

FEDERAL COURT OF AUSTRALIA

Colley, in the matter of PF Group Holdings Pty Ltd (Administrators Appointed) (No 2) [2024] FCA 1089

File number: NSD 927 of 2024

Judgment of: **STEWART J**

Date of judgment: 17 September 2024

Catchwords: **CORPORATIONS** – application for further extension of time to convene second meeting of creditors pursuant to s 447A of the *Corporations Act 2001* (Cth) – extension granted

Legislation: *Corporations Act 2001* (Cth), ss 435A, 439A(6), 447A)

Cases cited: *Colley, in the matter of PF Group Holdings Pty Ltd (Administrators Appointed)* [2024] FCA 792
Hayes (as Administrator), in the matter of Ply (ACT) Pty Ltd (Administrator Appointed) v Ply (ACT) Pty Ltd (Administrator Appointed) (No 2) [2013] FCA 503

Division: General Division

Registry: New South Wales

National Practice Area: Commercial and Corporations

Sub-area: Corporations and Corporate Insolvency

Number of paragraphs: 10

Date of hearing: 17 September 2024

Counsel for the Plaintiffs: M L Rose

Solicitor for the Plaintiffs: Clifford Chance

Counsel for Interested Person: D J Delany

Solicitor for Interested Person: JCL Law Partners

ORDERS

NSD 927 of 2024

IN THE MATTER OF PF GROUP HOLDINGS PTY LTD (ADMINISTRATORS APPOINTED) AND PF MANAGEMENT HOLDINGS PTY LTD (ADMINISTRATORS APPOINTED)

**ADAM COLLEY, DERRICK VICKERS, ANDREW SCOTT
AND STEPHEN LONGLEY (IN THEIR CAPACITIES AS
JOINT AND SEVERAL VOLUNTARY ADMINISTRATORS
OF PF GROUP HOLDINGS PTY LTD (ADMIN APPTD) AND
PF MANAGEMENT HOLDINGS PTY LTD (ADMIN APPTD))**
Plaintiffs

JAMES GRANT HOUGH
Interested Person

ORDER MADE BY: STEWART J

DATE OF ORDER: 17 SEPTEMBER 2024

THE COURT ORDERS THAT:

1. The interlocutory process dated 12 September 2024 be returnable immediately and *ex parte*.
2. Pursuant to s 447A(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**), the period for convening the second meeting of creditors (**Second Meetings**) of each of PF Group Holdings Pty Ltd (Administrators Appointed) ACN 622 776 765 and PF Management Holdings Pty Ltd (Administrators Appointed) ACN 622 782 512 (**Companies**) be further extended from 18 September 2024 to **7 February 2025**.
3. The plaintiffs, within seven business days of making these orders, take all reasonable steps to give notice of these orders to the Companies' creditors (including the persons claiming to be creditors), by means of a circular:
 - (a) to be published on the website maintained by the administrators in respect of the administration of the Companies;
 - (b) to be sent by email transmission to creditors for whom the plaintiffs have a current email address; and

- (c) to be sent by ordinary post to creditors for whom the plaintiffs have only a postal address.
- 4. The following parties have liberty to apply on giving all other interested parties not less than 3 business days' notice:
 - (a) any person who can demonstrate sufficient interest (including any creditor of the Companies) for the purpose of modifying or discharging order 2 above; and
 - (b) the plaintiffs, for the purpose of seeking any further extension of the convening period.
- 5. Until further order, and until no later than 7 February 2025, pursuant to ss 37AF(1)(b)(i) and (ii) of the *Federal Court of Australia Act 1976* (Cth), on the ground stated in s 37AG(1)(a), being that the order is necessary to prevent prejudice to the proper administration of justice, the Confidential Fourth Affidavit of Andrew John Scott dated 12 September 2024, Confidential Exhibit AJS-4 (excluding pages 2-10 to that Exhibit), Confidential Sixth Affidavit of Andrew John Scott dated 16 September 2024 and Confidential Annexure AJS-10 be kept confidential and be prohibited from disclosure to any person other than the Judge hearing the interlocutory process, and by the Judge's staff and assistants, and the plaintiffs, their staff and legal representatives.
- 6. The costs of and incidental to this application be costs in the voluntary administration of the Companies and be paid out of the assets of the Companies.

