

**Law
Update**
January 2009

Administrator's opposition to Winding-up Application

Re: Beach House Group Pty Ltd [2008] QSC 350

In the recent decision handed down by the Supreme Court in *Re: Beach House Group Pty Ltd*, the Court considered the circumstances in which it would grant an adjournment to administrators who were opposing a winding up application by creditors.

The administrators opposed the winding up application and sought an adjournment on the following grounds:

1. There was insufficient time to properly investigate the prospects of a DOCA.

- It was the submission of the administrators that they have had insufficient time to identify whether there exists a reasonable chance of selling the assets of the company. They were seeking more time to investigate the company's position and its affairs. The Court commented as follows on the evidence led:
 - (a) There was an offer of a DOCA by the directors however it was 'in a very embryonic form'.
 - (b) The offer was not in the form of a proposed deed and the Court was unable to ascertain whether there were any "strings attached to it".
 - (c) The debts of the company were somewhere in the vicinity of \$30 million and the offer in the proposed DOCA may have been in the vicinity of \$1.4 million, with half of that to go to a secured creditor.
 - (d) The evidence was very vague as to how the DOCA would be funded.

2. The adjournment may allow for the possible sale of a business.

- The Court noted that there was no evidence before it concerning any negotiations with respect to the proposed sale nor any indication of figures for it to consider.
- His Honour noted that the liquidators if appointed, could achieve the same result.

3. There was to be a creditors' meeting in 7 days at which time it would be possible to get an indication of the attitude of creditors.

- The Court held that this was a reasonable consideration.
- There was evidence before the Court that a majority, in value at least, of creditors supported the continuance of the administration.

4. The protection afforded to the company by section 440C would be lost along with the opportunity to sell the business as a going concern.

- In particular it led evidence that it would provide protection from the lessor and also from secured creditors.
- The Court found that it was ultimately in the interests of both the lessor and the secured creditor that the business be sold as a going concern and as a result, it seemed to be "protection against something which is not really a threat".

Decision

- Ultimately the Court was not satisfied that the evidence sufficiently disclosed a benefit or likelihood that anything worthwhile would be produced by granting the adjournment.
- After considering that the applicants were content for the administrators to be appointed as liquidators in any event, the Court refused the application for an adjournment and the administrators were appointed as liquidators.