

In the High Court of New Zealand
Wellington Registry

CIV-2018-485-

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
as receivers of Ebert Construction Limited (in receivership and liquidation) each being
Chartered Accountants of Auckland or Wellington

Applicants

And

Ebert Construction Limited (in receivership and liquidation)
a duly incorporated company having its registered office at 188 Quay Street, Auckland
Respondent

Affidavit of Lara Maree Bennett in support of Applicants' originating application seeking:

- (a) **orders appointing them as receivers to assets held by Ebert Construction Limited (in receivership and liquidation) on trust; and**
- (b) **for directions on how to manage and distribute those assets**

Sworn: 23 October 2018

For hearing: 8 November 2018



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

1. Introduction and overview of the application

- 1.1 I am one of the receivers of Ebert Construction Limited (in receivership and liquidation) (**Ebert**), together with John Fisk and Richard Longman. I am authorised to swear this affidavit on behalf of the receivers.
- 1.2 I have been a Chartered Accountant since 2006 and hold a current Certificate of Public Practice. I am a member of Chartered Accountants Australia and New Zealand (CAANZ) and am a CAANZ Accredited Insolvency Practitioner (NZ).
- 1.3 I joined PwC in Auckland in 2001 and am currently an Executive Director in the Restructuring Team. I have extensive experience in insolvency, with a particular focus on receiverships, voluntary administrations and liquidations. I have been the lead manager in a number of extensive and complex insolvencies including the Bridgecorp and Mainzeal receiverships.
- 1.4 Prior to joining PwC I spent four years as an accountant and finance manager in the property development and construction sector.
- 1.5 I am therefore very familiar with insolvency issues in the construction sector and the Construction Contracts Act 2002 (**Act**).
- 1.6 In this affidavit I:
- (a) explain the background to this Application; and
 - (b) detail the basis for the initial orders sought to facilitate the prompt determination of the Application.
- A further affidavit will be filed shortly which will provide additional detail on the factual basis for the substantive orders.
- 1.7 This Application concerns \$3.684 million held in a bank account by Ebert. In this affidavit I call the bank account the **Retention Account** and the funds held in the Retention Account upon our appointment as receivers (excluding interest earned) the **Fund**.

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- 1.8 The Fund represents retention monies held by Ebert on trust for subcontractors on the terms specified in the Act. Accordingly, the Fund is not available to meet the liabilities of Ebert to its creditors generally – it is held on trust for certain of Ebert’s subcontractors.
- 1.9 Ebert is now in liquidation. It is not proceeding with its active projects. Therefore, a number of issues have arisen regarding how the Fund should be managed and distributed.
- 1.10 The most pressing of these issues are:
- (a) who will manage claims to, and distribute, the Fund;
 - (b) which subcontractors have a claim to the Fund and on what basis; and
 - (c) how the Fund is to be distributed between valid claims from subcontractors.
- 1.11 There may be other issues which will arise as claims to the Fund are processed. However, these three issues are the most pressing as the determination of these issues will enable:
- (a) Subcontractors to have some certainty about what their potential claim to the Fund would be; and
 - (b) a substantial amount of the Fund to be promptly distributed to Subcontractors ideally by Christmas.
- 1.12 I am familiar with the retention provisions of the Act. Given my background in the construction sector, I was heavily involved with PwC’s submissions to the Ministry of Business, Innovation and Employment on the new retentions regime and providing advice to our clients on the new retentions regime. In my opinion, the legislation is not clear as to who will manage retentions held on trust for subcontractors in the context of an insolvency and how those funds are to be distributed.

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- 1.13 To the best of my (and the other Receivers') knowledge this is the first insolvency to consider the application of the new retention regime under the Act, since it came into force in March 2017.
- 1.14 In this affidavit, when I refer to "we" I mean John Fisk, Richard Longman and me. I confirm that unless stated I have personal knowledge or have reviewed the relevant facts or analysis detailed in this affidavit.

2. Background to the Application

Background to appointment of Receivers

- 2.1 The background to this Application is the insolvency of Ebert. Ebert is a construction company. It had two principal areas of operation – construction of processing facilities (predominantly in the dairy sector) and more general commercial construction (including multi-unit residential construction). Ebert had been largely successful with the processing side of the business over many years, but had mixed performance in respect of its other commercial and residential projects.
- 2.2 For a period prior to receivership, Ebert had been undertaking a review of a number of its commercial and residential projects. At the completion of the internal review process, Ebert's directors formed the view that the impact of actual and anticipated losses on poorly performing contracts was such that the continuation of trading was not feasible despite the fact that there were a number of processing projects which were in progress or scheduled to commence.
- 2.3 On 31 July 2018 the directors of Ebert passed a resolution requesting that its bank, Bank of New Zealand, appoint receivers pursuant to its general security agreement. Later that evening, John Fisk, Richard Longman and I were appointed receivers of Ebert.
- 2.4 To give some indication of the scale of Ebert's business prior to receivership, it had 15 active project sites nationwide and offices in Auckland and Wellington. It employed approximately 100 staff and had a forecast turnover for the year to 31 March 2019 of \$171 million.

Initial investigations by Receivers

- 2.5 Subsequent to our appointment, we analysed Ebert's 15 active projects including engaging with contract principals in order to establish whether it was feasible for work to recommence. It became apparent from this analysis that due to the financial and/or completion status of the projects and capital requirements, it was not feasible for work to recommence. This is detailed in our first report to creditors dated 28 September 2018, annexed and marked "A". As a result, control of all 15 active project sites was returned to the principals or other contractors.
- 2.6 On 3 October 2018 David Ruscoe and Timothy Downes of Grant Thornton (the **Liquidators**) were appointed by the shareholders as liquidators of the company. The Liquidators have consented to the Receivers continuing to act as agents of Ebert.

