

# FEDERAL COURT OF AUSTRALIA

## Deputy Commissioner of Taxation v PM Developments Pty Ltd [2008] FCA 1886

**TAXATION** – Goods and Services Tax – personal liability of liquidator of a corporation - whether liquidator personally liable for GST on sale of new residential premises owned by the corporation where contract for sale of those premises entered into and completed after the winding up order – where liquidator held not personally liable for GST debt

**PRACTICE AND PROCEDURE** – application for declaratory relief – Federal revenue law controversy – no assessment issued - circumstances in which granting of declaratory relief is appropriate – declarations made.

*Constitution* s 75

*Acts Interpretation Act 1901* (Cth) s 15AB

*A New Tax System (Goods and Services Tax) Act 1999* (Cth) ss 9-5, 9-20, 9-40, 17-5, 17-10, 23-5, 27-40, 147-5, 147-20, 147-25, 153-50, 153-55, 155-60, 182, 184-1, 195-1

*Bankruptcy Act 1966* (Cth) s 58

*Corporations Act 2001* (Cth) ss 419, 474, 477, 479, 556, 559, 564

*Income Tax Assessment Act 1936* (Cth) ss 6, 177

*Judiciary Act 1903* (Cth) s 39B

*Taxation Administration Act 1953* (Cth) s 105-100

*Goods and Services Tax Act 1985* (NZ) s 58

*Goods and Services Tax Amendment Act (No 2) 1992* (NZ) s 11

*Commissioner of Taxation v Futuris Pty Ltd* (2008) 82 ALJR 1177 cited

*Commissioner of Taxation v Linter Textiles Australia Limited (In liquidation)* (2005) 220 CLR 592 cited

*Commissioner of Taxation v Reliance Carpet Co Pty Ltd* (2008) 82 ALJR 968 cited

*Cooper Brookes (Wollongong) Pty Ltd v Commissioner of Taxation* (1980-1981) 147 CLR 297 distinguished

*Deputy Commissioner of Taxation v Broadbeach Properties Pty Ltd* (2008) 82 ALJR 1411 cited

*Director of Public Prosecutions (Victoria) v Le* (2007) 232 CLR 562 cited

*Hepples v Commissioner of Taxation* (1991-1992) 173 CLR 492 cited

*Oil Basins Ltd v Commonwealth of Australia* (1993) 178 CLR 643 cited

*Muroa Pty Ltd v O'Meara* (1997) 15 ACLC 1427 cited

*Platypus Leasing Inc v Commissioner of Taxation* (2005) 61 ATR 239 cited

*Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355 cited

*Re Application by the Liquidator of Haupiri Courts Ltd* [1969] NZLR 348 cited

*Re Bolton; ex parte Beane* (1987) 162 CLR 514 cited

*Re Judiciary and Navigation Acts* (1921) 29 CLR 257 cited

*Case W59* (2004) 21 NZTC 11,551 cited

**DEPUTY COMMISSIONER OF TAXATION v PM DEVELOPMENTS PTY LTD  
ACN 099 606 827; EX PARTE: JOHN LETHBRIDGE GREIG IN HIS CAPACITY AS  
LIQUIDATOR OF PM DEVELOPMENTS PTY LTD ACN 099 606 827 (IN  
LIQUIDATION)**

**DEPUTY COMMISSIONER OF TAXATION v JOHN LETHBRIDGE GREIG  
QUD159 of 2007**

**LOGAN J  
12 DECEMBER 2008  
BRISBANE**

**IN THE FEDERAL COURT OF AUSTRALIA  
QUEENSLAND DISTRICT REGISTRY**

**QUD159 of 2007**

**BETWEEN: DEPUTY COMMISSIONER OF TAXATION  
Applicant**

**AND: PM DEVELOPMENTS PTY LTD ACN 099 606 827  
Respondent**

**EX PARTE: JOHN LETHBRIDGE GREIG IN HIS CAPACITY AS  
LIQUIDATOR OF PM DEVELOPMENTS PTY LTD ACN 099  
606 827 (IN LIQUIDATION)  
Applicant**

**AND: DEPUTY COMMISSIONER OF TAXATION  
Cross-Claimant**

**JOHN LETHBRIDGE GREIG  
Cross-Respondent**

**JUDGE: LOGAN J**

**DATE OF ORDER: 12 DECEMBER 2008**

**WHERE MADE: BRISBANE**

**THE COURT DECLARES THAT:**

1. The Liquidator is not personally liable to the Deputy Commissioner of Taxation for goods and services tax (GST) or any related general interest charge on the sale of Lot 8 under the sale contract of 27 August 2008.
2. PM Developments Pty Ltd ACN 099 606 827 (in liquidation) (PMD) is liable for GST on the sale of Lot 8 under the sale contract.
3. The GST on the sale of Unit 8 under that sale contract falls within the category of costs and expenses to be applied in accordance with and under s 556(1)(a) of the *Corporations Act 2001*.

**THE COURT DIRECTS THAT:**

1. The GST on the sale of Lot 8 under that sale contract and other expenses under s 556(1)(a) of the *Corporations Act 2001* be paid proportionately by the liquidator

(subject to any liens in favour of Mills Oakley or other creditors under s 556(1)(a) of the *Corporations Act 2001*) pursuant to s 559 of that Act.

**THE COURT ORDERS THAT:**

1. The cross-claim is dismissed.
2. The Deputy Commissioner of Taxation pay the liquidator's costs of and incidental to the liquidator's application and the Deputy Commissioner's cross-claim.

Note: Settlement and entry of orders is dealt with in Order 36 of the Federal Court Rules.  
The text of entered orders can be located using eSearch on the Court's website.

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606 827 (IN LIQUIDATION)  
Applicant**

**AND: DEPUTY COMMISSIONER OF TAXATION  
Cross-Claimant**

**JOHN LETHBRIDGE GREIG  
Cross-Respondent**

**JUDGE: LOGAN J**

**DATE: 12 DECEMBER 2008**

**PLACE: BRISBANE**

**REASONS FOR JUDGMENT**

1 The question raised in this case may be succinctly stated, “Is a liquidator of a corporation personally liable for Goods and Services Tax (GST) in respect of the sale of new residential premises owned by the corporation pursuant to a contract for the sale of those premises entered into and completed after the making of the winding up order?”

2 The question arises in the following way. The relevant facts are not controversial.

3 Upon an application made by a Deputy Commissioner of Taxation, PM Developments Pty Ltd (PMD) was ordered to be wound up pursuant to the *Corporations Act 2001* (Cth) by an order of this Court made on 5 July 2007. Pursuant to that order Mr J L Greig of Deloitte was appointed the sole liquidator of PMD.

