

IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA  
TĀMAKI MAKAURAU ROHE

CIV-2024-404-

UNDER

Part 19 of the High Court Rules 2016 and sections  
239Y, 239AT, 239ADK and 239ADO of the  
Companies Act 1993

IN THE MATTER

of **NEW ZEALAND VACUUM CLEANER COMPANY  
LIMITED (ADMINISTRATORS APPOINTED)**, a duly  
incorporated company having its registered office at  
Level 34, ANZ Centre, 23-29 Albert Street, Auckland  
1010

AND

of an application by **STEPHEN ROBERT WHITE** and  
**JOHN HOWARD ROSS FISK**, both Licenced  
Insolvency Practitioners of PwC, having their place of  
business at PwC Tower, Level 27, 15 Customs  
Street West, Auckland 1010

**Applicants**

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ORIGINATING APPLICATION WITHOUT NOTICE  
8 FEBRUARY 2024

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McAugh**

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**TO:** The Registrar of the High Court at Auckland

**THIS DOCUMENT NOTIFIES YOU THAT:**

1. The applicants, Stephen Robert White and John Howard Ross Fisk ("**Applicants**"), of Auckland, Licenced Insolvency Practitioners and partners at PricewaterhouseCoopers ("**PwC**"), apply to the Court for orders that:

*Convening period extension*

- (a) the convening period for the watershed meeting of New Zealand Vacuum Cleaner Company Limited ("**Company**") be extended by 90 days from 28 February 2024 to 28 May 2024, pursuant to s 239AT(3) of the Companies Act 1993 ("**Act**");

*Extension of employee liability period*

- (b) the period within which notice of termination of contracts of employment must be given by the Applicants to the employees of the Company under s 239Y(3) of the Act is extended until the date on which the watershed meeting of the Company is held;

*Exemption of liability for rent and other payments*

- (c) the Applicants be exempted from liability arising under s 239ADK of the Act arising:
- (i) from any leases of real property that the Company has entered into ("**Leases**");
  - (ii) during the period that the Company continues to use or occupy or be in possession of leasehold property under the Leases; and
  - (iii) arising during the period that the Company continues to use or occupy or be in possession of leasehold property under the Leases (whether current or expired) whether before or after the date of these orders being made;

*Ancillary orders*

- (d) pursuant to s 239ADO of the Act, the relevant provisions of Part 15A of the Act are to operate such that:
- (i) any notice required to be sent pursuant to Part 15A of the Act has been and will be validly sent using the following methods ("**Notice Orders**"):
    - (aa) email, where an email address has been provided to the Company; or
    - (bb) if an email address has not been provided to the Company, by post to the postal address that has been provided to the Company; and

- (cc) posted to PwC's website ([www.pwc.co.nz](http://www.pwc.co.nz)).
- (ii) any meetings of creditors may be held by means of audio, or audio and visual, communication by which all creditors participating can simultaneously hear each other throughout the meeting;
- (iii) any postal voting conducted in accordance with clause 7 of Schedule 5 of the Act may also be conducted in whole or in part by way of email or other electronic means; and
- (iv) any documents required to be tabled at a meeting of creditors of the Company may be posted on PwC's website or sent to known creditors by email;
- (e) the Applicants are granted leave to commence these proceedings without notice;
- (f) leave is reserved for any person who can demonstrate a sufficient interest in the administration of the Company to apply (on notice) to vary or set aside these orders;
- (g) leave is reserved to the Applicants to apply further in respect of any modifications or ancillary issues arising out of the orders made;
- (h) notice of this application and a copy of the orders made shall be served on all creditors, employees and owners or lessors of any property that is subject to a Lease and that is used, occupied or in possession of the Company ("**Relevant Persons**"), by the Applicants:
  - (i) writing to known Relevant Persons as soon as practicable in the manner provided for in the Notice Orders; and
  - (ii) providing copies of the application and orders (if they have been granted), for inspection at the first creditors' meeting; and
- (i) the Applicants' costs of and incidental to this application be expenses incurred in the administration of the Company.

2. The grounds on which the orders are sought are as follows:

- (a) On 30 January 2024, the Applicants were appointed as joint and several administrators of the Company, pursuant to s 239I of the Act. On appointment, the Company had approximately 70 employees and liabilities totalling approximately NZ\$83 million.
- (b) The Company is part of a wider group of entities that are speciality retailers and wholesalers of domestic and commercial cleaning products in Australia and New Zealand ("**Group**"). Various entities in the Group, including the Company's shareholder, are also in administration.

- (c) The Applicants, together with the Australian administrators of the Australian Group companies, are running a sales process for all or part of the multi-jurisdictional business of the Group, which has commenced and is planned to take up to 16 weeks.

*Convening period extension*

- (d) The Applicants must convene the watershed meeting of the Company on or before 28 February 2024. Section 239AT(3) of the Act allows Applicants to apply to the Court to extend that convening period.
- (e) It is appropriate that the convening period be extended by a period of 90 days in these circumstances because:
- (i) additional time is required to complete the cross-border sales process prior to the watershed meeting and the extension sought aligns with the extension granted by the Federal Court of Australia for the Australian Group companies;
  - (ii) given the cross-border nature of the administration of the Group, the Applicants require additional time to investigate the affairs of the Company and form a view of the best option available to creditors, in order to satisfy the requirements of section 239AU of the Act;
  - (iii) the period of extension sought is no more than is required in the circumstances and is in the best interests of creditors; and
  - (iv) the extension sought should not prejudice:
    - (aa) creditors, who retain the ability to apply to vary or set aside the orders made; and
    - (bb) suppliers of goods and/or services, who are protected by the Applicants' obligation to pay for post-appointment trading liabilities that the Company incurs;
    - (cc) those employees who continue to be employed by the Company, who will benefit from the Applicants continuing to trade the business; and
    - (dd) landlords, who are paid by the Company to the extent that premises are used or occupied.

