IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CIV-2016-404-000937
[2016] NZHC 2187

IN THE MATTER	of section 294(1) of the Companies Act 1993
BETWEEN	CHRISTOPHER WAYNE JELLIE Plaintiff
AND	TANNENBERG LIMITED Defendant

Hearing: 12 September 2016

Appearances: Plaintiff on own behalf
R B Hucker for the Defendant

Judgment: 15 September 2016

JUDGMENT OF FITZGERALD J

This judgment was delivered by me on Thursday, 15 September 2016 at 2.30 pm pursuant to r 11.5 of the High Court Rules.

Registrar/Deputy Registrar

Solicitors: Hucker & Associates, Auckland
Copy to: Plaintiff

Introduction

[1] On 10 April 2016, the plaintiff, Mr Christopher Jellie, issued a statutory demand to Tannenberg Limited ("Tannenberg"), demanding payment of $26,000. That amount is said to be owed as a result of the alleged sale by Mr Jellie of a 1999 Mustang Cobra car to Tannenberg. Mr Jellie (who appeared on his own behalf at the hearing) says the statutory demand was served on the registered office of Tannenberg, a residential address in Northcote, on the morning of 11 April 2016.

[2] On 6 May 2016, Mr Jellie filed a statement of claim seeking an order that Tannenberg be put into liquidation. Mr Jellie submits that the liquidation proceedings were served on Tannenberg at the same Northcote address on 2 June 2016.

[3] There are two affidavits of service on the file, both sworn by Mr Ian Wentford. Mr Wentford is not a professional process server; rather, Mr Jellie confirmed at the hearing that he is an associate of an ex-neighbour of Mr Jellie. Mr Wentford deposes in his affidavits that in the case of service of each of the statutory demand and the liquidation proceedings, no one answered the door when he attended, so he sellotaped the documents to the door of the house.

[4] Tannenberg, through its director Mr Gerald Sharrock, says that the first Tannenberg knew of these liquidation proceedings was when Mr Sharrock was telephoned by an accounting firm on Friday 17 June 2016, advising that the matter had been advertised that day in the New Zealand Herald. On the following Wednesday, 23 June 2016, Tannenberg filed a statement of defence to the statement of claim, together with an application (and supporting affidavit) for an order staying the proceedings pursuant to r 31.11 of the High Court Rules.

[5] As well as the issue in respect of service, Tannenberg disputes the underlying debt on which the statutory demand is based. In particular, it says that there was no agreement that Tannenberg would purchase the Mustang Cobra car from Mr Jellie. Rather, Tannenberg says that legal title to the Mustang Cobra was transferred to Tannenberg as security for advances made by Tannenberg to Mr Jellie from time to time. The vehicle was later sold (with Mr Jellie's knowledge), but despite the

proceeds of sale being available to Tannenberg, Tannenberg says that Mr Jellie still owes Tannenberg some $7400.

[6] The issue for my consideration is whether Tannenberg has discharged the relevant onus for an order to be made staying the liquidation proceedings.

[7] In his written submissions, Mr Jellie supported the proceedings being stayed, at least "until the propriety of the debt is determined at trial". I clarified this with Mr Jellie at the hearing, and he confirmed that position. He submitted that the proceedings should be stayed on an interim basis only, pending resolution of his claim which he proposes to bring in the District Court.

[8] The central issue between the parties is therefore whether the proceedings should be permanently stayed, or stayed on an interim basis pending resolution of the underlying dispute. Given that liquidation proceedings have been commenced and that a decision to stay such proceedings is not made lightly, I heard submissions on, and address in my reasons to follow, whether the threshold required for the proceedings to be stayed, either permanently or temporarily, has been met.

Factual background

[9] Mr Jellie runs, or has run, a car importation business (and it appears other businesses in relation to motor vehicles). In particular, the evidence records that Mr Jellie has a particular interest in exotic vehicles, and a Dodge Challenger and a Mustang Cobra feature throughout the evidence on this application.

[10] Mr Sharrock deposes that he first met Mr Jellie in around 2012/2013, through a mutual friend. There is some dispute as to whether or not Mr Sharrock, who is a lawyer, has acted for Mr Jellie in the past, though that issue is not relevant to the current application.

[11] It appears that in or around 2014, there were discussions between Mr Sharrock and Mr Jellie on using the Mustang Cobra and the Dodge Challenger as part of an exotic car hireage business. There is some dispute as to how far the parties' discussions progressed, but it seems clear that at some stage, the proposal

came to an end. In the interim, Mr Jellie was in the process of selling his matrimonial home. Stored at the matrimonial home were the Dodge Challenger (which was in the process of being restored and reconstructed) and the Mustang Cobra. Mr Sharrock deposes that, upon the sale of Mr Jellie's matrimonial home, the Dodge Challenger was first stored with panelbeaters while work was undertaken on it and then from about May 2015, at a residential address in Northcote ("Property"), being the residential home of Mr and Mrs Sharrock and also the registered office of Tannenberg.

[12] It appears that during 2014 and 2015, Tannenberg advanced monies to Mr Jellie from time to time. Mr Sharrock's evidence is that the monies were to assist with work Mr Jellie was then undertaking on the Mustang Cobra; in relation to Mr Jellie's business of importing cars from Japan into New Zealand for sale; and for general living expenses of Mr Jellie. The contemporaneous documentation refers to such advances. For example, in an email from Mr Jellie to Mr Sharrock dated 27 December 2015, Mr Jellie refers to "the $23,000 I owe you ...". I also note an email dated 9 September 2015 from Mr Jellie to Mr Sharrock, which refers to "settling any debt I have with you", once funds had been received by Mr Jellie from a trust property settlement. However, at the hearing, Mr Jellie disputed that the advances had in fact been made to him. He explained his comments in the contemporaneous emails as being the result of "duress" placed on him by Mr Sharrock in relation to such communications.

[13] There is accordingly a dispute between the parties as to whether such advances were made to Mr Jellie, and if so, what, if any, sums remain outstanding from Mr Jellie to Mr Tannenberg.

[14] Mr Sharrock annexes to his affidavit in support of the stay application a copy of the ownership history of the Mustang Cobra, obtained by a search of the Motor Vehicles Register. This shows that Tannenberg obtained legal title to the Mustang Cobra on 22 September 2014. Mr Sharrock deposes that this was not an outright "purchase" by Tannenberg (as is submitted by Mr Jellie), but rather that the ownership was transferred into Tannenberg's name as security for the advances made to Mr Jellie from time to time.

[15] There is then a gap in the factual narrative. There is an email exchange in September 2015, in which Mr Sharrock stated that he was "running out of patience" in respect of what appears to have been the settlement by Mr Jellie of the amounts said to be owed by him.

[16] Presumably in this context, steps were taken in December 2015 to sell the Mustang Cobra. There is no dispute that Mr Jellie was aware of and involved in the sale. By email dated 27 December 2015, Mr Jellie advised Mr Sharrock that he (i.e. Mr Jellie) had sold the Mustang for $22,000. In his email, Mr Jellie stated "The new owner wants to transfer the money into my account tonight. Obviously this must go into your account, so I will need your bank details".

[17] Mr Jellie's email went on to record:

> However I would just like to confirm our agreement re the Mustang and Challenger before doing so, which was;
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> The money generated from the sale of the Mustang will go towards the rebuild of the Challenger. Once the Challenger is rebuilt, on the road and registered, it is to be sold and the $23,000 I owe you will be repaid from the sale of the Challenger.

[18] Mr Jellie sought Mr Sharrock's agreement to these arrangements, which Mr Sharrock provided by way of an email the following day, on 28 December 2015 (subject to adding costs of $100 per month from 1 January for interest on loan). Mr Jellie in turn agreed that arrangement in an email of the same date.

[19] In the event, $19,000 was paid by the purchaser. Mr Sharrock says in his affidavit that, even after payment of the balance of the purchase price, there will still be a shortfall to Tannenberg in terms of the amounts owed by Mr Jellie. Mr Sharrock exhibited a schedule of advances alleged to have been to Mr Jellie, which shows a corresponding credit of $19,000 from the sale of the Mustang Cobra. The schedule shows that after that credit, the sum of $7507.42 remains due to Tannenberg. As noted, Mr Jellie disputes that these advances were made to him and that he owes any sums to Tannenberg and/or Mr Sharrock.

[20] It seems that relations broke down further between the parties fairly soon after the sale. In March 2016, Mr Jellie issued an invoice to Tannenberg in relation to the alleged sale of the Mustang Cobra to Tannenberg, and demanded payment of $26,000.

