IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL DIVISION
CORPORATIONS LIST

IN THE MATTER OF IPO WEALTH HOLDINGS NO. 2 PTY LTD (ACN 620 610 157)

B E T W E E N

VASCO TRUSTEES LIMITED (ACN 138 715 009) AS TRUSTEE OF THE IPO WEALTH FUND (ABN 71 456 233 724)

Plaintiff

-and-

IPO WEALTH HOLDINGS NO 2 PTY LTD (ACN 620 610 157) & ORS (according to the attached Schedule of Parties)

Defendants

OUTLINE OF SUBMISSIONS OF MR JAMES PETER MAWHINNEY

Date of Document: 2 September 2020
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1. These submissions address the following in support of terminating the winding up application:

    1) Dye & Co's evidence

    2) A viable structured work-out;

    3) The wishes of 117 IPO Wealth Fund unitholders;

    4) Structured work-out vs liquidation

    5) Trustee needs to be replaced

    6) Time is not of the essence;

    7) Grounds for terminating the winding up application; and

    8) No just and equitable grounds.

The court cannot give credit to Dye & Co's evidence

2. Vasco sought to appoint Receivers & Managers on the basis of a conspiracy theory that assets had evaporated and mismanaged to hide their own professional negligence in fulfilling their obligations as trustee. Vasco was asleep at the wheel of the IPO Wealth Fund, and it needed to hire an insolvency practitioner capable of steering the IPO Wealth Holdings group to an early grave.
3. Vasco had no option but to make its conspiracy theory appear to be a reality by appointing a low-grade, local, single-office insolvency practitioner firm that would be prepared to further their agenda through the deliberate use of erroneous, self-serving reports aimed at having the IPO Wealth Holdings group wound up. This commercially destructive activity has been ongoing since 22 May 2020 when Dye & Co were first appointed Receivers & Managers, and has flowed through to 3 supposedly professionally prepared reports which have been designed to place significant blame on the Borrower so as to distract from the wrongdoing of the trustee. This is cowardly and unjust.
4. Vasco had scant regard for unitholders by opting to appoint Dye & Co rather than a top tier firm to manage a portfolio of $100m+ worth of assets that spanned 7 countries. The appointment was totally unfit for purpose other than for the ability to deliver on Vasco's objectives by degrading every possible aspect of Mr Mawhinney, the IPO Wealth Holdings group, and the broader Mayfair 101 Group. The defective appointment is astounding given their obligations to unitholders. It has resulted in a callous attack on an individual rather than a credible, professionally run, independent receivership and provisional liquidation process.
5. In considering whether the conduct of Dye & Co in their roles as Receivers & Managers and Provisional Liquidations is just and equitable the Court is encouraged to consider the following accounts of improper conduct by them and their associates:
    a) Dye & Co was provided with information by Mr Caldwell of Forensic IT in breach of a Court order. Dye & Co's counsel relied on this confidential information, unlawfully collected, to allege that documents had been deleted, attempting to sway the court using information it had obtained as a result of an order being breached by a Dye & Co appointed consultant.

Presumably this consultant has been used many times previously by Dye & Co to further their cause.

b) Cor Cordis, the voluntary administrators appointed by Mr Mawhinney, refused an appointment to the SPVs due to the companies having no creditors and therefore not being insolvent. The "Unissued Capital" account referenced on each balance sheet of the SPV and subsequently explained in the Public Examination by Mr Mawhinney described the fact that all advances to the SPVs were done on the basis of an equity investment, in exchange for share capital. This contrasts with:

   i) First Receivers & Managers Report – *"the Borrower's advances to the SPVs were unsecured loans"*

   ii) Second Receivers & Managers Report – *"the only liabilities disclosed in the balance sheets of the [16] SPV's are as follows [2 amounts less than $100 and one amount of $8.3m, which the Group's former accountants entered erroneously]*

   iii) Joint & Several Provisional Liquidators Report - *we consider the SPVs are also insolvent as the advances by the Borrower recorded as 'unissued capital' are properly treated as liabilities of the SPVs.*

c) Dye & Co has clearly manipulated the outcome of its findings despite having ample contrary evidence. There has been no independent investigation, simply a gathering of information for Dye & Co to shape the narrative that suits their purpose. No reports have been retracted or re-stated despite blatant errors existing. It would therefore be unjust and inequitable to wind up the companies by relying on any information contained within the Dye & Co reports.

