



McDonald  
Vague

business recovery partners

## Sinorama Holidays Limited (In Liquidation)

### Liquidators' Third Report (for the period from 2 April 2019 to 1 October 2019)

McDonald Vague Limited

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#### 1 INTRODUCTION AND APPOINTMENT

Peri Micaela Finnigan and Iain McLennan, Accredited Insolvency Practitioners, of Auckland, were appointed jointly and severally as liquidators of Sinorama Holidays Limited ("the company") on 2 October 2018.

Pursuant to Section 255(2)(d) of the Companies Act 1993 ("the Act"), the liquidators herewith report on the progress of the liquidation. This third report should be read in conjunction with the liquidators' previous reports. This report is being sent to all shareholders and all creditors who have filed a claim in the liquidation.

A Statement of Realisations and Distributions is **attached**.

#### 2 RESTRICTIONS

Whilst all care and attention has been taken in compiling this report, we do not accept any liability whatsoever to any party as a result of the circulation, publication, reproduction or use of this report.

We reserve the right (but are under no obligation) to review and, if we consider necessary, revise this report in respect of any information existing at the date of this report which becomes known to us after that date.

#### 3 CONDUCT OF THE LIQUIDATION DURING THE PRECEDING SIX MONTHS

##### *Asset Realisations*

##### **3.1 Client Funds and Term Deposit (Statement of Affairs: \$Unknown)**

The company did not hold client funds in a Trust Account. The company held three term deposits, one of which held \$367,000, and two others held specific bond arrangements, as follows:

Landlord	\$24,788
TAANZ	\$73,000

The bank was paid the \$367,000 it held by way of set-off, toward the debt it is owed and had secured by way of a GSA. The bank remains a creditor of the company.

The funds held for a landlord bond and for the TAANZ bond were released to them. The TAANZ bond has been returned to the company (discussed at 3.2 below).

TAANZ established that there were no eligible participants to share pro rata in the bond held. As a result, the full sum held was returned to the company and has been applied to preferential creditors in priority (the funder and liquidator fees and expenses). The TAANZ rules disqualified all Sinorama customers who purchased tour packages. Sinorama were not a typical travel agency.

The liquidators had no ability to recover funds from the Australian bank account that was in the name of an Australian registered company, Sinorama Holidays Pty Limited. This company appears to be insolvent and not trading. As far as we are aware, this company is insolvent and has obligations to the bank and other Australian customers.

### **3.2 Landlord and TAANZ**

The landlord has been paid its entitlement under the bond funds held as at the date of liquidation.

The entitlement to the benefit of the TAANZ bond of \$73,000 has now been established. TAANZ and the liquidators agreed the funds were available to the preferential and secured creditor not customers by virtue of the terms of the bond.

Customers are not eligible because Sinorama did not act as an agent. Sinorama provided incorrect disclosures to TAANZ. The bond does not extend to travel agents providing tour packages as the principal. Sinorama Holidays was not IATA registered and was not a typical travel agent and failed to fully disclose this to TAANZ. The Sinorama wider network provided the tours and Vacances Sinorama Inc. in Canada provided the airline tickets to the customers. The tours were "Sinorama" tours arranged by Vacances Sinorama Inc.

TAANZ cannot therefore assess any claims containing tours for the reason that the agent was acting as the principal. On this basis, the bond moneys have been released to the company and distributed to the preferential and secured creditors.

The liquidators were satisfied that the TAANZ Consumer Fund supported this approach:

*"If the TAANZ member or IATA approved agent which receives the money from the member which dealt directly with the customer is acting as a principal and selling its own product there will be no claim on the Fund if such TAANZ member or IATA approved agent becomes insolvent and is unable to deliver the services for which it has been paid. The Committee shall take cognisance of the fact that when a TAANZ member and/or IATA approved agent acts as a tour operator/tour wholesaler it will invariably be acting as a principal."*

### 3.3 *Vacance Sinorama Inc "VSI"*

*(Statement of Affairs: \$Unknown)*

As reported in our last report, Sinorama failed because of the failure of Vacances Sinorama Inc. On 7 August 2018, the Office de la protection du consommateur ("OPC") withdrew the licence of the Vacances Sinorama Inc. agency. The OPC found that the company had failed to comply with the requirements of the Travel Agents Act in Canada and had concerns with the way it handled clients' payments.

On July 24, 2018, the OPC appointed PricewaterhouseCoopers as the provisional administrator to manage the VSI agency.

On 12 October 2018 the company was placed into formal bankruptcy administration. The bankruptcy trustee voluntarily appointed by the directors was subsequently replaced following a creditors meeting. PWC in Canada are the replacement bankruptcy trustees.

The liquidators have lodged a claim in the bankruptcy for CAD\$1,559,606.10. The claim has been admitted. No distribution has been paid to date. The liquidators do not anticipate that there will be any distribution of any great value.

