

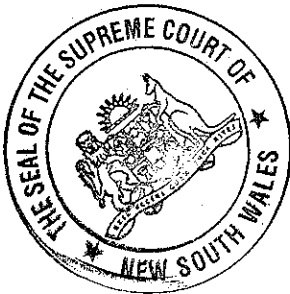
IN THE SUPREME COURT
NEW SOUTH WALES
SYDNEY REGISTRY
EQUITY DIVISION
CORPORATIONS LIST

No. *6041* of 2005

IN THE MATTER OF HERITAGE FINE WINES PTY LTD (IN LIQUIDATION)
(ACN 093 310 715)

ORIGINATING PROCESS

NICHOLAS JAMES DAVID CROUCH
First Plaintiff



HERITAGE FINE WINES PTY LTD (IN LIQUIDATION)
(ACN 093 310 715)
Second Plaintiff

JOHN ABELL and the persons named in the First Schedule
1 to 2910 Defendants

PETER NGAN
2911 Defendant

A. DETAILS OF APPLICATION

This application is made by the Receiver and Manager of wine over which Heritage Fine Wines Pty Ltd (in liquidation) ("Heritage") is bailee and the liquidator of Heritage seeking declarations and orders as to title to wine and distribution of wine, future storage of wine deals with liens and charges associated with unpaid levies, the sale and delivery of investor wine and unpaid storage and insurance costs owing to the Second Plaintiff by investors.

On the facts stated in the supporting Affidavit of Nicholas James David Crouch sworn 23rd November 2005, the Plaintiffs claim:

Barcoded Wine

1. A declaration that wine in the possession of the First and Second Plaintiff has been ascertained with title passing to investors of investor wine as to 47,476 bottles by reason of

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barcoding on packaging of such investor wine that reconciles to investor wine claims and company records being with respect to the wine set out in Exhibit **NJDC5** to the Affidavit of Nicholas James David Crouch sworn 24 November 2005.

2. An order the First Plaintiff distribute in specie the 47,476 barcoded bottles of investor wine to the investors as set out in Exhibit **NJDC5** to the Affidavit of Nicholas James David Crouch sworn 24 November 2005 subject to claims for any unpaid levies, storage and insurance owing to the Second Plaintiff and reasonable on-storage, delivery and sale costs pursuant to elections made by the relevant investors.
3. A declaration that wine in the possession of the First and Second Plaintiff has been ascertained with title passing to the Second Plaintiff as to 4,387 bottles by reason of barcoding on packaging of such wine that does not reconcile to investor wine claims being with respect to the wine set out in the relevant parts of Exhibit **NJDC5** to the Affidavit of Nicholas James David Crouch sworn 24 November 2005.
4. An order the First Plaintiff distribute in specie the 4,387 bottles of unclaimed barcoded wine to the Second Plaintiff as property of the company.

Exhaustion

5. A declaration that wine precisely reconciling to investor wine claims and the company records being with respect to the wine set out in the relevant parts of exhibits **NJDC2** and **NJDC6** to the Affidavit of Nicholas James David Crouch sworn 24 November 2005 has been ascertained pursuant to the concept of exhaustion and title in such wine has passed to the relevant investors.
6. An order the First Plaintiff distribute in specie the bottles of investor wine to the investors as set out in the relevant parts of Exhibit **NJDC2** to the Affidavit of Nicholas James David Crouch sworn 24 November 2005 where investor claims to such wine match wine available in warehouses and company records subject to claims for any unpaid levies owing to the First Plaintiff, storage and insurance owing to the Second Plaintiff and reasonable on-storage, delivery and sale costs pursuant to elections made by the relevant investors.

Company Stock

7. A declaration that the wine that is in the warehouses purchased by the Second Plaintiff for tasting and retail sale purposes and wine exceeding total investor claims for that wine label as set out in exhibits **NJDC9** and **NJDC10** to the Affidavit of Nicholas James David Crouch

sworn 24 November 2005 has been ascertained and title in that wine has passed to the Second Plaintiff.

8. An order the First Plaintiff distribute in specie the bottles of investor wine to the Second Plaintiff as set out in Exhibit **NJDC9** and **NJDC10** to the Affidavit of Nicholas James David Crouch sworn 24 November 2005.