The Fund

- 2.7 The Act provides that where Ebert intends to withhold sums which would otherwise be required to be paid under a commercial construction contract (**CCC**) entered into after 31 March 2017 to a subcontractor, those funds must be held on trust for the subcontractor.
- 2.8 Ebert had been placing funds in a separate bank account (the **Retentions Account**) in respect of retentions held on CCCs entered into after 31 March 2017, in accordance with the Act. Its practice was as follows:
- (a) The subcontractor would raise a claim for payment based on the prior period (generally the previous month).
 - (b) Ebert would consider whether the claim was in accordance with what it considered was owing under the CCC.
 - (c) Once Ebert had determined how much it considered was payable under the CCC, it created a Buyer Created Tax Invoice (**BCTI**), which recorded the amount to be paid to the subcontractor and the amount which was being retained.

- (d) Once the BCTIs were processed and sent to the subcontractors, Ebert would:
 - (i) pay the amounts owing under the BCTIs to the subcontractors; and
 - (ii) upon completion of a monthly reconciliation, transfer the net movement in retention monies recorded as owing in accordance with the Act from its general accounts to the Retention Account.

In practice, as part of this reconciliation process, Ebert would also consider what funds which were held in the Retention Account could now be paid out to subcontractors. Accordingly, there would generally be a single payment once a month into the Retentions Account, following which the Retention Account would hold all Ebert's recorded retentions on CCCs subject to the Act's requirements.

2.9 However, in the month prior to the appointment of receivers, Ebert did not complete this process.

Claims by subcontractors in May 2018

2.10 Ebert followed its usual processes up to 22 June 2018 in respect of invoices for services performed up to and including in May 2018.

2.11 The last transfer of retention payments from Ebert's general account to the Retention Account was on 22 June 2018. Following that transfer, the amounts in the Retention Account comprised retentions held (and reconciled) by Ebert up to the end of May 2018. I refer to these as the **Reconciled and Transferred Retentions**.

Claims by subcontractors in June 2018

2.12 The process in respect of claims made by subcontractors in June was not completed.

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[Signature]

- (a) Ebert had determined how much it considered was payable under the CCCs for claims made by its subcontractors in June 2018 and had created the requisite BCTIs (the **June BCTIs**).
- (b) The June BCTIs recorded the amount to be paid to the subcontractor and the amount which would be retained. I refer to these as the **Calculated but Not Transferred Retentions**.
- (c) However:
 - (i) the amounts payable to the subcontractor under the June BCTIs were (in most cases) not paid; and
 - (ii) no amounts were transferred from the general account to the Retention Account in respect of the Calculated but Not Transferred Retentions.

Claims by subcontractors in July 2018


2.13 Ebert did not commence the process for the month of July 2018 prior to the appointment of receivers on 31 July 2018. That is Ebert did not:

- (a) complete the assessment of all claims and issuance of BCTIs for claims made by its subcontractors in July 2018;
- (b) pay amounts to associated subcontractors in respect of those services;
- (c) calculate the confirmed retentions in respect of those services; or
- (d) pay any monies into the Retention Account relating to services provided by its subcontractors that were claimed for in July 2018.

2.14 I refer to these as Uncalculated and Not Transferred Retentions.

The Fund – More Detail

2.15 As I mentioned above, the last deposit into Ebert's Retention Account was on 22 June 2018. This means:

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- (a) The Fund is funded from the Reconciled and Transferred Retentions only. No monies relating to the Calculated but Not Transferred Retentions or the Uncalculated and Not Transferred Retentions were paid into the Retention Account.
- (b) The Fund does not represent all the retentions Ebert was entitled to hold in respect of commercial subcontracts entered into after 31 March 2017 up to the date of appointment of receivers.

2.16 Upon receivership Ebert's financial accounts recorded "retentions held" as being \$9.324 million (excluding GST), including \$4.466m subject to the retention regime under the Act. This disparity from the amount in the Fund is because Ebert's books reflect what the position ought to have been in respect of retentions held on all subcontractors, including those not subject to the retentions regime of the Act, following the reconciliation relating to the month of July 2018 – that is reconciled to remove amounts no longer to be held on trust and to include the Calculated Retentions.

2.17 We have also identified 14 subcontracts for which Ebert may have incorrectly recorded the CCC in its computer system as being entered into prior to 31 March 2017 or failed to record a date. This meant:

- (a) that the subcontract was incorrectly treated by Ebert as a construction contract which fell outside the retentions regime of the Act; and
- (b) therefore retentions held by Ebert under those CCCs were not paid into the Retentions Account at all.

I refer to these as **Wrongly Classified Subcontracts**. The relevant retentions total \$0.17m.

