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**TRANSCRIPT OF PROCEEDINGS**

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O/N H-1250654

**FEDERAL COURT OF AUSTRALIA**

**VICTORIA REGISTRY**

**MIDDLETON J**

**No. NSD 464 of 2020**

**APPLICATION IN THE MATTER OF VIRGIN AUSTRALIA HOLDINGS LTD  
(ADMINISTRATORS APPOINTED) and OTHERS**

**MELBOURNE**

**10.22 AM, THURSDAY, 30 JULY 2020**

**DR R.C.A. HIGGINS SC appears with MR D. SULAN and MR D. KROCHMALIK  
for the applicant**

**MR LAZARIDIES appears in person**

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HIS HONOUR: Yes.

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DR R. HIGGINS SC: May it please the court, I appear with my learned friends Mr Sulan and Mr Krochmalik for the plaintiffs.

HIS HONOUR: Yes. Mr Lazaridies, you seek to be heard, I understand?

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MR LAZARIDIES: Yes, your Honour. That's correct.

HIS HONOUR: Thank you. Is there anyone else who wishes to be heard in relation to this application? As I did with the earlier one, if I don't hear anybody then I will assume that no one wishes to make any submission to the court. All right. So, Dr Higgins, I have received this morning a minute of proposed order.

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DR HIGGINS: Yes, your Honour.

20

HIS HONOUR: Is there anything in that minute that's different from the one that I have been working from earlier than this morning?

DR HIGGINS: The same issue that was in respect of amendments to the previous .... your Honour, which includes notification by Halo.

25

HIS HONOUR: I see. Again, if the person is not registered, then there is the same sort of cascading effect in relation to informing people one way or the other.

DR HIGGINS: Precisely, your Honour. So your Honour sees at 7A(1) the inclusion of Halo.

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HIS HONOUR: Yes.

DR HIGGINS: And then in Likemyth ....

35

HIS HONOUR: Right. Yes. In relation to order 8 and one business day's written notice, I would like to extend that a little longer.

DR HIGGINS: Yes, your Honour.

40

HIS HONOUR: That won't do any damage, will it?

DR HIGGINS: Does your Honour have in mind that it be two business days or - - -

45

HIS HONOUR: I thought three.

DR HIGGINS: Yes, your Honour.

HIS HONOUR: No problem?

5 DR HIGGINS: .....

HIS HONOUR: All right. Well, whatever else has changed, we will make that change on three business days.

10 DR HIGGINS: Yes, your Honour. Your Honour should also have received an affidavit of David Michael Moore of 29 July 2020.

HIS HONOUR: Yes. Dr Higgins, just going back to paragraph 8.

15 DR HIGGINS: Yes, your Honour.

HIS HONOUR: Does that mean – and I'm focusing on this because this may have something to do with what I say later on – does that mean, as it reads, that any person, let's say in a week's time, wants to vary it, as long as they give you three days notice, that can happen?

20 DR HIGGINS: Precisely. Yes, your Honour. Yes.

HIS HONOUR: So if an individual creditor was upset with the way in which they were being dealt with by the administrators in relation to Halo and their proof of debt, they could come to the court.

25 DR HIGGINS: Yes, your Honour.

30 HIS HONOUR: Is that what you envisage?

DR HIGGINS: Yes, your Honour. Precisely. And having given a plea to two business days notice of that intention.

35 HIS HONOUR: Yes. All right. Well, that's really why I wanted to have a bit more time because I hope – and this is what you've said in response, I think, to Mr Lazaridies and, also, in the affidavit material, that there has to be some practicality and commonsense in dealing with individuals who may not be as familiar with electronic devices as probably most people listening to what I say are, at the moment anyhow. All right. That's what I understand that to be. Thank you.

40 DR HIGGINS: Thank you. Can I immediately pick up what your Honour has said and include the following: by all of the effect of the orders that we seek, and ultimately to mandate lodgement of proofs via Halo, it is of course the case that the administrators will adopt a pragmatic and commonsense approach, including, where appropriate, entering details on behalf of creditor and make lodgements outside the platform in line with what is the existing practice and the administrators are already

and will continue to provide whatever assistance on questions sought to facilitate interaction with the Halo platform.