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

REASONS FOR JUDGMENT

(Delivered *ex tempore*)

STEWART J:

- 1 On 26 June 2024, Adam Colley, Derrick Vickers, Andrew Scott and Stephen Longley were appointed as voluntary administrators pursuant to s 436C of the *Corporations Act 2001* (Cth) of PF Group Holdings Pty Ltd and PF Management Holdings Pty Ltd. On 18 July 2024, Shariff J made orders extending the convening periods for the second meetings of creditors of the companies from 24 July 2024 to 18 September 2024. That was on the basis that the administrators required further time to enable a sale process to continue, including to allow time for any deed of company arrangement to be proposed to allow the administrators to provide a comprehensive report to the companies' creditors and to allow time for the administrators to undertake and continue other work.
- 2 The background and circumstances to the administration and to the extension granted by Shariff J are recorded in his Honour's reasons in *Colley, in the matter of PF Group Holdings Pty Ltd (Administrators Appointed)* [2024] FCA 792. These reasons assume knowledge of that background.
- 3 By interlocutory process filed on 12 September 2024, the administrators seek a further extension of that convening period to 7 February 2025, and consequential orders. The essential reason underlying the need for an extension is that, on or about 23 July 2024 – which is to say, the week after the orders of Shariff J – Consumer Affairs Victoria filed a charge sheet and summons in the Magistrates Court of Victoria against one of the subsidiary companies in the group, namely, Panthera Finance Pty Ltd. That proceeding has inevitably led to the extended processes of inquiry and response from and to potential participants in the sale process. In short, an additional layer of complexity to the administrators continuing the sale process has been added, which has resulted in a longer due diligence and negotiation period than anticipated at the time of the first application before Shariff J.
- 4 In that context, the administrators have revised the timetable pursuant to which their first application to extend the convening period was based, to allow further time for bidders to familiarise themselves with the Victorian proceeding, and also to reflect other delays in the sale process. The administrators also anticipate that the sale process may require further time than that anticipated, including by reason of the number and complexity of bids which might be

made, and additional time being required to further negotiations. Given the complexity of the reconfirmed bids that have been received, the administrators were required to further revise the timetable after the filing of the interlocutory process last week. The administrators consider that further time is required to allow their ongoing sale process to continue, and potentially, to result in the sale of some or all of the companies' assets for the benefit of creditors. They anticipate that a further extension of the convening period to 7 February 2025 will be sufficient to enable their sale process to complete.

5 That is a particularly long extension, but I accept that it is appropriate having regard to the time needed to allow offers to be made and negotiations to be carried out, the timing of steps to be taken to complete any sale transaction, the desirability for the second meeting of creditors to be convened outside the end-of-year vacation period and at a time likely to be more suitable to the companies' creditors and stakeholders. Also, a lengthy extension will reduce the likelihood of any further extensions of time being required.

6 Notice of this application for a further extension has been given to the companies' creditors and to the Australian Securities and Investments Commission. No creditor has opposed the extension, although Mr Delany of counsel appeared today for Mr James (Jamie) Hough, a current director of the companies in administration and a possible creditor. The attitude taken by Mr Hough is to neither support nor oppose the extension.

7 As explained by Farrell J in *Hayes (as Administrator), in the matter of Ply (ACT) Pty Ltd (Administrator Appointed) v Ply (ACT) Pty Ltd (Administrator Appointed) (No 2)* [2013] FCA 503 at [7], where a second application for an extension of the convening period is sought, "it has become conventional for the Court to exercise its powers under s 447A(1) of the [Corporations] Act rather than s 439A(6)", the latter under which the first extension was granted. As her Honour observed, the principles applicable to extending the convening period under s 439A(6) remain relevant. Justice Shariff canvassed those principles in some detail. There is no need to repeat them here.

8 I am satisfied that the objects of s 435A of the Corporations Act are best served by the extension sought. The further extension will provide time for the potential impact of the Victorian proceeding to be assessed, allow any sale to complete or deed of company arrangement proposals to be made and allow the administrators time to properly report to creditors on the affairs of the companies in advance of the second meeting of creditors. I do not see that there will be any prejudice to creditors by reason of the further extension sought. It is far more likely

that the further extension will be in the best interests of creditors, in particular if a sale transaction can be effected. There is sufficient continued interest from potential bidders notwithstanding the Victorian proceeding for that to be a realistic possibility. I will nevertheless make the usual order allowing any person showing sufficient interest to apply to the Court for a modification of the orders that I will otherwise make.

- 9 Two “confidential” affidavits have been read and two “confidential” exhibits have been tendered. The affidavits are those of Mr Andrew Scott dated 12 September 2024 and 16 September 2024 and their respective exhibits AJS-4 and AJS-10. The administrators have sought suppression orders in relation to those affidavits and exhibits on the basis that it is necessary that they be suppressed in the interests of the administration of justice. Save for one exception I will come to, I am satisfied in relation to that need because of the necessarily confidential character of the details of the bidding process, and in particular, the identities of the bidders and the proposals that they make. If those details were not kept confidential, the success of the process would be substantially undermined and that would be to the detriment of creditors and hence prejudice the proper administration of justice. The exception is the charge sheet in the Victorian proceeding which is a public document and in respect of which I cannot see there is any justification for a suppression order. That document is at pages 2-10 of exhibit AJS-4. I will exclude that document from the suppression orders I will otherwise make.
- 10 For these reasons I will grant the relief sought by the plaintiffs.

I certify that the preceding ten (10) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Stewart.

Associate:



Dated: 18 September 2024