SC 623

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

CORAM: KELLY, J.

Wednesday,

2nd June, 1971.

In the matter of COMMERCIAL PACIFIC LUMBER EXPORTS PTY. LIMITED

1971

May 11, 12, 13, 14, 17, 18, 19 and June 2.

PORT MORESBY

Kelly, J.

The matters for my determination in this case arise on a motion for the appointment of a provisional liquidator of Commercial Pacific Lumber Exports Pty. Limited (to which I shall refer as "the company") pending determination of a winding-up petition presented by New Guinea Co-operation & Development Co. Ltd. (referred to as "Coop") and New Guinea Trade & Development Co. Ltd. (referred to as "Trade"). Each of the petitioners is stated to be a company constituted in accordance with the law of Japan with a registered office in that country. The grounds of the petition are that the company is unable to pay its debts, that two of its directors namely Farid Nicolas Wakim and Fouad Wakim have acted in the affairs of the company in their own interests rather than in the interests of the members as a whole and otherwise unfairly and unjustly to Coop, and that it is just and equitable that the company be wound up.

On the hearing of the motion both the company and Farid Wakim were represented by the same counsel. Counsel also appeared for the petitioners and leave was given for counsel to appear for three creditors, namely, Tutt Bryant (Pacific) Limited, I.A.C. (New Guinea) Pty. Limited and Clark Equipment (Australia) Ltd. who opposed the appointment of a provisional liquidator and for another creditor, Commonwealth Trading Bank of Australia, whose attitude was not indicated.

Counsel who appeared for the company and Farid Wakim also appeared for one Dory Chamoun for the purpose of moving for a stay of proceedings on the petition in so far as it was maintained and prosecuted by Coop; this of course also involved seeking a stay on the motion for the appointment of a provisional liquidator. After argument I decided that the appropriate course was for me to hear the evidence on the motion for the appointment of a provisional liqui-

dator as well as that particularly directed to the question of a stay before dealing with the latter question in order that all the facts should be before me, although obviously it is necessary that the motion for a stay be now dealt with prior to considering the other matters for determination on the original motion.

In the course of his final address counsel for the company and Farid Wakim sought an order that security for costs be given by Coop and this is a further matter requiring consideration.

The hearing extended over seven sitting days with a considerable volume of documentary material and a deal of oral evidence. Whilst in the circumstances it appeared unavoidable that the various matters in issue between the parties should be canvassed, it is necessary to keep in mind that I am not dealing with the winding-up petition but merely with an application for the appointment of a provisional liquidator. Much of the material, while no doubt providing background which to some extent assisted in placing the relevant facts in their correct perspective, does not require detailed consideration for the purpose of arriving at findings of fact such as might be necessary for the hearing of the petition itself. Various side issues were raised, some of doubtful relevance. However, I can say that the volume of evidence adduced did succeed in presenting me with a reasonably comprehensive picture of the dealings between the parties since August, 1969, even though that picture is in some respects somewhat blurred. In the circumstances I do not propose to deal with the facts at any greater length than is necessary for the purpose of this judgment and I shall content myself with setting out what I conceive to be the basic facts for that purpose.

The company was incorporated in May, 1969, the original shareholders and directors being Farid Wakim and one Lucien Forbes. In August, 1969 Forbes sold to Farid Wakim his shareholding in the company. On 11th August, 1969, immediately prior to Farid Wakim's purchase of these shares, an extraordinary general meeting of the members of the company resolved to amend the Articles of Association by the

addition of articles which appointed Farid Wakim as governing director until his resignation, death or disqualification from holding office. The governing director was given wide powers including the power to appoint and remove directors, to limit and restrict the powers of any other director and to exercise at his discretion all the powers and functions of the directors. On a date which would appear to have been between 14th and 18th August, 1969 the company and Coop entered into three written agreements, each of which however on its face is stated to have been made on 8th August, 1969. These agreements comprised two loan agreements, one of which provided for a loan by Coop to the company of an aggregate amount of US$144,000 "after effective of approval of Japanese Government for overseas investment" and the other for the loan of an aggregate amount of A$2,000,000 with the same qualification as to approval, whilst the third agreement is described as a joint venture agreement between the two companies which in effect provided for equal shareholding between what in fact might be termed the Wakim interests (although not so designated in the agreement) and Coop with equal representation of the respective interests on the board of directors. There was a conflict of evidence to which I shall later refer as to whether at the time these agreements were entered into Coop through its directors was aware of the resolution of 11th August, 1969 appointing Farid Wakim as governing director, as notice of that resolution was not given to the Registrar of Companies until 10th February, 1970.