5 HIS HONOUR: Thank you, Dr Higgins. Well, I will come to you in a moment, Mr Lazaridies, if you just patiently wait for a moment. I haven't forgotten you. I have read the affidavit material and the submissions - - -

DR HIGGINS: Yes, your Honour.

10 HIS HONOUR: - - - and we have received from Mr Lazaridies a submission, which I take it, Dr Higgins, you have seen.

DR HIGGINS: I have, your Honour. Thank you.

15 HIS HONOUR: And I have seen a response to his initial comments that he made that I read and have taken into account a response from your instructing solicitors Clayton Utz, which response, I think, was dated this morning at 8.36 - - -

DR HIGGINS: This morning, your Honour.

20 HIS HONOUR: - - - yes – on 30 July. All right. Now, let me address Mr Lazaridies first. Mr Lazaridies, I have taken into account those particular matters and I think you make some valid points, if I may say so, and I wondered, though, if they are accommodated by allowing anybody in your position or other positions  
25 similar to your own to, first, treat with the administrator to make sure that you are dealt with, but if the final matter, if you're not satisfied with that, then you can come to the court and I can make orders to facilitate, for instance, not using the Halo or whatever needs to be done to make sure your individual interest is catered for. What  
30 I should ask you, at the outset, is just to indicate you are an interested person; I take it you're a creditor or contingent creditor? You will need to take off mute, I think, Mr Lazaridies.

MR LAZARIDIES: Yes, that's correct, your Honour.

35 HIS HONOUR: Can I ask what category of creditor you are?

MR LAZARIDIES: I believe I'm one of what is referred to generally as a bond holder.

40 HIS HONOUR: I see. All right. Now, I take it your points just – relayed to yourself that your points were raised, I think, as a matter of general interest and importance in what I have to decide. That's where you're coming from, as well as your own interests, I take it.

45 MR LAZARIDIES: I think my interest does coincide with other people in the same category.

HIS HONOUR: Yes. Well, you've heard what I've said. Does that allay a fear you have as to not being treated appropriately in the administration?

5 MR LAZARIDIES: Your Honour, it actually increases my fears in the sense that  
it's extremely inconvenient for me to have to come back to court. I don't wish to  
expend funds on engaging counsel or solicitors, which is why I'm here myself, and I  
was hoping that by becoming involved today I could, as it were, have the matters  
addressed now rather than have to come back and waste the court's time at a later  
10 time. I should say that the experience to date hasn't been exceptional in the sense  
that a number of questions have been raised pursuant to my right to seek information,  
which haven't yet been answered. But that aside, I was hoping that these  
amendments would accommodate my concerns and those of other creditors.

15 HIS HONOUR: Well, the trouble is that I've got to look at the greater good for all  
the creditors and the practical and feasible approach to the administration. If it's not  
the basic approach to use the Halo system and it's not, in a sense, mandatory – and I  
will explain the word mandatory in a moment – if it's just discretionary, it defeats the  
whole purpose of the application, really. I don't think it's just about money. I know  
20 you say it's about – and I know relied upon – money, but it's also – we're dealing  
with what's practical and feasible in administration of this size, putting aside the  
pandemic, which just adds another layer.

So unless I'm satisfied – and I understand what you're saying about coming back to  
the court but hopefully that may not be necessarily depending on what information  
25 you give and what you're able to do, but if it can't be dealt with that way it would be  
much better. Now, if I find that there are many people in your position that are  
unhappy then I may have to rethink the orders that I'm making, but it's in the  
administrator's interests not to let that happen. So I am relatively confident now that,  
at least in your position, you've done what you've done, that they will do everything  
30 in their power to assist you.

