Supreme Court
New South Wales
Equity Division

Case Title:	In the matter of Wine National Pty Ltd, James Estate Wines Pty Ltd and Liquor National Pty Ltd
Medium Neutral Citation:	[2014] NSWSC 1516
Hearing Date(s):	20 October 2014
Decision Date:	24/10/2014
Jurisdiction:	Equity Division – Corporations List
Before:	Black J
Decision:	Orders made substantially in accordance with the form sought by the applicants. Liberty granted to first respondents to apply, by interlocutory process, in respect of matters arising from cessation of ongoing obligations from delivery date. Further order made for first respondents' proper and reasonable costs and remuneration in defending previous application to be costs of the receivership arising from previous orders. Further order made for first respondents to give notice of orders to fifth respondent, reserving liberty to fifth respondent to apply in respect of preceding order within fourteen days.
Catchwords:	CORPORATIONS – receivers, controllers and managers – where applicants seeks orders and directions in respect of delivery up and adjudication of claims of relevant stock held by first and second respondents as receivers and managers – whether first and second respondents should be ordered to deliver up stock – whether applicants should be appointed as receivers and managers of relevant stock – whether applicants are justified in dealing with and adjudicating claims in respect of stock –

	whether applicants are justified in imposing a recovery charge in respect of adjudication of claims to stock – whether first respondents entitled to indemnity in respect of costs incurred in previous application.
Legislation Cited:	- *Corporations Act* 2001 (Cth) ss 420, 420(2), 420(3), 479(3), 511, 1321 - *Personal Property Securities Act* 2009 (Cth) ss 12,13 - Uniform Civil Procedure Rules 2005 (NSW) r 26.4 - *Supreme Court Act 1970* (NSW) s 67
Cases Cited:	- *Ide v Ide* [2004] NSWSC 751; (2004) 50 ACSR 324 - *Re Application of Crouch* [2005] NSWSC 1308 - *Re Arcabi Pty Ltd (recs & mgrs apptd) (in liq)* [2014] WASC 310 - *Re Central Commodities Services Pty Ltd* [1984] 1 NSWLR 25 - *Re MF Global Australia Ltd (in liq)* [2012] NSWSC 994; (2012) 267 FLR 27 - *Re Renovation Boys Pty Ltd (admin apptd)* [2014] NSWSC 340 - *Re Universal Distributing Co Ltd (in liq)* (1933) 48 CLR 171 - *Shirlaw v Taylor* (1991) 31 FCR 222; 5 ACSR 767 - *Stewart v Atco Controls Pty Ltd (in liq)* [2014] HCA 15; (2014) 307 ALR 562 - *Thackray v Gunns Plantations Ltd* [2011] VSC 380; (2011) 85 ACSR 144
Texts Cited:	
Category:	Interlocutory applications
Parties:	Shaun Fraser in his capacity as Liquidator of Wine Investment Services Pty Ltd (in liq) (First Applicant) Christopher Honey in his capacity as Liquidator of Wine Investment Services Pty Ltd (in liq) (Second Applicant) Neil Robert Cussen in his capacity as Receiver appointed pursuant to orders made on 21 October 2013 (First Respondent) Vaughan Neil Strawbridge in his capacity as

	Receiver appointed pursuant to orders made on 21 October 2013 (Second Respondent) David Paul Merryweather in his capacity as joint and several receiver and manager of all of the assets of TLT Nominees Pty Ltd, Newcastle Liquor Wholesalers Pty Ltd, Print National Nominees Pty Ltd, James Australia Group Pty Ltd and Rugama Trading Pty Ltd (Third Respondent) Gregory Winfield Hall in his capacity as joint and several receiver and manager of all of the assets of TLT Nominees Pty Ltd, Newcastle Liquor Wholesalers Pty Ltd, Print National Nominees Pty Ltd, James Australia Group Pty Ltd and Rugama Trading Pty Ltd (Fourth Respondent) Tragopans Investments Pty Ltd (Fifth Respondent)
Representation	
	Counsel: D Sulan (Applicants) B Katekar (First to Fourth Respondents) E Schick (in person for Fifth Respondent) Solicitors: Johnson Winter & Slattery (Applicants) Kemp Strang (First to Fourth Respondents) E Schick (in person for Fifth Respondent)
File number(s):	2013/313137
Publication Restriction:	

JUDGMENT

Application by Messrs Fraser and Honey

1 By Interlocutory Process filed on 20 October 2014, Mr Shaun Fraser and Mr Christopher Honey in their capacity as liquidators of Wine Investment Services Pty Ltd ("WIS") seek orders for Messrs Cussen and Strawbridge,

who were appointed by the Court as receivers of wine stock held at premises at Denman, NSW ("Denman Wine Stock"), by order made on 21 October 2013, to deliver that wine stock to them. Messrs Cussen and Strawbridge do not oppose that order, subject to the Court noting that they cease to be the receivers of the Denman Wine Stock and to the making of orders dealing with their remuneration and disbursements.