Wine Shortfalls

9. A declaration that the wine set out in the relevant parts of Exhibit **NJDC2** and **NJDC3** to the Affidavit of Nicholas James David Crouch sworn 24 November 2005 being wine stored by the Plaintiffs at various warehouses controlled by the First Plaintiff and purchased by the investors that is subject to shortfalls between investor claims to such wine and the wine available to investors, which shortfalls have been apportioned on a pro-rata basis pursuant to the directions of this court made 18 November 2005, has been ascertained or is ascertainable and that the property in this wine has passed to the investors as set out in the relevant parts of the report being Exhibit **NJDC1** to the Affidavit of Nicholas James David Crouch sworn 24 November 2005.
10. An order the First Plaintiff distribute in specie the bottles of investor wine to the extent of an entitlement to a whole bottle to investors as set out in the relevant parts of Exhibits **NJDC1** and **NJDC3** to the Affidavit of Nicholas James David Crouch sworn 24 November 2005.
11. An order that to the extent that any of the wine listed in Exhibit **NJDC2** to the Affidavit of Nicholas James David Crouch sworn 24 November 2005 is recovered subsequent to 12 December 2005, the First Plaintiff is justified in allocating the wine to the investors and/or the company and distributing such wine to investors with losses apportioned on a pro-rata basis subject to payment by the investor of any costs associated with the recovery of the wine, receiver costs, unpaid levies and upon payment of on-storage, delivery and selling costs pursuant to the elections of the investors.

Total Loss

12. A declaration that the investors set out in Exhibit **NJDC7** to the Affidavit of Nicholas James David Crouch sworn 24 November 2005 have no claim to the wine under the control of the First Plaintiff and are limited to lodging of a proof of debt in the liquidation of Heritage Fine Wines Pty Limited (in liquidation).

13. A direction that the First Plaintiff repay all levies paid by investors receiving no wine or where a shortfall of wine has resulted in some bottles of that label of wine not being provided to investors unless a cash payment is made to an investor in relation to a bottle of wine.

Proofs of Debt

14. An order that the First Plaintiff in his capacity as liquidator accept proofs of debt in the liquidation of the Second Plaintiff without the need for formal lodgement of a proof of debt form or adjudication with respect to:
 - a. All claims to investor wine where an investor has not received wine in specie as claimed for a sum equivalent to the price paid by an investor for such wine;
 - b. All levies paid by investors.

Fractions of Bottles

15. An order that the First Plaintiff sell the investor wine that is incapable of allocation to an investor by reason of an entitlement being less than a full bottle as determined by the First Plaintiff's final reconciliation.
16. An order that the First Plaintiff pay the net proceeds of sale of such wine to the relevant investors subject to any receivers costs, sale costs and any unpaid levies owing to the First Plaintiff, storage and insurance owing to the Second Plaintiff including reasonable on-storage fees.

Recoveries

17. A direction that the First Plaintiff is justified in seeking to recover the wine referred to in Exhibit **NJDC17** to the Affidavit of Nicholas James David Crouch sworn 24 November 2005.
18. A declaration that the wine as set out in Exhibit **NJDC20** to the Affidavit of Nicholas James David Crouch sworn 24 November 2005 in the possession of the 2911th Defendant is the property of the investors set out in Exhibit **NJDC8** to the Affidavit of Nicholas James David Crouch sworn 24 November 2005.
19. An order that within 7 days of the date of these orders the 2911th Defendant deliver up the Plaintiff the wine referred to in Exhibit **NJDC20** to the Affidavit of Nicholas James David Crouch sworn 24 November 2005.
20. An order that any entitlement on the part of the 2911th Defendant be referred to an Associate Judge for the taking of accounts.

21. An order that the First Plaintiff or his nominee is entitled to recover reasonable costs and disbursements associated with the delivery or sale of investor wine and is granted a lien and first ranking priority over the wine or proceeds of sale of the wine subject to payment of such costs by the investors.
22. A direction that the First Plaintiff in his capacity as liquidator of the Second Plaintiff is authorised to recover from the investors or out of the proceeds of sale of the investor wine unpaid storage and insurance owing by investors to the Second Plaintiff prior to releasing the investor wine to investors and granting a lien and first ranking priority to the First Plaintiff in his capacity as liquidator of the Second Plaintiff in respect to such outstanding storage costs and insurance.