The prospect of any recovery remains unknown. The bankruptcy trustee has advised that total claims admitted in the bankruptcy of VSI amount to CAD\$55,027,931 and *"the net realization of VSI's assets is \$CAD 275K. There is no other tangible assets to realize"*. The trustee however will consider an action against the directors of the company subject to a formal report recommending this course of action. It is unknown if the directors have any ability to pay any judgment sum that may arise if an action is taken. The claim is significant. Based on known VSI realisations the distribution to Sinorama will be between NIL and 0.5 cents in the dollar. On a claim of \$5,000 this would be less than a \$25 return.

The Canadian Administrators/Bankruptcy Trustee commissioned a forensic accounting report to establish what actions to take for recovery. The report was due in May 2019. The liquidators have sought an update on prospects of recovery. Creditors are recommended to view the following link for updates: <https://www.pwc.com/ca/vacancesinorama>

### 3.4 *Furniture and Computers*

*(Statement of Affairs: \$1,500)*

The company held some modest furniture, equipment and computers. These were sold at auction and realised \$3,800.

### 3.5 *Other Realisations*

The liquidators commissioned a formal legal opinion from a Canadian law firm on other avenues for recovery from Canadian authorities. The below advice has been given which puts an end to further pursuit of funds held in Canada (apart from our claim in the bankruptcy of VSI):

*"We are of the view that a Quebec court will be reluctant to interpret the Act and the Regulation in a manner that would allow Australian and New Zealander travellers who purchased their travel packages from a New Zealand travel agent to travel to Asia to be compensated by public funds of the Province of Quebec".*

The advice is detailed and refers to legislation and case law. The liquidators have accepted that it would not be beneficial to continue the course of action.

#### 4 INVESTIGATIONS

The liquidators have investigated the books, records and affairs of the company. There are matters that require formal reporting to the Registrar of Companies.

A formal legal opinion was sought from a Canadian law firm. The opinion is that there is less than a 50% chance of success in advancing a recovery from travel agent bonds held in Canada. The only prospects of recovery from Canada (where funds were sent for travel bookings) is from a distribution (if any) from the VSI Bankruptcy.

To date the liquidators have considered the following further matters:

- Insolvent transactions – payments to the director after knowledge of the insolvency of Vacance Sinorama Inc.
- An overdrawn shareholder current account (including insolvent payments made above)– demand has been made
- Inadequate books and records (incorrect reporting of customer deposits as income)
- Breaches of directors' duties
- Incorrect accounting and handling of receipts leading to client shortfalls

The liquidators have sought a statement of personal financial position from the director. She has advised that she has no assets and lives in rental accommodation and is financially supported by a friend. She has not provided a sworn statement of position despite many requests to do so. There is no evidence to suggest the director has any means to repay the overdrawn current account. As a result, the liquidators are unlikely to advance a legal action against her for breaching her duties under the Companies Act 1993 unless funding is provided. Such an action is costly to pursue and only advanced if there is a potential benefit. The outcome could be bankruptcy and no return. The bank in any case have an ability to pursue the director for the bank shortfall and advance bankruptcy. The bank have conducted their own enquiry and to date have not taken these steps.

The liquidators consider the company was controlled by shadow directors, the same directors that created the significant loss to creditors in Canada. The lack of documentation supporting funds transfers to VSI support this along with commentary on how funds were not properly accounted for by VSI. The same directors of the failed VSI were former shareholders of Sinorama until August and September 2018.

## 5. CREDITORS' CLAIMS

### 5.1 Secured Creditor

The ANZ bank held a GSA against the company assets. The bank is a significant creditor and as such provided some funding to allow the liquidators to engage a Canadian lawyer and advance an investigation. Further funding was dependent on the legal advice. The legal advice has since been received and does not support further action for recovery in Canada. Further consideration will be made on whether to pursue the New Zealand director.

### 5.2 Preferential Creditors

Total preferential claims for wages or salary, holiday pay and redundancy amount to \$9,166.

The Inland Revenue Department submitted a preferential claim for \$3,025. This has been paid in full.

### 5.3 Unsecured Creditors

The liquidators have maintained separate registers for customers who have claims in the liquidation and suppliers/trade creditors who also have claims.

To date, NZ customers have lodged claims for \$976K.

Australian customers have lodged claims for a further AUD\$474k. In our last report the liquidators advised that we have not yet accepted that these are creditors of the company in liquidation. This exercise will not be advanced unless there is the prospect of a distribution.

There are also 30 trade creditors and suppliers who have lodged claims in the liquidation. This includes three preferential employee claims which amount to \$9,164 for unpaid holiday pay and employee entitlements. Inland Revenue have lodged a claim for \$3,025 however this claim may increase for the PAYE returns that were not lodged by the company for October and November. An amended claim has not yet been received at date of this report.

