

IN THE SUPREME COURT)
OF THE TERRITORY OF)
PAPUA AND NEW GUINEA)

CORAM: MANN, C.J.

M.P. No. 15 of 1965 (P)

IN THE MATTER of the Companies
Ordinance 1963

- and -

IN THE MATTER of PAPUA AND NEW
GUINEA DEVELOPMENT CORPORATION
LIMITED.

REASONS

Port
Moresby
6th July,
1965.

I have before me the adjourned Summons for Directions under which certain Orders were pronounced on the 17th June, 1965, by my brother Frost J. Pursuant to his Order, the 5th July was fixed as the date of the appointment of the Official Liquidator. The matter came on for hearing and Mr. Rissen of Counsel appeared on behalf of Mr. L.F. McEachran, a creditor who opposed the appointment of Mr. Pike, whose appointment was sought by Mr. Clay, who appeared for the Petitioning Creditor. Mr. McCubbery and Mr. Kike, who appeared for other creditors, supported Mr. Clay's application.

Whilst in matters of this kind the interests and wishes of substantial creditors constitute matters to be taken into account by the Court in exercising a discretion, and should carry substantial weight, I must also give due weight to the importance of having the assets of the Company placed firmly in the hands of a qualified Liquidator as soon as possible, for until this is done little or nothing can be achieved in the process of winding up.

Mr. Rissen was faced with the difficulty that at the moment there is only one individual qualified to be appointed, and that is Mr. Pike. It may well be, and one would confidently expect, that other Accountants of high standing in the community will shortly be added to the list of Official Liquidators, but it is impossible to anticipate when this is likely to occur since a number of steps and decisions must first be taken.

Mr. McEachran's objection to Mr. Pike is based on considerations of personal preference and he could not in any sense establish that Mr. Pike is unfit or unqualified to act.

There are substantial reasons why Mr. Pike's

appointment should be considered apt, particularly in the light of his previous experience of related companies and his convenient access to records that may well be material. I think that the considerations in favour of appointing Mr. Pike are overwhelming and I propose to make such an appointment.

I have been asked to make a number of incidental Orders and these were considered on the hearing of the summons yesterday. I indicated the form of Order which I would be prepared to make in each case, subject to further consideration of the question of security by the Official Liquidator. I have considered this point and now think that there is no occasion for me to direct that the Official Liquidator should give security.

The point arises by virtue of the Rules of Court under the Companies Act of 1863 (Queensland adopted), Rule 10 of which provides that "every Official Liquidator shall give security etc.". There is a mismatching between that Rule and Section 97 of the Companies Ordinance 1912-1926, the Papuan version of which was adopted in New Guinea. Sub-section (3) of Section 97 empowers the Court to determine whether and what security is to be given by any Official Liquidator on his appointment. Upon the footing that in case of conflict the Ordinance should prevail, it seems to me appropriate that the Rule should be read as if it provided that "every Official Liquidator who is required by the Court to give security shall give security etc.".

However this may be the position now appears to be altered by the provisions of the Companies Ordinance No. 1 of 1964. Repealing the earlier Ordinance the Companies Ordinance of 1964 now provides in Section 231 that the Court may appoint an Official Liquidator to be Liquidator of the company. The expression "Official Liquidator" is defined in Section 5 by reference to Section 11 of the Ordinance, which sets out the procedure which enables a person who is a "Registered Liquidator" to become an Official Liquidator. Again in Section 5 the expression "Registered Liquidator" is defined and the Companies Auditors Board is designated as the Board for the purpose of that definition.

Section 11 empowers the Administrator to require Official Liquidators to give security as prescribed for the due fulfilment of their duties. It seems to me that the duties in question are the duties which the Official Liquidator will from time to time undertake as a Liquidator of companies and assisting the Court in relation to winding-up proceedings. The apparent purpose of this new procedure is to strengthen the discipline of

the office of Official Liquidators and to secure more effective control over them. All Official Liquidators may be required to give security at the time of their appointment as a Liquidator.

Under the earlier legislation any person could be appointed an Official Liquidator and the Ordinance of 1912-1926 gave the Court power to require security as might appear appropriate in every individual case. The present scheme is a detailed one and provides for security to be given once and for all upon each registration of an Official Liquidator. I think that the later scheme must be taken as a direct substitution in different terms for the earlier scheme. I further think that the Rules which, in the light of subsequent statutory changes have gradually become inapplicable with respect to some specified matters, should be read as not requiring security to be given in respect of every liquidation when an Official Liquidator is appointed under the new legislation. Accordingly, in my opinion, there is no occasion for further security to be given by Mr. Pike.

As I intimated yesterday, I think it is appropriate that the Order appointing the Liquidator should be an Order pronounced in Court, even though under the Papua and New Guinea Act it may well be permissible for a Judge to exercise the jurisdiction of the Court whilst dealing with a matter in Chambers. Accordingly I intimated that such an Order will be pronounced in Court to-day.

Since a Liquidator was not previously appointed, the property of the Company is in the custody of the Court. An application for a Vesting Order can only be made at the instance of the Liquidator and, to save a possible hiatus, I indicated that I would allow the Liquidator, immediately upon his formal appointment being pronounced, to apply by Counsel so that a Vesting Order might be made immediately afterwards. I do not feel convinced that a Vesting Order is needed at all under the provisions of Section 233 of the Companies Ordinance of 1964. Since the Liquidator carries out the Liquidation on behalf of the Court and all that he is required to do for the purposes of his office is to take custody or control over all the property of the company, I would think that the company's property remains vested in the company and that the custody and control of it resides either in the Liquidator, or, pending his appointment, in the Court. I will hear Counsel further on this point before pronouncing the actual Order.