MR LAZARIDIES: Yes. Your Honour, does your Honour appreciate that I'm not  
suggesting the Halo system be disbanded? Rather, I'm suggesting it be used in  
35 tandem with the other normal things.

HIS HONOUR: Yes, I do appreciate that.

MR LAZARIDIES: Yes.

40 HIS HONOUR: But it defeats the purpose, really, if it can't be used as the  
mechanism for carrying out the quite difficult task that I must say the administrators  
have. Could I just explain to you when I said mandatory, should I just explain to you  
that the order is to the effect that the administrators are justified in using a particular  
system. So it's the court's imprimatur to say that if you do it this way, you will not  
45 get into trouble because the court is giving you the go ahead to use this system. But  
they have the discretion in which to use whatever information they want to use or to

deal with you in a way that is outside that if that is the appropriate way in which to treat ..... so that's a matter for the administrators.

5 So even adding your word "may" doesn't really add much because they can look after you in the way you want if they think that's the appropriate and best way to do it. Dr Higgins will correct me if anything I've said is wrong but that seems to me the approach that could be taken and perhaps should be taken.

10 DR HIGGINS: That's correct, your Honour.

HIS HONOUR: Do you disagree?

MR LAZARIDIES: Is your Honour referring to - - -

15 HIS HONOUR: I will just get Dr Higgins. Do you disagree with anything I just said, Dr Higgins?

20 DR HIGGINS: No, your Honour, with respect. I agree with everything your Honour has said.

HIS HONOUR: All right. So that's where I'm landing, Mr Lazaridies. Do you want - - -

25 MR LAZARIDIES: Yes. Your Honour, when you mentioned the word may were you referring to my suggestion that may be substituted for the word "must" for the end of order 2?

30 HIS HONOUR: No, I was actually referring to your first email I received last night - - -

MR LAZARIDIES: Yes.

35 HIS HONOUR: - - - where you added in a number of orders. I think must to may, justified in to may. That's what I was referring to.

40 MR LAZARIDIES: Yes. Well, the word must in the third last line of order 2 is probably where I have the greatest difficulty because to me that operates as the administrator telling creditors that that is the way it must be done and there is no deviation from that.

45 HIS HONOUR: Well, no. Well, I think that's not – that's a misapprehension, if I may say so, on your part because you've got to read the whole of the order in context. Again, Dr Higgins will tell me if I'm wrong, but it says are justified and requiring, pursuant to whatever, that they must register. Now, that's a justification that they have to insist on that, but if they want to go outside that and appropriately deal with a particular person because that's not appropriate, they can do that.

MR LAZARIDIES: And if they don't, your Honour?

HIS HONOUR: If they don't do that - - -

5 MR LAZARIDIES: If they don't want to or don't - - -

HIS HONOUR: If they don't do that, then in the appropriate case – and I know you don't want to do this – in the appropriate case, they would then have to come back to the court and say that they had not been dealt with appropriately in accordance with  
10 law and that their interests have not been appropriately considered because of whatever reason that's the case. Now, that would only arise - - -

MR LAZARIDIES: Yes.

15 HIS HONOUR: Now, that would only arise if I could be shown that the interests of the particular creditor had been ignored or that the appropriate procedure had not taken place in which case then I'd have to look at that, but – and I'm not saying this in any disparaging way, but we can't have the tail wagging the dog. I've got to deal with the best interests of the creditors as a whole and the administration of these  
20 particular companies in a practical and sensible way. So once I'm satisfied that the orders being sought deal with that at that level, there may well be individual cases that need to be dealt with separately. Now, I will have to deal with that. It's putting, also, more work on the court if there's an avalanche of people who are unhappy with it, but - - -

25 MR LAZARIDIES: Yes,

HIS HONOUR: - - - let me see if that's the case. At the moment, no one is objecting to these orders, including ASIC. You have made some points which I'm  
30 cognisant of and I think I can deal with, and hopefully you're not burdened again in coming to court, which I understand consumes time and money.

MR LAZARIDIES: Well, there's not much more I can add to what is in my submissions. Are your comments today confined to order 2 or am I to assume that  
35 they relate to the balance of the orders in my submission?

