

**In the High Court of New Zealand
Wellington Registry
I Te Kōti Matua o Aotearoa
Te Whanganui-ā-Tara Rohe**

CIV-2018-485-792

Under the Receiverships Act 2007 and Part 19 of the High Court Rules
In the matter of Ebert Construction Limited (in receivership and liquidation)

Between

John Howard Ross Fisk, Lara Bennett and Richard Longman

Applicants

and

Ebert Construction Limited (in receivership and liquidation)

Respondent

and

Auckland Ventilation Services Ltd

First Interested Party

and

Taslo Steel Security Limited

Second Interested Party

**Affidavit of Lara Maree Bennett in support of Receivers' application
for final directions as to receivership of the Retentions Fund**

Sworn 29 November 2019

SIMPSON GRIERSON
SOLICITOR FOR THE APPLICANTS

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I, **Lara Maree Bennett**, of Auckland, Accountant, swear that:

1. **Introduction and overview**

- 1.1 I refer to my earlier affidavits filed in this proceeding.
- 1.2 I make this affidavit in support of the Receivers' application for final directions in respect of the receivership of the fund held by Ebert Construction Limited (in receivership and liquidation) (**Ebert**) comprising retentions held on trust for Ebert's subcontractors (**the Fund**) and interest accruing on the Fund.
- 1.3 By way of brief background:
- (a) Mr Fisk, Mr Longman and I are court-appointed receivers to the Fund and the receivers of Ebert. When I use the term "**Receivers**" in this affidavit I am referring to us acting in our capacity as receivers of the Fund. When I am referring to us acting in our capacity as receivers of Ebert itself, I use the term "**GSA appointed Receivers**".
 - (b) On 31 July 2018 Ebert's Board passed a resolution requesting that its bank appoint receivers pursuant to its General Security Agreement. The GSA appointed Receivers were appointed later that day.
 - (c) As GSA appointed Receivers, it was apparent to us that the monies comprising retentions held by Ebert were held on trust for subcontractors. That gave rise to a number of novel legal and practical issues.
 - (d) On 23 October 2018 we applied to the Court for orders:
 - (i) appointing us receivers of the Fund; and
 - (ii) for directions as to how to manage and distribute the Fund.
 - (e) By court order dated 12 November 2018 (varied on 28 November 2018) (**the Court Order**) the Court appointed us as receivers to the Fund and provided various directions as to how to manage and distribute the Fund.
- 1.4 Over the past year we have identified and agreed the entitlements for subcontractors with a claim to the Fund (**the Eligible Subcontractors**) to the extent possible and all defects notification periods have now expired. To date distributions of 90 cents in the dollar (totalling \$3,773,926.70) have

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been made in respect of agreed entitlements, with the balance of funds being held pending the outcome of this application.

- 1.5 We are now in a position where we expect to make a final distribution to the Eligible Subcontractors and conclude the receivership of the Fund imminently. We seek directions from the Court on some final matters, to enable us to complete the receivership promptly. Assuming the directions sought are granted, we anticipate the final recovery to Eligible Subcontractors in respect of valid claims to be approximately 96 cents in the dollar.
- 1.6 In this affidavit I:
- (a) explain the work that we have carried out during the receivership;
 - (b) update the Court on the interest accruing on the Fund and explain why the Receivers are seeking a direction that the interest accruing on the Fund in July 2018 and post receivership be applied to our costs;
 - (c) explain why we are seeking a direction permitting us to pay a distribution to Ebert in respect of remedial deductions of \$30,253.98 (at the pro-rated rate) relating to defective work carried out by six specified subcontractors;
 - (d) explain the position in respect of two claims by Eligible Subcontractors who have waived their rights to amounts held and the specific directions sought in respect of each of these entitlements;
 - (e) outline the position in respect of two Eligible Subcontractors who we have been unable to locate and/or obtain confirmations of claim and the directions sought in respect of their entitlements to the Fund; and
 - (f) detail the costs for which we seek approval.
- 1.7 I annex hereto and mark "LB - 1" a bundle of documents which I refer to in this affidavit. The bolded page references are to pages within this bundle. The Court Order (excluding invoices relating to legal costs) is at **page 1**.
- 1.8 The Court previously ordered that service of the initial application in this proceeding and accompanying documents be served on all affected Subcontractors (being those subcontractor creditors of Ebert listed in Schedule One to the initial application) and Principals (being those principals of Ebert's construction contracts listed in Schedule Two to the application)



in redacted form, ensuring that the identity of specific Subcontractors and Principals affected by this proceeding remained confidential. Consistent with that confidentiality order, in this affidavit where it is necessary to refer to a specific Subcontractor, I have identified that party as "Subcontractor A" and "Subcontractor B". The specific identities are confirmed in Schedule One to this affidavit.

- 1.9 We therefore intend to serve this affidavit, without both Schedule One and the exhibits at pages **26 to 72** - which relate to specific creditors - on all affected parties. However, where a specific subcontractor is identified in this affidavit as "Subcontractor x" and in Schedule One, we will advise them of that at the time of service and provide any exhibits relevant to them (save for Subcontractor I who cannot be located).

2. **Actions since appointment as Receivers**

- 2.1 I explain below the main actions we have taken since our appointment as Receivers to the Fund in November 2018.
- 2.2 We wrote to each of the 130 Eligible Subcontractors (relating to 182 subcontracts) and the associated contract principals on 20 November 2018 setting out their calculated entitlement to the Fund and our proposed treatment of that entitlement, seeking their agreement/confirmation. To ensure consistency and minimise the costs of administering the Fund, we adopted a principles based approach, taking into account the level of completion of both the individual subcontract works and the wider project as at the date of the Company's receivership. This proposed treatment was subject to any known defects, outstanding documentation or other obligations under the individual subcontracts.
- 2.3 Based on the principles applied, we established that \$2.05 million (exclusive of GST) of entitlements would be eligible for an interim distribution prior to Christmas 2018 (the **Initial Entitlements**) subject to confirmation from the associated subcontractors and contract principals regarding the proposed treatment. The remaining \$1.63 million (exclusive of GST) would be released over time as relevant defects liability periods reached their expiry date.
- 2.4 We promptly reached agreement with 121 of the 130 affected subcontractors and the associated principals, which enabled us to pay out interim distributions of 70 cents in the dollar of the Initial Entitlements prior to Christmas 2018. This agreement included acknowledgement that the

release of entitlements would be subject to confirmation from the relevant principal that no defects or other contractual obligations in respect of each subcontractor remained outstanding at the proposed date of release.