4 Prior to the making of the winding up order, PMD had been the developer of a new residential project known as “Aspect on Burleigh” located at 112 The Esplanade, Burleigh Heads on the Gold Coast in Queensland. Equitrust Limited (EL) held a registered first mortgage over that land. Before 5 July 2007 contracts for the sale of 7 of the 8 lots, each of which comprised residential units, in “Aspect on Burleigh” had been completed. The proceeds from these sale contracts went in the main to EL in reduction of monies owed to that company.

5 At the time of the winding up order, Lot 8 was the subject of an uncompleted sale contract. This contract came to be terminated by the liquidator on behalf of PMD. Then and at all times thereafter prior to the property’s ultimate sale PMD was the registered proprietor of Lot 8. Title to that property has never vested in Mr Greig either in his capacity as liquidator of PMD or otherwise.

6 After the termination of the pre-liquidation Lot 8 sale contract, EL did not initially intervene in relation to the fresh attempt by PMD, initiated by Mr Greig as liquidator, to sell Lot 8 in the course of the liquidation. As a result, PMD came on 27 August 2007 to enter into a contract for the sale of Lot 8 to one Anthony Gregory de Leede for the sum of \$1,750,000.

7 The contract for the sale of Lot 8 to Mr de Leede is in the standard Real Estate Institute of Queensland/Queensland Law Society, Edition 2 form, as modified by special conditions. The latter include an acknowledgement on the part of the purchaser that PMD is in liquidation, that Mr Greig is its liquidator and that PMD has by its liquidator entered into the contract with the liquidator not being personally liable to satisfy any liability arising under the contract. Express provision in respect of GST is made by clause 9 in the special conditions:

**9. GOODS AND SERVICES TAX**

9.1 In this clause:

- (1) “GST” has the same meaning as in the Act;
- (2) “input tax” means an amount equal to the amount of GST paid or payable on any supply;
- (3) “Act” means A New Tax System (Goods and Services Tax) Act 1999 (Cth);
- (4) “primary payment” means any consideration provided by the Buyer to the Seller for any supply under this Contract;
- (5) “supply” has the same meaning as in the Act; and

(6) "tax invoice" means an invoice in the form required by the Act.

- 9.2 Any primary payment under this Contract is inclusive of GST, unless otherwise stated.
- 9.3 The Seller must issue a tax invoice to the Buyer within 7 days after the Buyer provides the primary payment and pays the GST.
- 9.4 If the GST paid by the buyer under the Contract differs from the amount of GST paid or payable by the Seller, the difference will be paid by the Buyer as required. However, if the Seller has paid the GST, the Seller is not required to make any refund to the Buyer until the Seller has received the refund from the Commissioner of Taxation.

8 Before settlement of this contract and as a result of an intervention by EL the contract came to be amended by the parties such that the agreed purchase price, inclusive of GST, became \$1,755,000. Settlement of the contract occurred on 31 August 2007. On settlement, an amount of \$174,090.91, which included \$159,545.45 (1/11th of \$1,755,000) on account of GST, was paid into the trust account of Mills Oakley Lawyers, the solicitors for PMD and the liquidator by or on behalf of the purchaser of Lot 8.

9 Allowing for sundry, minor receipts of monies payable to PMD but unrelated to the sale of Lot 8 and part payment of legal fees and outlays incurred by Mills Oakley Lawyers on the sale of Lot 8, the sum of \$168,065.91 has been retained in that firm's trust account.

10 In the course of the winding up, the following professional fees and outlays have been incurred in relation to the initial and later terminated contract for the sale of Lot 8 and in relation to the successful sale of that Lot:

- By the liquidator and his staff at Deloitte - \$10,456.90
- By Mills Oakley Lawyers - \$26,577.24.

11 These particular fees and outlays aside, the following professional fees and expenses have been incurred by the liquidator and his solicitors in the general course of the winding up of PMD:

- By the liquidator and his staff at Deloitte - \$38,673.56
- By Mills Oakley Lawyers - \$45,601.62 (this figure includes \$1,485 in respect of as yet unbilled work in progress).

12 Shortly prior to and also after the completion of the sale of Lot 8, Mills Oakley Lawyers, on behalf of the liquidator, corresponded with the Commissioner of Taxation (the

Commissioner) in relation to the disposition of the funds held in that firm's trust account following the sale of Lot 8. That culminated in the Commissioner's making a private ruling in which he expressed the following view:

As the sale of Unit 8 was made by you in your capacity as liquidator of [PMD], you (rather than the incapacitated company) are liable for the GST on this supply.

13 This proposition was said by the Commissioner to follow as a result of the operation of the provisions of Division 147 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (the GST Act).

14 Mr Greig does not accept the correctness of this ruling. A related concern that he has is that he not expose himself to litigation for failing to disperse the proceeds of the realisation of PMD's assets in accordance with the requirements of s 556 of the *Corporations Act*. Accordingly, he made an application to the Court in the winding up for directions pursuant to s 479(3) and s 564(b) of the *Corporations Act*. At the first directions hearing in respect of that application the then docket judge directed that the application continue on pleadings.

15 In his statement of claim the liquidator seeks the following relief:

- (a) A declaration that the liquidator is not personally liable to the Commonwealth of Taxation for GST on the sale of Lot 8 under the sale contract [sic]; and/or
- (b) PMD is liable for the GST on the sale of Lot 8 under the sale contract; and/or
- (c) That the GST on the sale of Unit 8 under the sale contract falls within the category of costs and expenses to be applied in accordance with and under s 556(1)(a) *Corporations Act*; and/or
- (d) If the liquidator is personally liable for GST on the sale of Unit 8 under the sale contract, that the assets of PMD be applied in indemnifying him for such liability in accordance with s 556(1)(a) and s 564(b) of the *Corporations Act 2001*; and/or
- (e) The GST on the sale of Lot 8 under the Sale Contract and other expenses under s 556(1)(a) of the *Corporations Act 2001* be paid rateably (subject to any liens in favour of Mills Oakley or other creditors under s 556(1)(a) of the *Corporations Act 2001*; and/or
- (f) The Deputy Commissioner of Taxation holds no proprietary, charge or priority interest over the amount received by the liquidator equivalent to the GST payable on the sale of Lot 8 under the sale contract; and/or

- (g) Such further or other orders, rulings, directions and declarations which this Honourable Court seems fit.
- (h) That the costs of this application be costs and expenses of the liquidator under s 556(1)(a) of the *Corporations Act 2001*.

16 For his part, the Deputy Commissioner cross claimed for declaratory relief to the effect that, as liquidator, Mr Greig was personally liable to the Commonwealth for the GST in respect of the sale as well as any related general interest charge payable under the *Taxation Administration Act 1953* (Cth) by virtue of late payment of the GST,

17 I am satisfied that, in the events that have transpired, there is a justiciable “matter” with the present being a proceeding in that matter: In *Re Judiciary and Navigation Acts* (1921) 29 CLR 257.

18 No assessment has been raised by the Commissioner in respect of the GST said to owed to the Commonwealth by the liquidator personally as a result of the post-liquidation sale of Lot 8. In these proceedings the tender of such an assessment would have been conclusive evidence of that liability: s 105-100 Sch 1, *Taxation Administration Act 1953*; *Deputy Commissioner of Taxation v Broadbeach Properties Pty Ltd* (2008) 82 ALJR 1411, at 1418 [33] and 1420 [40] to [45].

19 Where an assessment has not been made, this Court has jurisdiction to grant declaratory relief in an appropriate case against the Commissioner in respect of a Commonwealth revenue law controversy: s 39B(1A)(c) of the *Judiciary Act 1903* (Cth); *Oil Basins Ltd v Commonwealth of Australia* (1993) 178 CLR 643. Thus, even though the relief sought by the liquidator, insofar as declaratory relief is sought against the Deputy Commissioner, might be thought to extend beyond the bounds of the provision of directions under the *Corporations Act*, there is ample jurisdiction nonetheless to grant it. As to the cross-claim for declaratory relief made by the Deputy Commissioner, s 39B(1A)(a) of the *Judiciary Act* is a source of jurisdiction.

20 Jurisdiction to grant declaratory relief is one thing; whether or not as a matter of discretion such relief ought to be granted is another. The *Taxation Administration Act 1953* makes comprehensive provision for the resolution of Commonwealth revenue law

controversies. That Act contemplates that, ordinarily, the Commissioner's view of the meaning and application of a Commonwealth revenue law will be reflected in an assessment with the recipient of the assessment then being granted, by the provisions of Part IVC of that Act, a right of objection and, if dissatisfied with the Commissioner's objection decision, an ability to challenge the objection decision either by way of review in the Administrative Appeals Tribunal (AAT) or on a so-called "appeal" heard in the original jurisdiction of this Court.

21           Unlike income tax, where liability to pay that tax is not complete until the making of an assessment, liability to pay GST is not dependent on the making of an assessment by the Commissioner. Even so, by s 105-10 in Sch 1, the *Taxation Administration Act* anticipates that a person whom the Commissioner asserts to be subject to a liability to GST may require the Commissioner to make an assessment, thereby initiating the process that may lead to external merits review by the AAT or the exercise of original jurisdiction by this Court in a taxation appeal.

22           Part of the comprehensive scheme for the resolution of Commonwealth revenue law controversies is the conclusive effect given to the correctness of an assessment upon its tender in proceedings other than an appeal or review under Part IVC of the *Taxation Administration Act*. I have already noted the statutory provision for this in respect of GST assessments. The analogue of and inspiration for that section is s 177 of the *Income Tax Assessment Act 1936*. Read together with the ability to precipitate an assessment and the comprehensive rights of challenge thereafter conferred, the conclusive effect otherwise given to assessments upon their tender an expectation on the part of the Parliament is revealed that, insofar as an exercise of the judicial power of the Commonwealth is called for to resolve a Commonwealth revenue law controversy, that will ordinarily occur in this Court (initially on a taxation appeal or alternatively on an appeal on a question of law from the AAT and then in the Full Court), not a State or Territory Supreme Court, and subject only to those exceptional cases where the High Court grants special leave to appeal from a decision of the Full Court or is disposed to grant relief in its original jurisdiction under either s 75(iii) or s 75(v) of the *Constitution*.

23           Such considerations led Gummow, Hayne, Heydon and Crennan JJ to observe in their joint judgement in *Commissioner of Taxation v Futuris Pty Ltd* (2008) 82 ALJR 1177 at 1183, [10] that, “as a matter of discretion, relief under ss 75(v) and s 39B may be (and often will be) withheld where there is another remedy provided by Part IVC”.

24           In this case, exceptionally, it seems to me appropriate, as a matter of discretion, not to withhold the granting of declaratory relief. I do so for these reasons. The declaratory relief has been sought in this Court, which unlike these days a State or Territory Supreme Court, is the usual forum for the resolution of Commonwealth revenue law liability controversies. The point raised is novel, controversial not only between the parties but evidently also in academic literature (see Anderson and Morrison, *GST and Insolvency Practitioner Liability: Who are you?* (2001) 11 Revenue LJ 23) and one of pervasive significance to corporate insolvency administration. The latter factor was recognised by the Deputy Commissioner in submissions and evidenced by his disposition, exceptionally, to pay the liquidator’s taxed party and party costs of and incidental to the application in any event and, equally exceptionally, by his obviously considered decision not to make and tender an assessment, which would be the usual course for the Commissioner to adopt in a proceeding such as this in either this Court or, *a fortiori*, in a State or Territory Supreme Court: see, e.g. *Platypus Leasing Inc v Commissioner of Taxation* (2005) 61 ATR 239 (NSW Court of Appeal). There is no evidentiary controversy. Further, and as was also conceded on behalf of the Deputy Commissioner in submissions, the point is one always destined for this Court even in the event of assessment with the raising of the same and determination of an objection and attendant delays and related expenses only serving, in the circumstances, further to diminish such funds as may be available for distribution to creditors (principally, the Commissioner on behalf of the Commonwealth).

25           I turn then to consider the substantive revenue law liability question raised in the proceeding.

26           In their joint judgment in *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355 at 381-382, [69] to [71] McHugh, Gummow, Kirby and Hayne JJ offer an authoritative reminder that consistency as between the relevant statutory provision and the language and purpose of all provisions of the statute is the primary object of statutory

construction and of the correlative need to construe a statute as a whole, not piecemeal, with careful regard to context, purpose and with the object of giving sensible meaning to all of the language employed by Parliament. Their Honours also remind that the reconciliation of conflicting provisions may well require the ascertainment of which is the leading provision to which others in apparent conflict should yield so as to achieve, if possible, a conformity of meaning. I accept readily the Deputy Commissioner's submission that these principles should inform the approach to deciding whether Division 147 of the GST Act renders Mr Greig personally liable for GST in respect of the sale of Lot 8.

27           These are not the only principles of statutory construction which are at large in this case. The GST Act is a taxing statute. Giving full measure to the reminders offered in *Project Blue Sky v ABA*, it remains the case, in my opinion, that the subjection of a person to tax by Parliament requires clarity of language, not inexactitude or indirect references. Especially that is so where the asserted subjection of a particular person to tax is counter intuitive to what one might expect having regard to the prevailing general law position and the otherwise usual incidence of the tax in question. I conceive that the following passage from the judgment of Deane J in *Hepples v Commissioner of Taxation* (1991-1992) 173 CLR 492 at 510-511 is indicative of the contemporary approach to take to the construction of a taxing statute:

There has been a marked, and justifiable, tendency in recent times for the courts to construe taxation provisions as being directed to the substance as well as the form of transactions to an extent which previously would have been thought to be inconsistent with statements of high authority in cases such as *Partington v. The Attorney-General* (1869) LR 4 HL 100, at p 122, and *Inland Revenue Commissioners v. The Duke of Westminster* [1936] AC 1, at pp 20, 24-25, 28, 31. Nonetheless, at least in cases where tax avoidance is not involved and where the substance of relevant transactions is not concealed by artificialities of form, the basic 'principles of statutory construction' of taxing provisions remain those identified and explained by Rich and Dixon JJ. in their joint judgment in *Anderson v. Commissioner of Taxes (Vict.)* (1937) 57 CLR 233, at p 243. It is appropriate to repeat what their Honours there said:

In *Brunton v. Commissioner of Stamp Duties* ((1913) AC 747, at p 760), Lord Parker of Waddington, speaking for the Privy Council, says: "The intention to impose a tax or duty, or to increase a tax or duty already imposed, must be shown by clear and unambiguous language and cannot be inferred from ambiguous words." This rule he again emphasized in *Attorney-General v. Milne* ([1914] AC 765, at p 781), where he said, in the House of Lords: "The Finance Act is a taxing statute, and if the Crown claims a duty thereunder it must show that such duty is imposed by clear and unambiguous words." In *Ormond Investment Co. v. Betts* ([1928] AC 143, at p 151), Lord

Buckmaster, although differing from the majority of their Lordships and holding that in the particular case the Crown had satisfied the burden lying upon it, described the rule as a “cardinal principle ... a principle well known to the common law that has not been and ought not to be weakened - namely, that the imposition of a tax must be in plain terms.” He added: “The subject ought not to be involved in these liabilities by an elaborate process of hair-splitting arguments.” Lord Atkinson, who agreed in the decision of the House, expressed the rule as follows (at p 162): “It is well established that one is bound, in construing Revenue Acts, to give a fair and reasonable construction to their language without leaning to one side or the other, that no tax can be imposed on a subject by an Act of Parliament without words in it clearly showing an intention to lay the burden upon him, that the words of the statute must be adhered to, and that so-called equitable constructions of them are not permissible”.

28           Before proceeding to a more detailed consideration of the provisions of the *GST Act* it is instructive to consider some aspects of the general position of liquidators.

29           When a corporation is being wound up in insolvency, the liquidator’s duty is to take into his custody or under his control all of the property to which the corporation is or appears to be entitled: s 474(1) of the *Corporations Act*. Control of the corporation concerned is removed from the hands of its director or directors and vested in the liquidator for the purposes of the winding up of the corporation in insolvency in accordance with the provisions of the *Corporations Act*: s 471A(1) of the *Corporations Act*.

30           The making of a winding up order changes the control of the affairs of a corporation but does not affect its beneficial ownership of its assets: *Commissioner of Taxation v Linter Textiles Australia Limited (In liquidation)* (2005) 220 CLR 592 at 612-613, [54]. In this regard, the position with respect to corporate insolvency differs from that which prevails in respect of the administration of an individual’s bankrupt estate. The effect of s 58(1)(a) of the *Bankruptcy Act 1966* (Cth) is that, when a debtor becomes a bankrupt either by the making of a sequestration order or upon the acceptance of a debtor’s petition by the Official Receiver, the property of the bankrupt vests forthwith in the Official Trustee or, if there be a registered trustee of the bankrupt’s estate, in that registered trustee.

31           When on 5 July 2007 this Court ordered the winding up of PMD and appointed Mr Greig as its liquidator he did not become the beneficial owner of Lot 8. Title to that Lot remained vested in the corporation. It was PMD, not its liquidator, which came to sell Lot 8. Further, insofar as PMD might be thought then to have been in the business of property

development, that business, after Mr Greig decided that it ought to be continued for a short time for the purpose of best preserving and then realising Lot 8 as an asset of that corporation, remained the business of the corporation: s 477(1)(a) of the *Corporations Act*. It did not upon liquidation become Mr Greig's business. Contrary to the submission of the Commissioner, there is no support for any contrary conclusion to be found in s 9-20 of the *GST Act*. It was no more Mr Greig's business than it was not that of the directors of PMD prior to the making of the winding up order. Indeed, I did not understand the Commissioner to suggest that, before the winding up order, s 9-20 made PMD's business that of its directors. The only business relevantly conducted by Mr Grieg was the practise of his profession as an official liquidator, which included undertaking the liquidation of PMD. As will be seen, when acting in that latter capacity, he constituted an "entity" and "you" for the purposes of the GST Act, If does not follow from his possession of that status that he is liable to GST in respect of the sale of Lot 8.

32 It is possible for a liquidator to secure from this Court or another invested with jurisdiction under the *Corporations Act* an order vesting in him in his official capacity some or all of the property of a corporation being wound up in insolvency: s 474(2) of the *Corporations Act*. However, as is noted in the definitive Australian text on corporate insolvency law, McPherson's *Law of Company Liquidation*, p 7-1053, such applications are uncommon given the wide powers conferred on liquidators by the *Corporations Act*. At least in some jurisdictions, one circumstance which might prompt a liquidator to seek such an order is a need in the course of a liquidation to lodge a caveat: *Re Application by the Liquidator of Haupiri Courts Ltd* [1969] NZLR 348; *Muroa Pty Ltd v O'Meara* (1997) 15 ACLC 1427.

33 A description, which I gratefully adopt, of the general scheme of the *GST Act* in respect of liability to GST and a summary of some presently pertinent provisions is to be found in the recent judgement of the High Court in *Commissioner of Taxation v Reliance Carpet Co Pty Ltd* (2008) 82 ALJR 968 at 970-971, [3] to [9]:

### **The GST**

3 Provision respecting the assessment and payment of the GST is made by the statute styled A New Tax System (Goods and Services Tax) Act 1999 (Cth) ("the Act"). An important point respecting the nature of the GST was made as follows by the Full Court of the Federal Court in *Sterling Guardian Pty*

Ltd v Commissioner of Taxation: (2006) 149 FCR 255 at 258:

"In economic terms it may be correct to call the GST a consumption tax, because the effective burden falls on the ultimate consumer. But as a matter of legal analysis what is taxed, that is to say what generates the tax liability (and the obligations of recording and reporting), is not consumption but a particular form of transaction, namely supply ..."

By way of contrast to the Australian system, counsel for the Commissioner referred to Art 2(1) of the first Council directive [Directive 67/227] on the harmonisation of legislation of member states of the European Community concerning turnover taxes; this indicates that VAT is a general tax on the consumption of goods and services.

4 Section 7-1 of the Act relevantly states that GST is payable on "\*taxable supplies" [The use of the asterisk is a device to alert the reader to the presence of a definition in the Dictionary to the Act]. Section 9-5 answers a question "what are taxable supplies?", posed by a hypothetical taxpayer, by stating that "you make a *taxable supply*" if, among other criteria not presently relevant, "you make the supply for \*consideration".

5 **The composite expression "a taxable supply" is of critical importance for the creation of liability to GST.** In the facts and circumstances of a given case there may be disclosed consecutive acts each of which answers the statutory description of "supply", but upon examination it may appear that there is no more than one "taxable supply".

6 The meaning of "supply" is given in s 9-10 and in addition to the general words "any form of supply" in s 9-10(1), par (d) of s 9-10(2) includes "a grant, assignment or surrender of \*real property", and "real property" is defined [In the Dictionary provision of s 195-1].expansively as including:

- (a) any interest in or right over land; or
- (b) a personal right to call for or be granted any interest in or right over land; or
- (c) a licence to occupy land or any other contractual right exercisable over or in relation to land".

Further, par (g) of s 9-10(2) includes "an entry into ... an obligation ... to do anything.

7 The term "consideration" is defined in par (a) of s 9-15(1) as including:

"any payment, or any act or forbearance, in connection with a supply of anything".

The payment, act or forbearance may be voluntary and need not be by the recipient of the supply (s 9-15(2)).

8 The amount of GST on a taxable supply is 10 per cent of "the value of the taxable supply" (s 9-70), and in the present case this was assessed as being the consideration represented by the forfeited deposit.

9 Division 29 lays down rules for the attribution to a tax period of the GST

payable on a taxable supply. The general rule (s 29-5) is that the supplier becomes liable to pay GST on the earlier of two events, namely the receipt by the supplier of any of the consideration for the taxable supply, and the issue of an invoice relating to that supply; in the present case no invoice was issued by the taxpayer and the only relevant event was the receipt of the alleged consideration.

[Emphasis added in quotation of paragraph 5; footnote references incorporated into text of quote for reasons of different style requirements]

34 Given its “critical importance for the creation of liability to GST”, it is as well to set out in full the text of s 9-5 of the GST Act:

**9-5 - Taxable supplies**

You make a *taxable supply* if:

- (a) you make the supply for \*consideration; and
- (b) the supply is made in the course or furtherance of an \*enterprise that you \*carry on; and
- (c) the supply is \*connected with Australia; and
- (d) you are \*registered, or \*required to be registered.

However, the supply is not a \*taxable supply to the extent that it is \*GST-free or \*input taxed.

35 Reading the passage quoted from *Reliance Carpet* and s 9-5, and seized with the knowledge that an order for the winding up of a corporation does not vest its property in its liquidator one might, without more, think that the answer to the question posed in this case was clear; the sale of Lot 8 could only be a supply by PMD, not by Mr Greig. That is because the “supply” of Lot 8 was, *prima facie*, made by PMD and it was that corporation, not Mr Greig, to which the consideration for the sale of Lot 8 was payable and paid under the contract.

36 This position is submitted by the Commissioner to be affected by the operation of Div 147 of the *GST Act* in a way which renders Mr Greig personally liable for the GST payable in respect of the sale of Lot 8.

37 The nature of the Commissioner’s submission is such that the whole of Division 147 should be set out:

**Division 147—Representatives of incapacitated entities**

**147-1 What this Division is about**

Representatives of incapacitated entities may be required to register for GST

purposes.

**147-5 Representatives are required to be registered**

- (1) A \*representative of an \*incapacitated entity is required to be registered in that capacity if the incapacitated entity is \*registered or \*required to be registered.
- (2) This section has effect despite section 23-5 (which is about who is required to be registered).

**147-10 Cancellation of registration of a representative**

- (1) The Commissioner must cancel the \*registration of a \*representative of an \*incapacitated entity if the Commissioner is satisfied that the representative is not \*required to be registered in that capacity.

Note: Cancelling the registration of a representative under this subsection is a reviewable GST decision (see Subdivision 110-F in Schedule 1 to the Taxation Administration Act 1953).

- (2) The Commissioner must notify the \*representative of the cancellation.
- (3) Sections 25-50 and 25-55 do not apply to the cancellation of the \*registration of a \*representative of an \*incapacitated entity.

**147-15 Notice of cessation of representation**

A \*representative who ceases to be a representative of an \*incapacitated entity must notify the Commissioner of that cessation, in the \*approved form, within 21 days after so ceasing.

**147-20 Adjustments**

- (1) If:
  - (a) an \*adjustment relates to a supply, acquisition or importation that an \*incapacitated entity made before a \*representative of the incapacitated entity was appointed; and
  - (b) the adjustment arises after that appointment; and
  - (c) in the case of an \*increasing adjustment—the representative gives the Commissioner written notice that:
    - (i) states that the adjustment has arisen in these circumstances; and
    - (ii) specifies the amount of the adjustment;the adjustment is to be treated as if:
    - (d) the representative did not have the adjustment; and
    - (e) the incapacitated entity had the adjustment.
- (2) This section has effect despite section 17-10 (which is about the effect of adjustments on net amounts).

**147-25 Tax periods of representatives**

- (1) If a \*representative of an \*incapacitated entity is required to be registered in that capacity, the tax periods applying to the representative in that capacity are the same tax periods that apply to the incapacitated entity.
- (2) This section has effect despite Division 27 (which is about how to work out the tax periods that apply).

38 In the *GST Act* the headings of divisions and sections and the explanatory sections also form part of the Act: s 182-1. The first thing one notices about these on a perusal of Div 147 is that there is nothing about them which alerts the reader to the prospect that Div 147 is effecting a fundamental change either to the prevailing general company law position in relation to the absence of personal liability of liquidators for the post liquidation debts of a corporation or, more particularly, to the usual position under the *GST Act* which is that the person who makes a supply is the one liable to GST. Section 147-1 merely informs the reader that Div 147 is “about” a requirement on the part of “representatives” of “incapacitated entities” to register.

39 A convoluted definitional path that commences with s 195-1 of the *GST Act* and ends with s 6(1) of the *Income tax Assessment Act 1936* (Cth) establishes that the liquidator of a company is one of those who is a “representative”. An “incapacitated entity” is defined by s 195-1 of the *GST Act* thus:

“*incapacitated entity*” means:

- (a) an individual who is a bankrupt; or
- (b) an entity that is in liquidation or receivership; or
- (c) an entity that has a \* representative.

40 A body corporate falls within the definition of “entity” for the purposes of the *GST Act*: ss 195-1 and 184-1. An individual such as Mr Greig may, definitionally, also be an “entity”. In the *GST Act*, if a provision uses the expression “you”, it applies to entities generally, unless its application is expressly limited: definition, s 195-1.

41 It may be accepted, as the Commissioner submitted, that s 184-1(3) contemplates that a legal person may act in different capacities and constitute a different “entity” for *GST Act* purposes in each of those capacities. That subsection does not though mean that other attributes which do not under the general law attend that legal person acting in that capacity attend that person for the purposes of the *GST Act*. For example, even allowing for the impact of s 184-1(3), that does not mean that the entity which by sale “supplied” Lot 8 was anything other than PMD.

42 An initial impression of the end to which Div 147 is directed is not challenged by a cursory perusal of the text of the sections within Div 147 of the *GST Act*. None of them expressly state that, after the winding up of a company has commenced, a liquidator is, for

the purposes of the *GST Act*, taken to make a supply when an asset of the corporation is disposed of or to make an acquisition when a corporation purchases goods or services in the course of its winding up. In this regard, the language of Div 147 might be contrasted with that of Sub-div 153-B of the *GST Act*, which is concerned with the GST position of principals and agents. It allows, inter alia, principals and agents to make an arrangement whereby the agent will be treated as making supplies to third parties or acquisitions from third parties: s 153-50 *GST Act*. Where, for example, a supply is made by a principal to a third party and such an arrangement is in place, the supply that is made falls within the terms of that arrangement and both principal and agent are registered for the purposes of the *GST Act*, the taxable supply that the principal makes to the third party through the agent is taken to be a supply that is a taxable supply made by the agent to the third party, and not by the principal: s 153-55(1) *GST Act*. Like provision is made by s 153-60 in relation to acquisitions.

43 It is instructive to set out the text of ss 153-55 and 153-60 to highlight the elaborate way in which, by deeming, they achieve the end of making a person who has not otherwise in law made a supply or, as the case may be, an acquisition to have made a taxable supply or an acquisition for the purposes of the *GST Act*. They provide:

**153-55 The effect of these arrangements on supplies**

- (1) A \*taxable supply that the principal makes to a third party through the agent is taken to be a supply that is a taxable supply made by the agent to the third party, and not by the principal, if:
  - (a) the supply is of a kind to which the arrangement applies; and
  - (b) the supply is made in accordance with the arrangement; and
  - (c) both the principal and the agent are \*registered.
- (2) In addition, the principal is taken to make a supply that is a \*taxable supply to the agent. This supply is taken:
  - (a) to be a supply of the same thing as is supplied in the taxable supply (the agent's supply) that the agent is taken to make; and
  - (b) to have a \*value equal to 10/11 of the amount that is payable to the principal by the agent in respect of the agent's supply.

The agent is taken to make a corresponding \*creditable acquisition from the principal.

- (3) If the principal pays, or is liable to pay, an amount, as a commission or similar payment, to the agent for the agent's supply to the third party:
  - (a) for the purpose of paragraph (2)(b), the amount payable by the agent to the principal is taken to be reduced by the amount the principal pays, or is liable to pay, to the agent; and
  - (b) the supply by the agent to the principal, to which the principal's payment or liability relates, is not a \*taxable supply.
- (4) However, this section no longer applies, and is taken never to have applied, if the principal issues to the third party, in the principal's own name, any \*tax

invoice or \*adjustment note relating to the supply.

- (5) This section has effect despite section 9-5 (which is about what are taxable supplies), section 9-75 (which is about the value of taxable supplies) and section 11-5 (which is about what are creditable acquisitions).

**153-60 The effect of these arrangements on acquisitions**

- (1) An acquisition that the principal makes from a third party through the agent is taken to be a \*creditable acquisition made by the agent from the third party, and not by the principal, if:
- (a) the acquisition is of a kind to which the arrangement applies; and
  - (b) the acquisition is made in accordance with the arrangement; and
  - (c) both the principal and the agent are \*registered.
- (2) In addition, the agent is taken to make a supply that is a \*taxable supply to the principal. This supply is taken:
- (a) to be a supply of the same thing as is acquired in the \*creditable acquisition (the agent's acquisition) that the agent is taken to make; and
  - (b) to have a \*value equal to 10/11 of the amount that is payable to the agent by the principal in respect of the agent's acquisition.

The principal is taken to make a corresponding acquisition from the agent, and the acquisition is taken to be a creditable acquisition if, apart from this section, the principal's acquisition from the third party would have been a creditable acquisition.

- (3) If the principal pays, or is liable to pay, an amount, as a commission or similar payment, to the agent for the agent's acquisition from the third party:
- (a) for the purpose of paragraph (2)(b), the amount payable by the principal to the agent is taken to be increased by the amount the principal pays, or is liable to pay, to the agent; and
  - (b) the supply by the agent to the principal, to which the principal's payment or liability relates, is not a \*taxable supply.
- (4) This section has effect despite section 11-5 (which is about what are creditable acquisitions), section 11-10 (which is about what are acquisitions), section 9-5 (which is about what are taxable supplies) and section 9-75 (which is about the value of taxable supplies).

The presence of such elaborate, direct provision in Division 153-B of the GST Act stands in marked contrast to the absence of any similar provision in Division 147 whereby, for example, a representative who has not in law made a supply is nonetheless taken to have made a taxable supply for the purposes of the GST Act.