HIS HONOUR: No, they relate to all the orders.

40 MR LAZARIDIES: Yes.

HIS HONOUR: They relate to all the orders. Your point is either a good one for all of them or not at all because, I think, basically, the concept is as you've explained and, as I've said to you, I think there are some good points that are made but I don't think that they should impact upon what I think orders should be made in favour of  
45 considerations I've said.

MR LAZARIDIES: Well, your Honour, of course I'm comforted by the assurances from Dr Higgins on behalf of the plaintiff and your Honour's comments, which, Dr Higgins, on behalf of the plaintiffs, has agreed to. So thank you for that lead, if I may call it that.

5

HIS HONOUR: All right. What I will do is I will proceed just to hear Dr Higgins in relation to this matter. When I make the orders, I will be providing reasons for those orders, which will be hopefully made available as early as possible next week. They will be available on the court portal for you to read and I will consider and make note of your suggestions and explain why I have acted the way I have. So you will have an explanation for that in writing, so you will see what the position is.

10

MR LAZARIDIES: Thank you, your Honour. Is now an appropriate time to discuss the additional order that I sought in relation to creditors having access to the Halo material behind - - -

15

HIS HONOUR: Yes, let's address that. The - - -

MR LAZARIDIES: Maybe I could short circuit this by saying that in the email I received this morning from Ms Adams ..... the only objection raised to my proposed order was that it exposed confidential documents. I have come up with some wording to address that particular issue. I have conveyed that to Ms Adams. I haven't had a response to that yet.

20

HIS HONOUR: Yes, well, let's see what Dr Higgins says about that particular matter before I deal with other matters with Dr Higgins. So do you know what we're talking about, do you, Dr Higgins? There was an additional order that Mr Lazaridies wanted, which was any creditor shall be given access to the Halo platform and all material on the Halo platform and any material used or relied upon in relation to any adjudication decision notification on the Halo platform, whether or not that material information is posted on the Halo platform; and I think the response from Clayton Utz was, well, that wouldn't work because there's confidential material and then now it's said that there's an answer to that, presumably, making some regime, but what's your position in relation to this type of order, one way or the other?

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DR HIGGINS: Well, can I indicate this: the position is as set out in the email that Clayton Utz sent at 8.30 this morning. That ..... paragraph 8 of the ..... would necessarily disclose a vast amount of confidential information and the administrators could not consent to that order for various reasons. I have yet to receive, and I'm requesting it now, the form of words that Mr Lazaridies has indicated he has proposed. I'm not yet aware of that communication.

40

MR LAZARIDIES: I can provide that now, your Honour.

45

HIS HONOUR: Yes, just before you do – but I wondered if it should be limited, in any event, to information concerning that creditor?

DR HIGGINS: Yes, your Honour. That would be a quite different matter, with respect, your Honour, yes.

5 HIS HONOUR: And I could see, maybe, if I was a creditor and I would like to know exactly what was taken into account in the adjudication of my right to vote or my right to prove, and if there was something that I wasn't aware of, I would be a little bit upset if a decision was made against me, so that's just a matter of giving everybody a fair go. Mr Lazaridies, when I first saw this, that's what I thought you were wanting. That any creditor would be entitled to information about them and 10 their position. It wouldn't be all the information you could trawl through about everybody else and whatever, it's about a decision about you that you would want to know about. Is that right?

15 MR LAZARIDIES: That is correct. That is correct, your Honour.

HIS HONOUR: All right. Well - - -

20 MR LAZARIDIES: And in some ways, I guess that probably disposes of the confidentiality issue.

HIS HONOUR: Exactly.

MR LAZARIDIES: Yes.

25 HIS HONOUR: Exactly, because there's no confidentiality finding out your own information. So, Dr Higgins, I don't know if you can get instructions on the run, but I would be inclined to make an order along the lines I have spoken about. That is that any individual creditor could get information that it wasn't on the Halo that was otherwise taken into account in an adjudication.

