

Company Law

11/8/21 Update Summary

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LEGISLATION

HIGH COURT RULES

High Court Rules 2016, r 19.4(f) was amended, r 19.4A was inserted as from 20 May 2021, by High Court Amendment Rules 2021 (LI 2021/81).

COMMENTARY

COMPANY LAW

Commentary has been included on the following cases:

Alala International Ltd (in liq) v Chen [2020] NZHC 2212 — duty of directors to act in good faith and in best interests of company — introduction to directors' duties: ss 131–138 — other case examples of breaches of s 131 arising from insolvent trading/improper transactions — reckless trading — substantial risk of serious loss — other case examples of breaches of s 135 arising from insolvent trading/improper transactions — failure to pay tax liabilities — other case examples of claims by liquidators in relation to alleged breaches of s 135 — other case examples of breaches of s 137 arising from insolvent trading/improper transactions: [CA131.10(1)(z)], [CA135.04(17)], [CA135.05B], [CA135.06(4)(d)], [CA137.01(3)(o)].



Coupe v Remington [2020] NZHC 2122 derivative actions – court must consider certain factors – general principles to be applied in determining application for leave to bring derivative proceedings – *Vrij v Boyle*: [CA165.04].

Cummins v Body Corporate 172108 [2021] NZCA 145 – meaning of “solvency” – two limbs of solvency test – cash flow limb: s 4(1)(a) – “pay its debts as they become due” – Realistic commercial assessment of company’s entire financial position required – endorsement of approach in *Yan v Mainzeal Property and Construction Ltd (in rec & in liq)* [2014] NZCA 190: [CA4.03(1)(a)(iv)].

Denize Trustee Co Ltd v Waimauri Ltd [2020] NZHC 1718, (2020) 21 NZCPR 247 – service of documents on companies in legal proceedings – methods of service of document in legal proceedings on company – service by leaving document at company’s registered office – examples of valid service – documents handed to person (tenant at rented residential address) valid service (director had not advised Companies Office of change of address): [CA387.01(3)(b)].

Galante v Orinoco Organics Ltd [2020] NZHC 3154 – prejudiced shareholders – types of relief against oppression – principles in granting relief – interim relief: appointment of receiver: [CA174.05(1)(c)].

Global Cover Insurances Ltd (in liq) v Mario [2020] NZHC 1556 – reckless trading – substantial risk of serious loss – other case examples of breaches of s 135 arising from insolvent trading/improper transactions – failure to pay tax liabilities– other case examples of claims by liquidators in relation to alleged breaches of s 135 – other case examples of breaches of s 136 arising from obligations incurred while insolvent – other case examples of breaches of s 137 arising from insolvent trading/improper transactions: [CA135.04(17)], [CA135.05B], [CA135.06(4)(d)], [CA136.01(16)], [CA137.01(3)(o)].

Independent Carpets Ltd (in liq) v Carpet Call 2000 NZ Ltd [2020] NZHC 2757 – duty of directors to act in good faith and in best interests of company – introduction to directors’ duties: ss 131–138 – other case examples of breaches of s 131 arising from insolvent trading/improper transactions – reckless trading – substantial risk of serious loss – other case examples of breaches of s 135 arising from insolvent trading/improper transactions – failure to pay tax liabilities – other case examples of claims by liquidators in relation to alleged breaches of s 135 – other case examples of breaches of s 136 arising from obligations incurred while insolvent – other case examples of breaches of s 137 arising from insolvent trading/improper transactions – accounting records must be kept – accounting records required to “speak for themselves”: [CA131.10(1)(z)], [CA135.04(17)], [CA135.05B], [CA135.06(4)(d)], [CA136.01(16)], [CA137.01(3)(o)], [CA194.02(3)].

Johnson v Johnson [2020] NZHC 1563 – derivative actions – court must consider certain factors – general principles to be applied in determining application for leave to bring derivative proceedings – *Vrij v Boyle*: [CA165.04].

Minister of Education v Nayacakalou [2020] NZHC 1874 – meaning of “shareholder” – definition of “shareholder” – holder of solely beneficial interest in shares: [CA96.02(2)(b)].

O’Brien v Parkinson [2020] NZHC 1681 – derivative actions – court must consider certain factors – general principles to be applied in determining application for leave to bring derivative proceedings – *Vrij v Boyle*: [CA165.04].

Re Forestlands (No 2) Ltd (in liq) [2020] NZHC 1683 – trusts not to be entered on register – trusts in other contexts: [CA92.04].