Subsequent to the agreements of August, 1969 Coop took up its shareholding in the company and at all times material to the present proceedings the shareholding has been equally divided between the Wakim interests and Coop. Likewise the board of directors has consisted of two representatives of each interest, Farid Wakim and his brother Fouad Wakim on the one hand and Yoshiaki Katori and Tokumuchi Ogawa as representatives of Coop on the other. Loan money in fact made available by Coop to the company with the approval of the relevant Japanese Government authority (referred to as "Miti") was US$144,000 in December, 1969 and further amounts aggregating A$1,500,000 between August and October, 1970. In addition Coop arranged through the Mitsui Bank and the Commonwealth Trading Bank for the company to have available to it a standby credit; this was originally A$500,000 and as from the end of September, 1970 was A$300,000.

During the first half of 1970 the company commenced operations in the winning of timber from a lease held by it at Bialla in New Britain and in July, 1970 shipments of

timber to Japan commenced, the purchaser being Coop. In all, nineteen such shipments have been made. It appears that relations between the two interests were harmonious for some time.

The original agreements made in August, 1969 were in somewhat general terms and from about August, 1970 onwards efforts were made by Coop to have more comprehensive agreements executed. To this end documents of a much more detailed nature and which would have had the effect of introducing numerous additional terms were prepared by Coop at various times between August, 1970 and April, 1971 and presented to Farid Wakim for his signature. Of these documents it appears that only those dated 12th December, 1970 and 14th December, 1970 were signed and so far as the evidence shows these were signed by Farid Wakim on behalf of the company but were not executed by Coop.

In 1971 the picture underwent something of a change. Coop began to complain about the quality of logs being supplied and differences arose over payment and in particular over the terms of a letter of credit. From January, 1971 onwards questions also arose as to the payment by the company of the sum of US$38,855.82 owed by it to Trade and which will be dealt with more conveniently at a later stage.

Contemporaneously, negotiations had been proceeding over the formation of a consortium for the purpose of applying for a permit for the harvesting of timber at Open Bay in New Britain and if successful to operate that project. In October, 1970 an agreement for this purpose was entered into between the company, Coop, a Japanese company and an Australian company, but by March, 1971 all the parties to that agreement other than the company sought to rescind it. Meanwhile, early in 1971 an arrangement was made between Coop, Farid Wakim and Chamoun to tender for the Open Bay permit although apparently this was not reduced to writing. Then on 5th February, 1971 an agreement was made between Coop and Chamoun which provided inter alia for the purchase by Chamoun of the shares in the company held by Coop and for participation by Coop in a company which Chamoun was to form after obtaining the Open Bay permit. On 30th April, 1971 a tender for the permit was submitted by a company Integrated Timber Industries Pty. Ltd., the members of which were Chamoun and Farid Wakim.

In April, 1971 the stage was set for the present proceedings. On 13th April the solicitors for Farid Wakim (who were also solicitors for the company) by a telex message

demanded from Coop $500,000 which they claimed to be the balance of the $2,000,000 loan agreed upon in August, 1969. If this was not forthcoming it was threatened that the company would obtain funds elsewhere by creating a debenture as security. Coop replied in a telex message of 17th April that a total amount of $1,978,570 had already been remitted, and placed the blame on Wakim for the fact that the company had encountered a financial crisis. In reply by a further telex message of 20th April, this time sent by Wakim as chairman of the company, it was asserted that the company would be in a financial crisis only if Coop did not comply with its commitment and referred to the alternative courses of action open to Wakim, namely legal proceedings to recover amounts due by Coop to the company, finding another market for the timber produced and arranging necessary finance by way of a debenture against the assets of the company, which Wakim said he had already proceeded to do.

In fact it appears that at about this time Wakim, presumably in purported exercise of his powers as governing director, had taken steps to arrange for a loan of $210,000 from one Chipper on the security of a charge over the whole of the company's undertaking with certain collateral securities. A resolution of the company for this purpose is stated to have been passed by Wakim as its governing director on 28th April, 1971 and the loan agreement was made on 29th April, 1971. It appears from the evidence of Keechi Shibuya, who resides in Port Moresby where the registered office of the company is situated and who acted as an alternate director of the company for Katori, that no meeting of directors was held on this matter and, further, that about 21st April Wakim told him that he did not wish him to come to the office until the differences between the company and Coop were resolved.

