

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

**CIV-2013-485-840
[2013] NZHC 1190**

UNDER Section 255(4)(a) and (b) of the Companies
Act 1993

IN THE MATTER OF FCS LOANS LIMITED (in liquidation)
previously SOUTH CANTERBURY
FINANCE LIMITED

BETWEEN JOHN HOWARD ROSS FISK AND
DAVID JOHN BRIDGEMAN AS
LIQUIDATORS OF FCS LOANS
LIMITED (IN LIQUIDATION)
Applicants

Hearing: On Papers

Counsel: P.R.W. Chisnall - Counsel for the Applicants

Judgment: 23 May 2013

JUDGMENT OF ASSOCIATE JUDGE D.I. GENDALL

*This judgment was delivered by me on 23rd day of May 2013 at 3.30 pm under r 11.5
of the High Court Rules.*

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Registrar/Deputy Registrar

Date:

Solicitors: Crengle Shreves and Ratner, Lawyers, PO Box 10236, Wellington

[1] The applicants, John Howard Ross Fisk (Mr Fisk) and David John Bridgeman (Mr Bridgeman) are the liquidators of FCS Loans Limited (in liquidation) (the company). The liquidators apply here pursuant to s 255(4)(a) and (b) of the Companies Act 1993 (the Act) for an exemption from their compliance with s 255(2)(d) of the Act to send to every preference shareholder of the company the liquidator's six monthly report.

[2] Mr Fisk the first-named applicant has filed an affidavit in support of the present application dated 14 May 2013. In that affidavit he notes that since their appointment as liquidators the applicants have ascertained that there are 3,141 preference shareholders in the company holding 120,000,000 \$1.00 preference shares issued in December 2006.

[3] Since the date of their appointment as liquidators, the applicants have apparently sent two liquidator's reports to all preferential shareholders of the company. These are the liquidator's first report and the liquidator's first six monthly report. The next liquidator's six monthly report as I understand it is due to be filed on or around 18 June 2013.

[4] Mr Fisk in his affidavit notes that from costing ascertained from the liquidators' first mail-outs, the likely direct cash costs of any further mail-out to preferential shareholders for each liquidator's six monthly report will be approximately \$4,719.16 plus GST.

[5] Mr Fisk also confirms at para 7 of his 14 May 2013 affidavit that, due to the insolvency of the company, there is little or no prospect of any preference shareholders receiving any dividends in the liquidation. This is because any funds received will simply go towards payment of creditors and there will be nothing left for preference shareholders.

[6] Accordingly, the applicant liquidators bring this present application seeking an order pursuant to s 255(4)(a) and (b) of the Act to exempt compliance with this section, and providing further for the liquidators to now send their six monthly report

to the Registrar of Companies to then be posted on the Registrar of Companies website.

[7] If the exemption order sought is granted by this Court, the applicant liquidators indicate they will then send a further mail-out to all the preference shareholders explaining the exemption. This letter will also provide a link to the PricewaterhouseCoopers website where the liquidator's reports will be posted and be able to be downloaded. It will also inform the preference shareholders that the six monthly reports can also be viewed on the Registrar of Companies website and/or downloaded from that site.

[8] Finally, Mr Fisk at para 10 of his 14 May 2013 affidavit confirms that, as the liquidation of this company is complex and could take considerable time, with the present application the applicant liquidators simply seek orders to save considerable and avoidable mail-out costs in the liquidation.

[9] Weighing up all these matters, I am of the view that the costs of supplying six monthly reports by the applicant liquidators to the 3,141 preference shareholders (likely initially to attract a direct cash cost of \$4,719.16) is out of proportion to any benefit those preference shareholders will receive from the reports being mailed out to them. If what is suggested in the present application is adopted, any particular shareholder who wishes to view the six monthly report can do so by searching either the website of the Registrar of Companies or the PricewaterhouseCoopers website.

[10] I note at this point that the applicant liquidators are still required to provide a final report on the completion of the liquidation pursuant to s 257 Companies Act 1993.

[11] In my view, the money saved here by granting the applicant liquidator's application and avoiding the unnecessary mail-out costs may well increase the dividend paid to eligible creditors which is clearly a desirable end.

[12] As a consequence, I am satisfied that it is an appropriate exercise of the Court's discretion under s 255(4) of the Act here to grant the applicant liquidator's present application.

[13] Orders are now made therefore as follows:

- (a) Granting leave to the Applicants to file their present application as a without notice originating application pursuant to Part 19 of the High Court Rules; and
- (b) Exempting the Applicants from compliance with s 255(2)(d) of the Companies Act 1993 as to sending to every preference shareholder in the company the Applicant's six monthly report.

[14] In making this order it is noted that the applicants will undertake and carry out the proposal to meet the needs of preference shareholders of the company as set out at para 6 of the without notice originating application filed herein dated 14 May 2013.

[15] If costs are in issue here, then they may be the subject of appropriate memoranda filed which are to be referred to me for a decision.

'Associate Judge D.I. Gendall'