Singh v Patel [2020] NZHC 2242 – legal nature of shares – whether shares are capable of being the subject of a claim in conversion – company to maintain share register – consequences of failure to maintain share register – meaning of “shareholder” – definition of “shareholder” – who constitutes a “shareholder” in absence of share register?: [CA35.01(6)], [CA87.02(2)], [CA96.02(3)].

Watts & Hughes Construction Ltd v Biala [2020] NZHC 3041 – reckless trading – distinction between legitimate and illegitimate risk and judgment of Supreme Court in *Madsen-Ries v Cooper* [2020] NZSC 100: [CA135.01(15)].

WNY Group Ltd v Crown Range Holdings Ltd [2020] NZHC 1585 – dealings between company and other persons – comparison between s 18 and common law – whether necessary to show reliance on holding out – scope and application of ss 18(1)(c) and (d) – actions beyond authority of agent – powers which director customarily has authority to exercise – proviso to s 18(1): [CA18.02(2A)(f)], [CA18.05(1)(b)], [CA18.06(3)].

Wynyard v Bremner [2020] NZHC 1589 – duty of directors to act in good faith and in best interests of company – introduction to directors’ duties: ss 131–138 – fiduciary position of directors – prejudiced shareholders – conduct of affairs of company / acts of company – types of relief against oppression – principles in granting relief – relief refused: [CA131.01(4AA)(xii)], [CA174.01A(3)], [CA174.05(1)(h)].

Commentary has also been updated at the following location:

- [CA15.05] – separate legal personality – assets of company.
- [CA18.02(2)(a)], [CA18.03], [CA18.05(1)(b)] – dealings between company and other persons – comparison between s 18 and common law – whether necessary to show reliance on holding out – scope and application of ss 18(1)(c) and (d) – persons protected – actions beyond authority of agent – powers which director customarily has authority to exercise.
- [CA96.01(1)], [CA96.02(2)(b)] – meaning of “shareholder” – what is a shareholder? – definition of “shareholder”.
- [CA165.03], [CA165.04] – derivative actions – court must consider certain factors – general principles to be applied in determining application for leave to bring derivative proceedings – *Vrij v Boyle*.
- [CA174.04], [CA174.05(1)(c)], [CA174.06(2)], [CA174.08(8)], [CA174.08(13)] – prejudiced shareholders – “just and equitable” – types of relief against oppression – principles in granting relief – interim relief: appointment of receiver – liquidation order under s 174(2)(g): irretrievable breakdown – one or both parties at fault – examples of oppressive, unfairly discriminatory, or unfairly prejudicial conduct: alleged fetter on call of unpaid portion of shares not oppressive, unfairly discriminatory, or unfairly prejudicial conduct – assumption of unilateral control, mismanagement, and conflicts of interest.

CORPORATE INSOLVENCY – COMPANIES ACT

Coffee Culture Franchises Ltd v Home Straight Park Trustees Ltd [2021] NZHC 577 – court may set aside statutory demand – a substantial dispute – arguable case – COVID-19 pandemic and ADLS lease cl 27.5: [CA290.03(3)(b)].

Cummins v Body Corporate 172108 [2021] NZCA 145 – commencement of liquidation – appointment of the liquidator is at court’s discretion: [CA241.04(2)].

Re Pauanui Mountain Estate Ltd (in liq); Needham v Nayacakalou [2021] NZHC 398 – court supervision of liquidation – applications under s 284: [CA284.02].

Yan v Mainzeal Property and Construction Ltd (in liq) [2021] NZCA 99 – power of Court to require persons to repay money or return property – directors’ duties – generally – directors’ duties in relation to creditors – s 135 and s 136 – the granting of relief under s 301 – scope for recovery under s 301 – who benefits from a recovery effected under s 301: [CA301.05(1)], [CA301.06(3)], [CA301.06(4)], [CA301.08], [CA301.10], [CA301.11].

Commentary has also been updated at the following location:

- [CA301.01], [CA301.05(1)], [CA301.06(1)], [CA301.06(3)], [CA301.06(4)], [CA301.08], [CA301.10] – power of Court to require persons to repay money or return property – application of s 301 – directors’ duties generally – directors’ duties in relation to creditors – s 135 – meaning of substantial risk of serious loss – operation of s 135 – s 136 – the granting of relief under s 301 – scope for recovery under s 301 – who benefits from a recovery effected under s 301.

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