

FEDERAL COURT OF AUSTRALIA

Hughes, in the matter of Vah Newco No. 2 Pty Ltd (in liq) [2020] FCA 1121

File number: NSD 818 of 2020

Judge: **MIDDLETON J**

Date of judgment: 30 July 2020

Date of publication of reasons: 4 August 2020

Catchwords: **CORPORATIONS** – application for leave to appoint liquidator – where proposed liquidators are administrators of related corporate entities – application allowed

CORPORATIONS – application to truncate administration process to abridge or dispense with certain parts of administration process – application allowed

Legislation: *Corporations Act 2001* (Cth)

Cases cited: *Australian Securities and Investments Commission v Diploma Group Limited (No 5)* [2017] FCA 1147
C.A.R.E. Employment and Training Services Pty Ltd, in the matter of C.A.R.E. Employment and Training Services Pty Ltd [2020] FCA 374
Delsana Holdings Pty Ltd, in the matter of Delsana Holdings Pty Ltd (in liq) [2013] FCA 500
John R Turk & Sons (Artarmon) Pty Ltd v Newmont Television Pty Ltd [1999] NSWSC 622
Kulovski, in the matter of Corrimal Leagues Club Ltd (in liq) [2013] FCA 697
Palmer and Collis and Terraplanet Limited (in liquidation), in the matter of Terraplanet Limited (in liquidation) [2007] FCA 2092
Parkes Leagues Club Co-Op Limited (in liq) [2004] NSWSC 16
Peter Ngan re JKB Constructions Pty Ltd [2006] NSWSC 1040
Re Chilia Properties Pty Ltd (Administrator Appointed) (1997) 73 FCR 171
Re Cobar Mines Pty Ltd (rec & mgr apptd) (in liq) (1998) 30 ACSR 125
In the matter of Equiticorp Australia Ltd (in liq) [2020]

NSWSC 143

Re Nardell Coal Corporation Pty Ltd (recs and mgrs apptd) (in liq) (2003) 47 ACSR 122

Rupert Co Ltd v Chameleon Mining NL [2005] NSWSC 719

Schwarz, in the matter of Gordon Smith Marketing Pty Ltd (Administrator Appointed) [2016] FCA 1378

Sims, in the matter of Destra Corporation Limited [2009] FCA 1199

Smith in the matter of Actively Zoned Pty Ltd (in liq) [2012] FCA 605

Strawbridge, in the matter of Virgin Australia Holdings Ltd (administrators appointed) (No 2) [2020] FCA 717

Taylor, in the matter of Origin Internet Solutions Pty Ltd (in liquidation) [2004] FCA 382

Date of hearing:	30 July 2020
Registry:	New South Wales
Division:	General Division
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Sub-area:	Corporations and Corporate Insolvency
Category:	Catchwords
Number of paragraphs:	45
Counsel for the Plaintiffs:	Mr D R Sulan with Mr D Krochmalik
Solicitor for the Plaintiffs:	Clayton Utz

ORDERS

NSD 818 of 2020

IN THE MATTER OF VAH NEWCO NO. 2 PTY LTD (IN LIQUIDATION) ACN 160 881 354 AND VB INVESTCO PTY LTD (IN LIQUIDATION) ACN 101 961 095

**RICHARD HUGHES IN HIS CAPACITY AS LIQUIDATOR
OF EACH OF VAH NEWCO NO. 2 PTY LTD (IN
LIQUIDATION) ACN 160 881 354 AND VB INVESTCO PTY
LTD (IN LIQUIDATION) ACN 101 961 095**
First Plaintiff

**VAH NEWCO NO.2 PTY LTD (IN LIQUIDATION) ACN 160
881 354**
Second Plaintiff

**VB INVESTCO PTY LTD (IN LIQUIDATION) ACN 101 961
095 (and others named in the Schedule)**
Third Plaintiff

JUDGE: MIDDLETON J

DATE OF ORDER: 30 JULY 2020

THE COURT ORDERS THAT:

