

ACN 006 562 054 PTY LTD
(FORMERLY NOT QUITE RIGHT PTY LTD)
(ADMINISTRATORS APPOINTED)
ACN 006 562 054

NOT QUITE RIGHT HOLDINGS PTY LTD
(ADMINISTRATORS APPOINTED)
ACN 004 979 793

RETAIL HOLDINGS 90C PTY LTD
(ADMINISTRATORS APPOINTED)
ACN 119 396 557

(COLLECTIVELY REFERRED TO AS "THE GROUP")

UPDATE TO CREDITORS

5 August 2009

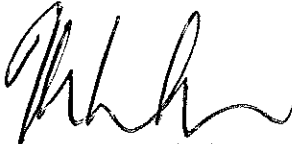
I refer to the appointment on 25 May 2009 of John Lindholm and James Stewart, **(the Administrators)** as joint and several Administrators of Not Quite Right Pty Ltd (Administrators Appointed), Not Quite Right Holdings Pty Ltd (Administrators Appointed) and Retail holdings 90C Pty Ltd (Administrators Appointed).

As reported in the notice to creditors dated 26 June 2009, the Administrators made an application to the Supreme Court of Victoria (**Court**) for orders extending the period by which the Administrators were required to convene the second meeting of creditors.

The extension was sought in order to complete the sale of the NQR business. An extension of the convening period will also enable the Administrators to further the investigations into the affairs of the Group. This will enable the Administrators to better advise the creditors of the options available to them.

I advise that the Court has now made orders extending the convening period to 23 September 2009. Attached is a copy of the order made by the Court.

Yours faithfully



JOHN LINDHOLM
ADMINISTRATOR

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL AND EQUITY DIVISION
COMMERCIAL COURT

LIST E
No. 7316 of 2009

IN THE MATTER of NOT QUITE RIGHT PTY LTD (ACN 006 562 054), NOT QUITE
RIGHT HOLDINGS PTY LTD (ACN 004 979 793) and RETAIL HOLDINGS 90C PTY
LTD (ACN 119 396 557) (Administrators appointed)

BETWEEN:

JOHN ROSS LINDHOLM and JAMES HENRY STEWART in their
capacities as Administrators of NOT QUITE RIGHT PTY LTD, NOT
QUITE RIGHT HOLDINGS PTY LTD and RETAIL HOLDINGS 90C
PTY LTD (Administrators appointed)

Plaintiff



ORDER

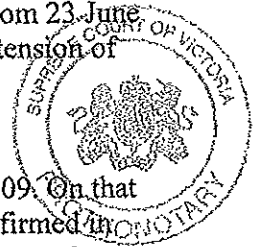
ASSOCIATE JUDGE: The Honourable Associate Justice Gardiner
DATE MADE: 25 June 2009
ORIGINATING PROCESS: Filed on 22 June 2009
HOW OBTAINED: At the trial of the proceeding
ATTENDANCE: Mr P. Crutchfield of Counsel for the Plaintiffs
OTHER MATTERS:

REASONS

1. On 25 May 2009 the Plaintiffs, Messrs Lindholm and Stewart, were appointed as joint administrators of Not Quite Right Pty Ltd ("NQR"), Not Quite Right Holdings Pty Ltd and Retail Holdings 90C Pty Ltd. In these reasons I refer to those companies collectively as the Not Quite Right Group.
2. S439A(1) of the *Corporations Act 2001* (Cth) ("the Act") requires the administrators of a company under administration to convene the second meeting of the company's creditors within the convening period as fixed by s439A(5) or as extended under s439A(6). S439A(6) of the Act provides that the Court may extend the convening period on an application made within the

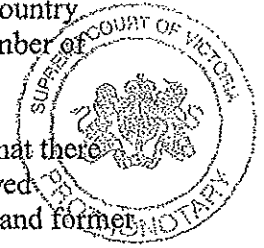
convening period. Under s439A(5)(b) of the Act, the administrators of the Not Quite Right Group are required to convene a meeting of the creditors of each company within the period of 20 business days beginning on the day after the day that the administration began, 26 May 2009, and ending on 23 June 2009. They are required to form an opinion about whether it would be in the best interests of the creditors of each of the companies for each of the companies to execute a deed of company arrangement, to be placed into liquidation or for control of the companies to revert back to the directors.

3. The administrators have applied ex-parte for an extension of the convening periods from 23 June 2009 until 23 September 2009, an extension of approximately 90 days.
4. The first meeting of creditors in each administration was held on 4 June 2009. On that occasion the administrators were confirmed in office as administrators and a committee of creditors was appointed.
5. In approaching applications of this kind, the Court has the task of attempting to reconcile the policy of Part 5.3A (which contemplates that administration will be a relatively summary and speedy process) with the object of Part 5.3A stated in s435A, which is that the property and affairs of the company should be administrated in a way that maximises the chances of the company or as much as possible of its business continuing in existence, or if that is not possible, results in a better return for the creditors and members than would result from an immediate winding up (see *Pan Pharmaceuticals Ltd (admins apptd) & Ors* [2003] FCA 598 at [41]). Further, the Court needs to ensure that undue speed does not prejudice sensible and constructive action directed towards maximising the level of return for creditors and shareholders (*Re Midas Australia Pty Ltd* (2009) 27 ACLC 43 per Kenny J).
6. The purpose of the second meeting of creditors is to enable creditors to make a decision about the company's future and which of the destinations are available after voluntary administration proceeds. The task of the administrators in that



context is to give guidance to the creditors so that they may make an informed decision on the basis of adequate information.