2 Messrs Fraser and Honey also seek orders that Messrs Merryweather and Hall, as receivers and managers of the assets of several companies, also deliver up wine stock held at Homebush, NSW ("Homebush Wine Stock") to them. Messrs Merryweather and Hall did not appear but I have been informed and I proceed on the basis they do not oppose that application.

3 Messrs Fraser and Honey also seek a direction, in their capacity as liquidators of WIS, that they should adjudicate claims to the Denman Wine Stock and the Homebush Wine Stock in a specified manner and that they would be justified in dealing with that wine stock by specified procedures. They additionally seek orders that they be appointed as court-appointed receivers of the Denman Wine Stock and the Homebush Wine Stock pursuant to s 67 of the *Supreme Court Act* 1970 (NSW) and corresponding directions as to the adjudication of claims to and dealings with that wine stock. Those orders are sought to the extent that the wine is not the property of WIS, so that directions given to Messrs Fraser and Honey in their capacity as liquidators of WIS may not address the position.

4 The process for assessment proposed to be adopted in respect of claims to the wine stock is in turn set out in Annexure A to the proposed orders and involves the giving of notice to potential claimants to ownership of that wine stock, the determination of which claims are admitted and whether bottles of wine from the Denman Wine Stock or the Homebush Wine Stock are attributable to claimants, subject to rights of appeal under s 1321 of the *Corporations Act* 2001 (Cth); the attribution of bottles of wine to particular claimants where appropriate, subject to a "Recovery Charge", as defined,

and the delivery of wine stock to a claimant on payment of that charge; and the sale of the wine stock to the extent that it cannot be attributed to particular claimants and the distribution of the pooled proceeds of that sale in a specified manner. The "Recovery Charge" is in turn defined as an amount referable to the costs, disbursements, expenses and remuneration of holding the wine stock, the adjudication of claims and delivery expenses. One of the relevant claims, which would be the subject of the "Recovery Charge", is that of Messrs Cussen and Strawbridge, including their legal costs and remuneration of defending a particular application to which I will refer below. Annexure B to the proposed orders in turn provides a regime for the sale of the wine stock and unclaimed wine stock and the maintenance of that stock.

5 The application is supported by an affidavit of Mr Fraser sworn 7 October 2014 which sets out the background to his and Mr Honey's appointment as liquidators of WIS and to the identification of the Homebush Wine Stock and also refers to the appointment of Messrs Cussen and Strawbridge as receivers appointed to other companies and subsequently as receivers of the Denman Wine Stock, pursuant to orders made by the Court under s 67 of the *Supreme Court Act*. Mr Fraser points to the view that he and Mr Honey have formed, with which Messrs Cussen and Strawbridge agree, that a single insolvency administrator should administer both the Homebush Wine Stock and the Denman Wine Stock and determine claims to that stock including by investors who had held wine with WIS. The case for that approach is compelling, on the basis of the evidence before me, where it is plain that there are claims which are likely to be overlapping made by investors against the wine at both locations, and where it is possible that wine attributable to claims in respect of one location may be held at the other. It is common ground that Messrs Fraser and Honey are best placed to perform that reconciliation task because of their access to raw data used in WIS's wine administration management system.

The position adopted by Messrs Cussen and Strawbridge

6 Messrs Cussen and Strawbridge had originally themselves sought similar orders, contemplating that they be appointed as receivers and managers to the Homebush Wine Stock in addition to the Denman Wine Stock to which they were originally appointed court-appointed receivers. They do not press that application because they now, properly, accept that access to the wine management system data means that Messrs Fraser and Honey are better positioned to perform that role. Messrs Cussen and Strawbridge seek, however, an order confirming their entitlement to costs of an interlocutory process filed in November 2013 by Douglas Hawkins Pty Ltd ("Douglas Hawkins"), which challenged their appointment as court-appointed receivers to the Denman Wine Stock, as costs of the receivership. Their entitlement to such costs and remuneration in respect of that application is recognised in the orders sought by Messrs Fraser and Honey but contested by Tragopans Pty Ltd ("Tragopans"), which claims to be an investor in the relevant wine. The application filed by Messrs Cussen and Strawbridge is in turn supported by an affidavit of Mr Cussen dated 22 September 2014, which provides further support for the conclusion that I expressed above that it is desirable that there be a single administration of the wine stock at Denman and Homebush, not least because, as I noted above, claims may have been made by investors to wine held at both locations.