30 DR HIGGINS: Yes, your Honour. On my present instructions, I see no difficulty with that. My understanding is that an individual creditor would be able to view that information through the Halo platform about him or herself in any event.

35 HIS HONOUR: Yes.

DR HIGGINS: So ..... access already available, in which case there would be obviously no difficulty at all in your Honour ordering to that effect.

40 HIS HONOUR: Yes. All right. Well, what I suggest we do is – that seems to satisfy what I think is fair and reasonable in relation to individual creditors. It seems to satisfy Mr Lazaridies concern. I'm right about that, am I not, Mr Lazaridies?

45 MR LAZARIDIES: That is correct, your Honour. Thank you.

HIS HONOUR: Thank you. All right. Well, I will make an order to that effect. We will work out the wording of the order, which may not be too much different

than what Mr Lazaridies gave as long as we limit it to the individual who is asking if the matter happens – if all the information is on the Halo platform, there’s no problem. If it turns out there’s other information, then that information can be disclosed. That’s what we’re trying to deal with. So I may leave that to you, Dr  
5 Higgins, to work out a form of order in relation to paragraph 8. It maybe sensible to just email something to Mr Lazaridies, as he has an interest in this, to see if he’s happy with it from his point of you; and if he’s happy with it then, more than likely, I will be happy with it.

10 DR HIGGINS: We’re content to do that, your Honour.

HIS HONOUR: All right.

15 DR HIGGINS: We will do that as soon as possible.

HIS HONOUR: All right. Thank you. Mr Lazaridies, you can stay on if you will like. I don’t think I will be taking much longer, so you’re more than happy to stay on or if you want to leave there’s no discourtesy to me if you want to now leave.

20 MR LAZARIDIES: Thank you, your Honour. I will leave if you don’t mind.

HIS HONOUR: No. Thank you very much for your input.

25 MR LAZARIDIES: Thank you.

HIS HONOUR: All right.

MR LAZARIDIES: Thank you, your Honour.

30 HIS HONOUR: Thank you. Yes, now - - -

MR LAZARIDIES: Thank you, Dr Higgins.

35 HIS HONOUR: So, Dr Higgins, I have had a look at the material, as I said, and the submissions.

DR HIGGINS: Yes, your Honour.

40 HIS HONOUR: I don’t – I will – as I have done – as I said to Mr Lazaridies, I will provide reasons for my orders. I propose that the orders you seek be made with the change to three business days in paragraph 8 – in order 8 - - -

DR HIGGINS: Yes, your Honour.

45 HIS HONOUR: - - - and a new additional order along the lines that a creditor will have access to the Halo platform and material in relation to that particular creditor to the extent relied upon in relation to any adjudication decision or notification whether

or not the material is posted on the Halo platform or not. So that's the gist of what I would order, but I will leave it to you to fix up the grammar.

5 DR HIGGINS: Yes, your Honour.

HIS HONOUR: If you could give us the minute in those terms as soon as you possibly can after liaising with Mr Lazaridies, just only on – you would only have to liaise with him on that last order.

10 DR HIGGINS: Yes, your Honour.

HIS HONOUR: I will make those orders and provide the reasons for doing that. For those who are listening to this and members of the press, the submissions and the affidavit material is available for you on the portal. Effectively, I am making the  
15 orders on the basis of the plaintiff's submissions, which have been filed, and the material in support subject to that additional order which will assist anybody who is a creditor who wishes to get further information about the decision made in relation to him or her. It seems to me that in the circumstances of this administration, putting  
20 aside the issue of the pandemic, the orders are feasible and practical and are in the interests of all the creditors in an efficient and, inexpensive as possible, the administration being carried out. Is there anything else, Dr Higgins?

DR HIGGINS: No, your Honour.

25 HIS HONOUR: All right. We will now then adjourn the court.

DR HIGGINS: May it please the court.

30 **MATTER ADJOURNED at 10.48 am INDEFINITELY**