

Insolvency Law & Practice

13/9/16 Update Summary

COMMENTARY

INSOLVENCY ACT

Commentary to s 326 (Insolvent may make a proposal) has been updated: [IN326.01] – [IN326.03]. [IN326.04] has been added.

Commentary to s 333 (Court must approve proposal) has been updated: [IN333.06(1)]. [IN333.02A] has been added.

Commentary to s 414 (Rehearings and appeals) has been updated: [IN414.01].

COMPANIES ACT

Commentary to s 289 (Statutory demand) has been updated: [CA289.01].

Commentary to s 305 (Rights and duties of secured creditors) has been updated: [CA305.01] and [CA305.01A].

Commentary to s 329 (Court may restore company to New Zealand register) has been updated: [CA329.03].

CASES

Commentary on the following cases has been included in this update:

INSOLVENCY ACT

Re Commissioner of Inland Revenue, ex parte Spicer [2016] NZHC 1344: unsuccessful application for extension of time for service of bankruptcy notice against overseas bankrupt: [IN17.07(3)].

Body Corporate 324525 v Butcher (a debtor) [2016] NZHC 887: partially successful application to set aside bankruptcy notice – bankruptcy notice did not attach sealed order for costs – held that creditor could rely on the notice: [IN29.04] and [IN418.02].

Commissioner of Inland Revenue v Faloon [2016] NZHC 990: unsuccessful application to review order of adjudication under s 414(1) Insolvency Act 2006 – threshold question was whether challenge could only be made by way of appeal to Court of Appeal: [IN414.01] and [IN414.02].

COMPANIES ACT

Cable Price (NZ) Limited v Taimona Haulage Ltd [2016] NZHC 828: unsuccessful application for liquidation order under s 241 Companies Act 1993 – creditor whose debt subject to genuinely arguable dispute treated as prospective or contingent creditor – leave required under s 288(5) Companies Act 1993: [CA241.02(2)(b)], [CA241.03(1)] and [CA241.04(1)].

Cargill Contracting Ltd v Heyward Holdings Ltd [2016] NZHC 351: unsuccessful application for order staying liquidation proceeding and restraining advertising: [CA241.04(1)].

Cardno (NZ) Ltd v GLW Group Ltd [2016] NZHC 1124: unsuccessful application for liquidation order: [CA289.01].

Takanini Central Residential Ltd v Terra Group NZ Ltd [2016] NZHC 478: partially successful applications to set aside statutory demands – whether reasonably arguable disputes over invoices on which demands founded – whether applicants had reasonably arguable counterclaims which might offset any amounts claimed not subject to genuine disputes: [CA290.02(1)].

Pinnacle Steel Ltd v Design Engineering (S.I.) Ltd [2016] NZHC 388: successful application to set aside statutory demand – company argued substantial dispute about whether sum claimed was owing and counterclaim: [CA290.02(2)].

Vance v Musgrave [2016] NZHC 1012: successful applications by liquidators – orders setting aside charge and transaction under which the value of company assets taken by employee were set-off against debt owed to employee – order directing employee to pay amount of claimed set-off: [CA292.03(5)(c)].

Petterson v Browne [2016] NZCA 189: partially successful appeal by liquidator against decision declining relief under ss 295 and 299 Companies Act 1993 – Court of Appeal considered nature of court's discretion under s 295: [CA295.01(5)] and [CA299.01].

Madsen-Ries v Donovan Drainage and Earthmoving Ltd [2016] NZCA 301: unsuccessful appeal by liquidators against decisions declining to set aside payments as insolvent transactions: [CA296.02] and [CA296.03(2)(c)].

Petterson v Hutt [2016] NZHC 1394: application by liquidator for interim injunction – High Court satisfied liquidator had arguable case that security holder was shadow director and that application under s 299 Companies Act 1993 might succeed: [CA299.01A].

Fisk v Attorney-General [2016] NZHC 479: unsuccessful application by receivers for priority over proceeds of sale – Customs made preferential claim in the receivership: [CA305.05A].

Mules v Registrar of Companies [2016] NZHC 986: unsuccessful application to restore companies to register of companies: [CA329.02A].

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