

THE COMPANIES ACT 1993
Pursuant to Section 255

LIQUIDATORS' FIRST REPORT TO CREDITORS & SHAREHOLDERS
OF
RESTAURANT LIMITED (IN LIQUIDATION)
Trading As Brownstone Restaurant & Cocktail Lounge
(Formerly trading as Prohibition Restaurant and also as Nostalgia Restaurant)
("the Company")

Company No: 1767536

1. INTRODUCTION

Christopher Carey McCullagh, Chartered Accountant and Stephen Mark Lawrence, both insolvency practitioners of PKF Corporate Recovery & Insolvency (Auckland) Limited, were jointly and severally appointed as Liquidators of the Company on 23 September 2013 by a special resolution of its shareholders, pursuant to section 241(2)(a) of the Companies Act 1993 (the "Act").

2. RESTRICTIONS

This report has been prepared in accordance with section 255 of the Act based on information contained in the Company's records and information supplied to us from the Company, its directors and other officers. We have not carried out an audit of the Company's records. Accordingly, we retain the right to amend particulars if we consider it necessary in light of information which becomes available to us after the date of this report. The Liquidators shall not be responsible for the reliance of any person on information contained in, or derived or omitted from this report.

3. COMPANY INFORMATION

The following publicly available information was obtained from the Companies Office website at the time of our appointment.

Date of Incorporation: 10 February 2006

Registered Office: 108 Ponsonby Road, Grey Lynn, Auckland 1011

Directors:

Name	Address
Colin Craig GARDNER	108 Ponsonby Road, Grey Lynn, Auckland 1011
Eduard GORIN	108 Ponsonby Road, Grey Lynn, Auckland 1011

Shareholders:

Name	Shareholding
Phoenix Group Ventures Limited	50%
Eduard GORIN	25%
Colin GARDNER	25%

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Level 3 • 48 Courthouse Lane • Chancery • Auckland 1010



4. BACKGROUND

The Company purchased the business of Pog Mahones Irish Bar in June 2006 and took over its leased premises at 108 Pronsonby Road, Auckland. The Company undertook extensive building works to refit the premises, and more than two years later it commenced trading as *Prohibition Restaurant and Speakeasy Cocktail Lounge*. It traded as *Prohibition* up until November 2012, when it rebranded as *Nostalgia Restaurant*. It again changed its name to *Brownstone Restaurant and Cocktail Lounge* in August 2013.

According to the Company's Director, Colin Gardner, the reasons for the Company's failure are as follows:

1. *The refurbishment of the premises took 18 months to complete. The Company encountered numerous delays in obtaining Auckland City Council and other approvals for the internal and external alterations due to the building being located in the Ponsonby Heritage Area. The Company had incurred costs of approximately \$2.9 million by the time Prohibition opened its doors in mid-August 2008, which included full rent totalling approximately \$200,000. The Company was unable to negotiate any rent holiday for this period.*
2. *Prohibition started trading as a premium fine dining restaurant offering lunch and dinner service 7 days a week. It took considerable time for Prohibition to become known in the market place and was also hampered by various unfavourable rumours, in particular that it was owned by the Russian mafia or that it was a gentleman's club.*
3. *Prohibition also commenced trading at the same time that the worldwide financial crisis started and the challenges that this and the local economic recession brought with them resulted in the business struggling from day one.*
4. *The 2011 Rugby World Cup had a significant adverse effect as Prohibition was not in or close to the "Fan Zone". Prohibition was also adversely affected by the proliferation of new restaurants and bars in the fan zone, specifically Wynyard Quarter. This downturn continued for 11 months following the RWC.*
5. *Another factor affecting business and the whole restaurant industry was the proliferation of online daily deals over the past 4 years, resulting in a "special deal" mind set (patrons waiting for the next deal instead of choosing a restaurant based on quality of cuisine and standard of service).*
6. *Despite implementing a number of innovative marketing initiatives which turned the downward trend to an upward trend, the legacy of a very difficult 11 months created continued cash flow problems. By this stage the major shareholder [Colin Gardner] had contributed circa \$4.8 million to financing the business and the accumulated losses were in excess of \$3 million. The shareholders then sought to raise finance by selling shares in the business and/or by arranging some form of short to medium term bridging finance facilities. Additional working capital was required to make the required changes to the business.*
7. *At the same time to ease the cash flows the Company entered into a Scheme of Arrangement with creditors, effective from October 2011, whereby the majority of them agreed to continue supplying on the basis that the balances due to them would be settled in equal monthly instalments over an 18 month period. To date all these instalments have been paid.*
8. *The shareholders were unsuccessful in finding third party financing until mid-February 2013 when they entered into a Sale and Purchase Agreement with the Phoenix Group Ventures Limited ("Phoenix Group") whereby they acquired a controlling interest in the Company for an initial capital contribution of \$100,000 and an undertaking to financially support the Company by underwriting the monthly cash flow shortages for a period of 6 months.*