*Extension of employee liability period*

- (f) Under s 239Y of the Act, the Applicants must give notice of termination to employees within 14 days of the Applicants' appointment, or they become personally liable for employees' salary and wages during the administration. This period ends on 13

February 2024. Section 239Y(4) of the Act allows Applicants to apply to the Court to extend that period.

- (g) The Applicants' current intention is to continue trading the Company in a stable manner in order to achieve a sale of all or part of the business of the Company as a going concern. The remaining employees are assisting the Applicants to do so, and their employment may be preserved through any sale or successful restructuring of the business of the Company.
- (h) In the absence of the extension being granted, the Applicants would be forced to terminate the employment of the employees (and potentially make offers to re-employ some or all of them) in order to limit their exposure to personal liability to employees for unknown amounts that may arise under the remaining employment contracts.
- (i) The Applicants intend to meet salary and wage entitlements in the ordinary course during any extended period beyond 14 days.
- (j) No party's rights will be negatively affected by an extension of time. Rather, the extension will assist the Applicants to preserve the employment of the employees. Whether they receive termination notices within 14 days of the Applicants' appointment as contemplated by s 239Y(3) of the Act or during any extended period, each employee's preferential and non-preferential entitlements will be governed to the same extent by Schedule 7 to the Act.

*Exemption of liability for rent and other payments*

- (k) Under s 239ADI of the Act, the Applicants will be personally liable for rent and other payments becoming due by the Company under an agreement made before the administration began and relating to the use, possession, or occupation of property by the company that accrue in the period beginning more than 7 days after the administration begins (being from 7 February 2024). Pursuant to s 239ADK of the Act, the Court may exempt an administrator from liability for rent and other payments under s 239ADI of the Act.
- (l) It is appropriate that the Applicants be exempted from liability in these circumstances because:
  - (i) preservation of the Leases is an important aspect of stabilising the business and facilitating a sale of the going concern, which is likely in the best interests of creditors (including landlords);
  - (ii) due to the number of Leases, the Applicants have not yet had the opportunity to take advice on the extent of possible liabilities that they would be exposed to under the Leases. There is a potential liability (in the form of make good obligations) arising at the end of the lease under the Leases for the Botany Downs store, Tauranga store, Christchurch service centre and Manukau service centre,

which are due to expire in the extended convening period (if the orders sought are made);

- (iii) absent the orders, the Applicants would be forced to cause the Company to cease to use, possess and/or occupy the Leases in order to avoid personal liability for any rent and other payments under the Leases;
- (iv) the Applicants will continue to pay rent under the Leases in respect of which (and for so long as) the Company is using, possessing, or occupying the premises; and
- (v) no party's rights will be negatively affected by the exemption of liability because:
  - (aa) the Applicants will continue to pay rent under the Leases in respect of which (and for so long as) the Company is using, possessing, or occupying the premises; and
  - (bb) owners or lessors of property occupied by the Company retain the ability to apply to the Court to vary or set aside the orders made.

*Ancillary orders*

- (m) The ability to email statutory notices required to be provided to creditors under Part 15A of the Act would save time and cost would increase the prospects that notices are received by the appropriate person and is consequently preferable to the alternative of posting such notices.
  - (n) Given the location of creditors, it would be more efficient for the Applicants and the creditors to proceed with creditors' meetings by means of audio, or audio and visual, communication by which all creditors participating can simultaneously hear each other throughout the meeting.
3. This application is made without notice to any other party on the basis that it is in the interests of justice, and of the speedy and inexpensive determination of this proceeding, that this originating application be determined on a without notice basis for the following reasons:
- (a) the persons who might be adversely affected by this application are the Relevant Persons;
  - (b) the Relevant Persons are protected by enabling them to apply to vary or set aside the orders; and
  - (c) requiring the Applicants to proceed on notice to all Relevant Persons would cause undue delay and prejudice to the Applicants and would jeopardise the proposed administration process.
4. This application is made in reliance on:

- (a) rules 7.23, 7.46, 18.7 and 19.2(c) of the High Court Rules 2016;
- (b) Part 15A of the Act, in particular sections 239Y, 239AT, 239ADK and 239ADO;
- (c) the affidavit of Stephen Robert White affirmed on 8 February 2024 made in support of this application; and
- (d) *Re Pumpkin Patch Ltd* [2016] NZHC 2771; *Re Ruapehu Alpine Lifts Ltd* [2022] NZHC 2738; *Re Go To Collection Ltd* [2022] NZHC 3225; and *Re New Ezibuy Limited & ors* [2023] NZHC 753.

5. I certify that:

- (a) the grounds set out in paragraph 4 on which the without notice application relies are made out; and
- (b) all reasonable inquiries and all reasonable steps have been made or taken to ensure that the application contains all relevant information, including any opposition or defence that might be relied on by any other party, or any facts that would support the position of any other party.

**Dated:** 8 February 2024



A R MacDuff  
Solicitor for the Applicants

This document is filed by **Alexander Robert MacDuff**, solicitor for the Applicants, of Russell McVeagh. The address for service of the Applicants is Level 30, Vero Centre, 48 Shortland Street, Auckland 1140.

Documents for service may be left at that address or may be:

- (a) emailed to the solicitor at [alex.macduff@russellmcveagh.com](mailto:alex.macduff@russellmcveagh.com); or
- (b) posted to the solicitor at PO Box 8, Auckland 1140; or
- (c) left for the solicitor at a document exchange for direction to CX10085.