

**DUPLICATE**

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

**CIV-2018-485- 792**

**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 Marea 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

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**Orders appointing the Applicants as receivers and managers of the Retention Account**

**Dated:** 29 November 2018

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 **Simpson Grierson**

**SIMPSON GRIERSON  
SOLICITOR FOR THE APPLICANTS**

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PO Box 2402, Wellington 6140  
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**MIKE COLSON  
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**RACHEL PINNY  
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PO Box 1530, Wellington 6140  
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**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: <sup>12<sup>th</sup></sup> 29 November 2018

Signature:   
Registrar/Deputy Registrar

**Denia Nunns**

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
<b>Total:</b>	<b>\$76,225.32</b>

### 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
<b>Total:</b>	<b>\$2,984.87</b>



**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.



**Tax Invoice**

From **Mike Colson - Barrister**  
Stout Street Chambers  
PO Box 117  
Wellington 6140

GST Number 47-446-171

Invoice No. 117  
Matter Ebert Construction - Directions application  
Issue Date 01/11/2018  
Due Date 22/11/2018  
For Professional services rendered in October 2018

To **The Receivers, Ebert  
Construction Ltd (in  
receivership)**  
c/- PriceWaterhouseCoopers  
Private Bag 92162  
Auckland

Attention: Lara Bennett

Description	Fee
Ebert Construction - Directions application: Professional services (15/10/2018 - 31/10/2018)	\$7,175.00 *
<b>Disbursements</b>	<b>\$12,847.80</b>
Rachel Pinny's fee as per attached.	
	Subtotal \$20,022.80
	GST * (15%) \$1,076.25
	<b>Amount Due \$21,099.05</b>

**Payment instructions**

Terms: Payment within 21 days please

Payment may be made electronically to my bank account;

Thank you

From **Rachel Pinny**  
Thorndon Chambers  
Maritime Tower, Level 6, 10  
Customhouse Quay  
PO Box 1530, Wellington 6140

**Tax Invoice**  
GST No: 58-397-970

Invoice ID **4**  
Issue Date **28/10/2018**  
Due Date **11/11/2018**  
Subject **Ebert Construction Limited (in receivership and liquidation): Retention Fund Application**

Invoice For **Mike Colson**  
Stout Street Chambers  
Level 6, Huddart Parker Building  
1 Post Office Square  
Wellington

<u>Description</u>	<u>Amount</u>
For all attendances in the period 14 October 2018 to 28 October 2018, as described in the attached letter.	<b>\$11,172.00</b>
This invoice comprises 64 hours of my time at \$175 per hour (excluding GST)	
	Subtotal <b>\$11,172.00</b>
	GST <b>\$1,675.80</b>
	<b>Total \$12,847.80</b>

**Notes**

Payment is due 14 days following invoice date unless agreed otherwise.  
Please pay by direct credit.  
Bank account number: XXXXXXXXXX



**Tax Invoice**

From **Mike Colson - Barrister**  
Stout Street Chambers  
PO Box 117  
Wellington 6140

GST Number 47-446-171

Invoice No. **118**  
Matter **Ebert Construction - Directions application**  
Issue Date **14/11/2018**  
Due Date **05/12/2018**  
For **Professional services rendered**

To **The Receivers, Ebert Construction Ltd (in receivership)**  
c/- PriceWaterhouseCoopers  
Private Bag 92162  
Auckland

Attention: Lara Bennett

<u>Description</u>	<u>Fee</u>
Ebert Construction - Directions application: Professional services (01/11/2018 - 09/11/2018)	\$5,162.50 *
<b>Disbursements</b>	<b>\$11,472.53</b>
<del>Attendances by junior barrister (Rachel Pinny)</del>	
Subtotal	\$16,635.03
GST * (15%)	\$774.38
<b>Amount Due</b>	<b>\$17,409.41</b>

**Payment instructions**

Terms: Payment within 21 days please

Payment may be made electronically to my bank account: XXXXXXXXXX

Thank you

From **Rachel Pinny**  
Thorndon Chambers  
Maritime Tower, Level 6, 10  
Customhouse Quay  
PO Box 1530, Wellington 6140

**Tax Invoice**  
GST No: 58-397-970

Invoice ID 7  
Issue Date 14/11/2018  
Due Date 28/11/2018  
Subject Ebert Construction Limited (in receivership and liquidation): Retention Fund Application

Invoice For **Mike Colson**  
Stout Street Chambers  
Level 6, Huddart Parker Building  
1 Post Office Square  
Wellington