9. *Phoenix Group appointed a General Manager who took over the day to day management of the restaurant. As a result there were a number of changes, which included personnel, menu, service offering, interior, exterior as well as changing the trading name to Brownstone. Despite the changes the trading conditions did not improve. During August the directors were in discussions with regard to the on-going financial support from Phoenix Group, its major shareholder, when Phoenix encountered some significant business issues affecting its on-going operations in New Zealand.*
10. *A number of proposals with regard to the future trading and on-going financial support were tabled and discussed by the directors in recent weeks. However, on 20 September 2013 it became clear that the Phoenix Group were no longer going to provide the on-going financial support for the Company to continue trading when the two directors (which they had appointed) resigned as directors with immediate effect.*
11. *The remaining two directors resolved to recommend to the shareholders that the Company cease trading and be put into liquidation as soon as possible. The Company ceased trading on 21 September 2013.*

5. STATEMENT OF COMPANY'S AFFAIRS

The Estimated Statement of Affairs is **attached**.

6. PROPOSED CONDUCT OF THE LIQUIDATION

Prior to the liquidation we met the Company's director to discuss the liquidation process. At this time we were provided with some background to the business and the events leading up to liquidation. Upon our appointment we sent a business questionnaire to the director along with a request to deliver records.

We have completed our statutory obligations in respect to advertising our appointment and notifying the Registrar of Companies. We have closed the Company's bank accounts, as identified in the statement of affairs.

Once we receive the Company records, we will examine them with a view to determining the cause of the failure of the business and also recovering any amounts due to the Company. Funds recovered will be distributed to creditors in accordance with the priority set out in the Seventh Schedule of the Act.

Our next statutory report with further information for creditors will be available in six months. In the meantime should any creditors have any information or any matter that they feel warrants investigation please advise us in writing.

7. VOIDABLE TRANSACTIONS

The Liquidators are required to review payments made by the Company during the 2 year period prior to liquidation to determine whether they are voidable within the definition of the term in Section 292 of the Act. A transaction is voidable on the application of the liquidator if it:

- a. Was made:
 - i. At a time when the company was unable to pay its due debts; and
 - ii. Within the specified period;
- b. Enabled another person to receive more towards satisfaction of a debt than the person would otherwise have received or be likely to have received in the liquidation.

Such payments can be set aside by an order of the High Court unless the creditor can prove that the transaction occurred during the ordinary course of business or that any other defence exists.

8. CREDITORS MEETING

The Liquidators propose pursuant to section 245 of the Act to dispense with the meeting of creditors. The Liquidators consider, having regard to the assets and liabilities of the Company, the likely result of the liquidation of the Company, and any other relevant matters, that no such meeting should be held.

However, if creditors wish to have a meeting, then written notice should be sent to the Liquidators' offices within 10 working days of receiving this notice.

