 1 to 8 above (Orders), the plaintiffs must:
  - a. send a notice of the making of the Orders, in accordance with Form 21, to each person in Australia whose claim to be a creditor of the defendant is known to the plaintiffs; and
  - b. publish a notice of the making of the Orders in accordance with Form 21 in The Australian newspaper.
10. For the purposes of paragraph 9(a) above, the notice of the making of the Orders may be given by the plaintiffs by:
  - a. sending such notice by email to any creditor (including a person claiming to be a creditor) of the defendant for whom the plaintiffs have a current email address; or
  - b. sending such notice to the postal address or facsimile number, or otherwise sending such notice in a manner provided for by the Corporations Act or the



Corporations Regulations 2001 (Cth), to any creditor (including a person claiming to be a creditor) not being a creditor referred to in sub-paragraph (a); and

- c. causing such notice to be made available on the website maintained by the plaintiffs at <http://www.mcgrathnicol.com>.

11. Costs of this application be costs in the administration of the defendant.

**Date that entry is stamped: 10 November 2016**

*Warrick Soden*  
Registrar