

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

CIV-2022-404-1993

UNDER Part 7 of the High Court Rules 2016 and Part 15A of
the Companies Act 1993

IN THE MATTER OF **RUAPEHU ALPINE LIFTS LIMITED
(ADMINISTRATORS APPOINTED)**

AND of an application by **JOHN HOWARD ROSS FISK**
and **RICHARD JOHN NACEY**, as Administrators of
**RUAPEHU ALPINE LIFTS LIMITED
(ADMINISTRATORS APPOINTED)**

Applicants

UPDATING MEMORANDUM OF COUNSEL FOR THE APPLICANTS

Dated: 20 December 2022

BUDDLE FINDLAY

Barristers and Solicitors
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MAY IT PLEASE THE COURT:

Introduction

1. The applicants are John Fisk and Richard Nacey as administrators (**Administrators**) of Ruapehu Alpine Lifts Ltd (in administration) (**Company**).
2. On 17 November 2022, ANZ Bank New Zealand Limited (**ANZ**) and Crown Regional Holdings Limited (**CRHL**) entered into a Term Loan Facility Deed (**Facility**), under which a loan facility was made available to the Company to enable the Administrators to meet post-administration liabilities. On 21 November 2022, the Administrators filed an interlocutory application for orders limiting their liability as administrators under the Facility. On 24 November 2022, the Court granted those orders (**Orders**).
3. The Orders provide that:
 - (a) any liability incurred by the applicants arising out of or in connection with the Term Loan Facility Deed dated 17 November 2022 (**Facility**) given by ANZ Bank New Zealand Limited and Crown Regional Holdings Limited is in the nature of debts incurred by the applicants in the performance and exercise of their functions as joint and several administrators of the Company;
 - (b) notwithstanding the liabilities in paragraph 3(a) above are debts incurred by the applicants in the performance and exercise of their functions as joint and several administrators of the Company, the applicants' personal liability for such debts (whether in contract, tort (including negligence) or otherwise) is limited to the available assets of the Company and any available statutory and equitable indemnities of the applicants in relation to those assets, except to the extent agreed under the Facility.
4. The Orders reserved leave for the applicants to apply for variation of the Orders.
5. Counsel for the applicants file this updating memorandum to seek directions from the Court concerning the scope of the Orders. The directions are sought as soon as possible. Counsel understands that ANZ and CRHL consent to the directions and a joint memorandum confirming their consent will be filed.

Background

6. The Orders were made at a time when it was contemplated that a restructuring proposal would be available by 16 December 2022 and that the watershed meeting could be held on or before that date. Accordingly, the Facility provided sufficient funding to continue to trade until the date of the anticipated watershed meeting.
7. However, as set out in the third affidavit of John Fisk dated 19 December 2022, the watershed meeting is contingent on the restructuring proposal being available for the creditors of the Company to consider. CRHL is in the process of developing the restructuring proposal. However, CRHL has advised that the restructuring proposal will not likely be available for several months, perhaps around May 2023. As a result, holding the watershed meeting on 16 December 2022 as contemplated under the terms of the Facility is no longer possible.
8. In these circumstances, additional funding is required for the Company to be able to continue to trade until the watershed meeting. CRHL has agreed to provide a further \$6 million to allow the Company to continue trading while CRHL develops its restructuring proposal. ANZ and CRHL have agreed to amend the Facility to provide that additional funding. On 19 December 2022, the Company, the Administrators, ANZ and CRHL entered into Deed of Amendment and Restatement relating to the Facility, which amended the Facility (**Variation**).
9. The key changes to the Facility under the Variation are:
 - (a) a new Tranche D Commitment of \$6 million has been made available by CRHL as the Tranche D Lender,¹ increasing the amount available under the Facility from \$4,500,000 to \$10,500,000;
 - (b) the date by which the watershed meeting is to occur has changed from 16 December 2022 to 16 May 2023;² and
 - (c) the Repayment Date has changed to refer to 16 May 2023, rather than 19 December 2022.³

¹ Amended and Restated Facility, cl 2.1(d) and cl 1.1 "Tranche D Commitment".

² Amended and Restated Facility, cl 13.2 and cl 14.11(a)(iii).

³ Amended and Restated Facility, cl 1.1 "Repayment Date".

10. Despite the Variation, there is no corresponding increase in the funding available for the Administrators' own costs beyond the existing \$500,000 limit under the original Facility.⁴

Directions sought

11. The purpose of this memorandum is to seek directions from the Court confirming that the terms of the Order that: "any liability incurred by the applicants arising out of or connection with the Term Loan Facility Deed dated 17 November 2022 (**Facility**)" includes any liability incurred by the applicants arising out of or in connection with the amended Facility.
12. The position remains, as deposed by Mr Fisk, that without the orders sought the Company would likely be placed into liquidation. That is because the Administrators are not prepared to assume the risk of personal liability for the level of borrowing that the Company would need to continue trading for the period of time required to prepare and present the restructuring proposal to the creditors at a watershed meeting.
13. In the Court's orders dated 24 November 2022, leave was reserved for the Administrators to apply for a variation of the Orders. The Administrators are not seeking a variation of the Orders but, rather, confirmation that the Orders apply to the Facility as amended by the Variation. A further updating affidavit on behalf of Mr Fisk is also being filed with this memorandum.
14. Following this filing, the Administrators will send a copy of the updating affidavit and the accompanying memoranda to the Company's creditors (by email and upload to PwC's website, consistent with the service methods that have previously been approved by the Court). The Orders continue to reserve leave for any person who can demonstrate a sufficient interest in the administration of the Company to apply to vary the Orders.

Conclusion

15. Counsel respectfully requests that the Court confirm that the Facility referred to in the orders dated 24 November 2022 includes the Facility as varied by the Deed of Amendment and Restatement that was entered into on 16 December 2022.

⁴ Amended and Restated Facility, cl 1.1 "Tranche C Commitment" and cl 3.1(c).

16. Counsel is available to appear at short notice to assist the Court.

Dated: 20 December 2022

A handwritten signature in blue ink, appearing to be 'D T Broadmore / L C Sizer', written in a cursive style.

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D T Broadmore / L C Sizer

Counsel for the Administrators