Please note that, pursuant to section 314 of the Act, creditors are advised that at any time in the course of the liquidation, the Liquidators will, at the request in writing of any creditor or shareholder, call a meeting of creditors for the purpose of appointing a Liquidation Committee.

9. CREDITORS CLAIM FORM

A creditor's claim form is enclosed for your convenience. We request that this be completed and returned to our office together with supporting documentation to register your claim in this liquidation.

Notice is given that the Liquidators have fixed 21 October 2013 as the day on or before, the creditors of the Company are to make their claims, and establish any priority their claims may have under section 312 of the Act, or to be excluded from the benefit of any distribution made before the claims are made or, as the case may be, from objecting to the distribution.

10. RETENTION OF TITLE

If you have supplied any goods to the Company to which you have retained title, please provide us with a copy of the terms and conditions under which you supplied the goods along with full details of the items which you have supplied. Supporting documentation must include copy invoices and delivery notes.

It is important to note that retention of title agreements fall under the definition of "security interest" within section 17 of the Personal Property Securities Act 1999 ('PPSA') and are required to be registered on the Personal Property Securities Register ('PPSR'). Unregistered agreements rank after the registered General Security Agreement ('GSA'). If you believe that your security has been validly registered against the Company, please provide a copy of the financing statement and any other documentation you have to substantiate your position.


11. ESTIMATED DATE OF COMPLETION OF LIQUIDATION

Bearing in mind the nature of the investigation of the Company's affairs we do not believe that we can give an accurate estimate for the date of completion of this liquidation at this time.

12. OTHER INFORMATION

Should you have any queries regarding this liquidation please direct all enquiries to the Liquidator of this office directly on 09 306 7424.

SIGNED



CHRIS McCULLAGH
JOINT & SEVERAL LIQUIDATOR

01/10/13

DATED

**RESTAURANT LIMITED (IN LIQUIDATION)
T/A BROWNSTONE RESTAURANT & COCKTAIL LOUNGE
ESTIMATED STATEMENT OF AFFAIRS
AS AT 23 SEPTEMBER 2013**

	<u>Notes</u>	Book Value \$	Estimated to Realise \$
ASSETS AVAILABLE TO PREFERENTIAL CREDITORS (SUBJECT TO GSA)			
Bank Accounts	1	3,497	3,497
Stock	2	30,416	Unknown
Bartercard Trade Dollars	3	14,719	Unknown
Total Assets Available to Preferential Creditors		48,632	Unknown
PREFERENTIAL CREDITORS			
Employees - Wages and Holiday Pay (Including PAYE)		34,269	34,269
IRD - PAYE		814	814
Total Preferential Creditors		35,083	35,083
Surplus / (Deficit) in relation to Preferential Creditors		13,549	** Unknown
ASSETS SECURED BY WAY OF GENERAL SECURITY AGREEMENT (GSA)			
Fitout Costs		1,494,493)	
Kitchen Equipment		36,136)	
Office Equipment		7,480)	
FOH Equipment		2,868)	
Bar Equipment		5,928)	
Chillers & Freezers		24,622)	
Tables & Chairs		25,293)	
Outdoor Furniture & Heaters		9,160)	
Carpets		1,062) -	Unknown
Curtains, Table Clothes, etc		8,706)	
Crockery & Cutlery		4,102)	
Glassware		68)	
Staff Uniforms		87)	
Clocks		4,311)	
Lights & Lampshades		7,218)	
Bric a Brac		7,261)	
Motor Vehicles		6,827)	
Total Assets Available to GSA Holder	4	1,645,622	Unknown
<i>Due to Rendrag Family Trust secured by way of General Security Agreement (GSA)</i>	5	(4,800,000)	(3,613,760)
Surplus / (Deficit) in relation to Rendrag's GSA		(3,154,378)	** Unknown
UNSECURED CREDITORS			
Trade Creditors		(95,021)	(95,021)
Surplus / (Deficit) in relation to Unsecured Creditors		(3,249,399)	** Unknown

