



Specialty Mens Apparel Pty Ltd

Trading as "Ed Harry"

ACN 149 766 307 ("the Company")

(in Liquidation)

Statutory Report by Liquidator

Section 70-40 of the Insolvency Practice Rules (Corporations) 2016

Date 22 July 2019

Brendan Richards
& Gayle Dickerson

Joint and Several
Liquidators

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1. Introduction

This report should be read in conjunction with the information contained in our Voluntary Administrators' Report to creditors ("the Administrators Report") dated 5 April 2019.

At the second meeting of creditors held on 23 April 2019, creditors resolved that the Company be wound up under Section 439C(c) of the Corporations Act 2001, with Brendan Richards and Gayle Dickerson appointed as Liquidators of the Company.

The purpose of this report is to:

- provide you with an update on the progress of the Liquidation;
- the results of our investigations into the Company's affairs; and
- the likelihood of a dividend being paid in the Liquidation.

At this stage, the estimated return to unsecured creditors is likely to be c.8c/\$. There are sufficient funds available to pay a dividend of 100c/\$ to the Company's secured and priority creditors, which includes employee entitlements.

2. Update on progress of Liquidation

2.1 Overview

The Company traded as 'Ed Harry' and operated as a specialty menswear retailer, operating 87 stores across mainland Australia, in addition to an ecommerce offering.

2.2 Key tasks carried out to date in the Liquidation

The following key matters have been attended to since our appointment as Liquidators:

- Finalised the sale of the Company's intellectual property (including trademarks, business name, website domains and social media accounts);
- Remitted payment of trading costs from the orderly wind down and inventory realisation program conducted by the Administrators;
- Undertook our statutory obligations to the Australian Taxation Office ("ATO"), Australian Securities & Investments Commission ("ASIC") and State Government organisations;
- Negotiated commercial settlement of a number of claims of creditors holding valid registrations on the Personal Property Securities Register ("PPSR");
- Calculated and verified employee entitlements for approximately 500 staff employed by the Company;
- Remitted a dividend in respect of priority employee entitlements;
- Remitted a dividend to the secured creditor holding a first-ranking General Security Interest over the Company;
- Undertaken further investigations into the Company's dealings and affairs;

- Progressed our investigations into possible claims, offences committed and courses of action available to the Liquidators; and
- Completion of this statutory report to creditors and attending to its lodgement with ASIC.

2.3 Trading outcomes

As outlined in our previous reports, upon our appointment as joint & several Voluntary Administrators on 15 January 2019 we undertook an urgent review of the Company's financial position, short term cash flow and trading forecasts and formed the opinion that it would be in the best interests of the Company's creditors to continue to trade on the Company's business in order to maximise the returns from an orderly inventory realisation program.

The orderly wind down of operations and inventory realisation program ran parallel with a marketing campaign to either effectuate a sale the Company's business as a going concern or to realise the Company's intellectual property. As previously advised, sales of \$16.8 million were achieved from the inventory realisation programs, whilst the Company's website and intellectual property were realised for \$302k (as no offers for the business as a going concern were forthcoming). The inventory realisation program and trading of the Company's business ceased on 23 March 2019.

2.4 Receipts and payments to date

A summary of receipts and payments in the Liquidation from 24 April 2019 to 12 July 2019 is set out at Appendix D.

2.5 Assets and liabilities

Report as to Affairs

As outlined in the Administrators report of 5 April 2019, the Directors of the Company completed a Report on Company Activities and Property ("ROCAP") during the Voluntary Administration, which were lodged with ASIC on 11 February 2019.

Assets and Liabilities

Please refer to Appendix A for an overview of the estimated assets and liabilities of the Company and comparison to the ROCAP as provided by the Directors.

3. Investigations into the Company's affairs

3.1 Investigations undertaken

Preliminary investigations were conducted during the Voluntary Administration of the Company, as set out in section 6 of our Administrators' report dated 5 April 2019.

Since the Company was placed into Liquidation, we have focused our additional investigations on the following:

- Potential actions available to a Liquidator; and
- Breaches of duty and other offences under the Act by the Directors of the Company.

3.2 Books and records

Pursuant to section 286 of the Act, a company is required to keep written financial records for a period of 7 years that correctly record and explain its transactions, financial position and performance and would enable true and fair financial statements to be prepared and audited. Section 1305 of the Act states that a book kept by a company is prima facie evidence of any matter recorded unless the contrary is proved.

Based on information reviewed, it appears the Company has met its obligations under the Act with respect to books and records and has therefore complied with the requirements of section 286(1) and (2) of the Act.

3.3 Offences and director duties

Section 533 of the Act requires a Liquidator to report to ASIC if it appears that:

- A past or present officer, or member, of the company may have been guilty of an offence in relation to the company; or
- A person who has taken part in the formation, promotion, administration, management or winding up of the company may have misapplied money or property of the company or may have been guilty of negligence, default, breach of duty or trust in relation to the company; or
- The company may be unable to pay its unsecured creditors more than 50 cents in the dollar.

