

Insolvency Law & Practice

22/6/18 Update Summary

CASES

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

INSOLVENCY ACT

Northland Regional Council v Philbrick [2018] NZHC 433: unsuccessful application to set aside bankruptcy notice – discussion of service of bankruptcy notice: [IN17.07] and [IN29.06].

Commissioner of Inland Revenue v Wilson [2018] NZHC 236: successful application for order adjudicating W bankrupt – consideration of whether age, employment and prospects of debtor recovering from bankruptcy relevant when exercising discretion to refuse adjudication: [IN37.06(4)].

Commissioner of Inland Revenue (CIR) v Wilson [2017] NZCA 100: Court of Appeal noted that decision whether to accept payment proposal not a matter which court can consider when deciding whether it would be just and equitable to refuse to adjudicate debtor bankrupt: [IN37.06(4)].

Ravelich v Manning [2018] NZHC 255: unsuccessful application for order that disclaimed property vest in the applicant: [IN119.01].

New Zealand Life Care Ltd v Official Assignee [2018] NZHC 17: unsuccessful application under s 239 Insolvency Act 2006 for order reversing decision of Official Assignee to reject claim in bankruptcy – debts or obligations that are statute barred or under an illegal contract not provable: [IN232.01].

Wang v Galloway Properties Limited [2018] NZHC 284: successful application to approve bankruptcy proposal – discretion whether or not to approve discussed: [IN333.01], [IN333.03] and [IN333.06].

COMPANIES ACT

Re Jackson [2018] NZHC 477 (alternative title *Re Meccano 2016 Ltd (Administrators Appointed)*): successful application by the administrators of Meccano 2016 (Meccano) for order extending period within which they had to convene watershed meeting of creditors of the company to decide future of the company – High Court held additional time of two months was reasonable – would provide further time for orderly progress to be made and for watershed meeting to be convened at a time when the administrators were able to provide creditors with a better informed assessment of the business, the prospects of them achieving further recoveries from sales of stock and assets and whether to recommend that the company execute a deed of company arrangement or alternatively that the administration should end and a liquidator be appointed: [CA239AT.02] and [CA239AT.03].

Renaissance Brewing Ltd v Shephard [2017] NZHC 2744: successful application for leave to commence proceeding seeking extension of convening period to schedule watershed meeting and to bring the application without notice – no creditors were opposed to an extension at the first meeting in the administration: [CA239AT.03].

Reserve Bank of New Zealand v CBL Insurance Ltd [2018] NZHC 264: successful application to appoint liquidators to CBL – order made appointing interim liquidators: [CA241.02(4)] and [CA241.06].

Commissioner of Inland Revenue v Apollo Bathroom and Kitchen Limited (in liq) [2018] NZHC 18: successful application by liquidators for orders increasing remuneration rates – increase in hourly rates was sought based on inflation rather than special features of the liquidation: [CA276.05].

Fisk v Fargher Construction Ltd [2018] NZHC 441: successful without notice application for F and M to be appointed liquidators of FCL – F and M were senior practitioners at PwC which had a continuing business relationship with some of FCL's secured creditors – apart from one client (a bank) neither F nor M provided services to those creditors – shareholders of FCL asked F and M to act – application was without notice because FCL involved in construction and clients left in limbo – High Court held appropriate for application to be made without notice – no obvious reason to oppose appointment – a large secured creditor had indicated its support –

creditors could vote to remove the liquidators at the creditors' meeting if they wanted to – F and M experienced insolvency practitioners and aware of their obligations: [CA280.03(a)].

Debut Homes Limited (in liq) v Cooper [2018] NZHC 453: applications by liquidators including for directions and orders concerning how sum recovered from sole director of company under ss 301 and 292 Companies Act 1993 to be applied in satisfaction of creditor claims – High Court declined application for direction that residual claims of related party creditors under security only partially set aside under s 299 Companies Act 1993 be set at zero – s 284(1)(a) Companies Act 1993 considered: [CA284.06], [CA299.01], [CA301.10(4)] and [CA305.05].

Harris v Bank of New Zealand [2017] NZHC 2374: successful application by liquidators under s 299 Companies Act 1993 to set aside general security deeds – successful application under s 35 Receiverships Act 1993 to prohibit appointment of any other receiver under the general security deed – unsuccessful applications under (a) s 34 Receiverships Act 1993 for direction that receivers were invalidly appointed and not entitled to remuneration, (b) s 35 Receiverships Act 1993 prohibiting appointment of any other receiver in respect of the property in receivership, and (c) s 37 Receiverships Act 1993 for receivers to be prohibited from acting as receivers for period of five years: [CA299.01].

Ulsterman Holdings Limited (in liq) v Walls [2017] NZHC 3040: liquidators applied for declarations that defendant sole director of company had breached duties under ss 131(1), 135, 136 and 137 Companies Act 1993 and for an order that he compensate the company – High Court held that defendant had breached ss 131(1), 135 and 137 and ordered him to contribute \$489,810.06 to the company's assets: [CA301.06(4)].

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