

**In the High Court of New Zealand
Wellington Registry**

CIV-2018-485- 729

**I Te Kōti Matua o Aotearoa
Te Whanganui-ā-Tara Rohe**

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

In the matter of Ebert Construction Limited (in receivership and liquidation)

Between

Lara Maree Bennett, John Howard Ross Fisk and Richard Michael 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

Memorandum of counsel for the Receivers seeking variation to orders

Dated: 26 November 2018

Judicial Officer: Justice Churchman



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May it please the Court:

1. Counsel refer to Your Honour's judgment of 12 November 2018.
2. In the context of preparing the orders for sealing, a practical issue has arisen. Accordingly, the Applicants seek a slight variation to the orders sought and granted.
3. The orders sought, and granted, included that:

*the Applicants are appointed as joint and several Court appointed receivers and managers to the retention fund held by Ebert in a bank account (number [REDACTED]) titled "Ebert SC Retentions" (the **Retentions Account**) (the **Fund**).*

4. During the course of the hearing the Applicants gave an undertaking that, pending further order of the Court, the balance in the Retentions Account would not fall below the amount of the interest accrued on that account from time to time.
5. As part of the usual process followed in an insolvency administration, the Receivers wish to close the Retentions Account and transfer the balance to a new account. The reasons for this are explained below. However, based on the order above, and the undertaking the Receivers provided to the Court, this would *prima facie* breach the Receivers' undertaking.
6. The Receivers therefore seek a variation to the orders and the undertaking which would enable the Retentions Account to be closed and the balance therein to be transferred to a new account. The variations will continue to ensure that the accrued interest is retained by the Receivers, pending further order of the Court.

Closure of the Retentions Account

7. Upon the wider receivership of the Company, all bank accounts held under its name were frozen for withdrawals (other than specific transfers requested to new receivership accounts), including the Retentions Account, which was held under the Company's main account number as an additional suffix. This is usual practice in an

insolvency administration with new accounts then operated for receivership purposes.


8. In addition, the Retentions Account needs to be closed as it is not an asset of the pre-receivership company and so cannot be retained under the existing pre-receivership bank mandate.
9. There is also the additional theoretical scenario that both the GSA receivership and the liquidation processes are completed prior to the resolution of final distributions from the fund. If the liquidation is complete then Ebert will be struck off the register and could not "own" a bank account in those circumstances.
10. In light of the above, the Receivers wish to transfer the amounts in the Retention Account (which would then be closed by BNZ) to a new BNZ account specifically opened to manage the distribution of the Fund. The new BNZ account would be entitled "Ebert Retention Fund" and would hold only amounts comprising the Fund and any interest which had accrued on the Fund. This account would then become the "Retentions Account" for the purpose of the orders and the Receivers' undertaking.
11. For completeness, this account will earn interest on credit balances utilising the same rate basis to that which applied to the Retentions Account. Accordingly, there is no prejudice to any party with an interest in the Fund.

Variation sought

12. The Receivers seek further directions and a variation to the existing orders as follows (changes to original orders sought in red):
 - (a) *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] [REDACTED]) titled "Ebert SC Retentions" (the **BNZ Retentions Account**) (the **Fund**).*
 - (b) *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**).*

- (c) *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).*



M G Colson / R L Pinny
Counsel for the Receivers

26 November 2018