Notes

1. Cash in bank at time of liquidation.
2. Stock on Hand at time of liquidation. Realisable value is unknown and maybe subject to retention of title security interests.
3. As advised by Director.
4. Fixed Asset values per draft financial accounts YE 31/03/12, plus recent acquisitions at cost.
We are unable to provide an estimated realisable value of the fixed assets as the assets are currently being marketed for sale and it may prejudice the outcome.
5. We have yet to determine the validity of the GSA and the secured debt. In the event that the security is invalid in any way, the debt may be deemed unsecured in part or in whole.





RESTAURANT LIMITED (IN LIQUIDATION)
Trading As Brownstone Restaurant & Cocktail Lounge

SCHEDULE OF CREDITORS NAMES AND ADDRESSES
PURSUANT TO SECTION 255(2)(C) OF THE COMPANIES ACT 1993

Creditors	Postal Address 1	Postal Address 2	Postal Address 3
Accident Compensation Corporation	Debt Management Unit	PO Box 3248	Wellington 6140
Aorangi Road Wines (Mataraki Holdings Ltd)	2 Peacock Street	Glendowie	Auckland 1071
Art of Produce	PO Box 91712	Auckland Mail Centre	Auckland 1142
Atomic Coffee Roasters Ltd	PO Box 52004	Kingsland	Auckland 1352
Bartercard Exchange Limited	PO Box 101563	Auckland 1333	
B Bachinger-Hearey	*n/a		
Blomfield Signs	32 Pollen Street	Grey Lynn	Auckland 1021
Bond Estate (Casito Miro)	3 Brown Road	Onetangi	Waiheke Island 1081
Burns & Ferral Ltd	PO Box 13140	Onehunga	Auckland 1643
Clearview Estate	194 Clifton Road	Te Awanga	Hastings 4180
Candola NZ Ltd	PO Box 87530	Auckland 1742	
Collins Plumbing & Gas Ltd	PO Box 45059	Te Atatu	Auckland 0651
Contour Sales	PO Box 15012	Tauranga 3144	
Corporate AV Services Ltd	400 B Great North Road	Grey Lynn	Auckland 1021
Craft Bros	2/139 Wellesley Street	Auckland 1010	
Crystal Bay Foods (NZ) Ltd	PO Box 204026	Highbrook	Auckland 2161
Cstuff	68 Ponsonby Road	Ponsonby	Auckland 1011
Datacom NZ	PO Box 6041	Auckland 1141	
Eftplus NZ Ltd	22 Valpy Street	Saint Clair	Dunedin 9012
EuroVintage Ltd	PO Box 99192	Newmarket	Auckland 1149
Eurowine Fine Wines (1990) Ltd	PO Box 13260	Johnsonville	Wellington 6440
Eveve Ltd	160a Oaia Road	Muriwai	Auckland 0881
Cornerstone Publications Ltd (Express)	PO Box 47514	Ponsonby	Auckland 1144
Food Publishing Ltd	PO Box 90693	Auckland Mail Centre	Auckland 1142
feeSmart Finance Ltd (GRA)	PO Box 113027	Newmarket	Auckland 1149
Glengarry Hancocks Ltd	PO Box 47191	Ponsonby	Auckland 1144
Hawkes Bay Independent Brewery	PO Box 7254	Taradale	Napier 4141
Hi IQ Liquor	PO Box 15453	New Lynn	Auckland 0640
Hospitality Licensing Ltd	PO Box 681	Oneroa	Waiheke Island 1840
Huapai Estate (Awa Valley Vineyard)	74 Awa Road	RD 1	Kumeu 0891
Inland Revenue Department	PO Box 1535	Hamilton 3240	
Il Forno Ltd	PO Box 251376	Pakuranga	Auckland 2140
Johnner	359 Dakins Road	RD7	Masterton 5887
Kapiti Coffee	46 Rosetta Road	Raumai South	Paraparaumu 5032
Kemp-Roberts McCallum	PO Box 9009	Newmarket	Auckland 1149
La Fromagerie Ltd	PO Box 8471	Symonds Street	Auckland 1150
Lincoln Vineyards Ltd	130 Lincoln Road	Henderson	Waitakere 0610
Macvine International Ltd	PO Box 28501	Remuera	Auckland 1541
Maison Vauron Ltd	PO Box 8471	Symonds Street	Auckland 1150
MDJ Creative	PO Box 300100	Albany	Auckland 0752
One Beverage Management Ltd	4A/84 Gunner Drive	Auckland 0610	
Preston Group Ltd (Mills Reef Winery)	PO Box 2247	Seventh Avenue	Tauranga 3140
M Pretcherer	*n/a		