Issues raised by the parties' submissions

7 The Court has been provided with detailed and helpful submissions by Mr Sulan, who appears for Messrs Fraser and Honey; Mr Katekar, who appears for Messrs Cussen and Strawbridge, and Mr Schick, a director of Tragopans, who represented it by leave. I have had regard to those submissions which will be held in the court file. I will not set out their content at length, in the interests of delivering a prompt judgment, but I will refer to several key issues below.

8 Mr Sulan helpfully summarised the evidence as to how WIS came to hold the wine, to the extent that that can be identified from imperfect records held by WIS, and points to the impossibility of matching each particular bottle of wine to a particular investor and to a shortfall of the wine held such that there is a need to adjust competing claims over the Denman Wine Stock and the Homebush Wine Stock on a combined basis, at least in respect of some particular categories of wine. He points to the reasons, which all parties now accept, that lead to the conclusion that Messrs Fraser and Honey as liquidators of WIS are best placed to undertake that task.

9 Mr Schick contended that at least some of the wine, or much of it, was the property of individual investors who had placed it in storage with WIS, and Messrs Fraser's and Honey's proposal proceeds on that basis, so far as it contemplates identifications of investors' claim to the wine and the return of it to them where there is sufficient wine to allow an allocation of particular bottles to particular investors and sufficient information to support that allocation. Mr Schick characterised the arrangement as a bailment. However, none of the parties suggested that the bailment was of such a character as to amount to a security interest under ss 12 or 13 of the *Personal Property Securities Act* 2009 (Cth) ("PPSA") such that the wine would vest in WIS if investors did not perfect any security interest by registration or otherwise. In *Re Arcabi Pty Ltd (Recs & Mgrs Apptd) (In Liq)* [2014] WASC 310, Master Sanderson held that a broadly similar arrangement for the custody of goods did not give rise to a security interest for the purposes of the PPSA, so the manner in which the parties have approached this issue appears to be justified. No suggestion was made that any bailment was a PPSA lease so as to be a security interest under ss 12 or 13 of the PPSA or that any consignment arrangement existed in a form that would give rise to a security interest under s 12 of the PPSA.

10 I accept that the appointment of Messrs Fraser and Honey as receivers of the Denman Wine Stock and the Homebush Wine Stock is appropriate under s 67 of the *Supreme Court Act*, where there is plainly uncertainty as to the ownership of the wine stock. That order is consistent with the previous appointment of Messrs Cussen and Strawbridge over the Denman Wine Stock, by reason of the same uncertainty. It seems to me that it is just and convenient to make such an appointment, for the purposes of s 67 of the *Supreme Court Act*, and appropriate to give corresponding directions to Messrs Fraser and Honey as court-appointed receivers, which the Court has an implied power to do, to those which would be given under ss 479 or 511 of the *Corporations Act* to them in their capacity as liquidators of WIS. I am also satisfied that the Court has jurisdiction to make a direction as to the process to be adopted, under s 479(3) or s 511 of the *Corporations Act*, on the basis which I summarised in *Re MF Global Australia Ltd (in liq)* [2012] NSWSC 994; (2012) 267 FLR 27 at [7]–[8], to which Mr Sulan referred, and that the process set out in Annexures A and B to the proposed orders is appropriate in the circumstances, subject to the issues as to the costs of the Douglas Hawkins application to which I will refer below.

11 I am also satisfied that the proposed Recovery Charge is appropriate, since the costs, expenses and remuneration of all of the relevant insolvency practitioners have been incurred in preserving, receiving and realising the funds, subject to the particular issue as to the Douglas Hawkins application which I will address below, and the procedures contemplate that the particular payments to be made to the insolvency practitioners funded by the Recovery Charge will be subject to court approval. The approach adopted in the proposed orders in respect of the Recovery Charge seems to me to be consistent with the exercise of an equitable lien in respect of the receivers' and liquidators' costs of realising the relevant assets: *Re Universal Distributing Co Ltd (in liq)* (1933) 48 CLR 171; *Stewart v Atco Controls Pty Ltd (in liq)* [2014] HCA 15; (2014) 311 ALR 351. The exercise of an equitable lien by receivers (in that case,