As at the date of this report, our report pursuant to Section 533 of the Act on the outcome of our investigation into the affairs of the Company has not been lodged with ASIC, as our investigations are yet to be finalised. Once finalised, our report will be lodged with ASIC.

3.4 Voidable transactions

Unfair preferences

When a Company is placed into Liquidation, various provisions of the Act enable the Liquidator to recover certain payments that were made by the Company to a creditor prior to the Company being placed into Administration, referred to as unfair preferences. An unfair preference payment is a transaction between a Company and a creditor, generally occurring in the six months prior to the relation back day, resulting in the creditor receiving from the company, in relation to an unsecured debt owed to the creditor, a greater amount than it would have received in relation to the debt in a winding up of the company. As Liquidator, we have reviewed transactions between 15 July 2018 and 15 January 2019.

Our investigations are still ongoing with respect to unfair preferences. We are currently reviewing additional books and records of the Company to confirm the quantum of payments made to certain creditors and whether they had reasonable grounds for suspecting the Company was insolvent or would become insolvent through entering into the transaction.

Uncommercial transactions

Section 588FB of the Act requires the Liquidator to investigate transactions which may be deemed to be uncommercial, having regard to the detriment to the Company (if any) suffered as a consequence of the transaction in the period two years prior to the appointment. In addition, Section 588FDA of the Act refers to "unreasonable director-related transactions" and requires the Liquidator to investigate such transactions, having regard to the detriment to the Company (if any) suffered as a consequence of the transaction. From the books and records reviewed, we have not identified any transactions which would constitute uncommercial transactions or unreasonable director-related transactions.

Unfair loans

Section 588FD of the Act requires investigations of transactions which may be deemed to be unfair loans to the Company. A loan to the Company is considered to be unfair if and only if, interest on the loan is extortionate, or the charges in relation to the loan were extortionate. From review of the books and records, we have not identified any transactions which would constitute unfair loans to the Company.

Voidable transactions – related parties

Section 588FE(4) of the Act requires investigations of transactions which may be deemed to be insolvent transactions with a related party entered into within 4 years of the commencement of the winding up. From our review of the books and records of the Company, we have not identified any transactions which would constitute voidable transactions with related parties.

3.5 Insolvent trading

In our Administrators report to creditors, our preliminary investigations concluded that the Company was likely insolvent in December 2018. Since the date of Liquidation, we have performed further investigations to determine the date of insolvency based on a detailed review of available books and records. Our investigations focused primarily on the following key insolvency indicators:

- inability to raise capital;
- suppliers placed on COD;
- creditors outside terms; and
- special creditor arrangements.

Based on these investigations, we determined the likely date of insolvency to be 31 December 2018.

4. Likelihood of a dividend

The Liquidators' estimate of the return to creditors (priority, secured and unsecured) is as follows:

Estimated return for creditors		
Creditor class	Est. Dividend (cents per \$)	Status
Priority creditors (employees)	100	Interim dividend paid 8 May 2019
Secured creditors	100	Interim dividend paid 12 July 2019
Unsecured creditors	8	Payable before EOY 2019

Priority Creditors

A dividend of 100c/\$ has been remitted for priority creditors (employee entitlements), in respect of leave and termination entitlements.

We have prepared and submitted the necessary lodgements with the ATO in relation to unpaid superannuation entitlements. Upon receipt of confirmation from the ATO, payment of outstanding superannuation and associated Superannuation Guarantee Charge will be made at 100 cents in the dollar. We anticipate receiving confirmation from the ATO and remitting payment for these amounts by 31 July 2019.

Secured Creditors

An interim dividend of 95c/\$ has been paid to creditors holding valid General Security Interests on the PPSR. The balance of the claim outstanding to the secured creditor relates to bank guarantees supporting rental bonds which are yet to be redeemed by landlords. We are currently liaising with the secured creditor and relevant landlords in relation to these amount and anticipate remitting a dividend for the balance of outstanding secured amounts by 31 August 2019.

Unsecured Creditors

In our report to creditors of 5 April 2019, we estimated the dividend to unsecured creditors was likely to be c.12c/\$. This estimate has been revised to c.8c/\$ as a result of:

- Increase in forecasted property costs from the trading period;
- Increase in legal fees as a result of a claims from creditors holding registration on the PPSR;
- Employee expenses such as workcover insurance costs and payroll taxes;
- Storage, freight and logistics costs from the inventory realisation program;
- Interest and fees owing to secured creditors; and
- Increase in claims from priority creditors.

