IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CIV-2015-404-1041
[2015] NZHC 2682

IN THE MATTER	of the liquidation of RETAIL READY LOGISTICS LTD (in receivership and liquidation)
BETWEEN	RETAIL READY LOGISTICS LTD Plaintiff
AND	BANK OF NEW ZEALAND First Defendant
	PETER CHARLES CHATFIELD and STEPHEN REX TIETJENS Second Defendants

Hearing: 23 September 2015

Counsel: K P Sullivan for Plaintiff (Respondent)
L A O'Gorman for Defendants (Applicants)

Judgment: 30 October 2015

JUDGMENT OF BREWER J

This judgment was delivered by me on 30 October 2015 at 3:00 pm pursuant to Rule 11.5 High Court Rules.

Registrar/Deputy Registrar

Solicitors: Johnston Lawrence (Auckland) for Plaintiff
Buddle Findlay (Auckland) for Defendants

Introduction

[1] The plaintiff, Retail Ready Logistics Ltd, undertook the business of a freight forwarder from 2006 to 2009. It is now in receivership and liquidation. It was placed into liquidation on 5 August 2009 by an order of this Court. Mr Walker was appointed as its liquidator.

[2] The first defendant, BNZ ("the Bank"), appointed the second defendants as receivers of the plaintiff on 20 May 2009. The second defendants are insolvency practitioners.

[3] The defendants apply for orders that the plaintiff pays security for costs in respect of its claim, and that further initial disclosure and particulars be provided. Accordingly, I am required to decide the following questions:

(a) Are the defendants entitled to security for costs?

(b) Shall the plaintiff provide further initial disclosure and particulars?

Background

[4] The plaintiff acted as a broker for importers of retail goods. The importation of certain goods attracts import duty. Import duty is collected by New Zealand Customs Service ("Customs") through the Customs and Excise Act 1996 ("the CEA"). Customs introduced a broker deferred scheme in which approved brokers can collect duty on an importer's behalf and account for it on a regular basis to Customs. The plaintiff, as part of the broker deferred scheme, invoiced each of its customers for import duty.

[5] The primary liability for duty is the importer's. The plaintiff's customers remained liable to pay Customs their import duty notwithstanding their use of the plaintiff's brokerage service.

[6] The plaintiff pleads that it was an implied term of the plaintiff's contracts with the importers that the plaintiff would, as agent and fiduciary, pay the importer's

import duty to Customs. The plaintiff would account to Customs within seven to 21 days for the duty (including GST). The plaintiff did not keep the duty in a separate bank account on trust for Customs, but rather paid the money from the importers into its account at the Bank and later disbursed it to Customs.

[7] On 7 November 2008, the plaintiff entered into a debtor finance facility agreement ("the DFF") with the Bank. Under the DFF the Bank agreed to purchase accounts receivable from the plaintiff (commonly called "debt factoring") on terms which are deemed to have constituted the provision of secured finance. At the same time, the plaintiff, pursuant to a general security agreement ("GSA"), granted a security interest to the Bank over "all our present and after-acquired property, and all personal property in which we have rights, whether now or in the future".

[8] On 3 January 2009, the Bank registered a financing statement giving notice of its putative security interest in the accounts receivable pursuant to the DFF, which described the collateral as all present and after acquired accounts receivable that are the proceeds of any of the plaintiff's contracts for the supply of goods or services.

[9] On 22 January 2009, the Bank registered a financing statement giving notice of its security interest pursuant to the GSA describing the collateral as all present and after acquired property.

[10] On 20 May 2009, the Bank appointed the second defendants as receivers of the plaintiff in its capacity as a secured creditor under both the GSA and the DFF.

[11] During May, June and July 2009 the second defendants as receivers collected $532,869.95 from the plaintiff's customers. The second defendants treated that amount as purchased debts under the DFF. This is because the Bank asserted rights to collect monies paid into the plaintiff's bank account.

The plaintiff's proceeding

[12] The plaintiff pleads that the $532,869.95 included $157,240.42 paid by its customers for import duty. The second defendants applied the import duty they

collected in reduction of the plaintiff's debt to the Bank. The plaintiff pleads that the Bank was not entitled to do that. Customs had priority.