On 31st March, 1971 Tutt Bryant (Pacific) Limited (to which I shall refer as "Tutt Bryant"), one of the creditors represented on the hearing of the motion, gave the company a notice under Sec. 222 of the Companies Ordinance demanding payment of a debt of $108,763.71. On 30th April following a discussion between representatives of Tutt Bryant and Wakim, a number of bills of sale were executed by the company to secure moneys payable by it to Tutt Bryant. It would appear that the result was that part of the money the subject of the Sec. 222 notice is now thus secured but that an amount of approximately $42,000 for goods supplied and services rendered remains unsecured.

On 30th April, 1971 a petition for winding-up was presented by the present petitioners and proceedings instituted for the appointment of a provisional liquidator. These were in fact the proceedings which originally came before me but by reason of a defect in the affidavit verifying the petition the petitioners elected to present a further petition and notice of motion, and it is upon that notice of motion that the matter ultimately proceeded, further proceedings by the petitioners on the original petition having been stayed.

It is first necessary to consider and determine the application made by Chamoun for a stay of proceedings. This application is based on the agreement of 5th February, 1971 between Coop and Chamoun to which I have already referred. The agreement provides inter alia for the sale by Coop to Chamoun of its shares in the company, for participation by Coop in a company which Chamoun was to form after obtaining the Open Bay permit, contains terms for the formation by the parties of a sales company and provides that they together with Wakim, who is not a party to the agreement, will form a shipping company. The clause in relation to the shipping company is more in the nature of a recital than an agreement. Whilst it is arguable whether there is a completed agreement by reason of the inclusion of clauses such as II(f) (Foley v. Classique Coaches Ltd. (1); May and Butcher Ltd. v. The King (2); and see also Hall v. Busst (3)) it is not necessary to determine this question in view of Clause IV which provides that: "All of the above Clauses and resolutions will enter into immediate effect only upon the obtaining of the "Open Bay Company" of the permit or rights to harvest the forest of the area known as Open Bay." The clause then goes on to provide that in the case of non-compliance with the clauses of the agreement, unless separately agreed upon with reference to the agreement, it will become "nil and void and of any effect"; in which event all engagements made in the meantime between the company and Coop with regard to the agreement will also become "nil and void". At the time of the hearing the necessary permit had not been obtained and it appeared that some time was likely to elapse before it would be known whether or not it would be obtained.

The obtaining of a permit is thus a condition precedent so that the parties are bound to perform their respective obligations only on the performance of the condition.

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(1) (1934) 2 K.B. 1
(2) (1934) 2 K.B. 17n
(3) (1960) 104 C.L.R. 206

The provision for the agreement becoming void in certain events could only become operative after the performance of the condition precedent as it is only then that the obligation of each party becomes effective. This is a different situation from that dealt with in Suttor v. Gundowda Pty. Ltd. (4) where the provision was for the avoidance of the contract on the occurrence of a specified event, so there is no occasion to apply the principles discussed in that case at pp. 440-1. At this stage whilst the condition precedent has not been peformed its performance is still possible so that, assuming that there is a completed agreement, the position may arise where each party is called upon to perform his or its part of the bargain and if a party had meantime disabled himself or itself from performance (for example, if Coop were to sell its shares) then he or it would be in breach.

There is a principle that neither party shall do anything to destroy the efficacy of the bargain he has made (O'Keefe v. Williams (5)). However, the application of this principle does not mean that if there is a completed agreement, Coop, because of its obligation as a shareholder on the performance of the condition precedent, is prevented from taking action which it deems necessary, both as a shareholder and as a major unsecured creditor, to protect its interests and for that purpose to seek a winding-up order and the interlocutory relief for which it now applies. I do not, for instance, consider that Coop would be compelled to stand helplessly by and allow the company to become insolvent or otherwise suffer what might be irreparable harm just because it had such a contract in relation to the sale of its shares.

If the time arrives when the condition precedent has been performed and by that time the company has either been wound up or if, as is suggested would be the case, even without winding-up a provisional liquidator should be appointed and the fact of that appointment has so altered Chamoun's position to his detriment that he has suffered damage, then no doubt he could seek to recover any sum to which he might claim to be entitled by reason of some default on the part of Coop. In that event matters such as whether there was a completed contract, whether Chamoun was entitled to require performance on the part of Coop and if so whether in the events that had happened he was entitled to recover damages from it would all be determined. However, to my mind these considerations do not carry with them the consequence that the petitioners should be

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(4) (1950) 81 C.L.R. 418
(5) (1910) 11 C.L.R. 171

prevented at the instance of Chamoun from continuing with their present action. The question of whether a provisional liquidator should be appointed and in due course whether the company should be wound-up concern persons other than the parties to the agreement of 5th February, 1971. It could not be said that there had been an abuse of process in presenting the petition in that it had been presented for purposes other than the ostensible purpose, for example, in an endeavour to put pressure on the company (see In re a Company (6)). I therefore consider that in all the circumstances the proper exercise of my discretion is to refuse the stay sought and I accordingly do so.

