

INSOLVENCY LAW JOURNAL

Volume 16, Number 1

March 2008

EDITORIAL	5
-----------------	---

ARTICLES

Statutory derivative actions in company liquidations – Matthew Broderick

The *Corporate Law Economic Reform Program Act 1999* (Cth) (CLERP) introduced a statutory derivative action on 13 March 2000 to codify the requirements for shareholders and other stakeholders to obtain the court's leave to bring proceedings in the name of a company, or to defend or otherwise intervene in proceedings to which a company is a party. Despite some interesting judicial and academic debate, the predominant view is that the statutory derivative action applies to companies in liquidation, even though a monetary return to shareholders for successful litigation will rarely occur in insolvent windings up. The statutory derivative regime allows a wider group of stakeholders (including company officers) to take control of litigation on behalf of a company. The enhanced involvement of stakeholders in company liquidations will see an increase in litigation, which is justifiable as the statutory derivative action aims to improve corporate governance. Even so, the availability of the statutory derivative action in company liquidations is not intended to usurp or undermine the functions of company liquidators, who are best placed to assess the benefits and detriments of litigation.

7

Challenges that franchisees of insolvent franchisors pose for liquidators – Jenny Buchan

Franchising is a business model based on contracts between a franchisor and its franchisees. Like any commercial entity, a franchisor might become insolvent. The interests of franchisees whose franchisor becomes insolvent raises particular issues for insolvency law and policy. The current approach of Australian insolvency law of casting the franchisee as simply a party to a contract fails to acknowledge the roles the franchisee occupies in the franchisor's business. How an insolvency administrator deals with an insolvent franchisor can determine whether the interests of the franchisees are preserved, or fail altogether. This roles and rights of franchisees in the franchisor's solvent business are identified. The franchisees' status in the franchisor's insolvency is examined and the nature and extent of their claims are identified. The responses of insolvency law are examined in terms of issues that liquidators and administrators need to take into account in dealing with the insolvency of a franchisor. Some avenues for reform are addressed.

26

RECENT DEVELOPMENTS – <i>Dr David Morrison</i>	
Milestones in bankruptcy and insolvency laws	43
Acting in the United States – When is recognition not required?	46
Khouzame v The Leasing Centre	54
REPORT FROM NEW ZEALAND – <i>Lynne Taylor</i>	
Defeating creditors under s 60 of the Property Law Act 1952 (NZ) and s 47 of the Property (Relationships) Act 1976 (NZ)	58

Guidelines for Contributors

Submission and licence agreement instructions

All contributions to the journal are welcome and should be sent, with a signed licence agreement, to the Production Editor, *Insolvency Law Journal*, Lawbook Co., PO Box 3502, Rozelle, NSW 2039 (mail), 100 Harris St, Pyrmont, NSW 2009 (courier) or by email to insolvjl@thomson.com.au, for forwarding to the Editor. Licence agreements can be downloaded via the internet at http://www.thomson.com.au/support/as_contributors.asp. If you submit your contribution via email, please confirm that you have printed, signed and mailed the licence agreement to the attention of the Production Editor at the mailing address noted above.

Letters to the Editor

By submitting a letter to the editor of this journal for publication, you agree that Thomson Legal & Regulatory Limited, trading as Lawbook Co., may edit and has the right to, and may license third parties to, reproduce in electronic form and communicate the letter.

Manuscript

- Manuscript must be original, unpublished work that has not been submitted for publication elsewhere.
- Personal details (name, qualifications, position) for publication and a delivery address, email address and phone number must be included with the manuscript.
- Manuscript must be submitted electronically via email or on disk in Microsoft Word format.
- Manuscript should not exceed 15,000 words for articles or 1,500-2,000 words for section commentary or book reviews. An abstract of 100-150 words is to be submitted with article manuscripts.
- Proof pages will be sent to contributors. Authors are responsible for the accuracy of case names, citations and other references. Excessive changes to the text cannot be accommodated.
- This journal complies with the Higher Education Research Data Collection (HERDC) Specifications for peer review. Each article is, prior to publication, reviewed in its entirety by a suitably qualified expert who is independent of the author.

Style

1. **Levels of headings should be clearly indicated (no more than four levels).**
2. **Cases:**
 - Case citation follows case name. Where a case is cited in the text, the citation should follow immediately rather than as a footnote. Give at least two and preferably all available citations, the first listed being the authorised reference.
 - Australian citations should appear in the following order: authorised series; Lawbook Co./ATP series; other company series (ie CCH, Butterworths); media neutral citation.
 - “At” references should only refer to the best available citation, eg *Mabo v Queensland [No 2]* (1992) 175 CLR 1 at 34; 66 ALJR 408; 107 ALR 1.
 - Where only a media neutral citation is available, “at” references should be to paragraph, eg *YG v Minister for Community Services* [2002] NSWCA 247 at [19].
 - For international cases best references only should be included.
3. **Legislation should be cited as follows:**
Trade Practices Act 1974 (Cth), s 51AC. The full citation should be repeated in footnotes.
4. **Books should be cited as follows:**
Macken JJ, O’Grady P, Sappideen C and Warburton G, *The Law of Employment* (5th ed, Lawbook Co., 2002) p 55.
 - In footnotes do not use *ibid* or *op cit*. The following style is preferred:
 4. Austin RP, “Constructive Trusts” in Finn PD (ed), *Essays in Equity* (Law Book Co, 1985).
 5. Austin, n 4, p 56.
5. **Journals should be cited as follows:**
Odgers S, “Police Interrogation: A Decade of Legal Development” (1990) 14 Crim LJ 220.
Wherever possible use official abbreviations not the full name for journal titles.
 - In footnotes do not use *ibid* or *op cit*. The following style is preferred:
 6. Sheehy EA, Stubbs J and Tolmie J, “Defending Battered Women on Trial: The Battered Woman Syndrome and its Limitations” (1992) 16 Crim LJ 220.
 7. Sheehy et al, n 6 at 221.
6. **Internet references should be cited as follows:**
Rickatson S, *The Law of Intellectual Property: Copyright, Designs and Confidential Information* (Lawbook Co., subscription service) at [16.340], <http://subscriber.lawbookco.com.au> viewed 25 June 2002. Underline the URL and include the date the document was viewed.

For further information visit <http://www.thomson.com.au/legal/> or contact the Production Editor.

SUBSCRIPTION INFORMATION

The *Insolvency Law Journal* comprises four parts a year.

Customer service and sales inquiries:
Tel: 1300 304 195 Fax: 1300 304 196
Web: www.thomson.com.au/legal/p_index.asp
Email: LRA.Service@thomson.com

Editorial inquiries:
Tel: (02) 8587 7000

HEAD OFFICE
100 Harris Street PYRMONT NSW 2009
Tel: (02) 8587 7000 Fax: (02) 8587 7100



© Thomson Legal & Regulatory Limited ABN 64 058 914 668 trading as Lawbook Co.

ISSN 1039-3293

Typeset by Lawbook Co., Pyrmont, NSW

Printed by Ligare Pty Ltd, Riverwood, NSW