2.18 Upon our appointment as Receivers, the balance of the Retention Account was \$3,684,316.15 comprising:

- (a) the Fund totalling \$3,678,832.53; and

- (b) interest earned on the Fund of \$5,483.62. (Interest earned on the Fund until 30 June 2018 was returned to Ebert's general accounts prior to our appointment.)
- 2.19 We have continued to hold the Fund and associated interest in the separate account.
- 2.20 We have carried out significant work attempting to reconcile Ebert's records, to establish which Subcontractors could have a claim to the Fund (based on any of the Reconciled and Transferred Retentions, Calculated but Not Transferred Retentions or Uncalculated and Not Transferred Retentions) and the amount of any such claim. This shows:
- (a) 152 subcontractors could have a claim to the Fund pursuant to 213 separate CCCs.
- (b) The claims to the Fund relate to 21 different Projects.
- 2.21 The 21 Projects were at various stages. By way of overview:
- (a) Ten Projects had achieved Practical Completion or Taking Over (including one of the active projects); nine of which are still within contractual defects notification periods. This means the projects were completed to the point where the building could be considered ready for use for its intended purpose (as defined under the relevant contract). Generally, the term "Practical Completion" is used for commercial and residential construction whereas "Taking Over" is the term used in respect of processing plant buildings in the dairy sector. In both cases the achievement of these milestones would trigger commencement of the contractual defects notification period for the works.
- (b) Eleven Projects had not achieved Practical Completion or Taking Over at the time of Receivership: Some were 95% completed, others had only just commenced or were at various mid stages. One project was days from Taking Over and

subsequently achieved this with the co-operation and assistance of the Receivers.

2.22 It is unclear whether we, as Receivers appointed by a secured creditor under a security agreement, could manage and distribute the Fund, given that it is held by Ebert as trustee. Even if we could, a number of practical and legal issues then arise. For example:

- (a) There is no guarantee that our appointment as receivers will continue until the Fund is distributed. If our appointment as Receivers came to an end, so would any ability we had to manage the Fund. This would cause significant practical issues for distribution of the Fund and may require significant duplication of work (and therefore increased cost) by the Liquidators or any other party appointed to administer the Fund.
- (b) The Fund could not be generally applied to the indebtedness of the appointing secured creditor, as Ebert did not have beneficial ownership of the Fund. This could raise a question as to whether we would be acting for a proper purpose if we were to try to distribute the Funds to the subcontractors.
- (c) There will invariably be costs associated with distributing the Fund. In the absence of a court order, it is not clear from the Act that we would be able to deduct our costs in administering the Fund from the Fund itself. However, as Ebert's creditors (save for subcontractors) will not receive the benefit of the Fund, there may be objections to the receivers' costs in managing the Fund being deducted from the general pool of assets, to the detriment of Ebert's general creditors. This leaves the Receivers in a position where costs are being incurred, but our ability to deduct these costs from the assets of Ebert (being the Fund or other assets) is not clear.

2.23 It is for these reasons that we consider it prudent to make this Application.

3. Orders as to service and timetabling to an urgent hearing

- 3.1 As one would expect, the collapse of Ebert has caused significant financial pressure on its subcontractors. At the time we were appointed as receivers, Ebert owed its trade creditors (including subcontractors) approximately \$24.517 million (including GST) for trade invoices and BCTIs and a further \$9.324m (plus GST) for subcontractor retentions. We are conscious of the need to pay any valid claims to the Fund promptly, to alleviate some of this financial pressure. For this reason, we have requested that the matter be heard urgently so that payments can be made out of the Fund ideally before Christmas.
- 3.2 We have been in ongoing discussions with a number of Ebert's subcontractors and the Principals in respect of each of Ebert's 15 active projects.
- 3.3 General communication with the subcontractors and trade creditors has been in three forms:
- (a) by publishing information to PricewaterhouseCoopers (**PwC**) webpage dedicated to the Ebert Construction receivership <https://www.pwc.co.nz/ebert> (the **Website**);
 - (b) by email, where an email address is provided; and
 - (c) by post.
- 3.4 We posted the initial creditor claim forms to subcontractors and asked them to respond providing us with (amongst other information) an email address as a contact. Of the 152 Subcontractors, 97 have to date provided an email address to the Receivers for the purpose of communication in the receivership. We have email addresses for a further 54 Subcontractors obtained from a review of the contract documents, including the subcontract agreement, most recent BCTI or contact schedule provided to the Principal upon completion of the Project. Accordingly, I believe we have email addresses for 151 of the 152 Subcontractors, and a postal address for the remaining one.

3.5 We have been in active contact with 20 of the 21 Principals to the relevant Projects by email and have an email address for the remaining one.

3.6 Therefore, I believe that service of the Application by:


- (a) publishing the Application and associated Court documents (including affidavits and memoranda) on the Website;
- (b) emailing Principals and Subcontractors for whom we have an email address to advise of the Application and providing a link to the Website; and
- (c) for the Subcontractor for whom we do not have an email address, or for any Subcontractors or Principals for whom an email is returned undelivered, couriering a letter to their registered office or last known address advising of the Application and informing them that the Application and associated documents are available on the Website;

will most likely bring the Application to the attention of all of the affected Principals and Subcontractors.

3.7 We have already contacted 12 Subcontractors who have claims to approximately 47% of the Fund, to inform them of the intended Application. None indicated an objection to the Receivers seeking appropriate orders from the Court to facilitate distribution of the Fund and a number have indicated a willingness to provide funding support to enable the application process in the event alternative funding cannot be secured.