Negotiants New Zealand Ltd	PO Box 4494	Auckland 1140	
Nevis Bluff Wines Ltd	PO Box 3861	Christchurch 8140	
Norrie Montgomery Photographer	PO Box 38516	Howick	Auckland 2145
Nova Energy Ltd	PO Box 8044	Symonds Street	Auckland 1150
NZPOS Systems Ltd - Wizbang	Level 1, 18 Northcote St	Takapuna	Auckland 0740
The Olympic Laundry Ltd	PO Box 47061	Ponsonby	Auckland 1144
Philip Moore Auckland Ltd	PO Box 8048	Symonds Street	Auckland 1150
Planet Wine Ltd	PO Box 47073	Ponsonby	Auckland 1144
Powerall Electrical Ltd	PO Box 76	Kumeu	Auckland 0891
Prattys	41 Linwood Avenue	Mount Albert	Auckland 1025
Procure Liquor Ltd	PO Box 10009	Dominion Road	Mt Eden 1446
Red + White	PO Box 1316	Shortland Street	Auckland 1040
Regency Imports Ltd	PO Box 9883	Newmarket	Auckland 1149
Replacement Lamp Services Ltd	PO Box 300059	Albany	Auckland 0752
Rendrag Family Trust	108 Ponsonby Road	Auckland 1011	
Restaurant Association of New Zealand	PO Box 8287	Symonds Street	Auckland 1150
R Simpson	*n/a		
Sabato	PO Box 8331	Symonds Street	Auckland 1150
Sansom Corporation Ltd	105/100 Parnell Road	Parnell	Auckland 1052
Sanz Global Ltd	PO Box 13805	Onehunga	Auckland 1643
Seek NZ Ltd	Locked Box 302328	North Harbour	Auckland 0751
Service Foods Ltd	PO Box 132330	Sylvia Park	Auckland 1644
Smart Payroll	PO Box 44094	Lower Hutt 5040	
Skellon Foods Ltd	18-22 The Concourse	Henderson	Waitakere City 0610
Soho Wine Co	81 Shelly Beach Road	Herne Bay	Auckland 1011
Southern Hospitality Ltd	PO Box 425	Dunedin 9054	
Space Industries	PO Box 76474	Manukau City	Auckland 2241
Stanley Group Ltd	PO Box 361	Matamata	Auckland 2271
Tea Total Ltd	PO Box 303439	North Harbour	Auckland 0751
Terravin Wines Ltd	PO Box 1098	Blenheim 7240	
The Produce Company Ltd	PO Box 132181	Sylvia Park	Auckland 1644
Thermotech	PO Box 207077	Hunua	Auckland 2254
The Whisky Shop (NZ) Ltd	Shop M2	41 Elliot Street	Auckland 1010
Three Miners Vineyards Ltd	89 McPherson Road	Alexandra	Central Otago 9391
Totali Ltd	PO Box 4587	Mt Maunganui South	Mt Maunganui 3149
Trainium	17 De Luen Avenue	Tindalls Beach	Wharangaparoa
Treasury Wine Estates (NZ) Ltd	PO Box 8264	Symonds Street	Auckland 1150
Tresillian - Lindsay Family Cellars Ltd	PO Box 6221	Upper Riccarton	Christchurch 8442
Twin Rivers Group Ltd	PO Box 201	Arrowtown 9351	
Transpacific Waste Management	Private Bag 14919	Panmure	Auckland 1741
Watercare	Private Bag 94010	Auckland 2241	
Westbrook Winery	PO Box 21443	Henderson	Auckland 0650
Zealfresh Ltd	PO Box 36495	Northcote	Auckland 0748