Sale Of Investor Wine & Payment Of Proceeds Into Court

23. An order that to the extent investors remain uncontactable by 31 January 2006, the First Plaintiff be entitled to sell the investor wine and deduct any unpaid levies, unpaid storage and insurance owing to the Second Plaintiff and reasonable sale costs from the whole of the funds received and pay the balance of those monies into court.

Final Levy

24. An order that a final levy be imposed on investors of wine over which the First Plaintiff is appointed receiver and manager, up to an amount of \$1.75 per bottle (inclusive of GST) to discharge receivership costs ("the final levy").

Approval Of Remuneration & Expenses

25. An order that the additional Receiver & Manager's fees for the period 8 October 2005 to 22 November 2005 in the amount of \$507,249.38 (inclusive of GST) be approved and paid as a cost of the receivership and that such sum be paid out of the investors levy as raised pursuant to the order contained in paragraph 1 of these orders.
26. An order that third party expenses incurred by the First Plaintiff as receiver and manager comprising:
 - a. insurance
 - b. storage fees
 - c. advertising
 - d. postage and couriers

- e. collection costs
- f. legal fees
- g. wine relocation costs
- h. stocktake costs
- i. security
- j. meeting costs
- k. computer expenses and IT consulting
- l. phone, fax and internet
- m. printing and stationery

in the total amount of \$442,075.99 (inclusive of GST) be approved and paid as a cost of the receivership and that such sum be paid out of the final levy raised pursuant to the order contained in paragraph 24 of these orders.

27. A direction that the First Plaintiff be reimbursed from the final levy for third party expenses paid by him totalling \$29,910.03 (forming part of the total expenses incurred and referred to in paragraph 26 of this Application) as directed by the First Plaintiff.

Sale of Business

28. A declaration that the First Plaintiff in his capacity as liquidator of the Second Plaintiff is entitled to sell the residual storage business of the Second Plaintiff and apply the proceeds of sale as an asset in the liquidation of the Second Plaintiff.
29. A direction that the First Plaintiff is justified in entering into a contract for sale of the residual storage business pursuant to the terms of a Heads of Agreement being **Exhibit NJDC45** to the Affidavit of Nicholas James David Crouch sworn 24 November 2005.

Distribution of Wine

30. Upon an election by investors for
- (a) storage by Cellarit Pty Ltd with a view to subsequent sale of the wine by Cellarit Pty Ltd at rates as may be agreed between the investor and Cellarit Pty Ltd.
 - (b) storage by Cellarit Pty Ltd with a view to subsequent delivery of the wine by Cellarit Pty Ltd of an estimated cost of \$6.00 per dozen plus delivery charges and transit insurance of 1%.

- (c) storage by Cellarit Pty Ltd with a view to ongoing storage of the wine by Cellarit Pty Ltd of an estimated cost of between \$1.50 and \$1.80 per dozen per month plus insurance.
- (d) storage by Cellarit Pty Ltd with a view to subsequent delivery by the receiver at an estimated cost of \$4.00 - \$10.00 per bottle plus insurance.

the First Plaintiff will have thereby have distributed the wine to the relevant investor.

- 31. Pursuant to investor elections, an order that Cellarit Pty Ltd be responsible for the on-storage, sale and delivery of all investor wine on and from the latter of the date of these orders or the third party's and First Plaintiff's completion of an audit of the Plaintiff's wine reconciliation.
- 32. In the event an investor fails to make an election in writing or otherwise complete forms provided by the First Plaintiff within 28 days from service of the election form, the wine is to be held in storage for a further period of 1 month to enable the First Plaintiff to exercise reasonable endeavours to contact the investor and an election to be made, failing which the First Plaintiff is to sell the wine and discharge from the whole of the funds received the sale costs and receiver's costs together with unpaid levies, storage and insurance with the balance to be paid to the relevant investor.