Sworn at Auckland

on 23 October 2018



Lara-Maree Bennett

before me:

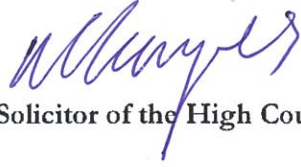


A Solicitor of the High Court of
New Zealand

Natasha Louise Kuypers
Solicitor, Auckland



This is the exhibit marked "A" referred to in the annexed Affidavit of **Lara Maree Bennett** sworn at Auckland this 23rd day of October 2018 before me:



Natasha Louise Kuypers
Solicitor, Auckland

Solicitor of the High Court of New Zealand

Receivers' First Report on the State of Affairs of

Ebert Construction Limited (in Receivership)

Pursuant to Section 23 of the Receiverships Act 1993

Company Number: 986366

28 September 2018

pwc

Registrar of Companies

Companies Office
Private Bag 92061
Auckland Mail Centre



Contact Details

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28 September 2018

Ebert Construction Limited (in Receivership) (Ebert or the Company)

Please find attached our report in relation to the Company 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 Company's assets, comprising the property in receivership;
- the Company's debts and liabilities that are to be satisfied from the property in receivership;
- details of the creditors with interests in the property in receivership, including any specific security interests held by creditors over certain assets; 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'.

Lara Bennett
Receiver

A handwritten signature in black ink, appearing to read 'John Fisk'.

John Fisk
Receiver

A handwritten signature in blue ink, appearing to read 'Richard Longman'.

Richard Longman
Receiver

Contents

1	Introduction and events leading to our appointment	4
2	Debts and liabilities of the Company	6
3	Property in receivership	8
4	Other matters	10
	Appendices	11
1	Restrictions	12
2	PPSA Registrations	13

Introduction and events leading to our appointment

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. Based on the information provided to us, it appears that the Company had been largely successful with the processing side of the business over many years, but had mixed performance in respect of its other commercial and residential projects.

For a period prior to receivership, the Company had been undertaking a review of a number of its commercial projects, including in relation to three substantial contracts in Auckland.

At the completion of the internal review process, the Company's directors formed the view that the impact of actual and anticipated losses on poorly performing contracts was such that the continuation of trading was not feasible, notwithstanding that a number of processing projects were in progress and scheduled to commence. On 31 July 2018 the Directors passed a resolution requesting that receivers be appointed.

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 the Company on the evening of 31 July 2018.

The property in receivership comprises all of the assets, property and undertakings of the Company.

This report has been prepared by us in accordance with and for the purpose of Section 23 of the Receiverships Act 1993 (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.

As noted, prior to receivership, Ebert's business operations comprised construction activities in the dairy processing and commercial sectors. At the date of appointment the Company had 15 active project sites nationwide with offices in Auckland and Wellington.

The Company employed approximately 100 staff, with forecast turnover for the year to 31 March 2019 of \$171m.

We note that the majority of plant and equipment utilised by Ebert during the course of its day to day and project operations was leased from a related entity, which is not subject to the receivership.

Work undertaken to date

Upon appointment, the immediate priority was to ensure adequate health and safety procedures and safeguards were in place and secure assets. Representatives of the receivers, and security personnel where required, attended all sites where construction work was in progress.

Once all sites were secured, collection of subcontractor tools and equipment was facilitated in an orderly manner. An analysis of the Company's 15 active projects was undertaken, including engagement with contract principals, in order to establish whether it was feasible for work to recommence.

Following this initial analysis, it was evident that, due to the financial and/or completion status of the projects and capital requirements, it was not feasible for work to recommence. Control of all sites was returned to the principals in the days following our appointment.

Additional activities undertaken and in progress are as follows:

- Settlement of outstanding claims in respect of sites active at the date of receivership;
- Negotiation and recovery of outstanding claims, in respect of inactive projects;
- Evaluation and reconciliation of employee, taxation, secured and unsecured creditor positions;
- Liaison with regulatory authorities as required; and
- The orderly exit of the Wellington and Auckland offices.

Following the initial assessments of active projects and the decision not to recommence work on those sites, the Company's staffing was reduced significantly. A small number of staff were retained for a short period to assist with the orderly exit of project sites and establishing the financial position of the Company. Further reductions in staffing based on assessment by the receivers of ongoing requirements and operations were subsequently undertaken.

At the date of this report three employees continue to assist the receivers, namely:

- One finance staff member assisting with analysis of financial information and completing ongoing financial and administrative requirements; and
- Two project management staff, providing assistance with pursuing recoveries relating to both active and inactive projects.

These employees have been retained due to their institutional knowledge of the Company, its systems, and its assets, and to ensure that the receivership is operated as cost efficiently as possible.

Overview and secured creditors

The following table shows the particulars of recorded outstanding debts and liabilities of the Company at the time of appointment that are required to be satisfied from the property in receivership:

Class of Creditor	Note	Description	Amount (\$'000)
Secured - general	1	Bank of New Zealand	6,085
Secured - general		Kelvin Eric Hale	3,500
Secured - PMSI	2	Various	Unknown
Unsecured - preferential		Employees	640
		Inland Revenue	349
Unsecured - non-preferential	3	Trade creditors	24,517
		Subcontractor retentions	9,324
		Employees	1,283
		Contingent creditors	Unknown

Notes

- This amount comprises principal and accrued interest to the date of appointment in respect of the following, and interest will continue to accrue on outstanding balances:*
 - Net indemnity liability for bonds on issue prior to receivership
 - Credit card balances
- A detailed list of PPSA registrations is attached at Appendix 2.*
- This amount includes all retentions recorded as owing by Ebert. At the date of receivership a separate bank account in respect of retentions owing on contracts entered into after 31 March 2017 held a balance of \$3.68m.*

Creditors with a general security interest

The Bank of New Zealand (BNZ) has a registered security interest over the Company in respect of a General Security Agreement dated 12 July 2013.