1. The Originating Process filed 27 July 2020 be made returnable at 10.15 am on 30 July 2020.
2. Pursuant to sections 436B(2)(g) and 448C(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**), leave be granted for Richard John Hughes, Salvatore Algeri, Vaughan Neil Strawbridge and John Lethbridge Greig to be appointed jointly and severally as administrators (**Administrators**) of each of VAH Newco No. 2 Pty Ltd (in liquidation) (**VAH Newco 2**) and VB Investco Pty Ltd (in liquidation) (**VB Investco**) (together, the **Companies**).
3. Pursuant to section 447A(1) of the Corporations Act, Part 5.3A of the Corporations Act is to operate in relation to each of the Companies as if:
 - (a) section 436E of the Corporations Act does not apply to the administrations of the Companies, such that there is no requirement that a first meeting of creditors in the administrations of each of the Companies be convened or held;

- (b) section 438B(2) of the Corporations Act does not apply to the administrations of the Companies; and
 - (c) the Administrators may convene and hold the meetings required pursuant to section 439A of the Corporations Act at any time during the convening period (as defined by the Corporations Act), provided that notice of such meetings is provided in accordance with section 75-225 of the *Insolvency Practice Rules (Corporations)* (**IPR**) and the *Corporations (Coronavirus Economic Response) Determination (No. 1) 2020* (Cth).
4. Pursuant to section 447A(1) of the Corporations Act and section 90-15 of the *Insolvency Practice Schedule (Corporations)*, being Schedule 2 to the Corporations Act (**IPSC**), if, pursuant to any provision in any of Part 5.3A of the Corporations Act, the *Corporations Regulations 2001* (Cth), the IPSC, or the IPR, the Administrators are required to provide any other notification to creditors during the administrations of the Companies, the applicable notice requirements will be satisfied by the Administrators taking the following steps:
- (a) where the creditor:
 - (i) is a registered user on the Halo Platform, by publishing a notice via the Halo Platform;
 - (ii) is not a registered user on the Halo Platform but the Administrators have an email address for a creditor, by notifying each such creditor of the relevant matter via email;
 - (iii) is not a registered user on the Halo Platform and the Administrators do not have an email address for a creditor but have a postal address for that creditor (or have received notification of non-delivery of a notice sent by email in accordance with (a)(ii) above), by notifying each such creditor in writing of the relevant matter via post;
 - (iv) is not a registered user on the Halo Platform and the Administrators do not have an email address for a creditor but have an email address for a trustee, custodian or other agent who represents or may act on behalf of that creditor, by notifying each such trustee, custodian or other agent via email;

- (b) by publishing notice of the relevant matter on the website maintained by the Administrators at <https://www2.deloitte.com/au/en/pages/finance/articles/virginaustralia-holdings-limited-subsidaries.html>; and
 - (c) to the extent the matter relates to a meeting that is the subject of section 75-40(4) of the IPR, by causing notice of the meeting to be published on the ASIC published notices website at <https://insolvencynotices.asic.gov.au/>.
- 5. Pursuant to section 90-15(1) of the IPSC, the Administrators are justified in not requiring or receiving a "Report as to Affairs" (RATA) or "Report on Company Activities and Property" (ROCAP) from any of the directors (or former directors) of the Companies.
- 6. Pursuant to section 482(1) of the Corporations Act, until further order, the winding up of each of the Companies be stayed.
- 7. The First Plaintiff must take all reasonable steps to cause notice of these orders to be given, within one (1) business day of the making of these orders, to:
 - (a) the creditors (including persons or entities claiming to be creditors) of each of the Companies, in the following manner:
 - (i) where the creditor is a registered user on the Halo Platform, by publishing a notice via the Halo Platform,
 - (ii) where the creditor is not a registered user on the Halo Platform but the Administrators have an email address for a creditor, by notifying each such creditor, via email, of the making of the orders and providing a link to a website where the Creditor may download the orders and the Originating Process;
 - (iii) where the creditor is not a registered user on the Halo Platform and the Administrators do not have an email address for a creditor but have a postal address for that creditor (or have received notification of non-delivery of a notice sent by email in accordance with (a)(ii) above), by notifying each such creditor via post, of the making of the orders and providing a link to a website where the Creditor may download the orders and the Originating Process;

