



## Summary of Judgment

*In the Matter of Kornucopia Pty Ltd (No 3) [2019] VSC 821*

16 December 2019

The Hon. Justice Sifris is presiding over a winding up application made in relation to three companies, Kornucopia Pty Ltd (**Kornucopia**), Efektiv Pty Ltd (**Efektiv**) and Avant-Garde Ventures Pty Ltd (**AGV**) (collectively, the **Companies**).

### Background

Kornucopia is the tenant of an apartment owned by Jeffrey Chen (**Chen**) and located in Docklands, Victoria. The Companies appear to be in the business of leasing apartments in the Southbank or Docklands areas from landlords, like Chen, and then subletting or licensing those apartments to others. Many landlords, including Chen, have not been paid and have commenced proceedings against the Companies in the Victorian Civil and Administrative Tribunal. The Companies have been and are engaged in substantial litigation in multiple jurisdictions within Victoria. Madgwicks Lawyers (**Madgwicks**) are a firm of solicitors which had previously been retained by Efektiv and AGV, having ceased acting in April 2019. They contend that invoices they issued on Efektiv and AGV, pertaining to services rendered, have also not been paid.

The Kornucopia proceeding was commenced on 21 June 2019. The Efektiv and AGV proceedings were commenced on 10 July 2019. In each, the Companies had not complied with various procedural orders, and had sought various extensions and adjournments. Relevantly, the Companies were ordered to file material relating to solvency by close of business on Tuesday, 10 December 2019. That order also was not complied with. A directions hearing was held on Thursday, 12 December 2019 to determine whether to proceed to trial on the following Monday, 16 December 2019. The material, not having been filed, caused Senior Counsel for the Companies to submit that the trial should preferably commence early in the new year and that the Companies be permitted to file evidence of solvency. His Honour rejected that submission.

### Decision

Justice Sifris referred to a number of matters that his Honour considered relevant to this decision. These included:

- a) The Court will take care to ensure that a party has the opportunity to present their case effectively. However, the Court will also take account of whether that party has failed to comply with previous procedural orders, the reason given for the adjournment, and the effect of the adjournment, not just on the parties but on other parties to other litigation before the Court.

- b) There is a need to maintain public confidence in the judicial system and the rule of law. Permitting undue delay to occur and wasted costs to be suffered can undermine that confidence.
- c) The time of the Court is a publicly funded resource. Inefficiencies in the use of that resource, arising from the vacation or adjournment of trials, are to be taken into account.
- d) The statutory winding up regime contemplates that applications to wind up insolvent companies should be dealt with promptly. This is to avoid injustices that may be caused by the continued trading of such companies in circumstances where they may not be able to satisfy any debts they incur. In this case, the Companies are tenants in a substantial number of properties in the Docklands area. They will continue to accrue rental liabilities and there is a question as to whether they can pay those debts.

His Honour set out the procedural history of this proceeding. That history showed that there had been various delays, adjournments and extensions of time so as to permit the Companies to file their evidence of solvency. Insufficient explanations were given for the various delays. Declining any further extension, and proceeding with the trial, Justice Sifris said the following:

The Companies have not been ‘shut out’ from presenting their case, as Senior Counsel put it. The Companies have been provided with multiple indulgences, extensions and adjournments, many of which, could rightly have been refused. At a certain point there can be no further delays. The flagrant attitude exhibited by the Companies to this litigation, and associated lack of any cogent reason for such extension and adjournment, justifies this all the more so. In modern litigation, there is strong public interest in favour of the efficient utilisation of the Court’s resources. There is a further public interest in the prompt determination of winding up proceedings, as to avoid the risk (which is unavoidable in this case) of a company which may be insolvent from incurring liabilities which it is unlikely to satisfy. The trial, in each case, will proceed on all issues, on 16 December 2019. A review of the procedural history and the cases makes for an entirely compelling case for there to be no further delays.

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**NOTE:** This summary is necessarily incomplete. It is not intended as a substitute for the Court’s reasons or to be used in any later consideration of the Court’s reasons. The only authoritative pronouncement of the Court’s reasons and conclusions is that contained in the published reasons for judgment.