Kelvin Eric Hale registered a security interest on 24 July 2018 on behalf of himself and another shareholder in respect of a \$3.5m advance made to the Company. We are advised that the advance was a short-term measure pending an intended capital raise by shareholders which was not completed prior to the receivership.

We note that one further creditor has asserted a general security interest which was inconsistent with the Company's records. The details of this claim are currently under assessment.

Creditors with PMSI registrations

On appointment there were 148 specific security financing statements for Purchase Money Security Interests (PMSIs) registered against the Company. The quantum of claims in respect of these registrations cannot yet be estimated as individual claims continue to be assessed.

A number of these have subsequently been discharged as there are no balances outstanding. In excess of 100 financing statements have been addressed since appointment, resulting in:

- goods/equipment being returned to the creditor; and/or
- where control of sites has reverted to the contract principal, relevant contact details being provided to PMSI claimants to enable them to discuss with the principal any assets subject to security claims that remained on the sites; and/or
- confirmation that the creditor does not hold a valid security interest.

The remaining PMSIs are either in the process of being addressed, or we are awaiting supporting documentation.

A large number of further claims have been received where there is no registered financing statement, and are being addressed accordingly.

Unsecured creditors

Unsecured preferential creditors

Based on information available from the Company's records, employee preferential entitlements at the date of receivership are currently estimated to total approximately \$0.64m. We have written to all employees to confirm the quantum of their preferential claims.

The Company's records indicate Inland Revenue may have a preferential claim in relation to PAYE for the period from 16-31 July 2018 totalling \$0.35m. In addition, the Company's GST return for June 2018 records a payment owing of \$0.68m. However, the return for July 2018 is estimated to be a refund in excess of this amount, resulting in a net GST receivable position. The net outstanding amounts remain subject to verification in conjunction with Inland Revenue.

Following recovery of trade debtors to date, we can confirm that unsecured preferential creditors will be paid in full, based on claims received to date.

Unsecured trade creditors

The Company's accounting records as at 31 July 2018 reported unsecured trade creditor balances of \$33.84m, represented by:

- Accounts payable - \$24.52m (including GST)
- Retentions held - \$9.32m (excluding GST)

The above balances may not reflect the total outstanding creditor position of the Company as some creditors may not have submitted invoices or claims for the period to 31 July 2018 at the time the accounts were updated. Accordingly the trade creditor position may be subject to change.

Non-preferential employee entitlements

Based on information available from the Company's records, non-preferential employee entitlements as at the date of receivership are currently estimated to total approximately \$1.28m, predominantly related to payment in lieu of notice. We have written to all employees to confirm the quantum of their claims.

Contingent creditors

The Company was involved in a material formal dispute process in respect of one of its contracts prior to receivership. In addition to that matter it is expected that principals who incur losses due to additional costs and/or delays as a result of the Company's inability to complete works will submit claims once these losses have been quantified.

Particulars of assets and proposals for disposal of receivership property

Summarised opposite are the particulars of the Company's key assets as at the date of our appointment, prepared from the Company's records.

The Receivers' role is to maximise recoveries in an efficient manner, address statutory requirements and, once obligations have been met, transfer any surplus available for unsecured creditors back to the Company or to a liquidator (if appointed).

We have omitted certain details concerning the realisation of receivership assets as we believe that their inclusion would materially prejudice the exercise of our functions and, in particular, our duty to obtain the best recovery reasonably obtainable in respect of the Company's assets.

Cash held in respect of subcontractor retentions

The Company had been placing funds in a separate bank account in respect of retentions held on subcontracts entered into after 31 March 2017, with an adjustment made on a monthly basis once subcontractors claims for the prior period had been finalised, buyer created tax invoices (**BCTIs**) issued, and a reconciliation of the resulting obligations completed. Upon receivership the balance of the account was \$3.68m, 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.

At the date of receivership BCTIs for June claims had been processed but the adjusting transfer had not yet been made. July claims were yet to be processed. Accordingly, the balance of the separate account does not represent all retentions held for subcontracts entered into after 31 March 2017. Reconciliations of Ebert's records are ongoing as formal creditor claims are received.

Type of Asset	Note	Book Value (\$'000)
Cash held in respect of subcontractor retentions	1	3,683
Contract receivables		18,605
Client retentions		4,826
GST		516
Income tax		2,436
Other Assets		91
Total		30,158

Notes

- 1 These funds were held aside by Ebert in accordance with the requirements of Subpart 2A of the Construction Contracts Act 2002 (CCA) specifically in respect of retentions owing on subcontracts entered into after 31 March 2017 and are not available to meet secured or other unsecured claims of the Company.

Ebert is the first significant insolvency requiring application of the new retentions regime. The CCA does not state the basis for confirming entitlements or the methods by which such amounts can be distributed, nor does it provide for the funding of the cost of those activities.

We are currently reviewing the position with respect to the amounts held in order to determine the conditions and appropriate processes under which those funds may be dealt with in accordance with the provisions of the CCA and any other relevant legislation. Our analysis to date indicates a number of complexities for which resolution will require an application for directions from the Court. Initial discussions have been held with regulatory authorities in this respect.

The receivers are conscious of the importance of this matter. However, until we are able to confirm a pathway and funding for addressing the issues with application of the legislation, we are unable to confirm a timeframe for resolution of this matter. In the interim the funds continue to be held aside.

Once reconciliations and other assessments have been completed, and options for resolution have been further developed, we will contact all impacted subcontractors regarding the next steps.