- (iv) where a creditor is not a registered user on the Halo Platform and the Administrators do not have an email address for a creditor but have an email address for a trustee, custodian or other agent who represents or may act on behalf of that creditor, by notifying each such trustee, custodian or other agent via email, of the making of the orders and providing a link to a website where the trustee, custodian, other agent or Creditor may download the orders and the Originating Process;
 - (v) by placing scanned, sealed copies of the Originating Process on the website maintained by the Administrators at <https://www2.deloitte.com/au/en/pages/finance/articles/virginaustralia-holdings-limited-subsiidiaries.html>; and
 - (b) the Australian Securities and Investments Commission.
8. Any person who can demonstrate a sufficient interest has liberty to apply to vary or discharge any of orders 2 to 6 above, on one (1) business day's written notice being given to the Plaintiffs and to the Associate to Justice Middleton.
 9. The Plaintiffs have liberty to apply on one (1) business day's written notice to the Court in relation to any variation or discharge of the Court's orders or any other matter generally arising in the administrations of either or both of the Companies.
 10. The Plaintiffs' costs of the application be treated as costs in the liquidations, or otherwise in the external administrations, of each of the Companies, jointly and severally.
 11. These orders be entered forthwith.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

MIDDLETON J:

INTRODUCTION AND OVERVIEW

1 On 30 July 2020 I made a number of orders on the application of the Plaintiffs in this proceeding. These are the reasons for those orders.

2 The Plaintiffs, including the First Plaintiff, Richard Hughes of Deloitte (Mr Hughes or the ‘**Liquidator**’) in his capacity as liquidator of each of the Second and Third Plaintiffs (the ‘**Companies**’), sought various orders in the Originating Process filed on 27 July 2020.

3 The Second Plaintiff, VAH Newco No. 2 Pty Ltd (in liquidation) (‘**VAH Newco 2**’), and the Third Plaintiff, VB Investco Pty Ltd (in liquidation) (‘**VB Investco**’) are each the subject of a member’s voluntary liquidation.

4 This application primarily seeks orders:

- (1) that leave be granted to appoint the Liquidator, together with the Fourth Plaintiffs, Salvatore Algeri, Vaughan Neil Strawbridge and John Letherbridge Greig, who are also partners of Deloitte, as administrators of the Companies (the ‘**Proposed Administrators**’); and
- (2) known as ‘truncated administration orders’ or ‘Day 1’ orders to abridge or dispense with certain parts of the administration process.

5 In seeking their orders, the Plaintiffs rely upon the affidavits of:

- (1) Mr Hughes affirmed 24 July 2020, and supplemented by his affidavit affirmed 28 July 2020; and
- (2) Cassandra Suzann Adams sworn on 28 July 2020.

6 Each of the Companies was wound up on 26 April 2019, as a members’ voluntary winding up and Mr Hughes was appointed as the liquidator. At the time, each of the Companies was thought to be a dormant entity with no liabilities.

7 Prior to their winding up, the Companies formed part of a corporate group comprised of other companies incorporated and operating in Australia, New Zealand and Singapore known as the Virgin group of companies (the ‘**Virgin Group**’).