Please refer to Appendix B which encloses a Form 534, Notice Inviting Formal Proof of Debt of Claim, requiring creditors of the Company whose debts or claims have not already been admitted, to submit their Formal Proof of Debt in the Liquidation by 12 August 2019.

Upon receipt of the Formal Proofs of Debt, I will commence adjudication of same and anticipate declaring and remitting a dividend to unsecured creditors before the end of calendar year 2019.

Appendix E encloses our Estimated Outcome Statement.

5. What happens next with the Liquidation?

The following matters will continue to be progressed:

- Completing our investigations into the Company's affairs;
- Distributing dividends to unsecured creditors following an adjudication process; and
- Completing our statutory obligations, including reporting to creditors and ASIC.

We may write to you again with further information on the progress of the Liquidation.

We expect to have completed this Liquidation within the next 12 months, subject to the length of time required to determine whether recovery actions are available, as well as the adjudication process and distribution of dividends to unsecured creditors.

6. What to do next

You should now:

- Read our report and attached information; and
- Complete and return your proof of debt (if not already done so) by **12 August 2019**.

You can access information which may assist you on the following websites:

- ARITA at www.arita.com.au/creditors
- ASIC at www.asic.gov.au (search for "insolvency information sheets").

7. Contact

If you have any queries in relation to the information in this report, please contact Greg Pitt of this office on (07) 3233 9481 or edharry@kpmg.com.au.

Dated this 22nd July 2019



Brendan Richards
Joint and Several Liquidator

8. Appendices

A. Asset and Liability summary

Specialty Mens Apparel Pty Ltd (In Liquidation)			
Asset & Liability Summary			
Description	Notes	ROCAP (ERV)	Liquidators' Est.
		\$'000	\$'000
Assets			
Cash	1	134	185
Inventory	2	12,732	15,529
Intellectual Property & Website	3	50	302
Plant and Equipment	4	141	255
Total Assets		13,057	16,271
Liabilities			
Employee Entitlements			
Wages		-	-
Pre appointment Superannuation		423	422
Annual Leave		1,121	790
Long Service Leave		590	398
Payment in Lieu of Notice		-	83
Redundancy		-	1,129
Time in Lieu		-	3
Total employee entitlements	5	2,134	2,825
Secured creditors	6	2,315	2,399
Unsecured Creditors	7	10,919	9,805
Related Party Creditors	8	582	1,170
Total Liabilities		15,950	16,199
Estimated surplus / (deficiency)		(2,893)	72

Notes:

1. Cash includes cash at bank includes, pre-appointment bank accounts, merchant services and store cash floats. The variance between the ROCAP and the realisations by the Liquidators are due to sales income received in the morning of the date of our appointment.
2. The value of inventory at cost is recorded at c. \$9.8m in the ROCAP at the date of appointment with the Directors applying a 30% mark up on cost for the total realisable value giving a value of c. \$12.7m. The Liquidators' realised achieved total sales of c. \$16.5m (including GST) during the inventory realisation program, less purchases of c. \$0.9m, resulting in net realisations of c. \$15.5m (including GST), not taking into account the cost of trading (wages, property rents, operational costs etc) during the inventory realisation program.
3. The Company's intellectual property (website, trademarks & customer listing) were realised for \$302,250 (inclusive of GST).
4. Plant and equipment comprises of fixed assets held at Head Office in Adelaide and each of the 87 retail stores, which have been realised for c.\$255k.
5. Employee entitlements in the ROCAP were not inclusive for Redundancy and PILN. The reduction in Annual Leave and Long Service Leave entitlements from the ROCAP to the Liquidators' estimate is a result of the priority component of claims of related parties being capped in accordance with section 556 of the Act and from leave entitlements taken by employees during the Administration period.

6. Secured creditors relate to All PAAP registrations in favour of the CBA. The variance in the Liquidators' estimate in comparison to the ROCAP is due to interest and charges.
7. Unsecured creditors comprise trade creditors, suppliers, landlords and statutory organisations. The reduction between the ROCAP to the Liquidators' estimate is a result of the landlords' pre-appointment debts being reduced from calling upon rental bonds by way of bank guarantees totalling c. \$800k. To date, we have received PODs from unsecured creditors of c. \$13m. However, these contain a number of claims whereby creditors are still to account for any steps undertaken in mitigating their losses (i.e. landlords securing replacement tenants).
8. The Related party claims in the ROCAP consist of amounts loaned to the Company. The Liquidators have increased this estimated to include the non-priority component of employee entitlements owed to related parties.

B. Form 534. Notice Inviting Formal Proof of Debt

FORM 534

subregulation 5.6.48(3)
Corporations Act 2001

NOTICE INVITING FORMAL PROOF OF DEBT OR CLAIM

Specialty Mens Apparel Pty Ltd (In Liquidation)
Trading as 'Ed Harry'
ACN 149 766 307
(the "Company")

Take notice that creditors of the Company, whose debts or claims have not already been admitted, are required on or before **12 August 2019** to prove their debts or claims and to establish any title they may have to priority by delivering or posting to me at my address a formal proof of debt or claim in accordance with Form 535 containing their respective debts or claims.