From the whole of the material before me, of which as I have indicated the above is but the barest summary of the major matters of relevance to the present proceedings, several matters clearly emerge. One is that the whole basis of the agreement between Wakim and Coop right from the outset has been that the company should be conducted as a joint enterprise between the Wakim interests and Coop with equal powers exercisable by each. This is of course quite inconsistent with the concept of Wakim being in a position to exercise his wide powers as governing director, and the powers conferred by the joint venture agreement and those conferred by the Articles relating to governing director would seem to be reconcilable only on the basis that as between the parties to the joint venture agreement there was necessarily an implied agreement on the part of Wakim not to exercise his powers as governing director while that agreement remained on foot, although it may well be that as against outsiders any purported exercise by him of those powers would be valid. However, I am not called upon to consider the validity of any acts done by Wakim in the purported exercise of such powers, so it is not necessary that I deal further with this aspect.

There was a deal of evidence on the question of whether at the time the agreements of August, 1969 were entered into Coop through its directors knew of the terms of the resolution of 11th August, 1969 appointing Wakim as governing director. I have come to the conclusion on the whole of that evidence that when the agreements of August, 1969 were signed the directors of Coop, or some of them at all events, knew that Wakim held the appointment of governing director of the company and they had some idea of what this meant although they may not have appreciated the full extent of the powers conferred upon Wakim by the Articles and of the

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(6) (1894) 2 Ch. 349

implications which this had in relation to the joint venture agreement. Be that as it may, for the purposes of the present application I do not find it necessary to consider further the legal consequences of this situation, in particular the contractual right of Coop to assert an equal voice in the management of the company notwithstanding the provisions of the governing director articles. I have already indicated a basis on which it seems that it would be possible to reconcile the two provisions and it would certainly make a mockery of the entire concept of the joint venture as indicated both by the original agreements of August, 1969 and the documents subsequently signed by Wakim in December, 1970 if he could, as it were, keep the ace up his sleeve and whenever he chose do exactly as he liked. His right to do so has been contested by Coop with some apparent justification and it is not appropriate that I should determine the contractual rights of the parties on an application such as at present.

Another matter which is apparent is that disputes do exist between the Wakim interests and Coop. It is true that these disputes to quite some extent are between Coop in its capacity as the purchaser of timber produced by the company rather than as a shareholder, but nevertheless the net result has been a cleavage between the two interests within the company. An attitude of mistrust between the two sets of directors has clearly developed particularly in recent months, and there is no doubt that at this stage mutual confidence between the two interests is lacking. It is but fair to assume that the position has been exacerbated by the present proceedings.

I am bound to observe that whilst the one set of counsel appeared both for the company and Wakim (and also, in relation to the application for a stay, for Chamoun) it would seem that, whilst no doubt their retainer came from the company, in reality they could represent but one set of interests having a fifty per cent shareholding in the company together with such interest as Wakim may have as a creditor. The petitioner Coop, in its capacity as a contributory, has the remaining fifty per cent interest in the company in addition to clearly being a creditor.

Reported cases indicate that as a general rule the court has been prepared to appoint a provisional liquidator in certain defined sets of circumstances. Two such circumstances, neither of which exists in the present case, are where the petition for winding-up has been presented by the company itself and where the petition is unopposed. Two other circum-

stances in which a provisional liquidator has been appointed and which it is suggested are applicable here are firstly, where the company is insolvent and secondly, where the situation is such that it is desirable to appoint a provisional liquidator to take possession of and to protect the assets of the company.