Particulars of assets and proposals for disposal of receivership (cont'd)

Contract receivables

The Company's accounting records as at 31 July 2018 reported total receivables in respect of construction contracts of \$23.43m, represented by invoiced amounts and accruals (\$18.61m) and retentions held by principals (\$4.83m).

We are working with a number of parties in order to progress negotiations and recoveries on both active and inactive contracts, including in respect of:

- Certified and uncertified progress claims for active projects where sites have been returned to the control of the contract principal;
- Final claims for completed (inactive) projects currently within defect liability periods;
- Insurance claims pending; and
- Retentions held by principals.

Each contract is analysed on an individual basis to determine the most appropriate strategy for maximising realisations.

In many instances resolution of outstanding receivables will be a complex and lengthy exercise due to physical works, documentation and guarantee/warranty issues outstanding.

We are unable to provide details in respect of individual contracts due to confidentiality and commercial reasons. However, we advise that options being considered include, but are not limited to, the following:

- Engagement of third parties to complete required remedial works;
- Negotiated settlement on the basis of agreed allowances for uncompleted works and/or documentation; and
- Formal recovery action if required.

Tax and other assets

The Company's accounts as at 31 July 2018 record net GST receivable of \$0.52m. The associated returns and supporting documentation are currently under review. Once this process is complete they will be submitted to Inland Revenue.

The Company's records show a number of balances receivable in respect of income tax (\$2.44m) which had not been fully reconciled at the date of appointment.

The Company's records show a book value for fixed assets, intangibles and investments of \$0.91m. Fixed assets on hand at appointment predominantly comprised office and IT equipment. Most significant construction plant and equipment was leased from a related entity, or third parties.

The Company's detailed accounting records are being assessed and further asset recoveries will be pursued as they are identified.

Other matters

Amounts likely to be available for payment to creditors other than those with statutory preferential claims

While it is too early to confirm the extent of potential recoveries from the receivership, the Company's accounts and our initial assessments indicate there may be a substantial shortfall to those with secured interests.

Accordingly, aside from preferential unsecured creditors and those creditors with a valid claim on the separate retention funds held, we do not anticipate any surplus funds being available to unsecured creditors from the receivership process.

Information provided by the Company

The directors, management and staff of the Company have co-operated in making available the information required by the Receivers to complete this report.

Communication

We have received a high volume of correspondence from creditors and other parties which we have endeavoured to reply to in a timely manner. We recognise that this is an extremely difficult situation for the many people and businesses impacted and would like to thank all parties for their ongoing patience and support as we work through the complexities of the receivership.

Our next statutory report under Section 24 of the Act, covering the period from 31 July 2018 to 30 January 2019, will be issued in March 2019.

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

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Appendices

Appendices	11
1 Restrictions	12
2 PPSA Registrations	13

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.
Prospective Financial Information	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	We have relied on forecasts and assumptions prepared by the Company about future events which, by their nature, are not able to be independently verified. Inevitably, some assumptions may not materialise and unanticipated events and circumstances are likely to occur. Therefore, actual results in the future will vary from the forecasts upon which we have relied. These variations may be material.
	Certain numbers in table throughout this report have been rounded and therefore may not add up exactly.
	Unless where otherwise stated all amounts are in New Zealand dollars.

PPSA registrations at date of receivership

Name of Creditor	Date		Name of Creditor	Nature	Registered	Date	Nature
	Registered	Date					
Abbas Limited	23-May-2012		Fleetpartners NZ	Goods - Other	19-May-2016	19-May-2016	Goods - Motor Vehicles
Allied Concrete Limited / AML Limited	13-Apr-2012		Fleetpartners NZ	Goods - Other	19-May-2016	19-May-2016	Goods - Motor Vehicles
APL Kwikform Pty Limited Trading As United Scaffolding	27-Apr-2016		Fleetpartners NZ	Goods - Other	25-May-2016	25-May-2016	Goods - Motor Vehicles
APL Kwikform Pty Ltd	18-Jan-2017		Fleetpartners NZ	Goods - Other	25-May-2016	25-May-2016	Goods - Motor Vehicles
Ardex New Zealand Limited	16-Jun-2017		Fleetpartners NZ	Goods - Other	02-Jun-2016	02-Jun-2016	Goods - Motor Vehicles
Armatec Environmental Ltd	29-Sep-2014		Fleetpartners NZ	Goods - Other	11-Jun-2016	11-Jun-2016	Goods - Motor Vehicles
Atkore International	24-Aug-2016		Fleetpartners NZ	Goods - Other	12-Jun-2016	12-Jun-2016	Goods - Motor Vehicles
Baier Group Limited	26-Jan-2017		Fleetpartners NZ	Goods - Other	13-Jun-2016	13-Jun-2016	Goods - Motor Vehicles
Bank Of New Zealand	03-Jul-2013		Fleetpartners NZ	All Present And After Acquired Personal Property	14-Jun-2016	14-Jun-2016	Goods - Motor Vehicles
Bank Of New Zealand Wholesale Financial Services	05-Oct-2017		Fleetpartners NZ	Intangibles	18-Jul-2016	18-Jul-2016	Goods - Motor Vehicles
BOC Limited	10-Mar-2016		Fleetpartners NZ	Goods - Other	20-Jul-2016	20-Jul-2016	Goods - Motor Vehicles
Bowers Brothers Concrete Limited	24-Apr-2015		Fleetpartners NZ	Goods - Other	08-Aug-2016	08-Aug-2016	Goods - Motor Vehicles
Buildpro Ltd	11-May-2017		Fleetpartners NZ	Goods - Other	29-Aug-2016	29-Aug-2016	Goods - Motor Vehicles
Calibre Enterprises Limited	04-Jun-2015		Fleetpartners NZ	Goods - Other	31-Aug-2016	31-Aug-2016	Goods - Motor Vehicles
Carriers Building Supplies Limited	04-May-2006		Fleetpartners NZ	Goods - Other	12-Oct-2016	12-Oct-2016	Goods - Motor Vehicles
Cirtex Industries Ltd	02-Apr-2013		Fleetpartners NZ	Goods - Other	10-Nov-2016	10-Nov-2016	Goods - Motor Vehicles
Cleanline Distributors Limited	11-Dec-2017		Fleetpartners NZ	Goods - Other	16-Nov-2016	16-Nov-2016	Goods - Motor Vehicles
Counties Manukau Health	08-Jun-2018		Fleetpartners NZ	Goods - Other	16-Nov-2016	16-Nov-2016	Goods - Motor Vehicles
Counties Manukau Health	08-Jun-2018		Fleetpartners NZ	Goods - Other	25-Nov-2016	25-Nov-2016	Goods - Motor Vehicles
Counties Manukau Health	08-Jun-2018		Fleetpartners NZ	Goods - Other	15-Dec-2016	15-Dec-2016	Goods - Motor Vehicles
Counties Manukau Health	08-Jun-2018		Fleetpartners NZ	Goods - Other	09-Jan-2017	09-Jan-2017	Goods - Motor Vehicles
Counties Manukau Health	08-Jun-2018		Fleetpartners NZ	Goods - Other	13-Feb-2017	13-Feb-2017	Goods - Motor Vehicles
Counties Manukau Health	08-Jun-2018		Fleetpartners NZ	Goods - Other	14-Feb-2017	14-Feb-2017	Goods - Motor Vehicles
Counties Manukau Health	08-Jun-2018		Fleetpartners NZ	Goods - Other	03-Mar-2017	03-Mar-2017	Goods - Motor Vehicles
Counties Manukau Health	08-Jun-2018		Fleetpartners NZ	Goods - Other	05-Apr-2017	05-Apr-2017	Goods - Motor Vehicles
Counties Ready Mix Limited	07-Aug-2015		Fleetpartners NZ	Goods - Other	27-Apr-2017	27-Apr-2017	Goods - Motor Vehicles
Euro Corporation Limited	24-May-2012		Fleetpartners NZ	Goods - Other	20-Jun-2017	20-Jun-2017	Goods - Motor Vehicles
FDL T/A Placemakers Albany	14-Jul-2015		Fleetpartners NZ	Goods - Other	23-Jun-2017	23-Jun-2017	Goods - Motor Vehicles
Fence To Hire Limited	26-Jan-2017		Fleetpartners NZ	Goods - Other	04-Jul-2017	04-Jul-2017	Goods - Motor Vehicles
Fisher & Paykel Appliances Limited	18-May-2007		Fleetpartners NZ	Goods - Other	13-Jul-2017	13-Jul-2017	Goods - Motor Vehicles
Fisher & Paykel Appliances Limited	30-Oct-2007		Fleetpartners NZ	Goods - Other	19-Jul-2017	19-Jul-2017	Goods - Motor Vehicles
Fleetpartners NZ	09-Sep-2014		Fleetpartners NZ	Goods - Motor Vehicles	19-Jul-2017	19-Jul-2017	Goods - Motor Vehicles
Fleetpartners NZ	02-Dec-2015		Fleetpartners NZ	Goods - Motor Vehicles	19-Jul-2017	19-Jul-2017	Goods - Motor Vehicles
Fleetpartners NZ	15-Dec-2015		Fleetpartners NZ	Goods - Motor Vehicles	27-Jul-2017	27-Jul-2017	Goods - Motor Vehicles
Fleetpartners NZ	29-Dec-2015		Fleetpartners NZ	Goods - Motor Vehicles	27-Jul-2017	27-Jul-2017	Goods - Motor Vehicles
Fleetpartners NZ	26-Feb-2016		Fleetpartners NZ	Goods - Motor Vehicles	03-Aug-2017	03-Aug-2017	Goods - Motor Vehicles
Fleetpartners NZ	19-Apr-2016		Fleetpartners NZ	Goods - Motor Vehicles	08-Sep-2017	08-Sep-2017	Goods - Motor Vehicles
Fleetpartners NZ	19-Apr-2016		Fleetpartners NZ	Goods - Motor Vehicles	12-Sep-2017	12-Sep-2017	Goods - Motor Vehicles
Fleetpartners NZ	19-Apr-2016		Fleetpartners NZ	Goods - Motor Vehicles	19-Sep-2017	19-Sep-2017	Goods - Motor Vehicles

PPSR registrations at date of receivership

Name of Creditor	Date		Nature	Name of Creditor	Date		Nature
	Registered	Date			Registered	Date	
Fletcher Concrete And Infrastructure Limited	14-Nov-2003		Goods - Other	NZGT (FP) Trustee Limited	27-Feb-2018		Goods - Motor Vehicles
Fletcher Concrete And Infrastructure Limited T/A Firth Industries	22-Jul-2012		Goods - Other	NZGT (FP) Trustee Limited	20-Jul-2018		Goods - Motor Vehicles
Fletcher Distribution Ltd	24-Oct-2014		Goods - Other	NZGT (FP) Trustee Limited	20-Jul-2018		Goods - Motor Vehicles
Fletcher Distribution Ltd T/A Placemakers Seaview	11-Jul-2017		Goods - Other	NZL Container Services Limited	13-Mar-2015		Goods - Other
Fletcher Steel Limited	12-Sep-2008		Goods - Other	Orix New Zealand Limited	03-Nov-2015		Goods - Motor Vehicles
Forman Building Systems Limited	11-May-2012		Goods - Other	Orix New Zealand Limited	08-Dec-2015		Goods - Motor Vehicles
Geofabrics New Zealand Limited	12-Jun-2015		Goods - Other	Orix New Zealand Limited	03-Feb-2016		Goods - Motor Vehicles
Glasscorp Limited	19-Apr-2011		Goods - Other	Orix New Zealand Limited	22-Feb-2016		Goods - Motor Vehicles
Gouldie Holdings Limited	08-Sep-2016		Goods - Other	Orix New Zealand Limited	30-Mar-2016		Goods - Motor Vehicles
Gough Gough & Hamer Ltd	25-Oct-2013		Goods - Other	Placemakers Hamilton	14-Mar-2018		Goods - Other
Hirepool Limited	27-Sep-2017		Goods - Other	Portacom New Zealand Limited	23-Jun-2006		Goods - Other
Hydraulink Group Of Companies	17-Oct-2016		Goods - Other	Porter Group Of Companies	16-Jul-2014		Goods - Motor Vehicles
Interfood Read Group Limited	24-Nov-2017		Goods - Other	Porter Group Of Companies	17-Apr-2015		Goods - Motor Vehicles
Jeffcoats Building Supplies Limited	29-Apr-2014		Goods - Other	Power Farming New Zealand Limited	01-Aug-2018		Goods - Motor Vehicles
John Jones Steel Limited	15-Aug-2017		Goods - Other	Preston Hire (Nz) Limited.	09-Jul-2018		Goods - Other
John Jones Steel Limited	15-Aug-2017		Goods - Other	Probuild NZ Limited	24-May-2013		Goods - Other
John Jones Steel Limited	15-Aug-2017		Goods - Other	Probuild NZ Limited	06-Mar-2018		Goods - Other
John Jones Steel Limited	15-Aug-2017		Goods - Other	R & S Scaffold Limited	14-Jun-2017		Goods - Other
Kelvin Eric Hale	24-Jul-2018		All Present And After Acquired Personal Property	Rexel New Zealand Limited	10-Sep-2014		Goods - Other
Koning Building Supplies Ltd T/A Placemakers Morrinsville	13-Jun-2013		Goods - Other	Ricoch Finance A Division Of Ricoch New Zealand Ltd	03-Aug-2009		Goods - Other
Monument Finance Ltd	17-Aug-2012		Intangibles	Ricoch Finance A Division Of Ricoch New Zealand Ltd	29-Apr-2016		Goods - Other
Nees Hardware And Building Supplies Ltd Ta M10 Mega Petone	09-Dec-2016		Goods - Other	Ricoch Finance A Division Of Ricoch New Zealand Ltd	16-Jan-2017		Goods - Other
NZGT (FP) Trustee Limited	13-Oct-2017		Goods - Motor Vehicles	Royalwolf Trading New Zealand Limited	22-May-2014		Goods - Other
NZGT (FP) Trustee Limited	24-Oct-2017		Goods - Motor Vehicles	S & T Stainless Ltd	07-Sep-2011		Goods - Other
NZGT (FP) Trustee Limited	24-Oct-2017		Goods - Motor Vehicles	Steel And Tube Holdings Limited	10-Sep-2002		Goods - Other
NZGT (FP) Trustee Limited	24-Oct-2017		Goods - Motor Vehicles	Steel Building Products (Southern) Limited	01-Oct-2014		Goods - Other
NZGT (FP) Trustee Limited	03-Nov-2017		Goods - Motor Vehicles	The Fletcher Construction Company Limited	25-Nov-2014		Goods - Other
NZGT (FP) Trustee Limited	10-Nov-2017		Goods - Motor Vehicles	Tile Warehouse Ltd	04-Oct-2017		Goods - Other
NZGT (FP) Trustee Limited	16-Nov-2017		Goods - Motor Vehicles	Tower Cranes NZ Ltd	13-Jul-2017		Goods - Other
NZGT (FP) Trustee Limited	30-Nov-2017		Goods - Motor Vehicles	Tower Cranes NZ Ltd	01-Aug-2018		Goods - Other
NZGT (FP) Trustee Limited	15-Dec-2017		Goods - Motor Vehicles	Tyco New Zealand Ltd	11-Mar-2016		Goods - Other
NZGT (FP) Trustee Limited	15-Dec-2017		Goods - Motor Vehicles	Ulti Group Limited	04-Oct-2016		Goods - Other
NZGT (FP) Trustee Limited	19-Dec-2017		Goods - Motor Vehicles	Unitec Institute Of Technology	15-Jun-2016		Goods - Other
NZGT (FP) Trustee Limited	15-Jan-2018		Goods - Motor Vehicles	Unitec Institute Of Technology	13-Sep-2016		Goods - Other
NZGT (FP) Trustee Limited	19-Jan-2018		Goods - Motor Vehicles	Unitec Institute Of Technology	12-Jun-2017		Goods - Other
NZGT (FP) Trustee Limited	26-Jan-2018		Goods - Motor Vehicles	Window Treatments Nz Limited	28-Jul-2016		Goods - Other
NZGT (FP) Trustee Limited	26-Jan-2018		Goods - Motor Vehicles	Woodmart Limited	19-Sep-2013		Goods - Other



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