[21] Email correspondence between the parties at that time shows a fairly vigorous dispute as to the validity of the invoice. In an email dated 22 March 2016, Mr Sharrock stated that the invoice was contested. In a response sent later that day, Mr Jellie stated that his invoice stood, and that:

> [a] deadline has been set. The timeframe in which you choose to act is your own responsibility.

Statutory demand

[22] Mr Jellie issued the statutory demand on 10 April 2016. As noted, he submits that it was served at the registered office of Tannenberg on 11 April 2016. Again as flagged earlier, Tannenberg disputes that the demand was served, or at the least, that it came to Tannenberg's attention at that time.

[23] In his affidavit of service, Mr Wentford says that, despite knocking forcefully and loudly several times on the door of the Property and calling out, no-one answered and therefore the document was affixed to the front door with sellotape.

[24] Tannenberg has filed an affidavit of Gary O'Loughlin, sworn 22 June 2016. Mr O'Loughlin is a painter who was working on the exterior of the Property on 11 April 2016. He deposes that he arrived at the Property at 8 am in the morning and did not leave until 5 pm. He says that he did not see or hear anyone coming to the Property during that time. He says that if anything was on the door, he would have immediately seen it, as he was returning to the garage every 10 or 15 minutes. Mr Sharrock in his affidavit also deposes that the statutory demand was not received at that time.

Liquidation proceedings

[25] Mr Jellie proceeded to file a statement of claim seeking an order putting Tannenberg into liquidation. The statement of claim is dated 6 May 2016 and was filed on that date. On the file there is a further affidavit of service of Mr Wentford, in which he deposes that on 2 June 2016, at 8.46 in the morning, he served the notice of proceeding at the Property. Again, he says he affixed the document to the front door, given there was no answer when knocking. Mr Sharrock also denies receiving this document, and says that the first he was aware of the proceedings was through the phone call from the accountancy firm on 17 June 2016.

[26] By email dated 17 June 2016, Mr Sharrock emailed Mr Jellie, referring to an earlier phone call. He noted that no statutory demand had been received, nor any notice of filing or any other notice. He suggested that the proceedings be withdrawn forthwith. Mr Sharrock replied noting that "there will be no withdrawal of the liquidation without payment of the Mustang in full". Tannenberg accordingly filed this application.

Approach

[27] Tannenberg's application is made pursuant to r 31.11 of the High Court Rules. The principles governing such an application are well settled and were summarised by Wallace J in *Nemisis Holdings Ltd v North Harbour Industrial Holdings Ltd* as follows:[1]

(a) The Court has an inherent jurisdiction to stay winding-up proceedings where the debt upon which such proceedings are founded is the subject of genuine dispute. In those circumstances the plaintiff cannot show it has the status of a creditor or that there has been neglect by the company to pay.

(b) The jurisdiction is an inherent one to prevent abuse of process. There is no inflexible rule.

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[1] *Nemisis Holdings Ltd v North Harbour Industrial Holdings Ltd* (1989) 1 PRNZ 379 (HC) at 385.

(c) The governing consideration is whether the proceedings suggest unfairness or undue pressure.

(d) It is a serious matter to stay winding-up proceedings, so the decision to do so is never made lightly. The onus is on the applicant and it is normally necessary to demonstrate "something more" than the balance of convenience considerations which are usually considered on an application for interim injunction. If the defendant company has had an opportunity to file appropriate affidavits, such defendant is required to establish a strong prima facie case of the existence of a genuine dispute on substantial grounds, or show that there are clear and persuasive grounds for a stay.

[28] I also refer to the Court of Appeal's observations in *Taxi Trucks Ltd v Nicholson*, describing the principles as follows:[2]

> It has long been settled that the Court may under its inherent jurisdiction restrain or stay winding-up proceedings that are an abuse of the Court's process. The abuse consists of using the winding-up procedure, involving as it does the advertising of the petition with the likely consequence of serious commercial damage to the company, as a means of obtaining payment of a genuinely disputed debt. For in general, a winding-up order will not be made where there is genuine dispute. This is not an inflexible rule, as was stated in and illustrated by *Bateman Television Ltd v Coleridge Finance Co Ltd* [1969] NZLR 794 (CA) [1971] NZLR 929 (PC), and in this respect the law in New Zealand differs somewhat from that in England, which is more unbending. The principles to be applied appear succinctly in this passage of the judgment of this Court in *Exchange Finance Co Ltd v Lemmington Holdings Ltd* [1984] 2 NZLR 242 at p 245, which follows a reference to the judgments in the Bateman case:
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> > Obviously the jurisdiction to restrain winding-up proceedings has to be exercised with that settled New Zealand law in mind. We think that the governing consideration can only be whether presenting or proceeding with a petition savours of unfairness or undue pressure. Whether that stigma attaches to a petition must depend on the particular facts. In many cases where there appears to be a genuine and substantial dispute about the present existence of a debt it will be right to grant an injunction. But there will be cases sufficiently out of the ordinary to justify a Judge in holding his hand.
> >
> > …

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2 *Taxi Trucks Ltd v Nicholson* [1989] 2 NZLR 297, (1989) 1 PRNZ 390 (CA).

[29] In his submissions, Mr Jellie refers to a number of other provisions that he submits are relevant to the stay application:

(a) Mr Jellie refers to s 247 of the Companies Act as providing the basis for a stay application in this case. However, s 247 appears to be intended for extant separate proceedings against the company (i.e. not the liquidation proceedings themselves) which is to be subject to liquidation.[3]

(b) Mr Jellie also refers to r 15.1(3) of the High Court Rules, which provides the Court with the ability to stay all or any part of proceedings, rather than strike them out. However, this is an ancillary remedy in the context of a strike out application.

(c) Mr Jellie also refers to the Insolvency Act 2006. This is not the appropriate mechanism, as there has been no creditor's application for personal bankruptcy.

[30] I accordingly proceed on the basis that r 31.11 is the appropriate governing procedure for this application. That rule provides me with discretion as to whether or not to stay the liquidation proceedings, including a discretion as to any terms on which a stay will be granted.

[31] I have also considered whether, if I am minded to order a stay of the proceedings, I can do so either on a temporary basis (as Mr Jellie submits, ie pending resolution of the underlying dispute regarding the debt) or on a permanent basis.

[32] Rule 31.11 does not expressly address this point. However, the learned authors of *Sim's Court Practice* suggest that any stay granted would be interlocutory and not final.[4] This is on the basis of r 31.11(3), which provides that an application for a stay is to be determined as if it were an application for an interim injunction. However, in the context of whether r 31.11(3) would similarly require an undertaking as to damages, the learned authors of *McGechan* observe that that may

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3 See *Insolvency Law and Practice* (online looseleaf edition, Westlaw) at [CA247.03].

4 *Sim's Court Practice* (online looseleaf edition, LexisNexis) at [HCR31.11.3].

be reading too much into the rule, and that the intention seems to be that the substantive requirements for an interim injunction must be met.[5]

[33] Rule 31.11(3) also states that if a court makes an order under the rule, it may do so on whatever terms the court thinks just. The discretion is broad and unfettered. I am of the view that such terms can include the stay being ordered on a permanent basis. For example, if it was accepted on the hearing of a stay application that the statutory demand and/or liquidation proceedings had not in fact been served, and there was clear evidence of a genuine and substantial dispute as to the underlying debt, I do not consider that it can have been intended that the court's power in such circumstances would be limited to an interim stay.

[34] I also note various decisions which proceed on the basis that the power to order a stay under r 31.11 includes a stay on a permanent basis.[6]

Analysis

[35] I am satisfied that a stay ought to be ordered in this case. I can state my reasons relatively briefly.

[36] Tannenberg has demonstrated that there is a genuine and substantial dispute in relation to the debt upon which the statutory demand is based. In particular, there is contemporaneous documentary evidence that monies were advanced by Tannenberg to Mr Jellie from time to time and that title to the Mustang Cobra was transferred as security for those advances.

[37] At the hearing, Mr Hucker referred me to the following matters and documents, which he submitted were consistent with the transfer of title in the Mustang Cobra being by way of security for the monies advanced to Mr Jellie, rather than by way of an outright purchase:

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5 *Andrew Beck* (ed) McGechan on Procedure (online looseleaf edition, Westlaw) at [HR31.11.06].

6 *Fog v Frimley Estate Ltd* [2015] NZHC 2247 at [3]; *Manawatu-Wanganui Regional Council v Easton Agriculture Ltd* [2013] NZHC 209 at [45]; *South Pacific Fire Protection South Island Alarms Ltd v Safe NZ Ltd* [2016] NZHC 1810 at [41].