[13] The plaintiff pleads five causes of action:

(a) *Breach of contract*. The payments of the import duty in reduction of the plaintiff's debt to the Bank were made in breach of the DFF contract with the plaintiff because they were not part of the purchased debts or part of the plaintiff's personal property over which the plaintiff had rights. The contract claim is based on an implied term that the plaintiff was obliged to pay customers' import duty as an agent and fiduciary.

(b) *Common law mistake*. The payments of the import duty in reduction of the plaintiff's debt were made by mistake and the Bank has been unjustly enriched by the mistake in breach of the plaintiff's obligation to pay the customer's import duty as agent and fiduciary.

(c) *Constructive trust*. The Bank and/or the second defendants have misappropriated the import duty knowingly in breach of trust or fiduciary obligation owed by the plaintiff to pay Customs, giving rise to a constructive trust over the duty amount.

(d) *Breach of statutory duty*. The DFF agreement did not govern the transfer of accounts receivable, but instead was simply lending secured by accounts receivable. Therefore, the second defendants breached their statutory duty by failing to pay out preferential claims in accordance with schedule 7 of the Companies Act. This resulted in the inability of the plaintiff and its liquidator to account for the import duty to Customs.

(e) *Breach of Personal Property Securities Act*. The second defendants breached their statutory duties under the PPSA by misappropriating

the import duty when those payments should have been made to Customs or returned to the plaintiff's customers.

The position of Customs

[14] The intended beneficiary of the litigation (subject to the payment of the liquidator's costs) is Customs. Although Mr Walker claims that Customs "strongly supports the proceedings", Customs has not entered into a funding arrangement.

[15] It is important to note that Customs applied to the Court to liquidate the plaintiff for failure to pay import duty and that, upon the plaintiff's liquidation, Customs filed a proof of debt as an unsecured creditor. Customs has not itself taken action against the Bank and the receivers. It is no longer able to do so as its claim would be limitation barred. It appears also that Customs has not taken any action to recover the import duty from the customers of the plaintiff.

[16] I was not provided with an affidavit setting out the position of Customs in relation to the proceedings.

Security for costs – general principles

[17] Rule 5.45 of the High Court Rules governs the ordering of security for costs. A Judge will usually follow a four-step approach in deciding whether to grant such an order.[1]

[18] First, the Judge must be satisfied of the threshold test under r 5.45(1). That test will be satisfied in this case if there is reason to believe that the plaintiff will not be able to pay the defendant's costs if the plaintiff is unsuccessful. The threshold test will be met where the plaintiff is a company in liquidation.[2]

[19] Second, and only if the threshold has been met, the Judge may decide whether to exercise his or her discretion to order security for costs pursuant to r 5.45(2). The ordering of security is not an automatic consequence of a plaintiff's

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1 See, for example, *Flat Bush Property Ltd (In Liq) v Logan* [2012] NZHC 332 at [21]; *Busch v Zion Wildlife Gardens Ltd (In Rec and In Liq)* [2012] NZHC 17 at [2].

2 See, for example, *Flat Bush Property Ltd (In Liq) v Logan*, above n 1, at [23].

impecuniousity.[3] Whether security is imposed depends on a broad overall assessment based on the interests of the parties.[4] The balancing exercise may include an assessment of the merits of the plaintiff's claim, but an assessment of the merits of the dispute at an interlocutory stage will only give the Court an impression of the merits.[5] Where an order for security will have the effect of preventing a plaintiff from pursuing its claim, such an order will be made only after careful consideration and in a case in which the claim has little chance of success. This is because access to the Courts for a genuine plaintiff is not lightly to be denied.[6]

[20] I have been assisted by Kós J's comprehensive discussion of security for costs in *Highgate on Broadway v Devine*.[7] In that Judgment, his Honour makes comments about the exercise of the discretion which are relevant to the present case:[8]

(a) Where the plaintiff is "nominal", so that it is in effect representing the interests of others who will thus be spared exposure to costs, it may be appropriate to make an order for security.

(b) While it is not appropriate that a Court predetermine the merits or form more than "an impression", if a prima facie case can be established that the respondent's claim is unmeritorious that will be a factor in favour of security for costs.

(c) Where allowing litigation to proceed without the checks and protection of security will be oppressive to the interests of other parties, particularly where the litigation is unjustified or unmeritorious, overcomplicated or unnecessarily protracted, then security may be ordered.

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3 *Highgate on Broadway Ltd v Devine* [2012] NZHC 2288, [2013] NZAR 1017 at [22].
4 *Hamilton v Papakura District Council* (1997) 11 PRNZ 333 (HC); *AS McLachlan Ltd v MEL Networks Ltd* (2002) 16 PRNZ 747 (CA) at [15]–[16].
5 *AS McLachlan Ltd v MEL Networks Ltd*, above n 4, at [21].
6 At [15].
7 *Highgate on Broadway v Devine*, above n 3.
8 At [22]–[24].

(d) Where it is reasonably probable that the defendant's actions the subject of a cause of action caused the plaintiff's impecuniousity, that is a strong consideration against awarding security.

(e) Where ordering security would deprive the plaintiff of the capacity to advance a prima facie meritorious claim, then that consideration should trump the right of a successful defendant to costs.

(f) The whole spectrum of each party's conduct in relation to the litigation and its subject matter may be considered, of significance is behaviour by either party that is contemptuous or oppressive.

(g) The most important consideration is how the respective interests of the parties should best be balanced.

[21] Third, the Court must decide the amount at which the security for costs should be fixed. The amount is not necessarily to be fixed by reference to a likely costs award. Rather, it is to be what the Court thinks fit in all the circumstances.[9] These include the nature of the relief claimed, the nature of the proceeding (including its complexity or novelty), the estimated duration of trial, the probable costs payable if the plaintiff is unsuccessful and the estimated actual costs.

[22] Fourth, the Court needs to determine whether to stay the proceeding under r 5.5(3)(b). Although a stay is discretionary, the Court will generally stay a proceeding until the security ordered is given.[10]

[23] I note that traditionally there has been an aversion to requiring liquidators to provide security for costs where proceedings are brought by a company in liquidation. This is to ensure that proceedings brought for the benefit of creditors are not stifled by security for costs applications.[11] But recently this aversion has been palliated. This is because there is a distinction between claims brought by a company in liquidation alone, and a claim brought by a liquidator. The relevance of

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9 *A S McLachlan Ltd v MEL Network Ltd*, above n 4.
10 *McGechan on Procedure* (looseleaf ed, Brookers) at [HR5.45.11].
11 *Heath and Whale on Insolvency* (online ed, LexisNexis) at [38.32].

the distinction is that a company in liquidation may have only its own assets available to meet any claim for costs, whereas a liquidator may be personally liable for costs and may have to look to his own assets if the assets of the company are insufficient. The Courts will be less inclined to require a liquidator personally to provide security for costs because his potential personal liability will provide better protection for a successful defendant than a costs order against a company in liquidation alone.[12]

Security for costs – discussion

[24] The plaintiff is in liquidation. It is clearly an impecunious plaintiff. Accordingly, I turn to consider whether to exercise my discretion. In doing so, I will balance the position of the defendants against the interests of the plaintiff company represented through the liquidator. I will discuss the following factors:

(a) The merits of the plaintiff's case.

(b) Whether the plaintiff is a "nominal" plaintiff.

(c) The risk of the proceeding being uneconomic.

(d) The cause of the liquidation.

(e) The public interest in the case.

The merits of the plaintiff's case

[25] The defendants say that the plaintiff's claim is lacking in merit for two reasons:

(a) The plaintiff does not have standing to bring the claim; and

(b) Customs does not have a priority claim to the $157,240.00 over BNZ under s 30 of the Receiverships Act 1993.

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[12] See, for example, *Combined Industrial Services Ltd (In Liq) v Dewar* [2015] NZHC 1924 at [53] and [54]; *Flat Bush Property Ltd (In Liq) v Logan*, above n 1, at [29] and [31].

[26] Turning first to standing. The argument is that because the plaintiffs' causes of action rely on common law or equitable arguments to overcome statutory priorities, the company in liquidation does not have standing to pursue those claims if such claims are not pursued by the party that made the alleged mistake; the company has not suffered any damage; and the company is not the beneficiary of any alleged fiduciary duties.

[27] Mr Sullivan for the plaintiff acknowledges that Customs could have sued the receivers; but he emphasises that the liquidator owes a duty to all creditors to realise and distribute the proceeds of the realisation of the company's assets to its creditors.[13] As Customs is a preferential creditor for any import duty outstanding, and the plaintiff is of the view that the import duty did not fall within the scope of the DFF so as to entitle the Bank to take that money, the liquidator is entitled to issue proceedings for recovery.

[28] I have considered the plaintiff's statement of claim. In my view, it is distinctly arguable that the plaintiff has standing to bring the proceeding:

(a) The first cause of action is in contract. As a contracting party, the plaintiff can sue BNZ for breach of the DFF contract.

(b) The second and third causes of action are alternative causes of action for mistake and knowing receipt of property giving rise to a constructive trust. The plaintiff was the legal owner of the property which is the subject of the causes of action. It is arguable that it has standing to bring the claim even though it is not beneficially entitled to the property.

(c) The fourth and fifth causes of action allege that the Bank and the receivers breached statutory duties under the Receiverships Act and the Personal Property Securities Act. The receivers owe duties to the person in respect of whose property they are appointed.[14] There is

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13 Companies Act 1993, s 253.
14 Receiverships Act 1993, s 18.

standing for the company to bring a claim against the receivers if the receivers breach their duty to the company.

[29] The defendants submit further that the plaintiff's second to fourth causes of action are unmeritorious because Customs does not have a priority claim to the $157,240.00 over the Bank under s 30 of the Receiverships Act.

[30] Section 101(4) of the CEA provides:

> In the case of a company in respect of the property of which a receiver is appointed in circumstances to which section 30 of the Receiverships Act 1993 applies, the amount of duty to which this section applies shall be paid in accordance with the requirements of section 30(2) of the Receiverships Act 1993.

[31] Section 30 provides that a receiver must pay "preferential creditors" out of assets that are the subject of security interest that:

> (a) is over all or any part of the company's accounts receivable and inventory or all or any part of either of them; and
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> (b) is not a purchase money security interest that has been perfected at the time specified in section 74 of the Personal Property Securities Act 1999; and
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> (c) is not a security interest that has been perfected under the Personal Property Securities Act 1999 at the time of the receiver's appointment and that arises from the transfer of an account receivable for which new value is provided by the transferee for the acquisition of that account receivable (whether or not the transfer of the account receivable secures payment or performance of an obligation).

[32] A "preferential creditor" is a creditor listed in Schedule 7 of the Companies Act. Customs is one of these "preferential creditors" where it has a claim for duty under the CEA. Heath and Whale explain the effect of the amendment to s 30(1):[15]

> The result intended by the section is that a receiver appointed under a general security agreement over present and after-acquired assets, such as is usually taken by banks and which is the most common way a receiver is appointed, must pay preferential creditors out of inventory and accounts receivable before paying the appointing creditor from such assets.

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15 *Heath and Whale on Insolvency*, above n 11, at [38.32].

[33] There is an exception to s 30(1). If a person has a purchase money security interest or if a receiver were appointed by a perfected purchaser of specific accounts receivable, then that person takes priority over "preferential creditors".[16]

[34] The defendants say that the Bank falls within the exception. They say that under the DDF it was the purchaser of specific accounts receivable and it perfected its interest. This, they say, has been the industry understanding of the effect of such arrangements for several years. The defendants argue therefore that the Bank's interest in the duty sum takes priority over the interest of Customs.

[35] The defendants say also that because the invoices were issued by the company in receivership after 20 May 2009, they are not validly subject to claims under s 30(2). This is because in *Strategic Finance (in rec and liq) v Bridgman & Anor*[17] the Court of Appeal held that the receiver's duty to pay preferential creditors out of accounts receivable and inventory only applied to assets of those categories that were on hand at the date of the appointment of the receiver. But, I note that the plaintiff will be able to overcome this hurdle if it can show that it brokered the importation of goods for a client prior to 20 May 2009 but had not been paid.

[36] The plaintiff says that the DDF does not constitute a perfected security interest over accounts receivable purchased for value. Whether an instrument such as the DDF could constitute such an interest has never been tested in Court. The plaintiff argues that if the matter proceeds to litigation it would be open to the Court to find that a "preferential creditor" takes priority in these circumstance because the purpose of the exception to s 30(1) is to secure the position of investors in securitisations and not for the purpose used by the Bank in this case.

[37] I am not persuaded by the defendants' submissions that the plaintiff's claim is entirely lacking in merit. Certainly the plaintiff may have some difficulty in persuading a Court that an arrangement such as the DFF does not constitute a perfected security interest over accounts receivable purchased for value when banks have been treating such arrangements as having that effect for a number of years.

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16 Receiverships Act 1993, s 30(2)(b).

17 *Strategic Finance (in rec and in liq) v Bridgman* [2013] 3 NZLR 650 (CA) at [86].

But the issue is yet to be litigated and the plaintiff's case should not be presumed to be hopeless because of the attitude of the banking industry. I note that the defendants have not challenged the merits of the contract claim.

Whether the plaintiff is a "nominal" plaintiff

[38] The defendants say that the intended beneficiary of the litigation is Customs. Customs is not pursuing the claim itself. It can no longer do so because any claim is limitation barred. The defendants say also that the customers who made the relevant import duty payments have no reason or standing to pursue claims against the defendants because Customs has not taken any action to recover the duty from them. The defendants say that the plaintiff is clearly intended to be a nominal one and this should be a factor that supports the imposition of security for costs.

[39] I am hesitant to accept the defendants' argument. This is because in all proceedings where a company is in liquidation, the plaintiff must be considered to be nominal. A company in liquidation will always be bringing proceedings for the benefit of its creditors. The general policy rule against requiring a company in liquidation to pay security for costs is to ensure that proceedings brought for the benefit of the creditors are not stifled by costs concerns. This policy reason is in direct contradiction to the policy reason for requiring security where the plaintiff is "nominal", which is that it gives the plaintiff an unfair advantage because those who benefit from the litigation are immune from liability. I do not think that the fact that a plaintiff is "nominal" can be given much weight in a liquidation proceeding.

The risk of the proceeding being uneconomic

[40] The defendants say that the significant motivation for the liquidator in bringing the proceeding is to get money from which he can pay himself for his services as liquidator. Mr Sullivan for the plaintiff submitted that this is not the case. He submitted that if the liquidator is ultimately found to have made claims which the company cannot make, and has acted unreasonably in doing so, then that is a matter

that could be addressed by the defendants in seeking a personal costs order against the liquidator.[18]

[41] The value of the plaintiff's claim is relatively low and it is very likely that the combined cost of the litigation and the liquidation expenses will exceed the amount at stake. Mr Sullivan estimates that the liquidator's fees are currently in the realm of $50,000.00. Once litigation costs and liquidator's fees are deducted from any recovery, I think the proceedings will be of little benefit to Customs. I accept the defendants' submission that the present litigation is largely uneconomic.

The cause of the liquidation

[42] The plaintiff acknowledges that the company's insolvency cannot be blamed on the defendants. But it says that the liquidation of the plaintiff was caused by the failure of the defendants to account for the import duty to Customs. It was Customs who applied to the Court to place the plaintiff into liquidation and it filed a proof of debt as an unsecured creditor. The plaintiff says that there is a connection between the plaintiff's impecuniousity and the subject matter of the proceedings. This, in its submission, goes against the imposition of security for costs.

[43] I give little weight to this factor for two reasons. First, I am prepared to accept that it is probable that the cause of the plaintiff's impecuniousity arises from the company's own trading performance. The receivers say that the plaintiff was insolvent and owed substantial sums to the Bank when it was placed into receivership. Second, since applying to place the plaintiff in liquidation, Customs has taken no direct action to pursue the amounts that the receivers gave to the Bank. Customs has not taken proceedings against the Bank, sought to be joined to the present proceedings or provided funding assistance to the liquidator in pursuing the present claim. Any causal link between the proceedings and the liquidation is tenuous.

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[18] *Mana Property Trustees Ltd v James Developments Ltd* [2010] NZSC 124.

The public interest in the case

[44] The plaintiff says that this case is of public interest. The issue raised by the plaintiff as to the statutory order of priorities under s 30(2) is yet to be determined by the Court. The plaintiff emphasises that where issues raised by a liquidator have wider relevance to insolvency law, no costs order is likely even where a liquidator loses.[19] Furthermore, it says that this is a case where a Court appointed liquidator is acting to maximise the return for creditors and should not be inhibited from performing his statutory obligations by an order for security.

[45] I suspect that here the plaintiff is attempting to cloak private interest with public sanctity. If the proceedings were of true public interest, then I would expect Customs to be taking a greater role in the litigation. I give no weight to the public interest consideration.

Conclusion

[46] On balance, I have reached the conclusion that this is an appropriate case for an award of security for costs. The factor that has tipped the balance for me is the uneconomic nature of the litigation. Given the relatively modest amount of money which the plaintiff is pursuing, I cannot see how the proceeding will be of real benefit to Customs if the plaintiff wins. There is a real risk of there being nothing left over for Customs as creditor. On the other hand, it is clear to me that the major impetus for bringing the proceeding is the hope by the liquidator of getting monies to pay for his services as liquidator. I am, therefore, persuaded to depart from the general principle that liquidators should not be inhibited from performing their statutory obligations by orders for security for costs. The plaintiff's access to justice right is not inhibited. I do not believe it would be fair in such circumstances to require the defendants to spend a substantial amount of money to conduct a defence with no prospect of recovering costs if they are successful.

[47] At this early stage of the proceeding where a statement of defence has not been filed, it is difficult for me to quantify the costs which would be likely to be awarded if the plaintiff is unsuccessful. Assuming that costs are calculated on a

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[19] See, for example, *CIR v Jennings Roadfreight Ltd (In Liq)* [2014] 2 NZLR 56 at [60].

Category 2B basis, that the hearing lasts three days and that the plaintiff's claim fails completely, the costs award would likely be in the vicinity of $45,000. Accordingly, I consider that the least amount which the plaintiff should reasonably be required to secure in advance of the hearing to protect the defendants' legitimate right to seek a costs contribution in the event that the plaintiff fails, is $30,000.

The provision of further initial disclosure and particulars

[48] I consider briefly whether the defendants are entitled to further initial disclosure and particulars. The fundamental function of the particularisation of pleading is to:[20]

(a) inform defendants as to the case they have to meet;

(b) limit the scope of the matters the plaintiff may put in issue at trial (or in pre-trial settlement discussion);

(c) enable the defendants to know what witnesses it will need to retain and enable them to start preparing evidence ahead of the formal exchange of evidence; and

(d) provide an opportunity for a defendant to seek summary determination on the basis that the claim as pleaded is untenable.

[49] The defendants have requested particulars and further information in a schedule attached to their application. They say they need the information to undertake a proper analysis of whether the company is the proper plaintiff in the claims, and, in particular, whether the liquidator seeks to use the litigation as a mechanism to obtain payment for his services over the previous six years. They also wish to examine the current situation between Customs, the plaintiff's customers and the directors of the plaintiff's customers, and whether the plaintiff has standing to bring the claims in mistake and in equity. An additional purpose is to be in a position

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[20] *LWR Properties Ltd (in rec) v Vero Insurance New Zealand Ltd* [2014] NZHC 1688 at [25] citing *Platt v Porirua City Council & Ors* [2012] NZHC 2445 at [19].

to conclude matters with proper regard to the statutory priorities and relevant non-party interests.

[50] The plaintiff says:

(a) There is no dispute that the money at issue is an identifiable sum, paid on invoice from the plaintiff for duty owed to Customs. The only issue is whether the DFF and the intercession of the receivership gave priority to the Bank and its appointed agents.

(b) To determine this issue requires very little evidence that is not well known to both parties. The receivers traded the company to collect its debts and had full access to its books and records. Substantial disclosure of all relevant financial records has been made.

(c) The pleadings, as supplemented in the correspondence, set out a clear factual basis for the causes of action that are alleged. Further, counsel submits that the receivers are fully aware of all of the underlying facts. They are not strangers to the issue.

(d) No statement of defence has been filed. Counsel submits that the claim against the defendants, as supplemented by the particulars set out in the correspondence, clearly informs the defendants of the case being made against it.

[51] At this early stage in the proceedings, I do not think that the plaintiff needs to furnish further information in order to fairly inform the defendants of the case that they have to meet, or to limit the matters that may be put in issue. Neither do I believe that the provision of this additional information will assist the defendants in preparing for trial. Having regard to the comprehensive disclosure between the parties, I am satisfied that the plaintiff has provided adequate information to the defendants in order to allow them to defend the claim. At least at this time.

Decision

[52] The plaintiff must pay security for costs. I fix the overall amount of security for costs at $30,000, payment of which shall be made into Court or otherwise secured to the satisfaction of the Registrar by 1 December 2015. In the event that the sum ordered is not paid or secured on or before the due date, the proceedings shall be stayed until payment is made.

[53] The defendants' application for further initial disclosure and particulars is dismissed.

Costs

(a) The plaintiff is entitled to costs on the application for further initial disclosure and particulars.

(b) The defendants are entitled to costs on the application for security for costs.

(c) In each case, costs will be calculated on a 2B basis.

(d) If the parties cannot agree costs, they are to file memoranda by 1 December 2015.

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Brewer J