

FEDERAL COURT OF AUSTRALIA

Jahani, in the matter of Miniso Master Franchisee Pty Ltd (Administrators Appointed) [2020] FCA 1066

File number: NSD 768 of 2020

Judge: **JAGOT J**

Date of judgment: 17 July 2020

Catchwords: **CORPORATIONS** – application for order in relation to the external administration of a company – application for extension of time for administrators’ personal liability under ss 443A(1)(c) and 443B(2) of the *Corporations Act 2001* (Cth) – extension sought due to suspension of rent payments in context of COVID-19 pandemic – extension in best interests of creditors as a whole – application allowed

Legislation: *Corporations Act 2001* (Cth)

Date of hearing: 17 July 2020

Registry: New South Wales

Division: General Division

National Practice Area: Commercial and Corporations

Sub Area: Corporations and Corporate Insolvency

Category: Catchwords

Number of paragraphs: 8

Counsel for the Plaintiffs: D Sulan with S Scott

Solicitor for the Plaintiffs: Hamilton Locke

Counsel for the Supporting Creditor: C Moller

Solicitor for the Supporting Creditor: Norton Rose Fulbright Australia

Counsel for the Interested Person: J Green

Solicitor for the Interested
Person:

Holding Redlich

ORDERS

NSD 768 of 2020

**IN THE MATTER OF MINISO MASTER FRANCHISEE PTY LTD ACN 617 284 214
(ADMINISTRATORS APPOINTED)**

**SAID JAHANI AND PHILIP CAMPBELL-WILSON IN
THEIR CAPACITY AS JOINT AND SEVERAL VOLUNTARY
ADMINISTRATORS OF MINISO MASTER FRANCHISEE
PTY LTD ACN 617 284 214 (ADMINISTRATORS
APPOINTED)**

First Plaintiffs

MINISO MASTER FRANCHISEE PTY LTD ACN 617 284 214
Second Plaintiff

JUDGE: JAGOT J

DATE OF ORDER: 17 JULY 2020

THE COURT ORDERS THAT:

1. Pursuant to ss 443B(8) and 447A(1) of the *Corporations Act 2001* (Cth) (**Act**) and s 90-15 of the Insolvency Practice Schedule (Corporations), being Schedule 2 to the Act (**IPSC**), Part 5.3A of the Act is to operate in relation to the Second Plaintiff (**Company**) as if:
 - (a) the First Plaintiffs' personal liability under ss 443A(1)(c) and 443B(2) of the Act begins on 15 August 2020 for the rent or other amounts payable by the Company, such that the First Plaintiffs are not personally liable for any liability with respect to any property leased, used or occupied by the Plaintiffs (including amounts payable pursuant to any leases entered into by the Plaintiffs), from any lessors, in the period from their appointment to 15 August 2020 inclusive; and
 - (b) the words "within five business days after the beginning of the administration" in section 443B(3) of the Act instead read "by 15 August 2020".
2. The First Plaintiffs take reasonable steps to cause notice of the orders to be given, within two (2) business days of the making of these orders to:
 - (a) the creditors (including persons claiming to be creditors) of the Company in the following manner:

- (i) where the First Plaintiffs have an email address for a creditor, by notifying each such creditor, via email, of the making of the orders;
 - (ii) where the First Plaintiffs do not have an email address for a creditor, but have a postal address for that creditor by notifying each such creditor, by post, of the making of the orders; and
 - (iii) where the First Plaintiffs do not have an email or a postal address by posting on the website of Grant Thornton.
- (b) The Australian Securities and Investments Commission, to its street address or email address.
3. Any person who can demonstrate sufficient interest has liberty to apply to vary or discharge any of the orders on the giving of three (3) business days' notice to the First Plaintiffs, and to the Court.
4. The costs and expenses of and incidental to the originating process are to be treated as costs in the administrations of the Plaintiffs.

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

REASONS FOR JUDGMENT

JAGOT J:

1 This is an application made under ss 443B and 447A of the *Corporations Act 2001* (Cth) (the **Act**), and s 90-15(1) of the *Insolvency Practice Schedule (Corporations)*, being Sch 2 to the Act, seeking orders that Pt 5.3A of the Act is to operate in relation to the second plaintiff (the **company**), as if:

- (1) the first plaintiffs' personal liability under ss 443A(1)(c) and 443B(2) of the Act begins on 15 August 2020 for the rent or other amounts payable by the company, such that the first plaintiffs are not personally liable for any liability with respect to any property leased, used or occupied by the plaintiffs from any lessors in the period from their appointment to 15 August 2020, and
- (2) the words "within five business days after the beginning of the administration" in s 443B(3) of the Act, instead read "by 15 August 2020".

2 The application is accompanied by evidence on behalf of the plaintiffs, and an outline of submissions.

3 The application is opposed by two groups of landlords (**Vicinity and Scentre Management Limited**). Both landlord representatives oppose the grant of any extension as sought by the first plaintiffs, and in the alternative, submit that any extension should be confined to the period of one week only. They point to factors which they say should persuade me that there should be no extension as sought, being:

- (1) in circumstances where the administration extends to one company only, what is proposed as the potential restructuring applies to the whole group rather than the single company to which the administrators have been appointed; and
- (2) the administrators wish to take the benefit of continuing trading without taking the burden of the accompanying rental obligations, and the company subject to the administration does not appear itself to be the relevant employer, or to be operating the retail businesses in the stores from which retail operations are run.

4 However, I am persuaded by the submissions that are put on behalf of the plaintiffs that the extension of time which is sought is not unreasonable in the circumstances, and will provide

the administrators with the best chance of realising value for the creditors of the company as a whole.

- 5 In these circumstances, it is necessary to have regard to the interest of creditors as a whole, and not just the landlords. In so far as the landlords are concerned, it is also a relevant factor that since the COVID-19 pandemic, it has transpired that the landlords have not been paid rent, in any event, since 31 March 2020. I agree with the submissions put for the plaintiffs that, having regard to the COVID-19 pandemic, it may comfortably be inferred that any landlord retaking possession of a retail store will be unlikely to be able to find a retail tenant in a short term.
- 6 Against this background, the provision of the extension of time for a period of some 20 days as sought by the plaintiffs is apparently in the best interest of the creditors as a whole, as it will give the administrators an opportunity to explore all options available to recapitalise or sell the company as a going concern, or to otherwise explore the possibility of entering into a deed of company arrangement.
- 7 Further, I accept that it is part of the task of the administrators that during the period of the extension, they will be able to negotiate with the landlords and franchisees as to their current arrangements, and this indicates, in the context to which I have referred where rental has not been paid since 31 March 2020, that the balance of discretionary considerations favours the grant of the extension of time.
- 8 In circumstances where there is a complex arrangement of companies and arrangements between those companies and the operation of the retail stores, I accept the evidence to the effect that the administrators have not been able to do what is necessary to be done to put them in the best position to work out which options are in the best interests of creditors as a whole. In these circumstances, I am satisfied that I should make orders in accordance with the short minutes of order as proposed by the plaintiffs.

I certify that the preceding eight (8) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Jagot.

Associate:

Dated: 24 July 2020