appointed under security documents) in calling in, caring for, and realising assets has been recognised, inter alia, in *Thackray v Gunns Plantations Ltd* [2011] VSC 380; (2011) 85 ACSR 144 and again in *Re Arcabi Pty Ltd* above, where Master Sanderson undertook a comprehensive review of the authorities, as they stood prior to the High Court's decision in *Stewart v Atco Controls Pty Ltd* above, which in turn applied those principles as they had previously generally been understood. Master Sanderson there pointed to, inter alia, *Thackray v Gunns Plantations* above as authority that such a lien extends to the costs of identification or attempted identification of the assets, protecting or attempting to protect them and distributing them to the persons beneficially entitled to them. Master Sanderson also held in that case that the costs, expenses and receiver's remuneration relating to work in identifying and returning stock held under a bailment at the time of their appointment and the costs of ensuring that property were all properly part of the costs of preservation of the company's property for which the relevant receivers were entitled to indemnity and to assert a lien. I agree with Master Sanderson's reasoning in that regard, and that reasoning is plainly also applicable in this case in very similar circumstances.

12 It will be noted that the costs incurred by the receivers to date fall in the categories considered in *Re Arcabi Pty Ltd* above and the costs to be incurred by Messrs Fraser and Honey in the steps proposed by the orders will also fall within those categories as costs of identification of owners of the wine and distribution of the wine to them, and subsequently of realising and distributing the proceeds of wine that cannot be attributed to particular owners. Messrs Cussen and Strawbridge also point out that their entitlement as court-appointed receivers to remuneration, indemnity and a lien in respect of properly incurred expenses is recognised in r 26.4 of the Uniform Civil Procedure Rules 2005 (NSW) and the case law, for example, *Re Central Commodity Services Pty Ltd* [1984] 1 NSWLR 25 at 27; *Shirlaw v Taylor* (1991) 31 FCR 222; 5 ACSR 767 at 775-776; *Ide v Ide* [2004] NSWSC 751; (2004) 50 ACSR 324 at [50].

13 Tragopans submits that the fact that the wine is or may be held under bailment by WIS for the investors excludes the application of an equitable lien. I do not accept that submission, so far as realisation costs have been incurred by the receivers or by Messrs Fraser and Honey where they are appointed as court-appointed receivers to the Denman Wine Stock. To the extent that Messrs Fraser and Honey incur corresponding costs, they will also do so, not in their capacity as receivers of WIS, but in their capacity as receivers appointed to the bottles of wine. Similarly, Messrs Cussen and Strawbridge have incurred such costs in respect of the receivers appointed to the bottles of wine to which they have been appointed receivers, not in any capacity in respect of WIS. Had those costs not been incurred, the wine could not in fact be distributed and could not be identified as attributable to particular investors, and this is a traditional situation where an equitable lien is available, as recognised in *Stewart v Atco Controls* above. This approach is also consistent with that adopted by the Court in *Re Application of Crouch* [2005] NSWSC 1308 at [11] in respect of the then receiver's proper receivership costs, where a voluntary levy was not paid, and a similar approach in *Re Renovation Boys Pty Ltd* [2014] NSWSC 340. The Recovery Charge in this case is also voluntary, at least in the sense that no investor is bound to pay it, although they cannot take possession of particular wine that would otherwise be attributable to them without bearing their share of the costs of preserving it, either by payment of the Recovery Charge or by sale of the wine if it is not paid and application of the lien to the proceeds.

Costs of the Douglas Hawkins application

14 As I noted above, a particular issue arises, as between Messrs Cussen and Strawbridge on the one hand and Tragopans (and, to the extent it represents other investors, those investors) on the other in respect of the Douglas Hawkins application. Mr Katekar, who appears for Messrs Cussen and Strawbridge, points out that they incurred costs in resisting

the application by Douglas Hawkins for their removal as court-appointed receivers. Messrs Cussen and Strawbridge point out, and I accept, that they were a necessary and appropriate contradictor to the application for their removal and their role was directed to protecting the interests of investors in the wine by maintaining the appointment of an independent party to administer and assess claims to that wine.