Trade creditors and suppliers and agencies who contracted to Sinorama Holidays Ltd claim to be owed \$634,153. We have not completed our investigations into how funds may be recovered to pay the non-customer unsecured trade creditors.

The total claims of customers and creditors to current date are \$2.12 million.

	AUD	NZD
Preferential Creditors		12,190.83
Unsecured Trade Creditors		634,153.00
NZ Customers		976,592.00
AUS Customers	\$474,485	499,234.00
Total Claims		<u>\$2,122,169.83</u>

The customer claims in the liquidation could increase by about another \$275K if all customers lodge claims. There are potentially further non-customer suppliers who have not lodged claims to date. We are aware of a further creditor that has a claim of about \$45,000 for costs incurred honouring the service.

To date, the liquidators have considered travel customer claims received but not those of unsecured trade creditors. The liquidators will consider the claims of unsecured trade creditors if or when we are in a position to pay a distribution. At this stage the prospects of any distribution are small to nil.

## **6 FUNDS / LIKELY OUTCOME**

At this stage the liquidators do not know whether a distribution to creditors is likely and suspect there may be a nil recovery.

The legal opinion from Borden Ladner Gervais, lawyers, says the prospects of success in a claim against the Quebec compensation fund for customers of travel agents is not high. IATA and ACTA are also not avenues to pursue.

This leaves recovery based on a dividend from VSI and/or pursuit of the NZ director. An update is being sought from the bankruptcy trustee. The liquidators are advised the director has no means to contribute to the loss to creditors.

## **7 MATTERS DELAYING THE COMPLETION OF THE LIQUIDATION**

The following matters are outstanding:

- Update from the bankruptcy trustee of Vacances Sinorama Inc. and likelihood of any distribution to creditors (we expect this will be minimal).
- Complete investigation into the position of the director and whether there is any financial gain to be made from further pursuit of the current account or breach of director duties claims.
- Reporting to relevant authorities on liquidators' investigations.
- Completion of Liquidation (if no likely benefit from VSI bankruptcy)

## **8 ESTIMATED DATE OF COMPLETION**

Based on the information contained in this report the liquidators cannot predict when they propose to complete all outstanding matters and retire as liquidators. If VSI confirm there is no distribution likely then the case may be closed. A formal response is sought from the bankruptcy trustee of VSI (in Canada) before any decision can be made.

The following link has not been updated since 20 November 2018. It provides information on VSI.

<https://www.pwc.com/ca/vacancesinorama>

## 9 CONTACT DETAILS

Enquiries should be directed to Peri Finnigan or Yvonne Wei by email to [pfinnigan@mvp.co.nz](mailto:pfinnigan@mvp.co.nz) or [ywei@mvp.co.nz](mailto:ywei@mvp.co.nz).

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PERI M FINNIGAN  
LIQUIDATOR

DATED this 9<sup>th</sup> day of October 2019

## Realisations and Distributions

### Sinorama Holidays Limited (In Liquidation) 2 October 2018 to 1 October 2019

Realisations	As Per Statement of Affairs \$	Cash Received \$
Client Funds and Term Deposit	367,000	367,000
Landlord – Bond	24,788	22,487
Sale of Assets - Furniture and Computers	1,500	3,804
Sale of 2017 BMW	60,000	55,000
Bank Account Closure	-	4,000
Interest	-	33
TAANZ Bond Refund	-	73,000
Pre liquidation GST Refund	-	17,572
Advances from GSA Holder	-	117,280
<b>Total Realisations</b>	<b>\$453,288</b>	<b>\$660,177</b>
<b>Payments</b>		
<b>Liquidators Fees</b>		
Liquidators Fees		135,074
Disbursements		658
<b>Total Liquidators Fees</b>		<b>\$135,732</b>
<b>Other Costs of Liquidation</b>		
Commission Charges		919
Freight Charges		814
Legal Fees		12,755
NZ Post Redirection		113
Residents Withholding Tax		6
<b>Total Costs of Liquidation</b>		<b>\$14,607</b>
<b>Distributions</b>		
Secured Creditor – Landlord		22,487
Preferential GST and PAYE		3,103
Secured Creditor -BMW Group (Personal Property Securities Register)		55,000
Preferential Creditor (from TAANZ Bond) reimburse funding		53,000
GSA Holder		367,000
<b>Total Distributions to Secured and Preferential Creditor</b>		<b>\$500,590</b>
<b>Total Payments</b>		<b>\$650,929</b>
<b>BALANCE HELD</b>		<b>\$9,248</b>

#### Notes:

- the above figures are GST exclusive
- The ANZ bank holds a General Security Agreement (GSA) over the company assets
- The GSA Holder's claim is unknown at the date of this report
- TAANZ refunded \$73,000. This was distributed to the preferential creditors in reimbursement of funding and costs