**Please note: Addresses of individuals are not included above due to the provisions of the Privacy Act 1993.*

PKF Corporate Recovery & Insolvency (Auckland) Limited

Complete and return this form to: Fax (09) 302 0536 / Email: admin@pkfcr.co.nz / Post: PO Box 3678, Auckland 1140

CREDITORS CLAIM FORM (Also for use by Preferential Creditors) Section 304(1) Companies Act 1993

<p>NAME AND POSTAL ADDRESS OF CREDITOR IN FULL</p> <p>Telephone Number: _____</p> <p>Email: _____</p> <p>My Reference is: _____ (if applicable)</p>	<p>Any personal information collected is for the purpose of administering the liquidation in accordance with the Companies Act 1955 and 1993. The information will be used and retained by the Liquidator and will be released to other parties only with your authorization or in compliance with the Privacy Act 1993.</p> <p>Under Section 304(1) of the Companies Act 1993 any claim by an unsecured creditor against a company in liquidation must be in this prescribed form and must -</p> <p>(a) Contain full particulars of the claim; and</p> <p>(b) Identify any documents that evidence or substantiate the claim.</p> <p>You may have access to and request correction of any personal information.</p>
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NAME OF COMPANY IN LIQUIDATION: Restaurant Limited (In Liquidation) T/A Brownstone Restaurant & Cocktail Lounge

I, (Name).....
(If claim is made on behalf of creditor, specify relationship to creditor and authority) claim that the company was at the date it was put into liquidation indebted to the above named creditor for the sum of (Amount in words and figures):

.....
..... \$.....

SIGNED:

Date:

WARNING

It is an offence under Section 304(6) of the Companies Act 1993 to: -

1. Make or authorise the making of, a claim that is false or misleading in a material particular knowing it to be false or misleading; or
2. To omit, or authorise the omission from a claim of any matter knowing that the omission makes the claim false or misleading in a material particular.

Received
(Date Stamp)

RESERVED FOR OFFICE USE:

Claim admitted/rejected for voting purposes:

Signed:

Date

CLAIM REJECTED FOR PAYMENT:

Signed

Date

Note: If the decision to admit or reject a claim is amended, the Companies Act 1993 Liquidation Regulations 1994 require that it be recorded in writing.

CLAIM ADMITTED FOR PAYMENT:

1) \$.....cents in the dollar OR 2) 100% distribution

Preferential Claim for:

Unsecured Claim for:

Amount distributed to creditor:

\$

\$

\$

Signed Liquidator/ Insolvency Administrator:

Dated

PARTICULARS OF CLAIM

If the creditor owes money to the company, please give full details.

Date	Details of Claim and Identification of Documents that Evidence or Substantiate the Claim	Amount \$

RETENTION OF TITLE CLAIMANTS ONLY

Please provide details of the basis of your retention of title claim and furnish a copy of the documentation showing that such a reservation of title clause is a condition of contract.

PREFERENTIAL CLAIMANTS ONLY

1. Are you claiming the full amount of your claim as preferential? Yes / No

2. If no, what part of the claim is preferential? \$.....

3. Why do you believe you are a preferential creditor?
(e.g. employee, GST etc).....

4. Details of your claim:.....

If applicable please record here your GST Registration number: