

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

**I TE KŌTI MATUA O AOTEAROA
WAIHŌPAI ROHE**

**CIV-2019-425-61
[2019] NZHC 1348**

UNDER Section 286 of the Companies Act 1993,
section 66 of the Trustee Act 1956

BETWEEN BRENDON JAMES GIBSON and
NATALIE GYTHA BURRETT as
Liquidators of PR Law Queenstown No 1
Trustees Limited (in liquidation)
First Applicants

AND PR LAW QUEENSTOWN NO 1
TRUSTEES LIMITED (IN LIQUIDATION)
as trustee of the Stuart Norris Family Trust
Second Applicant

AND STUART PAUL MICHAEL NORRIS as
settlor and beneficiary of the Stuart Norris
Family Trust
First Respondent

AND JACOB STUART TAPPER-NORRIS as
beneficiary of the Stuart Norris Family Trust
Second Respondent

AND ALISON KATHLEEN HARVEY NORRIS
as beneficiary of the Stuart Norris Family
Trust
Third Respondent

AND AMY LAURA JOHNS as trustee or former
trustee of the Stuart Norris Family Trust
Fourth Respondent

Hearing: (On the papers)

Counsel: J W A Johnson and W L Porter for the Applicants

Judgment: 14 June 2019

JUDGMENT OF ASSOCIATE JUDGE LESTER

[1] This is an application by way of an originating application for directions by the first applicants who are the Liquidators of the second applicant, PR Law Queenstown No 1 Trustees Ltd (in liquidation) (“the company”). The directions are sought pursuant to s 284 of the Companies Act 1993 and/or the Court’s inherent jurisdiction. The application by the company is for directions distinct from those sought by the Liquidators.

[2] The application is made without notice. The company also applies for leave to bring this application as an originating application and I will deal with that application at the conclusion of this judgment as the nature of the directions sought is relevant to the appropriateness of the procedure sought to be used.

Jurisdiction

[3] The applicants have asked for the matter to be dealt with as a matter of urgency and the file was referred to me yesterday afternoon and I am satisfied for the reasons below that I am able to deal with the applications.

[4] Under s 20(2)(b) of the Senior Courts Act 2016, an Associate Judge has the jurisdiction and powers of a High Court Judge under pt 16 of the Companies Act. Part 16 of the Companies Act incorporates s 284 which is relied on in the application.

[5] Section 21 of the Senior Courts Act 2016 provides that:

- (1) An Associate Judge has, in relation to a proceeding (including a proceeding on an interlocutory application) that is properly before the Associate Judge, the same jurisdiction and power to make an order or exercise an authority as a Judge of the High Court.

[6] None of the limitations on that jurisdiction under s 21(2) (which incorporates s 22(4)) apply to this application.

Background

[7] The background to the application is that PR Law Queenstown No 1 Trustees Ltd was placed into liquidation on 4 April 2019.

[8] The circumstances leading to the Court making a liquidation order on 4 April 2019 are set out in a Minute which I issued on 4 April 2019. I *annex* a copy of that Minute as it gives the reasons as to why the liquidation order was made.

[9] The company is trustee of the Stuart Norris Family Trust (“the SN Trust”). While the first applicants understand the company is the only trustee, the position of the fourth respondent, who was a trustee, is a matter the company wishes to resolve in future proceedings referred to in [11] below.

[10] The Liquidators who were appointed by the Court seek a direction in the following terms (paragraph 1(a) of the originating application):

Directions pursuant to s 284 of the Companies Act 1993 and/or the Court’s inherent jurisdiction that the costs incurred by the Liquidators in administering the Stuart Norris Family Trust (“the SN Trust”) and otherwise carrying out their duties as liquidators can be paid out of the corpus of the SN Trust fund on an indemnity basis.

[11] The second applicant seeks a direction in the following terms (paragraph 2(a) and (b) of the originating application):

- (a) Directions pursuant to s 66 of the Trustee Act 1956 and/or the Court’s inherent jurisdiction that it may commence proceedings (the **Substantive Application**) seeking:
 - (i) Directions as to whether PR Queenstown remains the trustee of the SN Trust;
 - (ii) Directions that Amy John’s retirement as trustee of the SN Trust was effective;
 - (iii) Directions confirming that PR Queenstown may realise the assets of the SN Trust by selling shares in Magic Memories Group Holdings Limited (the **Shares**) in accordance with the provisions of the constitution of that company;
 - (iv) Directions confirming that it may use the proceeds of sale of the Shares to pay the creditors of the SN Trust and to meet the costs and expenses of the Liquidators; and

- (v) Once the above steps have been carried out, an order removing it as trustee of the SN Trust and appointing Public Trust;
- (b) Directions pursuant to s 66 of the Trustee Act 1956 and/or the Court's inherent jurisdiction that PR Queenstown may pay its costs in bringing the Substantive Application, including but not limited to legal costs, and any adverse costs awards, from the corpus of the SN Trust fund provided that this order will only become final if no beneficiary of the SN Trust applies to vary or discharge the order prior to the first return date of the Substantive Application.

[12] The application is brought without notice on the grounds that:

- (a) to proceed on notice would cause undue delay or prejudice the applicant; and
- (b) the interests of justice require the application to be determined without serving notices of the application.

[13] The Court appointed liquidators in this case so that the Liquidators could address the steps apparently taken by Mr Stuart Norris as recorded in the *annexed* Minute. The first applicants state their concern that if this application was brought on notice Mr Norris may use the application as an opportunity to frustrate the Liquidators gaining funding to complete their role.

[14] In order to undertake the task they were appointed to complete by the Court, the Liquidators need the ability to meet costs.

[15] Given the position of the Liquidators and that of the company are intimately connected, I consider that it is in the interests of justice that there be leave for the second applicant to issue the substantive proceedings.

[16] I consider such a direction to be within the scope of s 284(1)(a), that is, a direction in relation to any matter arising in connection with the liquidation. The Liquidators need the company which they now control to issue proceedings to clarify the matters set out in the substantive application. The need to resolve the company's position as trustee and the other issues to be addressed in the substantive application are matters arising in connection with the liquidation.

[17] In short, the company was placed into liquidation to allow the Liquidators to resolve the matters referred to in the annexed Minute and to address the fact that the company had an undisputed indebtedness to applicant in the winding up proceedings.

[18] The Court, having appointed the Liquidators to carry out the role of addressing creditors' claims and the company's rights and liabilities, considers it is reasonable for the first applicants to seek directions from the Court in relation to their remuneration for that role. In the same way, and again given the circumstances described in the annexed Minute, it is in the best interests of the company and the SN Trust that the Liquidators have the company issue the contemplated substantive proceedings and that the company's costs in that regard are met from the SN Trust.

[19] Given the lengthy and contentious dispute that led to the company being liquidated, it is in the best interests of the company and the SN Trust that those issues be finally determined with the assistance of the Court if necessary.

[20] Accordingly, as recorded above, there are orders in terms of paras 1(a) and 2(a) and 2(b) of the originating application dated 10 June 2019 (set out at [10] and [11] above) seeking directions under the Companies Act 1993.

[21] That leaves the application by the company to use the originating application procedure. It follows from the orders that I have made that I consider it appropriate for the company to have sought directions by way of originating application. The matters on which the company sought directions are inseparable from the responsibilities of the Liquidators who now control company. The Liquidators can use the originating procedure as of right and it will be pointless to require the company to adopt a different procedure and leave is granted accordingly.

Associate Judge Lester

Solicitors:
Wynn Williams, Auckland

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

**I TE KŌTI MATUA O AOTEAROA
WAIHŌPAI ROHE**

CIV-2019-425-1

UNDER	Part 16 of the Companies Act 1993 and Part 31 of the High Court Rules 2016
IN THE MATTER	Of the liquidation of PR LAW QUEENSTOWN NO 1 TRUSTEES LIMITED
BETWEEN	JAY NORRIS Plaintiff
AND	PR LAW QUEENSTOWN NO 1 TRUSTEES LIMITED Defendant

Hearing: 4 April 2019

Appearance: G Wilkin for Plaintiff
S Mckenzie for Defendant
Ms Welsh for Mr S Norris

Minute: 4 April 2019

**MINUTE OF ASSOCIATE JUDGE LESTER
Order for Liquidation**

[1] I issue this Minute to confirm the reasons for declining the application for adjournment made by Ms Welsh on behalf of Mr Norris, a beneficiary of and holder of the power of appointment for the Trust of which the defendant is a trustee.