- 8 The Virgin Group is an Australian-based corporate group that operates in the domestic and international passenger and cargo airline business, offering aviation products and services to the Australian aviation market, including corporate, government, leisure, low cost, regional and charter travellers and air freight customers.
- 9 A substantial number of the entities in the Virgin Group are currently in administration (the ‘**Virgin Companies**’), with Messrs Hughes, Algeri, Strawbridge and Greig having been appointed as joint and several administrators of the Virgin Companies (the ‘**Deloitte Administrators**’) on 20 April 2020 (and in the case of one further company, on 28 April 2020): *Strawbridge, in the matter of Virgin Australia Holdings Ltd (administrators appointed) (No 2)* [2020] FCA 717 (*Strawbridge (No 2)*) at [3].
- 10 The Companies are both, through intermediate holding companies, wholly owned subsidiaries of Virgin Australia Holdings Limited (Administrators Appointed) (‘**VAH**’), a public company whose shares are listed on the Australian Securities Exchange and which is the parent company of the Virgin Group.
- 11 On 26 June 2020, in the course of the administration of the Virgin Companies, the Deloitte Administrators entered into a binding agreement with BC Hart Aggregator, L.P. and BC Hart Aggregator (Australia) Pty Ltd, entities associated with Bain Capital Private Equity LP and Bain Capital Credit LP (together, ‘**Bain**’), in which the business and assets of the Virgin Companies were sold (the ‘**Bain Transaction**’). Subject to the outcome of the second creditors’ meeting of the Virgin Companies, it is presently envisaged that the Bain Transaction will be completed through a deed of company arrangement (‘**DOCA**’).
- 12 In circumstances where each of the Companies is presently insolvent and the members’ voluntary windings up must come to an end, this application is designed to cause the Companies to be placed into administration (with the same administrators for each of the Virgin Companies) and to make the ancillary truncated or Day 1 orders so as to link the proposed administrations with the existing administrations of the Virgin Companies.

FACTUAL BACKGROUND

- 13 On 7 June 2018, Mr Hughes was engaged by the Virgin Group to assist in deregistering or winding up dormant entities or entities with limited or no assets within the Virgin Group.
- 14 The Companies were identified as falling into that category and, on 26 April 2019, Mr Hughes was appointed as the liquidator of each of the Companies pursuant to s 491(1) of the

Corporations Act 2001 (Cth) (the '**Corporations Act**') by special resolution passed by Virgin Australia Airlines Holdings Pty Ltd, the sole shareholder of each of the Companies. Declarations of solvency were signed by the directors.

15 The Liquidator prepared statutory lodgements and invited proofs of debt to be lodged, but thus far no proofs have been lodged and no claims have been notified.

16 While it was initially thought that the Companies were dormant entities with no liabilities, Mr Hughes says he now understands that:

- (1) VB Investco and VAH Newco 2 is each a party to a deed of cross-guarantee dated 18 June 2007 (the '**DOCG**'), including with certain other companies in the Virgin Group, which provides that upon the winding up of an entity to the DOCG (either in insolvency or as a creditor voluntary winding up), each other entity to the DOCG is liable for its debts; and
- (2) VAH Newco 2 is a guarantor of the following notes (the '**Notes**') issued by VAH:
 - (a) the '**VAH Unlisted 2018 Notes**': AUD\$150,000,000 (face value) of 8.25% unsecured Fixed Rate Notes issued by VAH on 30 May 2018 and due for repayment on 30 May 2023;
 - (b) the '**VAH Unlisted 2019 Notes**': AUD\$250,000,000 (face value) of 8.075% unsecured Fixed Rate Notes issued by VAH on 5 March 2019 and due for repayment on 5 March 2024; and
 - (c) the '**USD 2016 Senior Notes**': USD\$350,000,000 (face value) of 7.875% Senior Notes issued by VAH and due for repayment on 15 October 2021.

17 VAH Newco 2 is currently in default of the obligations in the 'Note Deed Poll' dated 17 May 2018 (which governs the VAH Unlisted 2018 Notes and the VAH Unlisted 2019 Notes) and the 'Indenture' dated 17 October 2016 (which governs the USD 2016 Senior Notes) because of the appointment of administrators to the Virgin Companies.