15 I dealt with the Douglas Hawkins application in my judgment delivered on 1 May 2014 ([2014] NSWSC 507) and noted the submission then put by Messrs Cussen and Strawbridge that they should not be removed as receivers to the Denman Wine Stock when competing claims to that stock continued to exist and their removal would have returned the wine to the possession of parties who were, directly or indirectly, one of the competing claimants to the wine, and where there are issues as to the adequacy of records to identify ownership of the wine which had arisen under those parties' control. In the event, an order for removal of Messrs Cussen and Strawbridge was not made because the winding up of WIS was not stayed and Douglas Hawkins accepted that there was no reason to remove the court-appointed receivers in that situation. I ordered that Douglas Hawkins and others should pay the costs of the respondents, including Messrs Cussen and Strawbridge, as agreed or as assessed of that application.

16 Mr Schick, for Tragopans, submits that the costs of the Douglas Hawkins application should follow the event, and such an order was in fact made as noted above, such that the unsuccessful applicants for the removal of Messrs Cussen and Strawbridge were ordered to pay Messrs Cussen's and Strawbridge's costs. However, the making of a costs order is not the same as the receipt of payment of the costs incurred, and the costs recoverable on an assessment of the receiver's costs of that application will invariably be less than the actual solicitor-client costs in any event. The right to recover costs from the applicants in that proceeding therefore does not exclude the receiver's claim to indemnity for them, although any amount ultimately received from the applicants would reduce the amount

for which indemnity was in practice required. There is also, in general and in the particular case, a risk as to whether those costs will ultimately be recovered.

17 Mr Schick submits that Messrs Cussen and Strawbridge ought to have sought security for the costs of that application, if there was a risk as to their recovery. I do not accept that submission. First, the application was an interlocutory application, and the costs of an application for security in respect of that application would themselves have had to be funded by Messrs Cussen and Strawbridge assuming, as is reasonable, that security would not have been voluntarily given. There is every reason to think that the additional costs of a security for costs application would have significantly increased the total amount of costs incurred by Messrs Cussen and Strawbridge in defence of the Douglas Hawkins application. Second, and in any event, security for costs may well not have been ordered so far as at least one applicant for the removal of Messrs Cussen and Strawbridge was a natural person against which any costs order was likely to be made, and was made, on a joint and several basis. Messrs Cussen and Strawbridge certainly should not be criticised for not bringing a security for costs application which might well have failed.

18 Mr Schick also takes issue as to the level of expenses which he believes were incurred by Messrs Cussen and Strawbridge in resisting the Douglas Hawkins application. There is presently no evidence as to the amount of those expenses, but the proposed orders provide that the amount which they will ultimately be paid, in the exercise of any right of indemnity, is subject to court approval. That provides an adequate control over their quantum.

Other issues raised by Tragopan

19 Mr Schick also submits that Messrs Cussen's and Strawbridge's claim to indemnity does not recognise that the bottles of wine are assets of the

"company in receivership". I do not accept the premise of that submission because, although at least some or many of the bottles of wine appear likely to be property of investors, there are competing claims to them, including by WIS, and Messrs Cussen and Strawbridge were appointed by the Court as receivers of the Denman Wine Stock, irrespective of its ownership, not of the assets of WIS. Mr Schick also points out that the receivers were afforded the powers under s 420 of the *Corporations Act*, and refers to s 420(3) which provides that the conferring of powers on a receiver in relation to property of the corporation does not affect any rights in relation to property of any other person other than a corporation. In the present case, it seems to me that the reference to s 420 of the *Corporations Act* in the Court's orders was simply a convenient shorthand to avoid replicating the full list of powers in s 420(2) in the Court's orders and did not import the limitation in s 420(3) of the *Corporations Act*, not least because the Court's orders did not, as Mr Katekar points out, confer powers specifically in relation to the property of WIS, but rather in respect of the Denman Wine Stock, whoever owned it. Moreover, to the extent that the wine stock was property of WIS, that submission does not assist Tragopans, because the powers under s 420(2) would in fact limit WIS's rights, as s 420(3) of the *Corporations Act* recognises. I therefore do not accept Tragopans' submission that the Recovery Charge involves any circumvention of s 420(3) of the *Corporations Act*.

20 I note that Tragopans, fairly, in any event accepts that such a charge is justifiable in respect of costs relating to the investigation and adjudication of competing claims to the wine stock, storage and insurance costs relating the wine stock and establishing the quantities of each product line forming part of the stock, although it did not extend that acceptance to the costs of the Douglas Hawkins application which I have addressed above.