[2] When the matter was called in the 11.45am list on Thursday 4 April 2019, I raised with Ms Welsh the memorandum filed by Mr Friar on behalf of Mr Norris,

which referred to Mr Norris having exercised his power as appointor under the Trust, to remove the defendant as trustee.

[3] Ms Welsh advised at that point that her instructions were that that had not occurred. I queried this with her given the memorandum and she explained that as late as 11.00am she had conferred with counsel assisting Mr Friar who said the power had not been exercised.

[4] At that point, Ms Mckenzie for the defendant trustee company advised that her office had received a notice purporting to remove her client as trustee and appointing another company as trustee. Ms Mckenzie explained that the Trust Deed was specific as to the type of company that could be trustee and that the company nominated as trustee did not fit within the class of permitted trustees. She referred to her firm having sought advice of Mr Raymond QC in respect of that issue. Her client's position was given the new trustee purportedly appointed by Mr Norris was not a permitted trustee, that her client therefore remained as trustee.

[5] Mr Wilkin who appeared for the plaintiff, Ms Jay Norris, maintained that his client wished to liquidate the company.

[6] I adjourned the matter to 2.15pm on Thursday 4 April 2019 for Ms Welsh to seek clarification. Ms Welsh had sought a six week adjournment.

[7] Prior to adjourning the matter to 2.15pm on 4 April 2019 I said if the matter was to be adjourned, it would only be until Thursday 9 May 2019, but would be on the condition that the defendant remained trustee of the Trust and that it remained possessed of the shares. I said to Mr Wilkin that if his client was prepared to accept those requirements, that the matter could be adjourned, otherwise I was not prepared to adjourn the matter.

[8] At 2.15pm on Thursday 4 April 2019, Mr Wilkin confirmed that his instructions were to seek an order placing the defendant in liquidation.

[9] Ms Mckenzie advised that her client had received a share transfer which it was not prepared to execute given concerns about the identity of the new proposed trustee and awareness of the fact that the plaintiff had obtained an interim charging order over

the shares. The directors of the defendant company's caution in that regard is entirely understandable.

[10] Ms Welsh explained that her instructing solicitors were unaware that Mr Norris had taken steps to remove the defendant as trustee. It appears that there may have been some breakdown in communication in respect of the position advised to Ms Welsh at 11am on 4 April 2019. As I confirmed in Court, there is no criticism of Ms Welsh in respect of any of this.

[11] Ms Welsh however conveyed that it was Mr Friar's position that the defendant was no longer trustee and that the adjournment request was maintained.

[12] I was concerned by the eleventh-hour attempt to divest the defendant of the very shares that Mr Norris had said in affidavits, one as late as yesterday (3 April 2019), would be sold to meet the defendant's obligation to the plaintiff or used as security for the defendant to borrow money to pay the plaintiff. The absence of any explanation as to why these steps were taken at the eleventh hour, and apparently without reference to Mr Friar leads to the inevitable conclusion that the purported removal of the defendant as trustee and the attempt to transfer the shares from the defendant's name was to, if not defeat, then delay the plaintiff's recovery of the amount Mr Norris accepts are owed to the plaintiff.

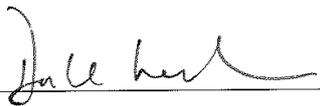
[13] I also noted that the debt was substantial and of some age. The plaintiff was entitled to seek an order, and this was the second call. Given Mr Norris' preparedness to take steps to divest the defendant of its only asset, he effectively ruled out the availability of an adjournment and the adjournment was declined accordingly and an order for liquidation made as set out below.

[14] Liquidators appointed: Brendon James Gibson and Natalie Gytha Burrett and their remuneration is subject to s 284 Companies Act 1993.

[15] (Liquidators allowed to exercise their powers individually pursuant to s 242 Companies Act 1993).

[16] Costs to the applicant on a 2B basis.
Plus disbursements as fixed by the Registrar.

[17] Order timed at 2.24pm on Thursday 4 April 2019.



Associate Judge Lester

NOTICE REQUIREMENT

The solicitors on the record for the parties are promptly to provide a copy of this Minute to their clients (r 5.43).

Copy to solicitors:
Bell Gully, Auckland
AWS Legal, Invercargill
Preston Russell Law, Invercargill
LeeSalmonLong, Auckland