18 It was submitted that these matters have two consequences. First, it means that the Companies have large (albeit likely contingent) liabilities to creditors. Secondly, the creditors of the Companies are also creditors of a number of the other Virgin Companies (presently in administration) that are also subject to the DOCG.

- 19 As set out above, in the course of the administration of the Virgin Companies, the Deloitte Administrators undertook a sale process for the business and assets of the Virgin Companies and, ultimately, entered into a binding agreement with Bain. As I have referred to earlier in these reasons, subject to the outcome of the second creditors' meeting of the Virgin Companies, the Administrators believe that the most expeditious and cost effective way to achieve completion of the sale is likely to be through the DOCA proposal to be advanced by Bain.
- 20 Importantly, if administrators are appointed to the Companies, they may be included as part of the Bain DOCA.

APPOINTMENT OF ADMINISTRATORS UNDER SECTIONS 436B AND 448C AND TRUNCATION OF THE ADMINISTRATION PROCESS

Principles

- 21 I turn now to the principles concerning the appointment of administrators by a liquidator and the truncation of the administration process.

Appointment of a liquidator and her or his partners as administrators

- 22 A liquidator has the power to appoint an administrator under s 436B of the Corporations Act.
- 23 However, where the liquidator wishes relevantly to appoint herself or himself or a partner of her or his firm as the administrator(s), then the Court's leave is required under sub-s 436B(2)(g) and 448C(1) of the Corporations Act.
- 24 Because a liquidator is at liberty under sub-s 436B(1) of the Corporations Act to appoint another person as administrator without the necessity of leave, the question of whether leave should be granted depends on whether the person or persons seeking to be appointed are appropriate to be appointed to that office: *John R Turk & Sons (Artarmon) Pty Ltd v Newmont Television Pty Ltd* [1999] NSWSC 622 at [14]. The principal consideration for the Court is whether the liquidator (or other proposed appointee) is an appropriate person to act as the company's administrator: *Re Cobar Mines Pty Ltd (rec & mgr apptd) (in liq)* (1998) 30 ACSR 125; *Re Nardell Coal Corporation Pty Ltd (recs and mgrs apptd) (in liq)* (2003) 47 ACSR 122.
- 25 The Court is not unduly constrained in the way it exercises the discretion conferred by s 436B(2): *Taylor, in the matter of Origin Internet Solutions Pty Ltd (in liquidation)* [2004] FCA 382 ('**Origin Internet**') at [6]; *C.A.R.E. Employment & Training Services Pty Ltd, in the matter of C.A.R.E. Employment & Training Services Pty Ltd* [2020] FCA 374 ('**C.A.R.E. Employment**') at [6].

26 In *C.A.R.E. Employment*, McKerracher J noted that:

[7] In *Origin Internet*, Finkelstein J assessed whether a liquidator was an 'appropriate person' having regard to two factors:

- (a) The first was to ask whether there was a conflict of duty or interest if the liquidator were appointed as administrator.
- (b) The second was to consider how much work the liquidator had undertaken in connection with the liquidation.

[8] Having found that there was no conflict and that the liquidator had undertaken considerable work, his Honour granted the liquidator leave under s 436B(2) of the Act to appoint himself as an administrator, noting that this would save considerable time, trouble and expense in the administration, thereby benefitting all those affected in the administration.

27 In assessing these matters, the Court must consider whether there is any matter such as a conflict of interest, a threat to independence, or anything else offensive to commercial morality in such an appointment: *Palmer and Collis and Terraplanet Limited (in liquidation)*, in the matter of *Terraplanet Limited (in liquidation)* [2007] FCA 2092 at [22]; *Schwarz*, in the matter of *Gordon Smith Marketing Pty Ltd (Administrator Appointed)* [2016] FCA 1378 at [11].

28 Relevant considerations include the proposed appointees' familiarity with the business and affairs of the subject companies; the likely reduction in duplication and associated costs where a liquidator is appointed as administrator including where considerable work has already been undertaken; and where continuity of appointees is desirable having regard to ongoing negotiations or complex arrangements: *In the matter of Equiticorp Australia Ltd (in liq)* [2020] NSWSC 143 (*'Equiticorp'*) at [23].