If they do not they will be excluded from:

- (a) the benefit of any distribution made before their debts or claims are proved or their priority is established; and
- (b) objecting to the distribution.

A Form 535, Formal Proof of Debt, is attached to this notice.

Dated this 22nd day of July 2019



Brendan Richards
Joint & Several Liquidator

C. Formal Proof of debt – Form 535

FORMAL PROOF OF DEBT OR CLAIM

To the Liquidators of:

Specialty Mens Apparel Pty Ltd (In Liquidation)
ACN 149 766 307 (the "Company")

1. This is to state that the Company was on 23 April 2019, and still is, justly and truly indebted to: _____

(full name, ABN and address of the creditor and, if applicable, the creditor's partners. If prepared by an employee or agent of the creditor, also insert a description of the occupation of the creditor) for _____ dollars and _____ cents

Particulars of the debt are:

Date	Consideration <i>(state how the debt arose)</i>	Amount	Remarks <i>(include details of voucher substantiating payment)</i>
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_____ \$

2. To my knowledge or belief the creditor has not, nor has any person by the creditor's order, had or received any satisfaction or security for the sum or any part of it except for the following: _____

(insert particulars of all securities held. If the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, show them in a schedule in the following form).

Date	Drawer	Acceptor	Amount	Due Date
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_____ \$

3. Signed by (select option):

- I am the creditor personally.
- I am employed by the creditor and authorised in writing by the creditor to make this statement. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.
- I am the creditor's agent authorised in writing to make this statement in writing. I know the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.

Signature: _____ Dated: _____

Name: _____ Occupation: _____

Address: _____

RECEIVE REPORTS BY EMAIL	Yes	No
Do you wish to receive all future reports and correspondence from our office via email?	<input type="checkbox"/>	<input type="checkbox"/>
Email:.....		

If being used for the purpose of voting at a meeting:

- a) Is the debt you are claiming assigned to you? No Yes
- b) If yes, attach written evidence of the debt, the assignment and consideration given. Attached
- c) If yes, what value of consideration did you give for the assignment (eg, what amount did you pay for the debt?) \$ _____
- d) If yes, are you a related party creditor of the Company? No Yes
(f you are unsure contact the Liquidators at edharry@kpmg.com.au)

D. Receipts and Payments

Specialty Mens Apparel Pty Ltd (In Liquidation)	
Receipts and payments - 23 April 2019 to 12 July 2019	
Receipts	\$
Cash transferred from Administrator's account	10,219,711
Trading revenue	111,461
Refunds	5,752
Interest income	735
Total receipts	10,337,659
Payments	
Appointees' disbursements	63,506
Appointees' remuneration	1,610,002
Bank charges	4,912
Consultant fees (trading)	151,870
Employee dividend	1,992,913
GST & PAYG	1,747,476
Information Technology (trading)	2,218
Insurance	5,821
Payroll tax	31,098
Printing & postage	2,921
Property expenses (trading)	76,148
ROT / PPSR settlements	275,000
Secured creditor dividend	2,284,466
Sundry expense (trading)	2,158
Superannuation (trading)	336,384
Transport & distribution costs (trading)	773
Utilities (trading)	7,389
Wages (trading)	2,186
Total payments	8,597,241
Closing cash at bank at 12 July 2019	1,740,418

E. Estimated Outcome Statement

Specialty Mens Apparel Pty Ltd (In Liquidation)	
Estimated return to creditors as at 12 July 2019	
Item	Liquidation ERV \$
Assets	
Cash at bank	1,740,419
Total assets	1,740,419
Less: Operating liabilities	
Rent and outgoings	(8,199)
Finance costs	-
Miscellaneous expenses	(7,287)
Superannuation	(317)
BAS refund / (payment)	(133,180)
Total operating liabilities	(148,983)
Professional costs	
Insurance	(5,867)
Legal fees	(13,191)
Liquidators' fees and disbursements	(178,442)
Total Professional costs	(197,500)
Funds available to meet priority claims	1,393,935
Less: Priority claims	
Employee entitlements - remaining	(411,609)
Total priority creditor claims	(411,609)
Funds available to meet secured creditor claims	982,327
Less: Secured creditor claims	
Commonwealth Bank of Australia - remaining	(114,152)
Total secured creditor claims	(114,152)
Funds available to meet unsecured creditor claims	868,174
Less: Unsecured creditor claims	
Trade and other creditors	9,804,539
Related party claims	1,170,085
Total owing to unsecured creditors	10,982,624
Estimated return to unsecured creditors (cents / \$)	0.08



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