Henschke Cranes Chardonnay

- 33. Subject to elections by investors, an order that the First Plaintiff apply 171 bottles of **1998** Henschke Cranes Chardonnay toward claims by investors to 188 bottles of **1999** Henschke Cranes Chardonnay and otherwise apportion losses on a pro rata basis.

Penfolds Adelaide Hills Chardonnay

- 34. Subject to elections by investors, an order that the First Plaintiff apply 153 bottles of **1998** Penfolds Adelaide Hills Chardonnay toward claims by investors to 103 bottles of 1998 Penfolds Adelaide Hills Chardonnay and 96 bottles of **1999** Penfolds Adelaide Hills Chardonnay with shortfalls to be apportioned on a pro-rata basis.

Penfolds Adelaide Hills Semillon

- 35. Subject to elections by investors, an order that that the First Plaintiff apply 224 bottles of **1998** Penfolds Adelaide Hills Semillon and 1 bottle of **1999** Penfolds Adelaide Hills Semillon toward claims by investors to 117 bottles of 1998 Penfolds Adelaide Hills Semillon and 168 bottles of **1999** Penfolds Adelaide Hills Semillon with shortfalls to be apportioned on a pro-rata basis.

Mouthpiece Wines Troy Kalleske Shiraz

36. Subject to elections by investors, an order that the First Plaintiff cause 16,904 unlabelled bottles of 2004 Mouthpiece Wines Troy Kalleske Shiraz to be labelled at an estimated charge of \$1.50 per bottle for labelling and capping and raise a special levy to cover this cost to be paid by all investors receiving bottles of 2004 Mouthpiece Wines Troy Kalleske Shiraz.
37. Subject to elections by investors, an order that the First Plaintiff distribute 16,904 bottles of wine as labelled to investor claims to 29,087 bottles of the 2004 Mouthpiece Wines Troy Kalleske Shiraz apportioning losses on a pro-rata basis.

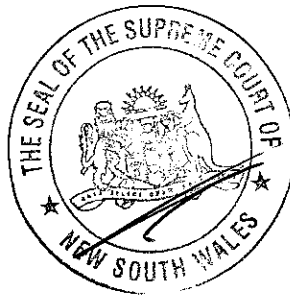
2001 Gilbert Siding Vintners Erebus Shiraz

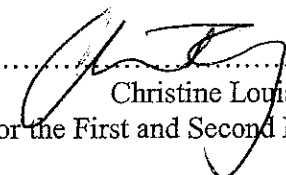
38. Subject to elections by investors, an order that the First Plaintiff cause the sum of up to \$25,000 to be paid to Premium Wine Bottlers SA Pty Ltd to discharge a purported workman's/artificer's lien over 26,004 bottles of 2001 Gilbert Siding Vinters Erebus Shiraz on account of bottling and labelling costs enabling such wine to be released and delivered to the First Plaintiff with the cost to form a special levy of up to \$0.97 per bottle to be borne only by those investors receiving this wine.

General

39. Any further or other orders the Court sees fit.
40. Liberty to apply on 24 hours notice.
41. The Court releases the First Plaintiff from his undertaking not to part with possession or sell any wine under this control.

Date: 23 November 2005




Christine Louise Perry
Solicitor for the First and Second Plaintiff

This application will be heard by Mr Justice Barrett at Supreme Court of New South Wales, Law Courts Building, Queens Square, Sydney at 10.00am on 12 December 2005.

B. NOTICE TO DEFENDANT(S)

To: see schedule attached

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the further conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the Plaintiff.

Note: Unless the Court otherwise orders, a respondent that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

C. FILING

Date of filing: 24 November 2005

This originating process is filed by Parry Carroll, Solicitors for the First and Second Plaintiffs

D. SERVICE

The Plaintiffs' address for service is:

Parry Carroll
Level 14, 60 Carrington Street
Sydney NSW 2000
Tel: 9221 3899
Fax: 9221 1375

It is intended to serve a copy of this originating process on each defendant and on any person listed below pursuant to the Orders made by Mr Justice Barrett on 17 October 2005.

- See schedule attached

The time by which a copy of this originating process is to be served has been abridged to 26 November 2005 by order made by Justice Barrett made 17 October 2005 and entered 2 November 2005.