29 Provided there is no potential for conflict, where considerable work has already been undertaken, it would be in the interests of creditors to grant leave as it would save considerable time, trouble and expense in the administration: *Origin Internet* at [7]; *Delsana Holdings Pty Ltd*, in the matter of *Delsana Holdings Pty Ltd (in liq)* [2013] FCA 500 at [4]; *Australian Securities and Investments Commission v Diploma Group Limited (No 5)* [2017] FCA 1147 (*'Diploma Group'*) at [58].

Truncation of the administration process

30 Where an administrator is appointed to a company that is already in liquidation, it is commonplace for orders to be made under s 447A of the Corporations Act truncating the administration process, for example:

- (1) to dispense with the first meeting of creditors;

- (2) to dispense with the requirement for a report as to affairs or a report on the company's business, property, affairs and financial circumstances; and
- (3) to permit the second meeting to be held at any time during the convening period:

see *Peter Ngan re JKB Constructions Pty Ltd* [2006] NSWSC 1040 at [7]; *Sims, in the matter of Destra Corporation Limited* [2009] FCA 1199 (*'Destra Corporation'*) at [5], [24]-[26]; *Smith in the matter of Actively Zoned Pty Ltd (in liq)* [2012] FCA 605; *Diploma Group* at [65]; *Equiticorp* at [32]-[40].

31 The rationale for such orders is that it would be:

- (1) superfluous and wasteful to convene the first meeting of creditors and to require the directors to provide reports about the company, given that creditors are aware of the companies' circumstances; or
- (2) too restrictive to require the second meeting of creditors to be convened on a particular date when the rationale for the appointment of the administrators is to give effect to a proposed restructure:

see *Destra Corporation; Kulovski, in the matter of Corrimal Leagues Club Ltd (in liq)* [2013] FCA 697 (*'Corrimal Leagues Club'*) at [26]; *C.A.R.E. Employment* at [20].

32 Finally, the Court has the power under s 482(1) of the Corporations Act to stay the winding up on the appointment of administrators. That may be appropriate where it is designed to facilitate the proposed restructuring transactions and finalise the external administrations (rather than restore the company to ordinary trading operations): *Equiticorp* at [53].

Orders should be made granting leave to appoint the Proposed Administrators and truncating the administrations

Leave to appoint the Deloitte Administrators

33 It was submitted that the members' voluntary winding up of each of the Companies cannot continue given the liabilities of the Companies that have now been identified, with the consequence that the Companies are insolvent.

34 In those circumstances, s 496 of the Corporations Act provides a number of possibilities to the Liquidator, including: calling a meeting of creditors to convert the members' voluntary winding up to a creditors voluntary winding up; applying to the Court to have the Companies wound up in insolvency; or to seek the appointment of administrators.

35 Because of the existing administrations of the other companies in the Virgin Group, and the DOCA that is to be proposed as the mechanism to complete the Bain Transaction, Mr Hughes proposes to appoint himself and each of the other Deloitte Administrators as the Proposed Administrators of the Companies.

36 In circumstances where the creditors of the Companies are also creditors of a number of the other Virgin Companies (presently in administration), that course will assist in the overall restructure of each of the companies in the Virgin Group. That is consistent with the Court's desire to see that there is some point in the move from winding up to voluntary administration: see *Rupert Co Ltd v Chameleon Mining NL* [2005] NSWSC 719 at [5]; *Corrimal Leagues Club* at [17]. Further, given that each of the Companies has no assets, that course is of benefit to the Companies' creditors.