d) Thomson Geer, counsel for Dye & Co, was advised that Mr Norman Fryde had acted for Mr Mawhinney in 2014 on matters relating to two entities that were the subject of the Public Examination and also acted for him personally. Thomson Geer have denied such a conflict exists and have continued to act, adding to the distasteful conduct of Dye & Co and the parties it has chosen to surround itself with to further its cause.

e) Dye & Co's reports contain various general statements that demonstrate a lack of general understanding of basic finance principles, such as the assertion that a company "was about to

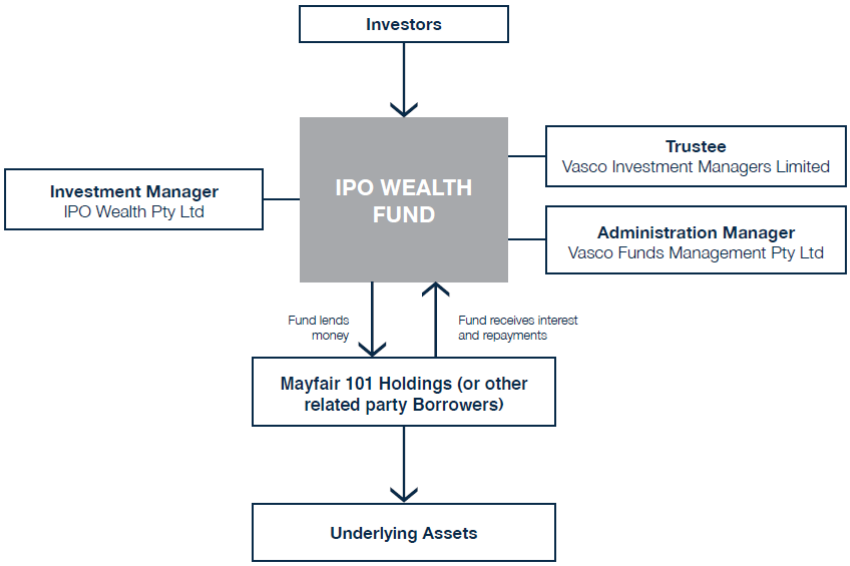
increase [in value] significantly due to its impending listing", when the act of listing a company is not determinative of a significant increase in price. These types of misleading statements influence the views of the many readers of these reports, including the Court, which creates a distorted view of the true nature of the affairs of the companies. Again, these reports do not contain reliable information and should therefore be disregarded.

f) Mr Hamish Mackinnon of Dye & Co requested that Mr Mawhinney transfer all Accloud shares back for nil consideration, despite these shares being paid for in cash (a transaction that has since been validated with the assistance of KPMG (see Exhibit JM-11) who has been engaged by the Mayfair 101 Group since 8 July 2020 (see Exhibit JM-12)). A veiled threat was made that an imposing Public Examination would be undertaken if Mr Mawhinney did not comply with his wishes to transfer assets to Dye & Co that were rightfully owned by non-IPO Wealth Holdings group entities.

6. Dye & Co and their associates are complicit in undertaking a brazen attempt to discredit Mr Mawhinney and the Mayfair 101 Group. There has been no true independent oversight of Dye & Co, as should have been the role of Vasco. The conflict is clear as day.
7. It was Mr Mawhinney that took steps to appoint Cor Cordis as voluntary administrators to introduce a much-needed independent party to the process, however this was dismissed in favour of Vasco's trio of itself, Dye & Co and the support of ASIC who are complicit in collectively taking 181 unitholders hostage through this one-sided process.
8. The sup-par submissions, reports and conduct of Dye & Co are only to be expected as a result of Vasco's poor choice of Receivers & Managers for a job that required a top-tier practitioner.
9. Substantial unitholder funds have been wasted, the Court's resources and processes have been abused along the journey, and the result is an unreliable set of reports prepared that have only helped deliver on Vasco's conspiracy theory and distract from their negligence.

A viable structured work-out is an available remedy

10. Despite the points above, the scheme itself has not failed. It has all the necessary components to swiftly change course and begin a viable structured work-out for the benefit of unitholders.
11. Vasco's role is that of a replaceable professional services firm. Their role is interchangeable with other service providers, and such a replacement is needed to maintain the integrity of the Fund for unitholders.
12. A trustee is commonly swapped out when funds change their course or adopt a new investment strategy, to a service provider that the Investment Manager can have a symbiotic relationship with for the ultimate benefit of the investors. Currently there is a disharmonious relationship between the Plaintiff and Investment Manager, however this does not justify the liquidation of assets. It however does justify the replacement of the Plaintiff.
13. The diagram below is contained within Page 9 of the IPO Wealth Fund Information Memorandum (see Exhibit JM-14). It depicts the interdependent relationships that are required for the operation of a Fund.