44 The Commissioner's submission is that a more detailed study of ss 147-20 and 147-25 in the context of the *GST Act* as a whole reveals an intention to subject all representatives of incapacitated entities to personal liability for GST.

45 Section 147-20 modifies the general effect of s 17-10 of the *GST Act*, which is concerned with the effect of adjustments on net amounts. In essence, the Commissioner's submission is that the words "the adjustment is to be treated as if the representative did not have the adjustment" in s 147-20(1)(d) of the *GST Act* carry with them the necessary

implication that, after his appointment, it is the representative who, for the purposes of s 9-5 of the GST Act, is to be taken to carry on the incapacitated entity's enterprise, to make the supplies of that incapacitated entity and likewise, for the purposes of s 11-20 of the GST Act, to make that entity's creditable acquisitions. A similar implication is said to underpin and to explain s 147-25 of the GST Act.

46 The Commissioner's further submission is that, in the event that there is any doubt about a liquidator's personal liability after appointment being implicit in ss 147-20 and 147-25, that doubt is resolved in favour of subsection to personal liability by recourse pursuant to s 15AB of the *Acts Interpretation Act 1901* (Cth) to statements made in the explanatory memorandum to the Bill in respect of those clauses which became Div 147. These state:

**REPRESENTATIVES FOR INCAPACITATED ENTITIES – DIVISION 147**

6.271 If you are registered and you become bankrupt, or go into receivership or liquidation, the person who conducts your enterprise on your behalf is, generally, personally carrying on the enterprise. This person (the representative) could be a trustee in bankruptcy, receiver, receiver and manager or a liquidator – section 195-1. The Administration Act provides for what happens to your GST liabilities if you die.

**Liability**

6.272 The representative is personally liable for the GST payable and for the other requirements of the Bill. The representative is liable from the date on which he or she becomes entitled to act for you (the principal) until he or she ceases to be so entitled. The representative is liable for GST, entitled to input tax credits and has any adjustments attributable to that period.

6.273 During that period the effect of Division 147 is that the representative rather than the principal is carrying on the enterprise. The representative is not personally liable for GST attributable before he or she becomes entitled to act for the principal.

47 An assertion as to its meaning and effect in an explanatory memorandum circulated by or with the authority of the Minister introducing a Bill into Parliament, like the Second Reading Speech in respect of that Bill, is not a substitute for the language employed by the Parliament in the Bill as enacted: *Re Bolton; ex parte Beane* (1987) 162 CLR 514, at 518; *Director of Public Prosecutions (Victoria) v Le* (2007) 232 CLR 562 at 573, [29] and 586, [85]. It is the duty of the courts to construe enactments, not to make them. If, truly, the language of an enactment does not translate into law a meaning and effect that one might

apprehend from secondary materials was intended it is for the Parliament to rectify that by further legislative provision.

48           The statement in para 6.271 of the explanatory memorandum as to who carries on an enterprise after bankruptcy, receivership or liquidation is true only of bankruptcy. It is not true of corporations which are placed in liquidation. Neither is it true of a privately appointed receiver. Subsection 419(1) of the *Corporations Act* intrudes to the extent of making a receiver liable for debts incurred in the course of the receivership “for services rendered, goods purchased or property hired, leased, used or occupied” but the business of a corporation to which a receiver is appointed nonetheless remains that of the corporation. Such errors hardly, with respect, inspire confidence in the utility of the explanatory memorandum. The description in the explanatory memorandum is not matched by the language employed within Div 147 as enacted.

49           Within Div 147 of the *GST Act*, ss 147-20 and 147-25 are ancillary to s 147-5. The latter requires an incapacitated entity’s representative to be registered if that entity was either registered or required to be registered. It imposes that requirement “despite” s 23-5: s 147-5(2). Subject to the meeting of a presently immaterial turnover threshold, s 23-5 of the *GST Act* imposes a requirement on the person carrying on an enterprise to be registered. It is quite possible to read s 147-5 and s 23-5 as together carrying with them an acknowledgement that, even though a representative does not carry on the incapacitated person’s enterprise, the representative is nonetheless required to be registered. It is a larger and more difficult thing to construe s 147-5 as carrying with it the implication that the representative is to be deemed to be carrying on that incapacitated person’s enterprise and making its supplies and acquisitions.

50           Section 147-25(2) provides that the section has effect despite Div 27. Within Div 27, s 27-40(1)(b) is noteworthy because, alone amongst those other provisions of the *GST Act* despite which various provisions of Div 147 of the *GST Act* are expressed to apply, it makes express reference to liquidation. It provides:

**27-40 An entity’s concluding tax period**

- (1) If:
  - (a) an individual dies or becomes bankrupt; or
  - (b) any other entity goes into liquidation or receivership or for any reason ceases to exist;

the individual's or entity's tax period at the time is taken to have ceased at the end of the day before the death, bankruptcy, liquidation or receivership.

- (1A) If an entity ceases to \*carry on any \*enterprise, the entity's tax period at the time is taken to have ceased at the end of the day on which the cessation occurred.
- (2) If an entity's \*registration is cancelled, the entity's tax period at the date of effect of the cancellation (the cancellation day) ceases at the end of the cancellation day.

51 Section 147-25(1) makes the tax period of a representative the same as that of the incapacitated entity. Tax periods are important in terms of the accounting for and payment of GST because it is the "net amount" (GST less input tax credits) as ascertained for a given tax period which must, as the case may be, either paid to the Commissioner or refunded or credited by him: s 17-5 and Div 33 of the GST Act.

52 One reading of the statement in s 147-25(1) that a representative's tax periods are to be the same as those of the incapacitated entity is that it assumes that the incapacitated entity will continue to have tax periods after, materially, going into liquidation. Paragraph 27-40(1)(b) provides to the contrary but s 147-25(2) provides that s 147-25 has effect despite, that is to the exclusion of, Division 27, which includes s 27-40. Another reading of s 147-25 is that it is meant to complement a provision which deems a representative to carry on an incapacitated person's enterprise and to make its supplies and acquisitions even though that representative may not do this under the general law. The difficulty is that there is no such provision in Division 147.

53 Section 27-40 of the *GST Act* is also fraught with internal contradictions of its own. On the one hand, materially, it provides that going into liquidation concludes an entity's tax period while on the other it provides that, where an entity carries on an enterprise, its tax period does not end until the day on which cessation of the enterprise occurs. Where the business of a company in liquidation is carried on for a time so as best to effect an orderly realisation of assets, that business will necessarily survive beyond the date when a winding up order is made. Dispensing with these contradictions makes construing s 147-25(1) such that a representative's tax periods are the same as those of the incapacitated entity on the basis that the incapacitated entity will continue to have tax periods after, materially, going into liquidation attractive.

