



Update

Commercial Dispute Resolution

29 November 2011

General power of court to make orders holding first creditors' meeting concurrently with meeting where new administrators appointed

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In the matter of *GR Finance (Administrator's Appointed)* [2011] VSC 528, Gardiner AsJ of the Supreme Court of Victoria recently made orders pursuant to section 447A of the *Corporations Act (Cth)* (**Act**) that Part 5.3A of the Act was to operate in relation to the administration of GR Finance Limited (Administrators Appointed) (**GR Finance**) so that the first meeting of creditors could be held concurrently with the meeting required to be held when new administrators were appointed.

Background

The company was placed into administration by its directors on 12 October 2011. Due to a conflict of interest the original administrators retired on 13 October 2011 and the Plaintiffs were appointed joint and several administrators of GR Finance on 13 October 2011.

Pursuant to 436E of the Act, the last day for convening the first meeting of creditors (**First Meeting**) was 20 October 2011. The purpose of the First Meeting is to determine whether to appoint a committee of creditors and if so, who are to be their committee's members. It is also open to creditors to replace the administrators.

Pursuant to section 449C of the Act, the administrators were also required to convene a meeting (**449C Meeting**) within 5 business days after being appointed so that the creditors could determine whether to remove them from office and, if so, appoint someone else as administrator of the company. As a result of the timing in this case, that meeting was to take place by 20 October 2011.

The Application

As a result of the dates for the two meetings and the cross-over of the business to take place at those meetings, the administrators, represented by **Holding Redlich**, sought orders:

- that the meetings be held concurrently; and
- that the requirements for notice of the 449C Meeting to the company's creditors and for advertising under section 449C(5) of the Act be dispensed with on the basis that notice had already been given with respect to the First Meeting.

His Honour held that "*the convening of two separate meeting serves no good purpose in my view and the time limits imposed by the Act would not permit it in any event. The statutory agenda stipulated for each meeting can practicably be dealt with at the same time.*"

As for the giving of notice and advertising, given that the First Meeting was required to be held within 8 business days after the administration began and the 449C Meeting was required to be convened within 5 business days after the new administrator's appointment, His Honour stated that it was not practicable to require the giving of written notice of the 449C Meeting and advertising of it two business days before that meeting.

In making his orders, Gardiner AsJ noted that in *McGrath v Henry Walker Elton Group Limited* [2005] NSWSC 32, the Supreme Court of NSW had made orders in very similar terms.

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