14. The three vital components for the cohesive functioning of the IPO Wealth Fund remain intact. The Fund currently has investors willing to remain invested for a further 3 years, a willing and capable Investment Manager that understands the underlying assets, and assets that are capable of being grown and harvested in an orderly fashion.

15. The ancillary services provided by the Plaintiff in its capacity as Trustee and Fund Administrator are interchangeable.
16. The scheme has therefore not failed. It is now ready to take its new course with a new trustee, a course which has overwhelming support of unitholders.

The wishes of 117 IPO Wealth Fund unitholders

17. Unitholders have expressed a clear preference for the continuation of the Fund for a further 3 years with over 95% of votes collected in favour of the proposed work-out solution and the replacement of the trustee.
18. Through the voting process unitholders have confirmed their preference is to see through the gestation period of the investments, rather than the assets be forced into liquidation.
19. The Plaintiff, in its capacity as trustee is not a true creditor. It obtains no financial benefit from the proceeds, and should steps aside. Unitholders are the true creditors, and their wishes ought to be granted.

Structured work-out vs liquidation

20. The structured work-out provides the capability to return the full loan amount as at 31 March 2020 of $77,065,000 and do so within a 3 year timeframe.
21. This represents a potential return to unitholders of close to 100 cents in the dollar.
22. By comparison the Joint and Several Provisional Liquidators Report issued by Dye & Co stated “it is presently our view that a full return to creditors is unlikely” and “we hold the view there will be a substantial shortfall to the Trustee.”
23. Dye & Co’s comments are not surprising given they are an insolvency practitioner rather than an investment manager.
24. The structured work-out is therefore capable of providing a far better commercial outcome for unitholders in terms of quantum and timing.

The trustee needs to be replaced

25. The Plaintiff's conduct has demonstrated scant regard for the Fund's unitholders, adding to the Court's compelling need to end the winding up application brought by the Plaintiff.

26. The Plaintiff is conflicted in its role as trustee for the following reasons:

    a) Appointed Receivers & Managers without immediately stepping down as trustee given its premeditated plan to wind up the IPO Wealth Holdings group;

    b) Applied to wind up the borrower within 7 days of appointing Receivers & Managers without seeking any alternative solutions for unitholders;

    c) Sought an urgent court hearing on 31 August 2020 for the purpose of discrediting a proposal put forward to unitholders by Mayfair 101 Group, rather than seeking to engage in a productive manner with both the proponent and unitholders. This remains the only proposal provided directly to unitholders, and ironically it was not sourced by the Plaintiff. Instead, the Plaintiff has sought to shepherd unitholders from interfering with the winding up application.

    d) The Plaintiff's reputation in the industry appears to be more important than the interests of the unitholders, hence a clear motive exists for the Plaintiff to bury the Fund's sole investment holding rapidly to maintain good standing within the industry such that it may acquire more clients for personal gain rather than protect existing unitholders of an existing Fund it oversees; and

    e) The Plaintiff's remuneration structure encourages it toward a lengthy but low-involvement engagement, such as liquidation compared to a more active role when the Fund is operational.

27. The Plaintiff has been an impediment to unitholders realising their investment. In its onerous position as trustee, the Plaintiff has failed to:

    a. Call any unitholder meetings since the Fund's inception;

    b. Communicate effectively with unitholders on the status of their investment;

    c. Engage with the Investment Manager to discuss solutions;

    d. Obtain alternative proposals from other investment managers;

e. Entertain discussions regarding proposals put forward;

f. Seek alternative options to avoid liquidation; and

g. Take any evident steps to scrutinise the work of the Receivers & Managers and Provisional Liquidators.

28. The Plaintiff became conflicted in their role as trustee when they choose to appoint Receivers & Managers and subsequently sought to aggressively discredit any proposals put forward rather than working through their merits to obtain a workable outcome. Exhibit JM-1 is a letter from the Borrower's counsel to the counsel of the Plaintiff and Provisional Liquidator requesting a meeting on 15 June 2020. Exhibits JM-3b and JM-3b are letters from both parties rejecting the meeting.

29. Further, it should be noted that the Plaintiff made its winding up application on 29 May 2020, just 7 days after appointing Receivers & Managers. No intention or opportunity existed for a true independent process to be undertaken to ascertain whether the companies should be returned to the director. This short timeframe highlights the Plaintiff's unnecessary desperation which is in stark comparison with fulfilling their duties as trustee.