54 A feature of Div 147, in contrast to s 153-55(5) of the GST Act, is the conspicuous absence within it of any reference to s 9-5 of the *GST Act*. Yet in its delineation of what is a “taxable supply” s 9-5 is a, if not the, pivotal provision within the *GST Act*. For s 9-40 of the *GST Act* makes a person liable on any “taxable supply” which they make. Absent the making of a “taxable supply” there is no liability to GST when a “supply” is made.

55 To note this particular absence of s 9-5 reference quality in Div 147 is to note a resemblance between the provision in s 147-5 of the GST Act for the registration of representatives of incapacitated persons and the position which prevailed under the *Goods and Services Tax Act 1985* (NZ) (the NZ GST Act) as originally enacted. Subsection 58(1) of the NZ GST Act originally allowed the Commissioner for Inland Revenue to deem such persons to be registered. Section 58 of the NZ GST Act was amended in 1992 by s 11 of the *Goods and Services Tax Amendment Act (No 2) 1992* (NZ) so as to substitute a new subsection 1 and, tellingly, to add a new subsection, s 58(1A) which provided, materially that, “*For the purposes of this Act ..., where any person becomes a specified agent [defined so as to include a liquidator] that person shall ... be deemed to be a registered person carrying on the taxable activity of the incapacitated person during [the agency period] and the incapacitated person shall during that period be deemed not to be carrying on that taxable activity*”. Section 58 of the NZ GST Act has since been further amended so as to remove an anomaly in the operation of this subsection exposed in *Case W59* (2004) 21 NZTC 11,551 (Willy DCJ constituting the Taxation Review Authority). Perhaps surprisingly, given the affinities between New Zealand’s GST regime and Australia’s, Div 147 contains no equivalent to s 58(1A) of the *NZ GST Act*.

56 *Cooper Brookes (Wollongong) Pty Ltd v Commissioner of Taxation* (1980-1981) 147 CLR 297 was referred to in the course of the Commissioner’s submissions as providing an alternative basis upon which to find that a liquidator was personally liable for post liquidation supplies. No doubt if the literal meaning of any of the provisions within Div 147 produced an irrational or absurd result this case might be called in aid so as to prefer an alternative construction, especially if that construction was evidently intended by an amending Act having regard to the history of the legislation. The difficulty here though is not with the literal meaning of statutory provisions but with the complete absence of basal deeming provisions necessary to achieve the end of rendering a liquidator personally liable in a way which is

contrary to the position prevailing under both the general law and the ordinary position under s 9-5.

57           Within the GST Act it is s 9-5, not any of those in Div 147, which is the leading provision. The elements within s 9-5 are cumulative. To require a liquidator to register is to bring that official within but one of the four elements that cumulatively comprise a “taxable supply”, so far as a post liquidation sale of property of the corporation is concerned. The registration requirement does not carry with it the other three. To regard Div 147 as achieving this is to give its provisions a weight that their language cannot bear, especially so as to create a counter intuitive taxation liability on the part of a liquidator.

58           As the GST Act presently stands, the effect of requiring a liquidator of a corporation to register will be that any supplies which the liquidator makes in that “representative” capacity in the event that any property of the corporation is ordered to be vested in him will become a “taxable supply” by him in that capacity; otherwise the disposal of the property of a corporation, insofar as that constitutes a supply for the purposes of the GST Act, will remain a taxable supply by the corporation and have to be accounted for and paid by it accordingly.

59           In the result then my conclusion is that Mr Grieg is not liable for the GST payable in respect of the sale of Lot 8. It necessarily follows that he has no liability for general interest charge. The reasons for that conclusion largely reflect the submissions made on his behalf. These, in turn, adopted an analysis to be found in the article by Messrs Anderson and Morrison referred to in paragraph 24 above. I note in passing that clause 9 in the special conditions, the GST clause in the sale contract, appears to have been drawn on just such an understanding of the position that would prevail in respect of liability to GST.

60           The GST in respect of the sale of Lot 8 being a post liquidation debt of PMD, it enjoys the payment priority for which s 556(1)(a) of the *Corporations Act* provides. It is but one of a number of equal ranking post liquidation debts. That it happens to be a revenue debt does not these days give it any separate or special priority or subject the available amount for distribution to any charge in favour of the Commonwealth. Mr Greig has deposed that the total amount of priority payments to which s 556(1)(a) of the *Corporations Act* applies is \$232,824.31. That exceeds the amount available for distribution which is \$168,065.91. In these circumstances s 559 of the *Corporations Act* dictates that the liquidator must effect

proportionate payment. The amount of the proportionate payment will be affected by such liens, if any, as may be enjoyed by Mills Oakley or another creditor.

61 The Deputy Commissioner's cross-claim should be dismissed. I propose to make the following declarations and orders in respect of the application brought by Mr Greig as liquidator and the Commissioner's cross claim:

1. A declaration that the liquidator is not personally liable to the Deputy Commissioner of Taxation for GST or any related general interest charge on the sale of Lot 8 under the sale contract of 27 August 2008.
2. A declaration that PMD is liable for the GST on the sale of Lot 8 under that sale contract.
3. A declaration that the GST on the sale of Unit 8 under that sale contract falls within the category of costs and expenses to be applied in accordance with and under s 556(1)(a) of the *Corporations Act 2001*.
4. A direction that the GST on the sale of Lot 8 under that sale contract and other expenses under s 556(1)(a) of the *Corporations Act* be paid proportionately by the liquidator (subject to any liens in favour of Mills Oakley or other creditors under s 556(1)(a) of the *Corporations Act*) pursuant to s 559 of that Act.
5. An order that the Deputy Commissioner of Taxation pay the liquidator's costs of and incidental to the liquidator's application and the Deputy Commissioner's cross claim.

I certify that the preceding sixty-one (61) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Logan.

Associate:

Dated: 12 December 2008

Counsel for the Applicant: Mr Gotterson QC  
Counsel for the Applicant: Ms Conway  
Solicitor for the Applicant: Australian Government Solicitor  
Counsel for the Respondent: Mr Stewart SC  
Counsel for the Respondent: Mr Wilkins  
Solicitor for the Respondent: Mills Oakley Lawyers  
Date of Hearing: 1 December 2008  
Date of Judgment: 12 December 2008