(a) That the invoice for the purchase price was only issued by Mr Jellie in March 2016, being nearly two years after the alleged sale of the vehicle to Tannenberg;

(b) The reference in Mr Jellie's email of 28 December 2015 to the payment of the purchase price of the Mustang Cobra, when it was sold to the third party purchaser. Mr Jellie stated "the new owner wants to transfer the money into my account tonight. Obviously this must go into your account, so I will need your bank details."

(c) The following references in Mr Jellie's email to Mr Sharrock of 9 September 2016:

(i) The statement that "you then asked me to sign over into your name my 1999 Mustang Cobra *as security* against the money borrowed to buy engine parts as well as panel & paint work for the Dodge Challenger…."(my emphasis);

(ii) Mr Jellie's expectation of receiving funds from his trust property settlement upon which "I will settle any debt with you on exchange of the Mustang back into my own name and returned to me";

(d) The use of the vehicle by Mr Jellie as collateral for monies advanced to Mr Jellie by Auto Finance Direct, with Tannenberg guaranteeing those advances up to the value of the Mustang Cobra. Mr Hucker accepted that there was no copy of the guarantee in evidence, but noted that Mr Sharrock's evidence on this point had not been challenged.

[38] Mr Jellie submits that the transfer of the Mustang Cobra to Tannenberg was an outright purchase. But the contemporaneous materials show that there is at least a genuine and substantial dispute about that point. In particular, the contemporaneous emails, including those written by Mr Jellie himself, are consistent with the position

advanced on behalf of Tannenberg. I am conscious that Mr Jellie says that he was under duress when preparing those emails. Given the fairly clear terms in which the emails are written and that this particular issue was only raised by Mr Jellie when those materials were put to him at the hearing, that is a matter Mr Jellie will need to explain on the hearing of any substantive proceedings relating to the underlying debt.

[39] Irrespective of the above, I record that it is not necessary or appropriate for me to determine any of these matters on this application. Nor could I on the basis of the evidence before me. There is a clear factual conflict between Mr Jellie and Mr Sharrock's evidence. Resolution of that factual conflict will require considerably more evidence and no doubt cross examination of the relevant witnesses. The upshot is that I am satisfied that there is a genuine and substantial dispute as to the underlying debt.

[40] I am also satisfied on the evidence that there have been issues with the service of the statutory demand and the liquidation proceedings. As noted, there are affidavits of service that these documents were affixed to the door at the Property. I do not dismiss those out of hand. However, there is also evidence from Mr Sharrock and the painter working at the Property that the documents were not in fact received. Again, I cannot resolve this factual conflict on the materials before me. I accept for current purposes that there is at least an issue as to whether or not Tannenberg had notice of the papers at the relevant time. I am also conscious that Mr Sharrock is a lawyer, and would have readily appreciated the consequences of the service of a statutory demand (and the urgent steps that must be taken in response), irrespective of his view of the validity of the underlying debt. The fact that the statement of defence and this application were filed promptly after the matter appears to have first been brought to Tannenberg's attention is consistent with this.

[41] Mr Hucker also pointed to the evidence before the Court of Tannenberg's solvency, including having significant equity in various properties in Auckland. I am conscious however, that on an application to set aside a statutory demand, if there is

no genuine dispute as to the debt, proof of solvency is unlikely to be sufficient to set aside the demand. If there is no genuine dispute, the debt ought to be paid.[7]

[42] Finally, Mr Jellie does not challenge that the underlying debt is subject to dispute and that it ought to be resolved in separate proceedings.

[43] In light of the above, I am satisfied that it is appropriate to order a stay of these proceedings.

[44] The remaining question is therefore the terms on which the stay should be ordered, i.e. whether it ought to be a permanent stay or an interim stay pending resolution of the underlying dispute.

[45] Mr Jellie submitted that there would be a miscarriage of justice if the stay was not ordered on a permanent basis:

(a) He said that any damage or prejudice to the company was already done, as the advertising had already been carried out.

(b) He said that nothing further needed to be done, in terms of freezing of accounts or similar, other than the hearing of the application for liquidation.

(c) He submitted that only person who would be disadvantaged would be himself, as he would not be "allowed (his) moment" to demonstrate what he considered to be an injustice in this case through the actions of Tannenberg.

(d) An interim stay was necessary because he has already poured what cost he could into this proceeding and would want to claim back costs once his claim on the underlying debt is vindicated.