Without going into a great deal of detail on the subject I will say immediately that on the evidence before me I certainly could not be satisfied that the company is insolvent or even that a prima facie case of insolvency is established by the evidence. The meaning of insolvency was considered by Barwick, C.J. in Rees v. Bank of New South Wales (7) and in Sandell v. Porter (8), and it could not be said that the evidence is sufficient to satisfy the test there enunciated, namely, that the company did not have or could not command sufficient cash resources to pay its debts as they became due. The evidence left the general position of the company in a somewhat vague state. It is apparent that it has financial problems, but this does not necessarily denote insolvency. The latest accounts of the company which were produced, namely, those as at 31st December, 1970 are not audited and could not be taken to reflect accurately the financial position of the company at that date, nor do they afford any indication of its present position. The forecast made by Sever as to the company's cash position at various dates is equally valueless as being based on what would appear to be optimistic and unsupported estimates of revenue and by failing to take into account various items of expenditure for which the company would obviously become liable.

Evidence as to the specific debt, namely, the sum of US$38,855.82 stated in the petition to be owing to Trade and on the non-payment of which it was sought to rely as indicating the inability of the company to pay its debts was unsatisfactory. So far as the evidence showed, this sum had not been paid; on 17th May Wakim said that he was making arrangements to pay it that day, and his counsel stated that it had in fact been paid after the close of the evidence, but obviously I could not properly act on this. However, the evidence is not clear as to the point of time at which the company's liability to pay this amount ultimately arose as it would seem that some indulgence was granted by the creditor, and I would not be prepared to rest any finding of insolvency on this particular debt. The position might well be otherwise in relation to the

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(7) (1964) 111 C.L.R. 210 at p. 218
(8) (1966) 115 C.L.R. 666 at p. 670

Tutt Bryant debt the subject of the Sec. 222 notice on which it seems the petitioners would be entitled to rely, assuming that compliance with all the provisions of Sec. 222(2)(a) were to be established. This was not the case in the present proceeding so that whatever the position may be on the winding-up petition itself at this stage insolvency is not established.

The question then is whether the situation is such that even though the petitioners cannot show that the company is insolvent, nevertheless it is desirable that the assets of the company be protected pending the determination of the winding-up petition. The court is being called upon to exercise a discretion and if it seems to it to be proper to do so under the circumstances of any particular case, it will exercise that discretion to appoint a provisional liquidator even though the situation does not fit exactly into any of the categories in which provisional liquidators have been appointed in other cases. The width of the court's discretion is indicated by Levy v. Napier (9) where the Lord President said at p. 477: "... we are not determining in any way at this stage whether the company should or should not be wound up compulsorily. All we are concerned with is whether a holding operation under the control of a provisional liquidator is appropriate, pending the decision on whether or not to wind up this company. The operation is provided for by the Act and is designed to maintain the status quo and prevent prejudice to either of the contestants." Lord Guthrie at p. 479 said: "... the more we have heard of the ramifications of the disputes between the petitioner and the respondent, and the more we have heard of the allegations and counter-allegations against the good faith of the other, it is the more desirable that the course adopted by the Vacation Judge should be approved" (that is, the appointment of a provisional liquidator). Whilst the facts of that case differ from those in the present case, the concept of maintaining the status quo and preventing prejudice to interested parties pending determination of the winding-up petition where the circumstances are shown to be such as to warrant this course is clearly indicated.

It has been suggested that it is necessary that the situation should be one of emergency or at least of urgency, but this is not necessarily so. It is true that in the headnote to In re Hammersmith Town Hall Company (10) it is said that the Court will, in case of urgency, appoint a provisional liquidator, without the consent of the company, to take posses-

(9) (1962) S.C. 469
(10) (1877) 6 Ch. D. 112

sion of and protect the assets; but the short judgment of Jessel, M.R. makes no reference to urgency. Where the case is not one of insolvency or of a petition presented by the company itself or unopposed the test is simply whether the circumstances are such that to use the words of the Lord President in Levy v. Napier (11) (supra), "a holding operation under the control of a provisional liquidator is appropriate."

Whilst I do not have to go so far as to decide whether or not is is probable that the petitioners will establish any one or more of the grounds of their petition, I can say that on the analogy of the partnership principle which has been applied in winding-up cases such as In re Yenidje Tobacco Co. Ltd. (12), Loch v. John Blackwood Ltd. (13), Re Lundie Brothers Ltd. (14), and more recently in In re Westbourne Galleries Ltd. (15) in which the authorities are reviewed, the facts of this case as they emerge before me certainly provide a strong prima facie case for winding-up on the just and equitable ground. As I have already stressed, I am not being asked to determine whether the company should be wound up although no doubt if the evidence had been such as to indicate that the petitioners had but a slender chance of succeeding on their petition the court may well hesitate to take the step of appointing a provisional liquidator; however, that is not the case here.

