

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

CIV 2009-404-002470

IN THE MATTER OF the liquidation of Numero Uno Investments
Limited

BETWEEN THE OFFICIAL ASSIGNEE IN THE
BANKRUPTCY OF THE PROPERTY OF
DAVID PAUL JOHN
Plaintiff

AND NUMERO UNO INVESTMENTS
LIMITED
Defendant

Hearing: 1 May 2009 ON THE PAPERS

Appearances: B Dickey for Plaintiff

Judgment: 1 May 2009

**JUDGMENT OF ASSOCIATE JUDGE ROBINSON
(On the Papers)**

This judgment was delivered by me on 6 May 2009 at 11 am,
Pursuant to Rule 11.5 of the High Court Rules

Registrar/Deputy Registrar

Date.....

Solicitors: Meredith Connell, PO Box 2213, Auckland

[1] Mr David Paul John was adjudicated bankrupt in the High Court at Hamilton on 23 February 2009. On his adjudication all his property including his seventy percent shareholding in Numero Uno Investments Limited were vested in the Official Assignee.

[2] Numero Uno is party to a racing entitlement contract for the V8 Supercars Championship a racing series that takes place in Australia and New Zealand. Because of Mr John's bankruptcy and in terms of the racing entitlement contract, the rights under that contract were surrendered.

[3] V8 Supercars Australia Propriety Limited have undertaken a tender process for the sale of those rights. The successful tender was for \$1,000,000 AUD plus GST. Settlement of the sale was completed on 30 April 2009. In terms of the agreement, the net proceeds from the sale of the rights are to be paid to Numero Uno.

[4] The solicitors for the purchaser of the rights under the racing entitlement contract indicated settlement could take place but only on the basis that immediate steps were taken to place Numero Uno in liquidation so that the net proceeds could be paid to the Official Assignee as liquidator. The Official Assignee is concerned that had settlement been delayed, the purchaser of the rights under the racing entitlement contract would not have been able to complete the next race day on 2 May 2009 with Numero Uno facing the prospect of having to pay damages of \$150,000 AUD. The Official Assignee to enable settlement to proceed has effectively undertaken to apply to the Court for the liquidation of Numero Uno.

[5] The company may be put into liquidation by special resolution of those shareholders entitled to vote and voting on the question (see section 241 Companies Act 1993). Furthermore, the Official Assignee may be liquidator of a company on the passing of a special resolution by exercising the voting rights attaching to the shares in the company because the shareholder has been adjudicated bankrupt. The

Official Assignee states that the other shareholders support the liquidation of Numero Uno.

[6] Consequently, the Official Assignee brings this application for an order placing Numero Uno into liquidation relying on the grounds set forth in s 241(4)(d) The Companies Act 1993. Namely on the ground that such order is just and equitable. The Official Assignee also seeks an order being appointed liquidator.

[7] If an order is made, the Official Assignee must advertise the appointment as required by s 255 The Companies Act 1993. Consequently, the public and in particular potential creditors will have notice of this liquidation.

[8] According to the enquiries made by the Official Assignee, the only creditors of Numero Uno are McVeagh Fleming for \$145,000 and the bankrupt estate for \$149,000. Clearly there is going to be a significant surplus and consequently the liquidation will be a solvent liquidation. Pursuant to rule 41.9 High Court Rules this application must be advertised. However, pursuant to rule 1.5 High Court Rules the Court can proceed to liquidate the defendant and dispense with the requirement for advertising.

[9] The circumstances which would justify the Court in dispensing with the requirement for advertising and permitting an application for liquidation to proceed on an ex parte basis must be extremely limited. That is to ensure that the public is aware that the company is being liquidated and in particular, to protect the interests of any creditors.

[10] However, there are very special circumstances in this case.

- a) The company is solvent.
- b) The company has entered into an agreement to sell its major asset. The purchaser is insisting on the company being placed into liquidation. The Official Assignee has consented to this requirement.

- c) All shareholders according to the Official Assignee agree to the company being liquidated. The Official Assignee's application will not be opposed.
- d) The Official Assignee's appointment as liquidator will ensure that an independent, reliable authority supervises and carries out the liquidation and in the circumstances of this case will ensure that the rights of all interested parties including creditors are respected.
- e) There is a need for this liquidation to proceed without delay and without incurring unnecessary costs. If the normal procedure is adopted then not only will there be delays in advertising but there will also be delays in bringing the application on for hearing. Those delays could prejudice the sale of the company's rights under the racing entitlement contract.

[11] Consequently, in the unusual circumstances of this case, I am satisfied that the application should be granted. Accordingly, I confirm that the company was placed into liquidation on 1 May 2009 at 4.40 p m.

Associate Judge Robinson