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7 *Provida Foods Ltd v Foodfirst Ltd* [2012] NZCA 326 at [29]-[30].

[46] In response, Mr Hucker for Tannenberg submitted that there would be no specific prejudice to Mr Jellie if the proceedings were permanently stayed. He also submitted that to order a stay on specific terms, such as the payment of money into court, would put Mr Jellie in a special position, in terms of receiving security, compared to any other litigant. Mr Hucker also submitted that there would be prejudice to Tannenberg and potentially other third parties in having the liquidation proceedings stayed on an interim basis, namely:

(a) There will be issues in relation to the "specified period" for the purposes of the voidable transactions regime, which, depending on how long any District Court proceedings take, could be extended by quite a significant period of time.[8] I note however, that this would be a consequence of any interim stay of liquidation proceedings, so I do not see it as a ground for prejudice in and of itself.

(b) There is an on-going commercial stigma resulting from the fact that the company is facing liquidation proceedings. Mr Hucker noted that there may be obligations in existing or future loan agreements/applications to financiers to notify them of any liquidation proceedings or steps taken in that regard. No particular evidence has been advanced on this point, but I accept that it is not uncommon for loan and other commercial agreements to include provisions which are triggered by steps being taken to wind up a company.

(c) Mr Hucker also urged me to adopt the approach of Holland J in *Maru Industries Ltd*,[9] which was to discourage stays being granted on terms that a payment be made into Court.

(d) Finally, Mr Hucker submitted that if Mr Jellie is successful in his District Court proceedings, then there is no prejudice to him as he will then have available to him the full range of enforcement options that are available to any successful litigant in civil proceedings.

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8 See Companies Act 1993, s 292.

9 *Maru Industries Ltd v Don Forbes Construction Ltd* (1989) 2 PRNZ 176 (HC).

[47] Having heard the competing arguments on this point, I am satisfied that it is appropriate to grant the stay on a permanent basis. My reasoning is four-fold:

(a) First, there is no real debate that there is a substantial and genuine dispute as to the underlying debt.

(b) Second, there are also issues as to service of both the statutory demand and the liquidation proceedings, or at least when those documents first came to the attention of Tannenberg.

(c) Third, if Mr Jellie is successful in his claim for the debt, he will have available to him a fully reasoned court judgment and the full range of enforcement options.

(d) Finally, given the existence of a genuine and substantial dispute as to the underlying debt *and* issues as to when Tannenberg was first appraised of these proceedings, I consider that it would be unfair for the dispute concerning the debt to be resolved with the spectre of liquidation proceedings hanging over the company. Had the materials that are currently before me been put before the Court on an application to set aside the statutory demand, I consider it likely that the application would have been granted. This would have resulted in the underlying dispute being pursued in the normal way without parallel, albeit stayed, liquidation proceedings on foot.

[48] In all the circumstances, I am prepared to order a permanent stay of these proceedings.

[49] I appreciate that this is not the outcome that Mr Jellie had hoped for, but I am clear in my view that Tannenberg has demonstrated that a permanent stay of these proceedings is appropriate.

Costs

[50] Tannenberg has been successful in bringing this application. I see no reason why costs should not follow the event in the normal way.

[51] Tannenberg seeks increased costs. However, I am not satisfied that there is a basis for such uplift; the matter has been dealt with relatively promptly and although there has been some slippage by Mr Jellie in the timetabling orders, it has not been to such a degree as to place any additional burden on Tannenberg. Mr Jellie also quite properly acknowledged in his submissions that a stay would be appropriate, with the result that the hearing was able to be relatively focused.

[52] In support of its application for increased costs, Tannenberg also refers to the fact that Mr Jellie has not filed a notice of opposition, and that Associate Judge Sargisson (in an earlier minute on this file) provided Mr Jellie the opportunity to discontinue these proceedings. However, it may not have been clear to Mr Jellie from Associate Judge Sargisson's minute that he was required to file a notice of opposition. Further, his failure to do is unlikely to have increased Tannenberg's costs. And while Mr Jellie did have an opportunity to discontinue these proceedings, I am not satisfied that the indication of that opportunity by Associate Judge Sargisson is itself a basis for ordering increased costs.

Result

[53] I accordingly make an order permanently staying the application for liquidation in these proceedings.

[54] Costs are ordered on this application against Mr Jellie on a category 2B basis together with disbursements as fixed by the Registrar.

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Fitzgerald J