The present position of this company is that there is a definite cleavage between two interests, each with an equal shareholding in the company and one of which is also a large unsecured creditor. Irrespective of whether, in view of the provisions of the joint venture agreement, he is entitled to do so, Wakim is asserting control of the company to the exclusion of the directors appointed by Coop and indeed has gone so far as to encumber the whole of the company's undertaking. To my mind this clearly creates a situation in which at the suit of Coop at all events with the interest which it has in the company, the company should be placed in the hands of some neutral person and its assets protected pending the determination of the winding-up petition. I consider that such a "holding operation" is certainly appropriate.

I appreciate that certain of the creditors do not wish this step to be taken as they are understandably concerned with their own interests which they consider would be best

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(11) (1962) S.C. 469
(12) (1916) 2 Ch. 426
(13) (1924) A.C. 783
(14) (1965) 1 W.L.R. 1051
(15) (1970) 1 W.L.R. 1378

served by the company continuing as it is without the appointment of a provisional liquidator. However, I do not consider that the views of these creditors should be allowed to prevail when it appears so desirable for the reasons which I have indicated that at this stage there should be an impartial person appointed to take charge of the assets.

I therefore propose to appoint a provisional liquidator as sought by the notice of motion. No question has been raised as to the impartiality or suitability otherwise of the official liquidator whose appointment is sought and he will therefore be appointed. It seems to me to be desirable that the provisional liquidator should be given the power to carry on business so far as is necessary for the purpose of preserving the business as a going concern and I therefore include this amongst the powers set out in the order, although I have limited this until further order in case the situation should appear otherwise once the provisional liquidator has assumed his duties.

I have finally decided against requiring from the petitioners an undertaking as to damages, although I was informed that such an undertaking would be given if required. Whilst there are many cases in which this is appropriate it is not, so far as I can ascertain, an invariable requirement. In view of the interests of Coop, both as a substantial shareholder and as a creditor, it does not appear necessary that it should give such an undertaking as against the company and I would not be prepared to require that it be given as against Wakim. In the circumstances there is no occasion to consider the somewhat different position of the co-petitioner Trade and no good purpose would be served by requiring an undertaking from that petitioner alone.

Finally, it is necessary that I rule on the application that Coop give security for costs. Section 221(2)(c) of the Companies Ordinance is not applicable as Coop is not a contingent or prospective creditor since it appears that interest on its loan to the company has accrued due and is unpaid. I would not be justified in applying Sec. 363(1) as there is nothing to indicate that Coop would be unable to pay the costs for which it might be liable if it were unsuccessful on its petition. In view of the nature of Coop's interests in the company I do not consider that the fact that it is a foreign company to which it would seem Division 3 of Part XI does not apply should cause me to make an order for security for costs. The application for security is therefore refused.

The order which I make for the appointment of the provisional liquidator is in the following terms.

I appoint Murray James Brown, chartered accountant, an official liquidator, to be the provisional liquidator of the company until the making of a winding-up order herein or until further order.

The duties to be performed by the provisional liquidator are as follows: -

(1) To take possession of and protect the assets of the company.

(2) To carry on the business of the company until further ordered, but so far only as may be necessary for the purpose of preserving the business as a going concern.

(3) To receive and collect the debts due to the company, but only so far as may be necessary for the purpose of preserving the business as a going concern.

(4) To exercise in so far as may be necessary all or any of the functions and powers which may be performed by an official liquidator upon a winding-up order as provided by the Companies Ordinance 1963.

The nature and description of the property of which the provisional liquidator is to take possession is as follows:

(a) All the books of account and the general records of the company.

(b) All real and personal estate whatsoever owned by the company.

(c) All cash in possession of the company and the provisional liquidator shall take charge of and may operate all the banking accounts in the name of the company in the exercise of his powers and duties as aforesaid.

(d) All trade equipment in possession of the company or belonging to the company.

I order that the costs of the petitioners and of the company and Farid Nicolas Wakim of and incidental to the application be costs in the matter of the petition.

Solicitors for the petitioners	:	N. White & Reitano
Solicitors for the company and for Farid Nicolas Wakim and Dory Chamoun	:	Craig Kirke & Pratt
Solicitors for Tutt Bryant (Pacific) Limited and I.A.C. (New Guinea) Pty. Limited	:	Francis & Francis
Solicitor for Clark Equipment (Australia) Ltd.	:	J. K. Smith
Solicitors for Commonwealth Trading Bank of Australia	:	Cyril P. McCubbery & Co.