



McDonald
Vague

business recovery partners

Sinorama Holidays Limited (In Liquidation)

Liquidators' Fourth Report (for the period from 2 October 2019 to 1 April 2020)

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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 fourth 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 received \$367,000 by way of set-off. The sum on deposit was applied toward secured debt. 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 subsequently been returned to the company (discussed at 3.2 below) and distributed.

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 at date of this report. 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 (if justified). The report was due in May 2019. The liquidators have sought an update on prospects of recovery and an update on whether any action has been commenced against the directors of the Canadian company. We expect due to the lack of updates and postings on the PWC website that there has been no further progress and therefore minimal prospect of a dividend for creditors. We will advise if there is any change. The following link for updates on the Canadian company bankruptcy is found here, however the latest update is 2018 year: <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 was provided 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. The liquidators also do not have the required funding to advance an offshore legal pursuit which would be costly and outcome unknown.

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.

As discussed at 3.5, 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. The bank have also formed a similar view. The bank hold a personal guarantee. 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. The expected outcome would be bankruptcy and NIL recovery. Such an action is costly to pursue and only advanced if there is a potential benefit. 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 have prepared a detailed report for the Registrar of Companies.

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.

5.2 Preferential Creditors

Total preferential claims for wages or salary, holiday pay and redundancy amount to \$12,190.

The Inland Revenue Department submitted a preferential claim for \$3,025. This has been paid by way of an internal IRD transfer between GST and PAYE tax revenues. A GST refund was used to pay the PAYE obligation. Inland Revenue are expected to have a greater preferential claim for PAYE returns that were not lodged by the company for October and November.

5.3 Unsecured Creditors

The liquidators maintained separate registers for customers who had claims in the liquidation and suppliers/trade creditors who also had 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 since there is now no prospect of a distribution.

There are also 31 trade creditors and suppliers who have lodged claims in the liquidation.

Trade creditors and suppliers and agencies who contracted to Sinorama Holidays Ltd claim to be owed \$571,809. Our prior report recorded a higher sum. This is adjusted down by amended claims.

The total claims of customers and creditors to current date are \$2.06 million.

	AUD	NZD
Preferential Creditors		12,190.83
Unsecured Trade Creditors		571,809.00
NZ Customers		976,592.00
AUS Customers	\$474,485	499,234.00
Total Claims		<u>\$2,059,825.83</u>

The customer claims in the liquidation could increase by about another \$275K if all customers were to lodge claims. There are potentially further non-customer suppliers who have not lodged claims to date.

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. The pursuit of the NZ director is expected to not provide any recovery. An update is being sought from the bankruptcy trustee to confirm if there are any prospects of a dividend. If there are none, the liquidators will look to close down the liquidation and report findings to the appropriate authorities.

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).
- 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 will be closed. A formal response is sought from the bankruptcy trustee of VSI (in Canada) before any decision can be made.

9 CONTACT DETAILS

Enquiries should be directed to Peri Finnigan or Yvonne Wei by email to pfinnigan@mvp.co.nz or ywei@mvp.co.nz.

The Liquidators can be contacted at:

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PERI M FINNIGAN
LIQUIDATOR

DATED this 15th day of April 2020

Realisations and Distributions

Sinorama Holidays Limited (In Liquidation) 2 October 2018 to 1 April 2020

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	-	61
TAANZ Bond Refund	-	73,000
Pre liquidation GST Refund	-	17,572
Advances from GSA Holder	-	117,280
Total Realisations	\$453,288	\$660,204
Payments		
Liquidators Fees		
Liquidators Fees		137,395
Disbursements		658
Total Liquidators Fees		\$138,053
Other Costs of Liquidation		
Commission Charges		919
Freight Charges		814
Legal Fees		12,755
NZ Post Redirection		113
Residents Withholding Tax		13
Total Costs of Liquidation		\$14,614
Distributions		
Secured Creditor – Landlord		22,487
Preferential GST and PAYE		3,153
Secured Creditor -BMW Group (Personal Property Securities Register)		55,000
Preferential Creditor (from TAANZ Bond) reimburse funding		53,000
GSA Holder		367,000
Total Distributions to Secured and Preferential Creditor		\$500,640
Total Payments		\$653,307
BALANCE HELD		\$6,897

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