30. The Plaintiff's conduct to seek to wind up the Borrower, and their subsequent actions (or better described as inaction) solidifies the fact that the Plaintiff has acted out of self-interest. They sought and engaged Dye & Co to assist with this process, and to give this process the mirage of a credible front.

31. The unitholders have identified the Plaintiff's interference with their wishes, and have demanded they be removed through the voting process (see Paragraphs 17 and 18 Affidavit of James Peter Mawhinney).

32. The Court must consider unitholders are the aggrieved party in these circumstances and step in to the shoes of the trustee to provide independent oversight and evaluate options for remedying the position of the unitholders, given the Plaintiff has failed to do so.

Time is not of the essence

33. Time is not, and has never been, of the essence in following through with the winding up order for many reasons including:

    a) The assets are preserved and secured by the provisional liquidators;

    b) The liquidation path is a long road with these types of assets, likely to be many years;

    c) The likely return to unitholders in a liquidation process is minimal, therefore expediting the process will provide little by way of material gain in the short term; and

    d) The 181 unitholders ought to have the opportunity to express their views, given they are the key stakeholders in the Fund.

34. A consistent theme of the Plaintiff's and Dye & Co's submissions have been the urgency for winding up, including the bringing forward of the winding up application to today's hearing. Once a winding up order is made, it is final and it is destructive. Therefore, it cannot be in the best interests of the unitholders to do so without exploring all viable alternatives prior to making a winding up decision, including the structured work-out which is a viable remedy the unitholders have demonstrated overwhelming support for.

Grounds for terminating the winding up application

35. A winding up application on just and equitable grounds is recognised by the Courts as last resort where no other alternative remedy exists. No such case exists here.

36. A viable proposal has been put forward for unitholders to vote on, given it is their investment at stake, which unitholders are in favour of and capable of accepting under the powers granted to them by the IPO Wealth Fund Trust Deed (see Exhibit JM-13).

37. In *Posgate & Anor* v *Hanson & Anor,* Henry J stated*:*

> *The pivotal question to be determined then is whether some other remedy is available to the applicants and, if it is, whether they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.*

38. The Plaintiff brought proceedings on Monday 31 August 2020 to attempt to discredit the only proposal available to unitholders prior to the winding up application being heard. Instead of attempting to thwart the proposal, the Plaintiff could have:

    i. Contacted the proponent to discuss the proposal;

    ii. Called a unitholder meeting or information session of their own;

    iii. Sought alternative proposals from other investment managers; or

    iv. Written to unitholders to demonstrate some level of interest in cooperating with the proponent to implement the proposal.

    This conduct exemplifies the Plaintiffs relentless behaviour toward achieving its objective, a forced a liquidation, as opposed to acting reasonably and in the best interests of unitholders.

39. In *Re Vision Image (Aust) Pty Ltd; Cheng v Yeo* [1998] WASC 38, Barrett J held that there must be some additional element of "corporate paralysis" such as an absence of any prospect of the company continuing to operate, which is not the case given the preparedness of the Investment Manager and unitholders to continue a relationship for up to a further 3 years whilst assets are realised and capital is returned to unitholders.

No just and equitable grounds

40. The circumstances are as follows:

    a) A winding up application against the Borrower was brought by a creditor (the Plaintiff) exercising its rights under a General Security Agreement due to missed loan repayments;

    b) The creditor is a Fund with a trustee that is duty bound to act in the best interests of its unitholders;

        i) A proposal has been made by a party related to the Borrower to acquire the distressed loan receivable from the Fund, in exchange for up to $77,065,000 paid from the realisation of certain assets over up to 3 years, giving unitholders a real prospect of near to 100c in the dollar return;

ii) $60,392,815 of unitholders (by way of value) have voted in favour of this proposal, many of whom are experienced investors and all who qualify as wholesale clients per s708 Corporations Act (Cth) ; and

iii) The implementation of the proposal enables the distressed loan to be satisfied, thus achieving two outcomes:

(1) Borrower has no creditors and therefore becomes immediately solvent, voiding the need to wind up the IPO Wealth Holdings group given the debt is satisfied; and

(2) Unitholder value is preserved through the orderly growth and realisation of assets as opposed to liquidation.

41. Therefore, no just and equitable grounds exist to wind up the company given the proposed remedy is supported by unitholders whose money is ultimately at stake, and that remedy is capable of being implemented.