

ENGLAND AND WALES / JUDGMENT

Plants to Go Ltd, Re [2009]

EWHC 3915 (Ch) (27 April 2009)

[2009] EWHC 3915 (Ch)

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Neutral Citation Number: [2009] EWHC 3915 (Ch) Claim No. 8189 of 2009 IN THE HIGH COURT OF JUSTICE CHANCERY DIVISION BIRMINGHAM DISTRICT REGISTRY Civil Justice Centre Priory Courts 33 Bull Street Birmingham B4 6DS 27th April 2009 B e f o r e : HIS HONOUR JUDGE PURLE QC Sitting as a Judge of the High Court

IN THE MATTER OF PLANTS TO GO LIMITED AND IN THE MATTER OF THE INSOLVENCY ACT 1986 Between: MR STEPHEN JEFFRIES MRS TINA JEFFRIES THEODOULOS PAPANICOLA (As Administrator of Plants to Go Limited) Applicants -v- DEVON & CORNWALL SECURITIES LIMITED (Qualifying floating charge holder) LYNN GIBSON (Supervisor of the CVA) Respondents

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Counsel for the Claimants: MR PAUL J DEAN (instructed by Lewis Onions, solicitors) No appearance for the Defendants

HTML VERSION OF JUDGMENT

Crown Copyright © THE JUDGE: I have decided to make an administration order in relation to the company Plants to Go Limited with retrospective effect from 12.35 pm on 13 th March 2009. On that date and time, there was a purported out of court appointment by the directors who omitted to serve of notice upon a qualifying charge holder. That raised a question mark over the validity of that appointment which has been effectively resolved by my making a retrospective order today, which I am satisfied I have power to do on the authority of Re: G-Tech Construction Limited [2007] BPIR 1275 , a decision of the late Mr Justice Hart. Observations have been received

both from the qualifying floating charge holder and from the supervisor of the voluntary arrangement affecting the company. It is clear that the voluntary arrangement, for whatever reason, has not been a success and that the only realistic alternative to administration is winding up. The matter has been presented to me as a pre-pack, which always excites interest and suspicion because of the risk of the pre-pack being a stitch-up. However, the procedure is well established and the reasons why it is said that a better result will be achieved for creditors has been explained in greater detail than usual. In particular there is a witness statement of the administrator, Mr Papanicola, explaining his thinking. There is an estimated outcome statement before me which demonstrates that there is a realistic prospect of a better result being achieved by administration. It is not a certain prospect, but that is not the test. In those circumstances it seems appropriate to make the administration order. A significant advantage of administration is that the directors are prepared to waive substantial indebtedness which will be recorded in the order in the form of an undertaking which Mr Dean for the applicants has given. In those circumstances I make the order with the retrospective effect I have mentioned. The position at the moment is that the directors are still in charge of the company's business by arrangement with the administrator. They wish to arrange a purchase of the business on terms which they hope to be able to comply with. If, of course, that goes horribly wrong, as sometimes these things do, the administrator will, no doubt, bear in mind his duty to make a further application to the court if the prospect of achieving a better result in administration no longer obtains. As of today there is a real prospect and I think it is right to make the order in the exercise of my discretion. THE JUDGE: I will hand down to Mr Dean the order which he handed me up with his scribble on it to which I have added my scribble and I hope he will be able to interpret it. Now you can go. [Judgment ends] BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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