- 2.5 Post Christmas we continued to seek agreement with the remaining nine affected subcontractors and to liaise with Eligible Subcontractors and Principals on the distribution of entitlements to the Fund in accordance with the agreed principles. This involved us considering more than 60 claims by principals for defects in subcontracted works. The discussions on these claims took some time and were in some instances of quite a detailed nature in order for us to understand and resolve the outstanding issues.
- 2.6 Resolution of these claims were primarily reached through:
- (a) the Receivers concluding that the defect or obligation could not be attributed to the Eligible Subcontractor after consideration of associated circumstances and supporting information; or
 - (b) remediation of the defect or performance of the obligation by the Eligible Subcontractor; or
 - (c) agreement by the Eligible Subcontractor for an amount to be deducted from their claim to the Fund.
- 2.7 Over the course of the receivership:
- (a) we reached agreement with four Eligible Subcontractors to deduct defect remediation costs from their claim to the Fund; and
 - (b) resolved more than 60 further defects claims via either concluding that the defect or obligation was not attributed to the Subcontractor or direct remediation, which resulted in release of retentions to the Eligible Subcontractors.
- 2.8 During this time we also:
- (a) completed taxation analysis and issued invoice documentation to all Eligible Subcontractors in accordance with the conditions of their subcontract agreements with Ebert in order to facilitate the filing of a GST return to ensure that GST on entitlements totalling \$551,824.88 was returned to Ebert for the benefit of Eligible Subcontractors;



- (b) dealt with all correspondence and contact from Subcontractors and other parties in respect of the retentions, including in respect of the impact of the Court Order;
- (c) undertook receivership administration tasks, including statutory reporting and accounting functions; and
- (d) continued to liaise with associated Principals as relevant defect notification periods expired and released funds to Eligible Subcontractors accordingly.

2.9 A summary of all distributions to date is as follows:

- (a) December 2018 – 109 payments, \$1,543,500.89
- (b) February 2019 – 109 payments, \$670,836.68
- (c) March 2019 – 4 payments, \$52,417.28
- (d) April 2019 – 10 payments, \$42,305.84
- (e) July 2019 – 27 payments, \$457,730.20
- (f) August 2019 – 47 payments, \$677,228.73
- (g) September 2019 – 1 payment, \$7,958.36
- (h) October 2019 – 21 payments, \$250,062.90
- (i) November 2019 - 9 payments, \$71,885.76
- (j) Total – 337 payments, \$3,773,926.70

2.10 There is currently \$419,337.75 remaining in the Retentions Account, including interest.

2.11 I attach at **pages 7 to 25** our First Report and our Six Monthly Report on the Receivership of the Fund, which outline the steps we have taken in the receivership.

3. Interest accruing on the Fund

3.1 The Fund has been held at all times in an interest bearing account.

3.2 As at 31 October 2019 the Retentions Account included \$44,742.15 of interest (net of Resident Withholding Tax), comprising:

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(a) \$5,483.62 earned prior to the receivership of Ebert on 31 July 2018;
and

(b) \$39,258.53 earned following Ebert being placed into receivership.

3.3 We understand that there may be an argument that the first ranking secured creditors could have a claim to some or all of that interest (and any further interest earned in respect of the Fund) (the **Interest**) in reliance on section 18F(3) of the Construction Contracts Act 2002, which provides that Party A (Ebert) may retain the benefit of any interest earned on retention money on or before the date on which it is payable under the contract.

3.4 In Ebert's receivership, preferential entitlements have been paid in full and there is a material shortfall on the debt owed under the first ranking security. Accordingly, if the Interest is required to be paid to Ebert, the first ranking security holders would be the interested/entitled party.

3.5 The Receivers have consulted with the holders of the first ranking security interests in Ebert and received written confirmation that any rights they have to the Interest are waived on the basis that the Interest will be applied to the Receivers' costs (thus reducing the amount of costs which needs to be deducted from the retentions held in the Fund). Emails from the first ranking security holders confirming this are annexed at **pages 26 to 29**.

4. Proposed distribution to Ebert from the Fund relating to defective works by subcontractors

4.1 We are seeking directions permitting us to make a distribution to Ebert from the Fund in respect of remedial deductions of \$30,253.98 (with payment on a pro-rated basis reflecting the rate applicable for Eligible Subcontractors, being approximately 96 cents in the dollar). These amounts relate to defects in the subcontracted works, where the contract principal has withheld retentions due to those defects, which would otherwise have been payable to Ebert.

4.2 I explained in my second affidavit filed in this proceeding, the cascading effect of retentions in a supply chain (see Affidavit of Lara Bennett sworn 1 November 2018, Part 4).

4.3 By way of summary, under the standard contractual arrangements, if work which is subcontracted by Ebert to a subcontractor is defective, and that work is not remedied by the subcontractor, then either:

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- (a) Ebert may remedy the defects and deduct the cost of remedying the defect from the retentions held for that subcontractor; or
 - (b) if Ebert does not remedy the defects:
 - (i) the contract principal will withhold costs associated with the defects from retentions it holds for Ebert; and
 - (ii) Ebert will in turn withhold those costs from the retentions it holds for the subcontractor.
- 4.4 There are six instances whereby a contract principal has withheld retentions which would otherwise be payable to Ebert because of defective work which was subcontracted by Ebert to subcontractors. In accordance with the usual process, we seek directions enabling us to deduct those amounts from retentions Ebert holds in the Fund for those specific subcontractors.
- 4.5 Four of these subcontractors (Subcontractors A, B, C and D) have agreed to the amounts being deducted from their retentions held in the Fund, being:
- (a) \$11,500.00 (including GST) in respect of Subcontractor A;
 - (b) \$2,645.00 (including GST) in respect of Subcontractor B;
 - (c) \$3,297.50 (including GST) in respect of Subcontractor C; and
 - (d) \$1,783.55 (including GST) in respect of Subcontractor D.
- 4.6 Agreement has not been reached in the case of the fifth and sixth subcontractors, Subcontractors E and F. We became aware of defects in subcontracted works carried out by Subcontractors E and F. As a result of these defects, the associated contract principals withheld \$9,647.93 and \$1,380.00 respectively of retentions which would otherwise have been paid to Ebert. We contacted Subcontractors E and F indicating that we were considering deducting \$9,647.93 (including GST) and \$1,380.00 (including GST) respectively from retentions held by Ebert for that subcontractor in respect of that project and stated that if it considered it was not liable for those defects to advise us and to provide us with some supporting information. We sent a follow up email on 30 October 2019 to both Subcontractor E and F, requesting a response by 8 November 2019 but to date no response has been received.
- 4.7 The relevant correspondence relating to Subcontractors A to F is annexed at **pages 30 to 60.**

5. Directions sought in respect of waived subcontractors' entitlements

- 5.1 We have been unable to make distributions to two subcontractors (G and H) with entitlements totalling \$1,561.07, as they have advised us they do not wish to make a claim to the Fund. We therefore seek directions on how these entitlements are to be applied.
- 5.2 Subcontractor G has a claim to the Fund of \$691.23. Subcontractor H has a claim of \$869.84. By email dated 11 December 2018 Subcontractor G confirmed they did not wish to make a claim to the Fund. In a telephone call on 10 December 2018 Subcontractor H advised that they do not wish to make a claim to the Fund.
- 5.3 Accordingly, we seek a direction that any amounts which would otherwise be payable to Subcontractors G and H from the Fund be either:
- (a) applied to the Receivers' costs; or
 - (b) paid to Ebert (in receivership).

The relevant correspondence in respect of subcontractors G and H is at **pages 61 to 64.**

6. Unclaimed monies

- 6.1 There are two Eligible Subcontractors (Subcontractors I and J) with claims to the Fund totalling \$5,590.44 that either:
- (a) we have been unable to establish contact with; or
 - (b) have failed to provide us with any formal claim forms or confirm that they did not wish to make a claim.
- 6.2 We have been unable to contact Subcontractor I at all. We have sent letters by courier to the address held by Ebert for this subcontractor and were advised by the occupier that the subcontractor had vacated that premises about eight years prior. We also sent several emails to the contact person on Ebert's records, but received no response.
- 6.3 In respect of Subcontractor J, we made contact with them through LinkedIn and they provided us with an email address. We sent correspondence to that email address and asked them to confirm their entitlement, in order to

pay them the interim distributions. We did not receive a response from them. A final follow up email was sent on 20 November 2019 requesting a response by 26 November 2019 and again no response was received.

- 6.4 Given that we have been unable to engage substantively with these Eligible Subcontractors in the previous 12 months, have no other means of contacting these subcontractors and the extensive publicity that the Ebert receivership has received in New Zealand, we do not anticipate being able to engage with (and in the case of Subcontractor I, to locate) these subcontractors for payment of their claims in the near future. However, if we do not conclude the receivership of the Fund until we receive responses from these subcontractors, this will increase costs relating to the receivership of the Fund unnecessarily and will prevent us from making a final distribution to the other Eligible Subcontractors.
- 6.5 Therefore, we seek directions allowing us now to pay any monies which would otherwise be payable to Subcontractors I and J to the Commissioner of Inland Revenue as unclaimed money.
- 6.6 Attached at **pages 65 to 72** is correspondence relating to Subcontractors I and J (internal correspondence is redacted).

7. Approval of costs and disbursements

- 7.1 I detail below the fees and disbursements for which we are seeking approval, totalling \$135,427.87.
- 7.2 Once the Court has considered this application and made the appropriate orders, there will still be tasks to be carried out, prior to the conclusion of the receivership including:
- (a) serving the Court's orders on affected subcontractors;
 - (b) paying out the final distributions; and
 - (c) finalising our final report.
- 7.3 The key steps are set out at paragraph 8.2 below. The amounts for which we seek approval include an allowance for these additional steps to avoid us having to return to the Court for further approval of these costs. Therefore, the actual costs to be deducted from the Fund may be slightly lower than the amounts for which approval is sought.

Receivers' fees

- 7.4 I attach at Schedule Two a summary of the Receivers' time on this matter and proposed fee. That summary shows that 336.1 hours have been spent on the receivership of the Fund. That Schedule also:
- (a) provides a breakdown of the chargeable rates by hours worked at each staff level together with a narration of the nature of the work carried out by those staff; and
 - (b) outlines the disbursements which have been incurred or are anticipated to be incurred before conclusion of the receivership, including legal costs.
- 7.5 The Court Order outlined the rates for the receivers and their staff (the **Consented Rates**). The Consented Rates give a range for each level of personnel.
- 7.6 Applying the upper level of the Consented Rates to time spent results in a fee of up to \$142,445.00 (plus GST and disbursements) for work completed in the receivership.
- 7.7 However, in consideration of the unique circumstances giving rise to our appointment and the overall losses suffered by many Subcontractors we propose to apply the lower level of the Consented Rates in this instance.
- 7.8 This reduces the proposed Receivers' fees from \$142,445.00 to \$118,704.50 (plus GST and disbursements). This is the figure for which we request the Court's final approval plus GST and disbursements.
- 7.9 The proposed fee of \$118,704.50 includes an allowance of up to \$10,655.00 (30 hours) for this application process and tasks required to complete the closure of the receivership, including a final distribution to subcontractors. It assumes that the process from filing this application is straightforward and there are no unanticipated issues which we need to deal with, including a substantive opposition to the orders now sought. If there are such unanticipated issues, we would need to return to the Court for an increase to the fees approved. If the actual time and fee is less then obviously we will only charge for that lesser amount.

7.10 A significant proportion of the work in the receivership has been completed by senior staff members. We considered that this was necessary (and ultimately more efficient) given the complex analysis and subsequent negotiations required to resolve issues with respect to the status of individual subcontracts and associated defect liability obligations.

7.11 We have been conscious of the fees incurred and have made an effort to reduce the costs incurred during the receivership by delegating work to staff at Associate and Support levels where appropriate. In addition, despite the complexity of the work undertaken, we have elected to apply the lower end of the Consented Rates scale in calculating our proposed fees.

Receivers' disbursements

7.12 We also request the Court's approval of the following disbursements and legal costs (all excluding GST):

- (a) a 5% general disbursement on our requested fee totalling \$5,935.23. This general disbursement covers incidental disbursements which are not invoiced separately including for example the cost of phone calls, photocopying, couriers and the like.
- (b) Travel costs totalling \$161.92 relating to taxis and parking costs incurred during travel for the November 2018 hearing.
- (c) Public notice advertising costs of \$626.22 relating to the publication of notices of appointment as required under section 3(1) of the Receiverships Act 1993; and
- (d) Legal costs of \$10,000.00.

7.13 The legal costs comprise:

- (a) counsels' costs to date of approximately \$8,000 (excluding GST); and
- (b) an allowance for further minor attendances relating to this application for directions and matters relating to the conclusion of the receivership.

7.14 The costs referred to in paragraphs 7.5, 7.11 and 7.12 above do not include the costs and disbursements of \$79,210.19 (plus GST) relating to the initial application to the Court for orders appointing us as receivers to the Fund and for directions as to the management of the Fund, previously approved by the Court.

- 7.15 As detailed at paragraph 8.1 below, and assuming accrued interest is applied to the Receivers' costs, this would take the total costs to be deducted from the Fund (being costs relating to the initial application in November 2018 and the receivership costs) to \$169,895.91.
- 7.16 In my affidavit filed in support of the application appointing us as Receivers sworn 1 November 2018, I estimated that the total costs to be deducted from the Fund (being the costs of that court application and to administer the Fund itself) could be less than \$150,000.
- 7.17 That estimate was on the basis that there were no significant disputes to the Fund or other material matters which needed to be addressed. As I explained above, there have been a number of complex issues with defects which we have needed to address. This has increased the time incurred on this receivership and the costs of the receivership as a result.

8. Outcome of Fund administration and final distribution

- 8.1 A summary of the overall outcome of the Fund, including the application of interest being applied in accordance with the directions we have sought is as follows:

Outcome summary		\$
<i>Costs</i>		
Application Costs		79,210
Receivership Costs		135,428
	Subtotal	214,638
<i>less Interest</i>		(44,742)
	Net Total Costs (excluding GST)	169,895.91
<i>Outcome</i>		
Total obligations of Fund at receivership		3,678,833
GST recovered		551,825
	Total Fund and Total Obligations	4,230,657
<i>less Net Total Costs</i>		(169,896)
	Net Funds Available for Distribution	4,060,762
	Recovery for beneficiaries	95.98%

- 8.2 If the directions sought in this application are granted, the Receivers will undertake the following tasks in order to conclude the receivership:
- (a) a further distribution to Eligible Subcontractors of approximately 5.98 cents in the dollar (subject to the addition of the final interest amount upon closure of the account) on their entitlements, bringing the total distributions to 95.98 cents in the dollar;

- (b) distribution of remedial deductions and (if so ordered) waived entitlements to Ebert (at approximately 95.98 cents in the dollar);
- (c) transfer of unclaimed monies to Inland Revenue, if so ordered (at approximately 95.98 cents in the dollar);
- (d) payment of all fees and costs associated with the administration of the Fund;
- (e) completion of final accounting and treasury processes; and
- (f) finalisation and filing of a final report in accordance with s24 of the Receiverships Act 1993.

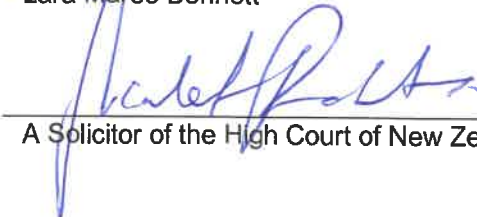
Sworn at Wellington

on 29 November 2019



Lara Maree Bennett

before me:

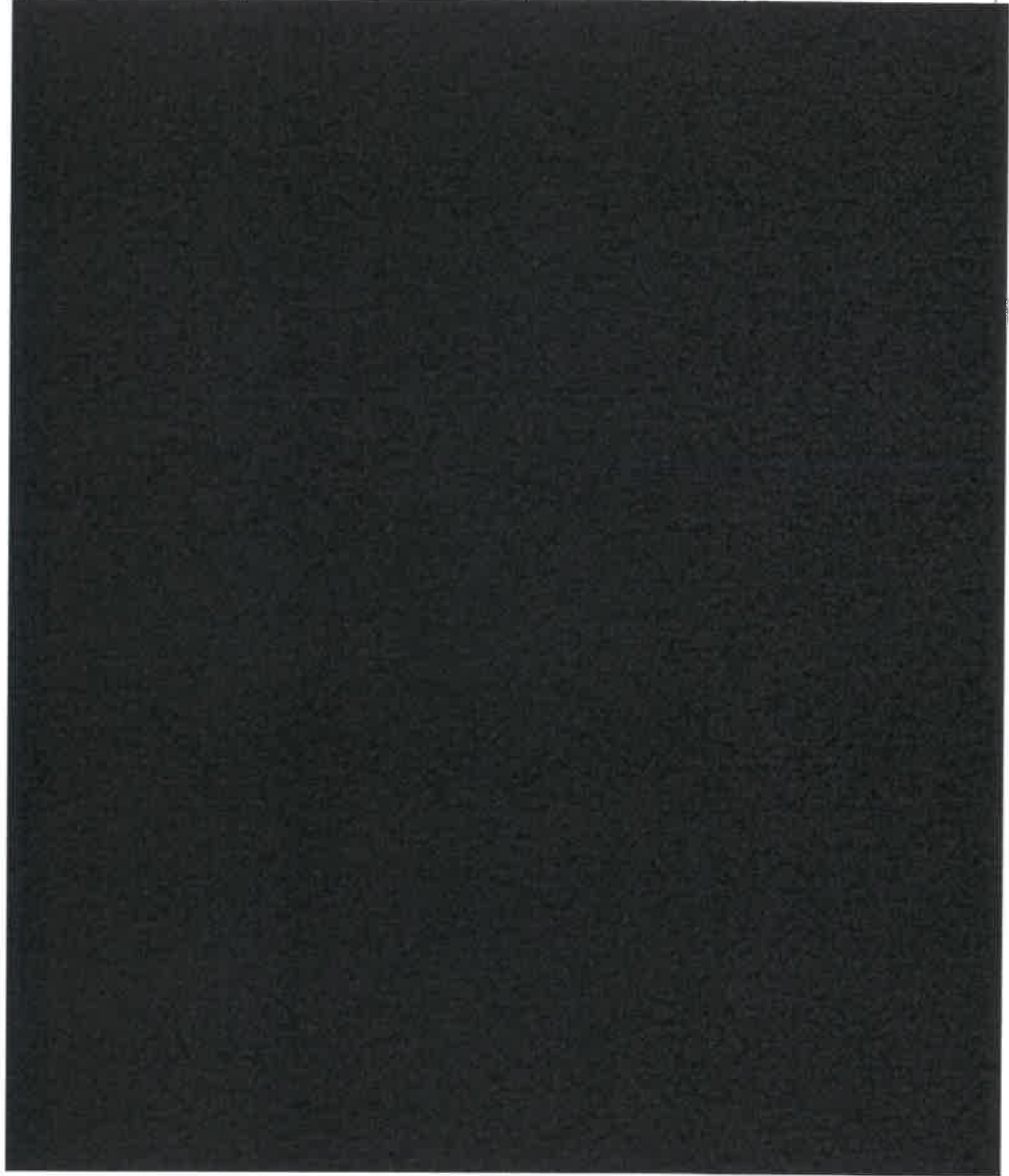


A Solicitor of the High Court of New Zealand

Scarlet Rhiannon Roberts
Solicitor
Wellington

Schedule One: Identity of Specific Subcontractors referred to in this Affidavit

Identifier	Name	Project	Amount of retentions in issue
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Schedule Two: Summary of receivership costs

Staff Level	Total Hours	Consented Rates			Schedule Fee Range		Proposed Fee	
		Avg PwC Rate	Low	High	Low	High	Applied Rate	Fee
<i>Time costs</i>								
Receivers/Partners	86.1	706	485	550	41,758.50	47,355.00	485	41,758.50
Associate Directors	147.6	617	395	485	58,302.00	71,586.00	395	58,302.00
Senior Associates	28.0	406	250	315	7,000.00	8,820.00	250	7,000.00
Associates	38.8	230	190	250	7,372.00	9,700.00	190	7,372.00
Support Staff	35.6	344	140	140	4,984.00	4,984.00	120	4,272.00
	336.1				119,416.50	142,445.00	353	118,704.50
<i>Disbursements</i>								
5% service and administration fee								5,935.23
Travel costs								161.92
Advertising (Public Notices)								626.22
							Total Receivers' costs	125,427.87
<i>Legal costs</i>								
Incurred to date								2,924.89
Allowance for final application and closure process								7,075.11
							Total Receivership costs	135,427.87

Work undertaken at each staff level:

Receivers/Partners

- Strategic planning;
- Oversight, review and approval of receivership staff work;
- Communication with stakeholders and other third parties, including addressing media inquiries;
- Negotiations with subcontractors and principals where required;
- Reviewing and authorising distributions to subcontractors;
- Supervision of all staff and conduct of the receivership;
- Review incoming and outgoing correspondence including amendments to draft documents;
- Execution of documents;
- Review and approval of GST related analysis and returns; and
- Liaison with legal counsel as required.

Associate Directors

- Management of day to day activity streams;
- Analysis in relation to the retention position of each subcontract and treatment of entitlements in accordance with the Court Order;
- Preparation of day to day correspondence including determining the status of any necessary defects with interested parties, in conjunction with the receivers and more junior staff;
- Discussions with stakeholders on issues relating to the retention fund and its distribution;
- Negotiations with subcontractors and principals where required;
- Calculation of distributions in accordance with defect notification period expiry dates, along with preparation of associated reports to receivers and correspondence with subcontractors/principals;
- Strategy discussions and updates to receivers;
- Preparation and distribution of buyer created tax invoices required to finalise GST position;
- Preparation and initial review of reports and outgoing correspondence;
- Review and monitoring of receipts and payments; and
- Supervision of all junior staff.

Senior Associates and Associates

- Preparation of spreadsheets and letters under direction of senior staff;
- Assistance with the preparation of correspondence/reports;
- Assistance with ongoing analysis where required; and
- Assistance with preparation of closure documentation.

Support Staff

- Preparing and administering the payment process to subcontractors;
- Internal accounting and treasury functions;
- Secretarial support for subcontractor communication processes and payment notification; and
- General administrative tasks.



DUPLICATE

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Under the Receiverships Act 1993 and Part 19 of the High Court Rules

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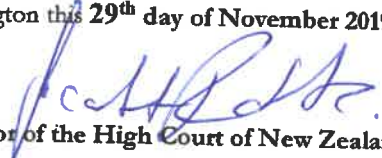
Auckland Ventilation Services Ltd

First Interested Party

and

Taslo Steel Security Limited
Second Interested Party

This is the exhibit bundle marked "LB-1" referred to in the annexed Affidavit of Lara Maree Bennett sworn at Wellington this 29th day of November 2019 before me:



Solicitor of the High Court of New Zealand

Orders appointing the Applicants as receivers and managers of the Retention Account
Scarlet Rhiannon Roberts
Solicitor
Wellington

Dated: 29 November 2018

 **Simpson Grierson**

SIMPSON GRIERSON
SOLICITOR FOR THE APPLICANTS

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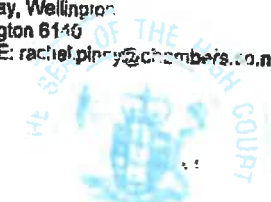
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Case Manager
29 NOV 2018



Before the Honourable Justice Churchman, 12 November 2018

After reading the originating application of Lara Maree Bennett, John Howard Ross Fisk and Richard Michael Longman as receivers of Ebert Construction Limited (in receivership and liquidation) (**Ebert**) (the **Applicants**) dated 23 October 2018, the affidavits of Lara Maree Bennett and David Ian Ruscoe, the written submissions for the Applicants, the memoranda of counsel for the First Interested Party, the Second Interested Party and the Applicants and after hearing Michael Colson and Rachel Pinny counsel for the Applicants and Craig Andrews counsel for the First Interested Party, this Court orders that:

- 1 The Applicants are appointed as joint and several Court appointed receivers and managers to the retention fund presently held by Ebert in a bank account (number [REDACTED]) titled "Ebert SC Retentions" (the **BNZ Retentions Account**) (the **Fund**).
2. The Receivers are permitted to transfer the balance of the BNZ Retentions Account to another bank account provided it is established solely to hold the balance of the Fund and any accrued interest on the terms set out in this order (the **Retentions Account**).
3. The Applicants' undertaking that, pending further order of the Court, the balance of the Retentions Account will not fall below the level of interest earned on it, applies to the Fund howsoever represented (i.e. whether in the BNZ Retentions Account or, subsequently, any other bank account).
4. The Fund is held by Ebert on trust in accordance with sections 18A to 18I of the Construction Contracts Act 2002 (the **Act**) for only those Subcontractors in respect of whom, and in proportion to amounts in respect of which:
 - (A) Ebert issued and sent a Buyer Created Tax Invoice (**BCTI**) to that subcontractor, which showed a deduction for retention monies from the amounts otherwise payable to that subcontractor under that BCTI;
 - (B) Ebert subsequently transferred retention monies relating to that BCTI into the Retention Account; and



- (C) those retention monies did not cease to be retention monies pursuant to section 18C(3) of the Act.
5. The Applicants are entitled to:
- (a) make payments to the Subcontractors entitled to share in the Fund on a *pari passu* basis and on a basis which does not pay any interest claims on any claims to the Fund which have become due and payable; and
 - (b) make interim payments on a basis of 75 percent of nominal entitlement or such other percentage as seems prudent to the Applicants.
6. In respect of the Applicants' fees, costs and expenses:
- (a) the Applicants' costs of this Application, being the Applicant's costs of \$32,828.32, legal costs of \$43,397.00 and disbursements of \$2,984.87, as particularised in the attached Schedule One, be deducted from the Fund;
 - (b) the Applicants' remuneration be fixed at the rates detailed in Schedule Two to this order;
 - (c) the Applicants are entitled to deduct from the Fund their fees, costs and expenses relating to the management and administration of the Fund but must:
 - (i) file a memorandum of counsel detailing the fees, costs and expenses to be deducted from the Fund (the **Costs Memorandum**) for final approval of the Court; and
 - (ii) serve the Costs Memorandum on all Subcontractors by:
 - (A) publishing the Costs Memorandum on the PricewaterhouseCoopers (PwC) webpage dedicated to the Ebert receivership <https://www.pwc.co.nz/ebert> (the **Website**); and



- (B) emailing Subcontractors for whom the Applicants have an email address to advise of the Costs Memorandum and providing a link to the Website;
- (d) any Subcontractor who wishes to file a memorandum in response to the Costs Memorandum must do so with 14 days of service of the Costs Memorandum in accordance with order 6(c)(ii) above.
- 7 Leave is granted for the Applicants to return to the Court for further directions as required.
8. Leave is granted for the first and second interested parties and any Subcontractor served with these proceedings to apply for further directions from the Court but they must serve any such application for directions on the parties and all other Subcontractors in the manner detailed at order 6(b)(ii)(A) to (B) above.

 Date: 29 November 2018

Signature: 
Registrar/Deputy Registrar

Denia Nurris

Deputy Registrar
of the High Court
at Wellington



Schedule One: Applicants' costs and disbursements of the Application

Costs (excluding GST and as per attached invoices)

Fees for Mike Colson for period 14 October 2018 to 9 November 2018 (inclusive)	\$12,337.50
Fees for Rachel Pinny for period 14 October 2018 to 8 November 2018 (inclusive)	\$21,059.50
Fees for Simpson Grierson relating to the Application for the period to 13 November 2018	\$10,000.00
Fees for the Applicants relating to the Application for the period to 13 November 2018	\$32,828.32
Total:	\$76,225.32

Disbursements (excluding GST)

Filing fee on the originating application	\$469.57
Filing fee on interlocutory application (leave)	\$168.07
Sealing fee - initial orders	\$43.47
Sealing fee - substantive orders	\$43.47
Travel (flights to Wellington for hearing)	\$530.26
Service and administration costs	\$1,641.42
Wellington District Law Society Library – cases	\$88.61
Total:	\$2,984.87



Schedule Two: Applicants' rates of remuneration

All rates below are hourly rates and exclude GST

Receivers and Partners:	\$485.00 to \$550.00.
Associate Directors:	\$395.00 to \$485.00.
Managers:	\$315.00 to \$385.00
Senior Associates:	\$250.00 to \$315.00.
Associates:	\$190.00 to \$250.00.
Support staff:	\$140.00.



Receivers' First Report on the State of Affairs of

Ebert Construction Limited Retentions Fund (in Receivership)

Pursuant to Section 23 of the Receiverships Act 1993

January 2019

Company Number: 986366

pwc

Registrar of Companies
Companies Office
Private Bag 92061
Auckland Mail Centre



Contact Details
188 Quay Street
Private Bag 92162
Auckland 1142
New Zealand

Webpage: <https://www.pwc.co.nz/ebert>
Email: restructuring@nz.pwc.com
Telephone: +64 (9) 355 8317

January 2019

Ebert Construction Limited Retentions Fund (in Receivership)

Please find attached our report in relation to the Ebert Construction Limited Retentions Fund (the **Fund** or the **Retentions Account**) in Receivership pursuant to Section 23 of the Receiverships Act 1993 (the **Act**).

This report is subject to the restrictions set out at Appendix 1. In particular, all information contained in this report is provided in accordance with Sections 26 and 27 of the Act. In preparing this report we have relied upon and not independently verified or audited information or explanations provided to us.

In accordance with the requirements of section 23 of the Act, we report on:

- the property in receivership;
- the liabilities that are to be satisfied from the property in receivership;
- amounts likely to be available for payment to creditors; and
- such other information that we consider to be of relevance to readers of this report.

Should you or any reader of this report have any queries, please contact us via the details set out opposite.

Yours faithfully

Ebert Construction Limited (in Receivership)

A handwritten signature in black ink, appearing to read 'Lara Bennett', written over a horizontal line.

Lara Bennett
Receiver

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2	Particulars of debts and liabilities	5
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Events leading to our appointment and particulars of assets

Receivership of the Company - 31 July 2018

We, Lara Bennett, John Fisk, and Richard Longman, all Chartered Accountants Australia and New Zealand Accredited Insolvency Practitioners (NZ), of PwC, were appointed receivers of Ebert Construction Limited (**Ebert or the Company**) on the evening of 31 July 2018.

Ebert had two principal areas of operation, being construction of processing facilities (predominantly in the dairy sector) and more general commercial (including multi-unit residential) construction.

For further information in relation to the Receivership of the Company please refer to the associated First Receivers Report dated 28 September 2018.

Receivership of the Fund - 12 November 2018

At the date of the Company's receivership, it held a separate bank account containing funds relating to certain subcontractor retentions. These funds were held aside by the Company in accordance with the requirements of Subpart 2A of the Construction Contracts Act 2002 (CCA) in respect of retentions owing on subcontracts entered into on or after 31 March 2017.

We were advised that the Company had been placing funds in the separate bank account with an adjustment made on a monthly basis once subcontractor claims for the prior period had been finalised, buyer created tax invoices (**BCTIs**) issued, and a reconciliation of the resulting obligations completed.

As at the date of the Company's receivership the balance of the separate account was \$3.68m (exclusive of GST) (the **Fund** or the **Retentions Account**), with the last adjustment taking place at the end of June 2018, in respect of Ebert's records of applicable retentions held up to the end of May 2018.

BCTIs for June claims had been processed but the adjusting transfer had not yet been made. The majority of July claims were yet to be processed. Accordingly, the balance of the Fund does not represent all retentions recorded as held for subcontracts entered into on or after 31 March 2017.

Ebert is one of the first significant insolvency events to which the new retentions regime applied. Following our appointment as receivers of the Company we determined that the provisions of the CCA did not provide sufficient clarity or guidance in respect of the basis for confirming entitlements or the methods by which such amounts could be distributed. In addition, there are no specific provisions for funding the cost of those activities in an insolvency scenario.

Due to the complexities in relation to eligibility to the Fund, ability to distribute and associated cost, the receivers of the Company submitted an application for directions from the Court including a request for a separate receivership appointment over the Fund.

A hearing was held on 8 November 2018 and we, Lara Bennett, John Fisk, and Richard Longman, were appointed joint and several receivers and managers to the Fund by Court Order on 12 November 2018. The property in receivership comprises all funds held in the Retentions Account.

This report has been prepared by us in accordance with and for the purpose of Section 23 of the Act. It is prepared for the sole purpose of reporting on the state of affairs with respect to the property in receivership and the conduct of the receivership.

Particulars of debts and liabilities

Court Judgment

In addition to the appointment of the receivers, the Court judgment of 12 November 2018 included the following:

- Entitlement to the Fund is limited to those subcontractors with Reconciled and Transferred retention balances, being the specific amounts for individual subcontracts reconciled by Ebert to the Retentions Account up to 22 June 2018, primarily relating to work up to the end of May 2018.
- Those with retention movements relating to claims for work which were processed after the last transfer to the Retention Account was made and those for which no monies were transferred to the Retention Account due to incorrect contractual dates being recorded in Ebert's accounting system (**Wrongly Classified Subcontracts**) do not have an entitlement to the monies contained in the Fund.
- The receivers are granted the ability to make interim payments of entitlements that are due and payable on the basis of a 75% entitlement or such other percentage they consider prudent to enable the receivers to distribute a portion of the fund before resolving associated GST and cost issues and distributing any balance.
- The associated fees, costs and expenses of the Court application were to be deducted from the Fund on an indemnity basis.
- The fees, costs and expenses associated with administration of the Fund are to be deducted from the Fund with a requirement for the receivers to obtain Court approval for those costs, including notification to subcontractors affected by the proceeding. Those affected subcontractors will then have an opportunity to make submissions if they wish to.

- Leave was granted to return to the Court for further directions if required.

In accordance with the judgment the debts and liabilities to be satisfied from the Fund comprise amounts owing to those subcontractors with Reconciled and Transferred retentions balances (being \$3.68m), and associated costs and expenses.

The issue of claims to interest accruing on the Fund has not yet been resolved. The Receivers have given an undertaking to the Court that the balance of the Retention Account will not fall below the level of interest earned on the Fund from time to time, pending determination of how that interest should be distributed.

Creditors with an interest in the property in receivership

A reconciliation of the Company's records established that 130 subcontractors have an entitlement to the Retentions Account, arising from 182 subcontracts. There are no other creditors with preferential claims to the Fund.

There are no creditors with security interests registered against the Fund. However, as noted above, the issue of claims to interest accruing on the Fund has not yet been determined.

The Court issued initial procedural orders dated 26 October 2018 which included granting an application to redact creditor names and addresses from the publicly available Court documents in order to protect the commercial interests of the creditors affected. Consistent with this order we have also excluded those details from this report.

Work undertaken to date

As previously noted, following the Court judgement and reconciliation of the Company's records it was established that 130 subcontractors have a claim against the Retentions Account and these claims arise from 182 subcontracts.

We wrote to each individual subcontractor (and associated contract principals) on 20 November 2018 setting out their calculated entitlement and the receivers' proposed treatment with respect to each relevant subcontract, seeking their agreement/confirmation.

Proposed treatment of claims

The proposals sent to each subcontractor were made subject to consideration of any known defects or outstanding documentation or other obligations in respect of the specific subcontract works.

To ensure consistency and minimise the costs of administering the Fund, a principles based approach was applied for the proposed treatment of claims, taking into account the level of completion of both the individual subcontract works and the wider project as at the date of the Company's receivership.

Based on the principles applied we established that \$2.05m (exclusive of GST) of entitlements would be eligible for an interim distribution prior to Christmas 2018 (**Initial Entitlements**), subject to confirmations from the associated subcontractors and contract principals regarding the proposed treatment.

The remaining \$1.63m (exclusive of GST) would be released over time as relevant defects liability periods reached their expiry date.

To date we have reached agreement with 121 subcontractors with regard to the proposed treatment of their claims and are awaiting confirmation or have ongoing discussions with the remaining 9.

Interim Distributions

Interim distributions totalling **70 cents in dollar (plus GST)** of Initial Entitlements that had been agreed by both the subcontractor and the contract principal have been paid out. For any subcontracts where agreement had not been reached, we are continuing discussions to understand and resolve outstanding issues in order to reach an acceptable position for all relevant parties.

Other matters**Distributions to date**

The orders issued by the Court gave the receivers the ability to make interim payments of entitlements that are due and payable on subcontracts with agreed entitlements.

Accordingly we have made interim distributions of **70 cents in dollar (plus GST)** for Initial Entitlements where amounts and treatment is agreed. To 31 December 2018, these distributions totalled c.\$1.54m (c.\$1.34m plus GST) as follows:

- NZ\$1.16m on 7 December 2018
- NZ\$0.31m on 14 December 2018
- NZ\$0.07m on 19 December 2018

Further distributions will be made in accordance with the principles applied and/or by agreement with the relevant parties, and once associated GST and cost issues are resolved.

GST

The amounts held in the Retentions Account were exclusive of GST. To facilitate recovery of the applicable GST and enable it to be passed on to the subcontractors, BCTIs were issued for the amounts with the GST component included in a GST return filed by the Company.

The return is currently under assessment by Inland Revenue.

Information provided by the Company

As we are also receivers of the Company, we have had full access to Ebert's available financial records and associated information required to complete this report.

Communication

We have received a high volume of correspondence from subcontractors and other parties both in respect of the retentions and the wider receivership of the Company which we have endeavoured to reply to in a timely manner.

This is an extremely difficult situation for the many people and businesses impacted and we are conscious that most subcontractors are likely to experience a significant shortfall in their wider claims for unpaid works and/or retentions not held in the Fund. Recognising that the Fund may be the only recovery for many subcontractors we aim to progress its distribution as cost and time efficiently as possible.

We would like to thank all parties for their ongoing patience and support as we work through the administration of the Fund and seek resolution of outstanding matters. Our next statutory report under Section 24 of the Act, covering the period from 12 November 2018 to 11 May 2019, will be issued in July 2019.

Material updates will be communicated either in writing to relevant parties or via our webpage. In the interim, should subcontractors or other stakeholders have any queries arising from this report, please contact us as follows:

Ebert Construction Limited Retentions Fund
(In Receivership)
c/- PwC
Private Bag 92162
Auckland 1142
Webpage: <https://www.pwc.co.nz/ebert>
Email: restructuring@nz.pwc.com
Telephone: +64 (0) 355 8317

Restrictions

Area	Detail
Statutory	All information contained in this report is provided in accordance with Sections 26 and 27 of the Receiverships Act 1993.
Basis of reporting	The statements and opinions expressed herein have been made in good faith, and on the basis that all information relied upon is true and accurate in all material respects, and not misleading by reason of omission or otherwise.
Information available	We have not independently verified the accuracy of information provided to us, and have not conducted any form of audit in respect of the Company. Accordingly, we express no opinion on the reliability, accuracy, or completeness of the information provided to us and upon which we have relied. Whilst all care and attention has been taken in compiling this report, we do not accept any liability whatsoever arising from this report.
The statements and opinions expressed in this report are based on information available as at the date of the report.	
We reserve the right, but will be under no obligation, to review or amend our Report, if any additional information, which was in existence on the date of this Report was not brought to our attention, or subsequently comes to light.	
Other	Certain numbers throughout this report have been rounded and therefore may not add up exactly.
	Unless where otherwise stated all amounts are in New Zealand dollars.



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*Receivers' Six Monthly Report on the State of
Affairs of*

Ebert Construction Limited Retentions Fund (in Receivership)

Pursuant to Section 24 of the Receiverships Act 1993

Company Number: 986366

July 2019

pwc

Registrar of Companies
Companies Office
Private Bag 92061
Auckland Mail Centre



Contact Details
188 Quay Street
Private Bag 92162
Auckland 1142
New Zealand

Webpage: www.pwc.co.nz/ebert
Email: restructuring@nz.pwc.com
Telephone: +64 (9) 355 8317

15 July 2019

Ebert Construction Limited Retentions Fund (in Receivership)

Please find attached our six monthly report in relation to the receivership of the Ebert Construction Limited Retentions Fund (the **Fund** or the **Retentions Account**), for the period 12 November 2018 to 11 May 2019, pursuant to Section 24 of the Receiverships Act 1993 (the **Act**).

This report is subject to the restrictions set out in Appendix 1. In particular, all information contained in this report is provided in accordance with Sections 26 and 27 of the Act. In preparing this report we have relied upon and not independently verified or audited information or explanations provided to us.

In accordance with the requirements of section 24 of the Act, we report on:

- Property disposed of in the period covered by this report;
- Amounts owing as at the date of this report to any person under whose interests the receiver was appointed;
- Details of the creditors with interests in the property in receivership; and
- Such other information that we consider to be of relevance to readers of this report.

Should you or any reader of this report have any queries, please contact us via the details set out opposite.

Yours faithfully

Ebert Construction Limited Retentions Fund (in Receivership)

Handwritten signature of Lara Bennett in black ink.

Lara Bennett
Receiver

Handwritten signature of John Fisk in black ink.

John Fisk
Receiver

Handwritten signature of Richard Longman in blue ink.

Richard Longman
Receiver

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Events leading to our appointment and particulars of assets

Receivership of the Company - 31 July 2018

We, Lara Bennett, John Fisk, and Richard Longman, all Chartered Accountants Australia and New Zealand Accredited Insolvency Practitioners (NZ), of PwC, were appointed receivers of Ebert Construction Limited (**Ebert** or the **Company**) on the evening of 31 July 2018.

For further information in relation to the Receivership of the Company please refer to the First Six Monthly Receivers Report dated March 2019.

Receivership of the Fund - 12 November 2018

At the date of the Company's receivership, it held a separate bank account containing funds relating to certain subcontractor retentions. These funds were held aside by the Company in accordance with the requirements of Subpart 2A of the Construction Contracts Act 2002 (**CCA**) in respect of retentions owing on subcontracts entered into on or after 31 March 2017.

We were advised that the Company had been placing funds in the separate bank account with an adjustment made on a monthly basis once subcontractor claims for the prior period had been finalised, buyer created tax invoices (**BCTIs**) issued, and a reconciliation of the resulting obligations completed.

As at the date of the Company's receivership the balance of the separate account was \$3.68m (exclusive of GST) (the **Fund** or the **Retentions Account**), with the last adjustment taking place at the end of June 2018, in respect of Ebert's records of applicable retentions held up to the end of May 2018.

BCTIs for June claims had been processed but the adjusting transfer had not yet been made. The majority of July claims were yet to be processed. Accordingly, the balance of the Fund did not represent all retentions recorded as held for subcontracts entered into on or after 31 March 2017.

Following our appointment as receivers of the Company we determined that the provisions of the CCA did not provide sufficient clarity or guidance in respect of the basis for confirming entitlements or the methods by which such amounts could be distributed. In addition, there are no specific provisions for funding the cost of those activities in an insolvency scenario.

Due to the complexities in relation to eligibility to the Fund, ability to distribute and associated cost, we, as receivers of the Company, submitted an application for directions from the Court including a request for a separate receivership appointment over the Fund.

A hearing was held on 8 November 2018 and we, Lara Bennett, John Fisk, and Richard Longman, were appointed joint and several receivers and managers to the Fund by Court Order on 12 November 2018. The property in receivership comprises all funds held in the Retentions Account.

This report has been prepared by us in accordance with and for the purpose of Section 24 of the Act. It is prepared for the sole purpose of reporting on the state of affairs with respect to the property in receivership and the conduct of the receivership.

Particulars of debts and liabilities

Court Judgment

In addition to the appointment of the receivers, the Court judgment of 12 November 2018 included the following:

- Entitlement to the Fund is limited to those subcontractors with Reconciled and Transferred retention balances, being the specific amounts for individual subcontracts reconciled by Ebert to the Retentions Account up to 22 June 2018, primarily relating to work up to the end of May 2018.
- Those with retention movements relating to claims for work which were processed after the last transfer to the Retention Account was made and those for which no monies were transferred to the Retention Account due to incorrect contractual dates being recorded in Ebert's accounting system (**Wrongly Classified Subcontracts**) do not have an entitlement to the monies contained in the Fund.
- The receivers are granted the ability to make interim payments of entitlements that are due and payable on the basis of a 75% entitlement or such other percentage they consider prudent to enable the receivers to distribute a portion of the fund before resolving associated GST and cost issues and distributing any balance.
- The associated fees, costs and expenses of the Court application were to be deducted from the Fund on an indemnity basis.
- The fees, costs and expenses associated with administration of the Fund are to be deducted from the Fund with a requirement for the receivers to obtain Court approval for those costs, including notification to subcontractors affected by the proceeding. Those affected subcontractors will then have an opportunity to make submissions if they wish to.

- Leave was granted to return to the Court for further directions if required.

In accordance with the judgment the debts and liabilities to be satisfied from the Fund comprise amounts owing to those subcontractors with Reconciled and Transferred retentions balances (being \$3.68m), and associated costs and expenses.

The issue of claims to interest accruing on the Fund has not yet been resolved. The Receivers have given an undertaking to the Court that the balance of the Retention Account will not fall below the level of interest earned on the Fund from time to time, pending determination of how that interest should be distributed.

Creditors with an interest in the property in receivership

A reconciliation of the Company's records established that 130 subcontractors have an entitlement to the Retentions Account, arising from 182 subcontracts. There are no other creditors with preferential claims to the Fund.

There are no creditors with security interests registered against the Fund. However, as noted above, the issue of claims to interest accruing on the Fund has not yet been determined.

The Court issued initial procedural orders dated 26 October 2018 which included granting an application to redact creditor names and addresses from the publicly available Court documents in order to protect the commercial interests of the creditors affected. Consistent with this order we have also excluded those details from this report.

Work undertaken to date

Following the Court judgment and reconciliation of the Company's records it was established that 130 subcontractors have a claim against the Retentions Account and these claims arise from 182 subcontracts.

As previously reported, we wrote to each individual subcontractor (and associated contract principals) on 20 November 2018 setting out their calculated entitlement and the receivers' proposed treatment with respect to each relevant subcontract, seeking their agreement/ confirmation.

Proposed treatment of claims

The proposals sent to each subcontractor were made subject to consideration of any known defects or outstanding documentation or other obligations in respect of the specific subcontract works.

To ensure consistency and minimise the costs of administering the Fund, a principles based approach was applied for the proposed treatment of claims, taking into account the level of completion of both the individual subcontract works and the wider project as at the date of the Company's receivership.

To date we have reached agreement with 126 subcontractors with regard to the proposed treatment of their claims and are awaiting confirmation or have ongoing discussions with the remaining four.

Based on the principles applied it was established that \$2.05m (exclusive of GST) of entitlements were eligible for an interim distribution prior to Christmas 2018, subject to any outstanding defects or other obligations. Further entitlements of \$0.3m (exclusive of GST) became eligible for distribution during the period covered by this report as the relevant defects periods on the associated subcontracts expired.

Defects

We have continued to progress discussions with subcontractors and principals in relation to outstanding defect and obligation issues.

At the date of this report, discussions are ongoing with respect to 13 subcontracts with total entitlements of \$86k (exclusive of GST) in order to understand and resolve outstanding issues and reach an acceptable position for all relevant parties.

GST

As detailed in our previous report, the amounts held in the Retentions Account were exclusive of GST. To facilitate recovery of the applicable GST and enable it to be passed on to the subcontractors, BCTIs were issued for the amounts with the GST component included in a GST return filed by the Company. As a result a further \$0.55m has been received and is available for the creditors of the Fund.

Distributions

As at 11 May 2019, interim distributions totalling \$2.31m had been made, representing 90 cents in dollar of entitlements agreed by both the subcontractor and the contract principal (including GST). Further distributions continue to be made as relevant defects periods expire.

Receipts and Payments

The table opposite sets out the receipts and payments for the Fund for the period 12 November 2018 to 11 May 2019.

As detailed in our report, we have made interim distributions of **90 cents in dollar (plus GST)** for all eligible Initial and Secondary Entitlements where amounts and treatment is agreed. These distributions were made as follows:

- NZ\$1.54m in December 2018
- NZ\$0.67m in February 2019
- NZ\$0.05m in March 2019
- NZ\$0.04m in April 2019

This brings distributions in the Receivership to date to total \$2.31m.

Ebert Construction Limited - Retentions Fund (In Receivership)		\$
Receipts & Payments		
for the period 12 November 2018 to 11 May 2019		
<i>Receipts</i>		
Retention funds on hand at a appointment		3,678,833
GST receivable		551,825
Interest on hand at a appointment		27,067
Interest received		15,282
Total receipts		4,273,006
<i>Payments</i>		
Distributions to creditors		2,309,061
Application costs (in accordance with Court Orders)		79,210
RWT on Interest		4,279
Total payments		2,392,550
Net funds on hand		1,880,456

Other matters**Information provided by the Company**

As we are also receivers of the Company, we have had full access to Ebert's available financial records and associated information required to complete this report.

Communication

This is an extremely difficult situation for the many people and businesses impacted by the Receivership and we are conscious that most sub-contractors are likely to experience a significant shortfall in their wider claims for unpaid works and/or retentions not held in the Fund. Recognising that the Fund may be the only recovery for many sub-contractors we aim to progress its distribution as cost and time efficiently as possible.

We would like to thank all parties for their ongoing patience and support as we work through the administration of the Fund and seek resolution of outstanding matters.

Material updates will be communicated either in writing to relevant parties or via our webpage. In the interim, should sub-contractors or other stakeholders have any queries arising from this report, please contact us as follows:

Ebert Construction Limited Retentions Fund
(In Receivership)

c/- PwC

Private Bag 92162

Auckland 1142

Webpage: www.pwc.co.nz/ebert

Email: restructuring@nz.pwc.com

Telephone: +64 (9) 355 8317

Appendix 1 - Restrictions

Area	Detail
Statutory	All information contained in this report is provided in accordance with Sections 26 and 27 of the Receiverships Act 1993.
Basis of reporting	The statements and opinions expressed herein have been made in good faith, and on the basis that all information relied upon is true and accurate in all material respects, and not misleading by reason of omission or otherwise.
Information available	We have not independently verified the accuracy of information provided to us, and have not conducted any form of audit in respect of the Company. Accordingly, we express no opinion on the reliability, accuracy, or completeness of the information provided to us and upon which we have relied. Whilst all care and attention has been taken in compiling this report, we do not accept any liability whatsoever arising from this report.
	The statements and opinions expressed in this report are based on information available as at the date of the report.
	We reserve the right, but will be under no obligation, to review or amend our Report, if any additional information, which was in existence on the date of this Report was not brought to our attention, or subsequently comes to light.
Other	Certain numbers throughout this report have been rounded and therefore may not add up exactly.
	Unless where otherwise stated all amounts are in New Zealand dollars.



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