7. NQR operates a Victorian based discount supermarket chain established approximately 20 years ago as a means by which manufacturers could clear excess stock, discontinued lines and cancelled supermarket orders. NQR purchased that stock and sold it at a discount to retail customers. The Not Quite Right Group employs approximately 360 staff and has 21 stores all based in Victoria, mostly in rural and country areas. The stores are leased from a number of different landlords.
8. The creditors listing for NQR reveals that there are 308 unsecured creditors that are owed \$5,291,380. There are 425 employees and former employees who are owed approximately \$550,000 in unpaid wages, annual leave, long service leave and superannuation.
9. National Australia Bank ("NAB") is a creditor of the company for \$983,155 in respect of bank guarantees, fixed asset hire purchase agreements and leases. It holds six fixed charges and a registered fixed and floating charge over the assets and undertakings of the company. In addition, RAN Holdings Pty Ltd ("RAN Holdings") holds a fixed and floating charge over all the assets and undertakings of the NQR.
10. Not Quite Right Holdings Pty Ltd owes approximately \$1 million to its creditors all of whom are related party creditors. Retail Holdings 90C Pty Ltd owes \$2 million to RAN Holdings in respect of vendor finance extended by the former owner of the business in the sum of \$1,547,000 to related party creditors. NAB also holds a fixed and floating charge over the assets and undertakings of Not Quite Right Holdings Pty Ltd.
11. One of the administrators, Mr Lindholm in his affidavit sworn 22 June 2009, details the steps and investigations and actions which have been taken by the administrators since their appointment.



12. The administrators seek an extension of the convening period for the following reasons:



Sale of Business:

13. Since their appointment the administrators have been trying to achieve a going concern sale of NQR business. To that end they have advertised the sale of NQR's business in the *Australian Financial Review* and *The Age*, received expressions of interest from 45 parties, provided a confidentiality agreement to 30 of those parties, received 20 signed confidentiality agreements, received non-binding indicative offers from five parties, considered all offers and proceeded with three parties to the next stage of the due diligence process. They have provided unsuccessful parties with the opportunity to revise their offers and submit a non-binding indicative offer by 11 June 2009. Two parties have made offers however, both parties could not proceed with the sale process due to the tight timeframe. Of the three interested parties accessing confidential sale documentation, two subsequently withdrew their interest and there is currently only one potential purchaser. That purchaser has made an offer which is detailed in paragraph 28(e) of Mr Lindholm's affidavit.
14. The terms of the offer are commercially complex. It is said that a major factor will be the process of negotiations between the purchaser and the landlords of the premises from which the businesses are operating. The administrators intend to introduce the successful purchaser of the company's business to the landlords of the relevant premises and facilitate agreement between the purchaser and the landlords for new leases of the premises. The administrators estimate that this process is likely to take up to four months as there are approximately 22 landlords with existing leases with the company. Mr Lindholm states that if the period of the voluntary administration ends prior to the conclusion of such negotiations, landlords would be entitled to re-enter the premises and end the leases. If this occurs sale of the company's business as a going concern may not proceed, which in turn would result in there being less a return for NQR's employee creditors and other

unsecured creditors. .



Liquor License Requirements:

15. Mr Lindholm states that it is his understanding that in the normal course it would take approximately 25 days from the date of the lodgement of the necessary application forms for a transfer of liquor licenses to be effected. One of the pre-conditions to settlement of the sale of a company's business to the proposed purchaser is that it be granted a liquor license by Consumer Affairs Victoria. Settlement of the sale of the business cannot take place until that has occurred.

Food Act Regulation:

16. NQR is involved in the sale of food and as such is required to be registered under the Food Act 1984 (Vic) in order to sell the company's business as a going concern. Each of the stores operated by the company is required under s35 of that Act to register the company's business with the council of the municipal district in which the store is located. Mr Lindholm indicates that it would take three to four weeks for the relevant councils to approve the registration of the businesses in the name of the purchaser.

Possible Use of a Deed of Company Arrangement:

17. Mr Lindholm states that in order to achieve the best returns to priority creditors such as employees and secured creditors, the administrators also wish to ensure that all avenues of possible disposal of the business are available including the use of deeds of company arrangement.
18. In addition, the administrators state that the convening period should be extended for the following reasons:
 - (a) It is in the interests of all the unsecured creditors for the extension to be granted because the employee creditors will have the benefit of continued employment with NQR and the unsecured creditors will have the benefit of continued trade with the purchaser as licensee. This may result in an increased realisation for unsecured creditors.