The form of orders to be made

21 For all these reasons, and subject to some potential changes to the orders which have been under discussion between the respective insolvency practitioners, I will make orders substantially in the form of those sought by Messrs Fraser and Honey, which should include references in paragraphs 7(c)(i) and 7(d)(i) of Annexure B to the inclusion of Messrs Cussen's and Strawbridge's costs of defending the Douglas Hawkins application, subject to a requirement for court approval for the costs, disbursements and expenses already contained in that paragraph. I will hear the parties as to the steps which should be taken to finalise orders in this regard.

Two additional issues

22 Two additional issues were raised in submissions after I had indicated that I proposed to make the orders set out above. The first of those issues was the form of order which should be made to deal with the position following the retirement of Messrs Cussen and Strawbridge as receivers of the Denman Wine Stock, which will take effect pursuant to the orders that I will make, from the Delivery Date (as defined), 10 November 2014. It is common ground that, and I am satisfied that, the proper course is to make an order that they should retire from their appointment pursuant to the orders previously made on that date without prejudice to certain of their rights. I will also grant liberty to Messrs Cussen and Strawbridge to apply, by interlocutory process, in respect of matters arising, and in particular any application to confirm the cessation of any ongoing obligations upon them from the Delivery Date. In making such an application, they may need to identify the jurisdiction, whether in the Court's inherent jurisdiction or otherwise, to make any order analogous to an order for release of a liquidator in respect of a receiver. If such an order is to be sought in the Court's inherent jurisdiction, then it is likely that it will need to be supported by similar evidence as that which would be led in respect of an application for the release of a liquidator.

23 The second issue that arose was an application made by Messrs Cussen and Strawbridge, in their interlocutory process, for an order that their costs of the interlocutory process filed by Douglas Hawkins are costs of the receivership arising from Order 2 of the orders made in these proceedings on 21 October 2013. Mr Sulan, who appeared for Messrs Honey and Fraser, who are the incoming court-appointed receivers of the wine stock, did not oppose or consent to such an order, but raised, in submissions, several matters relevant to whether such an order would be consistent with, or gave rise to any risk of contradiction of or confusion with, paragraphs 7(c)(i) and 7(d)(i) of Annexure A to the orders to be made by the Court.

24 Mr Katekar made clear that the intention of the orders sought by Messrs Cussen and Strawbridge is not to enlarge their entitlements, but to ensure that those entitlements are recognised and properly founded, to be dealt with in the manner recognised in paragraph 7(c)(i) and 7(d)(i) of Annexure A to the orders. Mr Katekar points out that those paragraphs assume that Messrs Cussen and Strawbridge have an entitlement to their costs, without necessarily themselves conferring such an entitlement, and that an order of the Court may be necessary to confer such an entitlement in respect of a court-appointed receiver. At the same time, Messrs Cussen and Strawbridge accept that the order which is made should not be wider than the entitlement to costs which is recognised under paragraph 7(c)(i) and 7(d)(i) of Annexure A and which I have addressed in my judgment, and should be subject to the procedure there noted, which includes, as I have emphasised in my judgment, a requirement for court approval of the relevant costs, disbursements and expenses.

25 The parties have fairly drawn my attention to the fact that Tragopans, which appeared at the earlier hearing, is not present today, where Mr Schick would have had to travel from Canberra to attend for any judgment. It seems to me that that matter can properly be addressed by directing

Messrs Cussen and Strawbridge to give notice to Mr Schick of the orders made today, and specifically to draw his attention to the further order which I propose to make in respect of their remuneration, and to reserve liberty to Tragopans to make a further application in respect of that order, if so advised, within fourteen days.

26 I am satisfied that an order should be made, broadly in the form sought by Messrs Cussen and Strawbridge, so that there is no doubt that the entitlement assumed by Annexure A is founded in an order of the Court. However, the form of order I will make seeks to ensure that the administration of such an order occurs in the manner provided in Annexure A.

27 I will therefore make the following additional orders which will be numbered Orders 9 and 10 as follows:

9. Order that the First Respondents' proper and reasonable costs and remuneration in defending the Interlocutory Process filed by Douglas Hawkins Pty Ltd and others on 6 November 2013 are costs of the receivership arising from Order 2 of the orders made in these proceedings on 21 October 2013, such costs to be dealt with in the manner provided in paragraphs 7(c)(i) and 7(d)(i) of Annexure A.

10. Direct the First Respondents to give notice of these orders to Tragopans Pty Ltd and reserve liberty to Tragopans Pty Ltd to apply in respect of Order 9 within fourteen days.

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I certify that this and the preceding 15 pages are a true copy of the reasons for judgment herein of his Honour Justice Black

Associate
Date: 31 October, 2014