37 I consider that the four Deloitte Administrators are appropriate and experienced persons to act as the Companies' administrators and there are obvious advantages in seeking to appoint them as the Proposed Administrators. They have been intimately involved in the administrations of the Virgin Companies, including: developing an understanding of the assets, liabilities and creditors of the Virgin Companies (which overlap to some degree with the creditors of the Companies); undertaking the sale process culminating in the Bain Transaction; and preparing the proposed report to creditors in advance of the second meetings of creditors.

38 Further, in light of the inter-connectedness of the companies in the Virgin Group that are in external administration (for example, because of the DOCA), there is good reason to have common administrators for the each of those companies. As Lehane J noted in *Re Chilia Properties Pty Ltd (Administrator Appointed)* (1997) 73 FCR 171 at 173 (in a different context, but in remarks that are nevertheless apposite to the current circumstances):

Section 448C quite plainly contemplates that a person who is a liquidator of a creditor of a company may nevertheless be appointed as administrator of the debtor company [...] and it is well established that in the absence of any real, as opposed to theoretical, conflict of interest it is generally desirable that the external administration of a group of companies should be placed in the hands of one administrator.

39 There is no other conflict of interest, threat to independence, or anything else offensive to commercial morality in making such an appointment of which I have been made aware.

40 Finally, in *Parkes Leagues Club Co-Op Limited (in liq)* [2004] NSWSC 16 at [5], Hamilton J cited the desirability of continuity of those in charge of the management of the company and the implementation of a DOCA proposal as a reason why a liquidator should generally be given

leave to appoint herself or himself as administrator, unless there is some distinct reason as to why that person should not be deemed a suitable person in the circumstances. Those conclusions apply in the present case.

Truncation orders

41 As to the orders dispensing with the requirement to hold the first meetings of creditors, it was submitted that:

- (1) the (contingent) creditors of the Companies are also creditors of at least some of the other Virgin Companies presently in administration; thus, the creditors have been provided with notice of the affairs of the Virgin Group and the process of the external administration (including by the issuing of various reports by the administrators) and have had an opportunity to attend the concurrent first meeting of creditors for the Virgin Companies;
- (2) further, the affairs and future of the Virgin Group (including the Companies) will be identified in detail in the proposed report to creditors in advance of the second meetings; and
- (3) accordingly, there is no reason to require the Proposed Administrators to incur the expense of convening and holding the first meeting of creditors.

42 As to the orders dispensing with the requirement of the directors to provide a report as to the Companies' affairs, it was submitted that:

- (1) a single report on company activities and property ('**ROCAP**') of the companies that are the subject of the DOCG has already been prepared by the directors of those companies and provided to the Deloitte Administrators in accordance with the Court's prior orders (see *Strawbridge (No 2)* at [167]-[175]); and
- (2) the ROCAP adequately reflects the position of each of the Companies' business, property, affairs and financial circumstances, such that a further ROCAP would not be of any assistance in the administration or liquidation of the Companies.

43 As to the orders permitting the second meetings of creditors to be held at any time during the convening period, it was submitted that is necessary to permit the second meetings to be held concurrently with the second meetings of the Virgin Companies. This will be of benefit in permitting the future of the Virgin Group to be decided by creditors of all of the relevant companies in administration at a single occasion.

- 44 As to the orders staying the windings up, it was submitted that:
- (1) there is presently a proposed restructure of the entire Virgin Group (including the Companies) as part of the Bain Transaction;
 - (2) a continuation of the liquidations while that occurs would be duplicative and wasteful;
and
 - (3) the windings up are not terminated at this point, such that the Court retains the discretion to consider (at a later point) whether it is in the creditors' interests that that occur.
- 45 I agree with each of the foregoing submissions of the Plaintiffs and consider it appropriate to make the orders sought.

I certify that the preceding forty-five (45) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Middleton.

Associate:



Dated: 4 August 2020

SCHEDULE OF PARTIES

NSD 818 of 2020

Plaintiffs

Fourth Plaintiff:

SALVATORE ALGERI, VAUGHAN NEIL
STRAWBRIDGE AND JOHN LETHBRIDGE GREIG