(b) Existing employees will not be prejudiced by the extension of the convening period as during that period their employment will continue pursuant to the licensing agreement with the purchaser and they will continue to be paid. In addition, if the businesses are sold it is likely that they will be able to retain their jobs and there will be fewer creditor claims by employees, which will improve the position of unsecured creditors generally.

(c) If the company's business is sold as a going concern, it may be of substantial benefit to many of the current landlords to the premises as they will have the opportunity to negotiate new leases with the potential purchaser of the business and avoid periods during which the premises would otherwise be vacant as well as avoiding associated new letting costs.

(d) If deeds of company arrangement are to be used, the extension of the convening period will allow more time for the deeds to be formulated and considered by the administrators and more time for the administrators to consider whether to recommend to creditors whether it would be in the best interests of the company to execute a deed of company arrangement.

(e) The administrators do not have time before the expiry of the existing convening periods to prepare meaningful reports as to the companies' affairs and financial circumstances or a statement about the voluntary administrators' opinion about whether it would be in the creditors' interests for the company to execute a deed of company arrangement.

19. At the first meeting of creditors, a committee of creditors was appointed to NQR. There are seven members of that committee, five of which consented to the administrator's application and two who were unable to attend the conference call which was made to them in that regard. In addition, RAN Holdings has indicated that that company, a secured creditor, does not have an objection to the application for the extension of the convening period. In a later affidavit of Mr Lindholm of 24 June 2009, he deposes that NAB does not have an objection to the application for the extension of the convening period on the basis that the NAB debt will be fully repaid.



20. The NQR Group's affairs are somewhat complex and some extension of time for convening a second meeting of creditors should be given. The question is whether the extension should be for such a period that the businesses of the company might be sold before the meeting is held. In *Re Global Food Equipment Pty Ltd; Carter v Global Food Equipment Pty Ltd* BC200706622 White J of the Supreme Court of New South Wales made orders extending the period of the convening period for approximately two months. He imposed a condition which is set out in para [24] as follows:

"The applications are made ex-parte. In theory at least there may be persons affected by an order extending the period for convening a second meeting to 31 August 2007. In particular, any person who may be proposing a deed of company arrangement might wish to be heard to resist an order than the time for convening the meeting be extended until after any acceptable offers for the purchase of the companies' assets and business are accepted."

His Honour went on to grant liberty to apply to any person to apply to vary the order on appropriate notice to the Plaintiff.

21. I consider that the extension sought by the administrators should be granted. In my view this is an occasion in which the interests of creditors would be better served by a measured and detailed approach by the administrators to the sale of the business. There would appear to be no one who will suffer by reason of the imposition of a statutory moratorium. The committee of creditors and the secured creditors do not oppose the extension and employees' interests are best protected by what is proposed. The Court should take into account the views of experienced insolvency practitioners in the position of the administrators and the unnecessary costs which would be consumed by convening a meeting of the creditors which almost certainly would be adjourned.

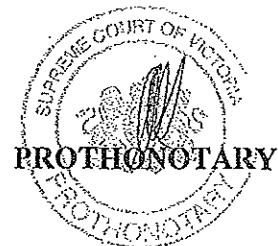
22. In addition, the administrators also seek under S447A(1) an order which allows them to hold the second creditors meeting at any time within the convening period as extended. If it subsequently

transpires that a shorter period of time is required than that currently anticipated, the second creditors meeting may be held without any unnecessary delay. This order sought was made by Kenny J in *Re Midas Australia Pty Ltd* and by Lindgren J in *Re Datsytek Australia Pty Ltd* (2003) 45 ACSR 446. Justice Robson has by an order made today, 25 June 2009, referred this application to me for hearing and determination and pursuant to rule 16.1(3) of the Supreme Courts (Corporations) Rules 2003. I am empowered to make such an order under s447A of the type sought and I make such an order.

THE COURT ORDERS THAT:

1. Pursuant to section 439A(6) of the *Corporations Act 2001* (Cth) ("the Act") the period fixed by s 439A(5)(b) of the Act for the convening of the second meeting of creditors of each of Not Quite Right Pty Ltd (Administrators Appointed) ACN 006 562 054, Not Quite Right Holdings Pty Ltd (Administrators Appointed) ACN 004 979 793 and Retail Holdings 90C Pty Ltd (Administrators Appointed) ACN 119 396 557 be extended from 23 June 2009 to 23 September 2009.
2. Pursuant to s 447A of the Act, the second meeting of creditors of the Companies may be held at any time during the convening period as extended under Order 1 or within 5 business days thereafter.
3. Liberty to apply is granted to any person who can demonstrate sufficient interest to modify or discharge Orders 1 or 2 on not less than 48 hours notice to the Plaintiffs.
4. The Plaintiffs' costs of this application are costs in the administrations of the Companies.

DATE AUTHENTICATED: 30 July 2009



KK:30/7/09