Description	Amount
For all attendances relating to the Retention Fund Application for the period 29 October 2018 to 8 November 2018.	\$9,887.50
This invoice relates to 56.5 hours of my time at \$175 per hour (excluding GST)	
Disbursement: Expenses incurred with NZLS relating to cases provided by the Wellington District Law Society Library	\$88.61
	Subtotal \$9,976.11
	GST \$1,496.42
	<b>Total \$11,472.53</b>

**Notes**

Payment is due 14 days following invoice date unless agreed otherwise.  
Please pay by direct credit.  
Bank account number: [REDACTED]

# TAX INVOICE

PwC  
P O Box 243  
WELLINGTON 6140

November 15, 2018  
Account Reference **535565-2400400**  
Tax Invoice No. **668368**  
G.S.T. Reg No. 48-371-809  
Format: MAIN  
Ref. SBF/AQW

For: John Fisk / Richard Longman / Lara Bennett

**Ebert Construction - Receivership**

OUR FEE	12,500.00
Less 20.00% discount	<u>2,500.00</u>
	10,000.00

	Net	GST	
Document production, delivery and telephone calls	250.00	37.50	
<b>Disbursements</b>			
Court Filing	686.96	103.04	
			<u>936.96</u>
			10,936.96

GST on above	1,640.54
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<b>TOTAL</b>	<u><u><b>\$12,577.50</b></u></u>
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This account is now due for payment with all amounts in NZD unless stated otherwise

<b>Time Summary</b>				
<b>Author</b>	<b>Rank</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>Amount</b>
Josh Cairns	Partner	3.16	600.00	1,890.25
Sally McKechnie	Partner	1.91	600.00	1,142.96
Steve Flynn	Consultant	10.19	600.00	6,110.44
Charlotte Doyle	Year 1 Solicitor	2.20	224.00	492.36
Catey Boyce	Year 4 Solicitor	0.22	344.00	75.61
Ella Arbuckle Page	Law Graduate	0.37	164.00	60.08
Josiah Koh	Law Graduate	0.37	164.00	60.08
Oska Rego	Law Graduate	1.03	164.00	168.22
<b>Total</b>		<u>19.45</u>		<u>10,000.00</u>

<p>Account Name: Simpson Grierson General Account          Payments to: [REDACTED] Account no. [REDACTED] Payment Reference: 668368          Bank Name: Westpac New Zealand Limited, Branch: 79 Queen Street, Auckland, New Zealand          Bank Swift Code: WPAC NZ2W (overseas payments only). Email: <a href="mailto:accounts.receivable@simpsongrierson.com">accounts.receivable@simpsongrierson.com</a></p>
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AUCKLAND: Level 27, Lumley Centre, 88 Shortland Street, Private Bag 92518, Auckland 1141, New Zealand. T +64 9 358 2222  
 WELLINGTON: Level 24, HSBC Tower, 195 Lambton Quay, PO Box 2402, Wellington 6140, New Zealand. T +64 4 499 4599  
 CHRISTCHURCH: Level 1, 151 Cambridge Terrace, West End, PO Box 874, Christchurch, 8140, New Zealand. T +64 3 365 9914  
[www.simpsongrierson.com](http://www.simpsongrierson.com)



**PricewaterhouseCoopers**  
188 Quay Street  
Private Bag 92162  
Auckland 1142  
New Zealand  
Telephone +64 9 355 8000  
Facsimile +64 9 355 8001

Ebert Construction Limited (In Rec & In Liq)  
c/- PwC  
Private Bag 92-162  
Auckland

GST No: 70-130-025  
Tax Invoice

Invoice No: NZD38034188  
Account No: 16148726

19 November 2018

## Memorandum of Professional Fees

	Net Fee (Excluding GST)	GST	Total Fee (GST Inclusive)
Our fee for professional services in relation to the Court Application process for appointment as receiver of the retentions trust account, Indemnity costs for which have been ordered by the Court.	32,828.32	4,924.25	37,752.57
Service and administration fee	1,641.42	246.21	1,887.63
Disbursements – travel	530.26	79.54	609.80
<b>Total</b>	<b>\$ 35,000.00</b>	<b>\$ 5,250.00</b>	<b>\$ 40,250.00</b>

If you have any queries please contact Lara Bennett on +64 9 355 8542

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### Remittance Advice

### Your remittance within 14 days would be appreciated

Payment can be made by direct credit to our bank account [REDACTED] noting client name and invoice number as reference. Please email your remittance advice to [nzaccountsreceivable@nz.pwc.com](mailto:nzaccountsreceivable@nz.pwc.com).

Please detach and return with cheque to:

**PricewaterhouseCoopers**  
Private Bag 92162  
Auckland 1142

Date 19 November 2018  
Invoice No. NZD38034188  
Total \$ 40,250.00