

under: Rules 10.12 and 7.43A of the High Court Rules, and sections 284 and 271 of the Companies Act 1993

in the matter of: orders for directions concerning the liquidation of **PTT Limited (in liquidation), Maxwell Foster Limited (in liquidations), Gibson McLeod Limited (in liquidation),** and **Alba International Limited (in liquidation)**

between: **John H R Fisk and David Bridgman**
Applicants

and: **PTT Limited (in liquidation)**
First respondent

and: **Maxwell Foster Limited (in liquidation)**
Second respondent

and: **Gibson McLeod Limited (in liquidation)**
Third respondent

and: **Alba International Limited (in liquidation)**
Fourth respondent

Interlocutory application of the applicants for:

- (1) orders that this proceeding is heard together with CIV-2015-404-1833;
- (2) orders pooling the assets of the first to fourth respondents;
- (3) directions for distribution of the assets of the first to fourth respondents to creditors; and
- (4) directions as to service on creditors

Dated: 11 September 2020

Before: The Honourable Justice Palmer

INTERLOCUTORY APPLICATION OF THE APPLICANTS FOR:

- (1) ORDERS THAT THIS PROCEEDING IS HEARD TOGETHER WITH CIV-2015-404-1833;**
- (2) ORDERS POOLING THE ASSETS OF THE FIRST TO FOURTH RESPONDENTS;**
- (3) DIRECTIONS FOR DISTRIBUTION OF THE ASSETS OF THE FIRST TO FOURTH RESPONDENTS TO CREDITORS; AND**
- (4) DIRECTIONS AS TO SERVICE ON CREDITORS**

To: The Registrar of the High Court at Auckland

And to: The respondents

And to: Any other party the Court directs

This document notifies you that—

- 1 The applicants, John Howard Ross Fisk and David John Bridgman (together, the *Liquidators*), will on 2020 at apply to the Court for:
 - 1.1 an order that this proceeding, be heard together with *Financial Markets Authority v PTT Limited (in Liquidation) & Ors*, CIV-2015-404-1833 a proceeding filed on 15 August 2015 in the High Court at Auckland (*FMA Proceeding (Consolidation Order)*);
 - 1.2 in the event the orders and directions sought by the receivers of the fifth and seventh respondents in the FMA Proceeding (the *Receivers*) are made as requested (or in substantially similar terms):
 - (a) an order that (*Pooling Order*):
 - (i) the liquidation of the companies PTT Limited, Maxwell Foster Limited, Gibson McLeod Limited and Alba International Limited (*PTT Group*), proceed together as if they were one company; and
 - (ii) the net amount held by the Liquidators, be treated as forming one common pool of assets for distribution, available to all creditors of the PTT Group; and

- (b) directions that the common pool of assets, after deducting the approved costs and expenses of the liquidators, be distributed to those creditors on a *pari passu* basis (*Liquidation Directions*);
 - 1.3 directions that this interlocutory application and all other documents related to this application are to be published on the website of PwC and notified to all other identified creditors by way of a communication by the Liquidators (the *Publication Directions*);
 - 1.4 the costs of this application be awarded to the applicants; and
 - 1.5 leave be reserved for the Liquidators to apply for final directions confirming the precise figures for distribution and payment.
- 2 The grounds upon which each order is sought are as follows:
- 2.1 The *Consolidation Order*, outlined in paragraph 1.1, is sought on the grounds that:
 - (a) the discretion to make an order under r 10.12 of the High Court Rules 2016 is wide and to be exercised broadly in the interests of justice;
 - (b) this proceeding and the FMA Proceeding contain sufficient common threads to justify being heard together as a matter of justice, including:
 - (i) there is a considerable overlap of respondents between this proceeding and the FMA Proceeding, and the Liquidators formerly acted as receivers of the PTT Group and continue to act as receivers of Mr Robertson and the Steven Robertson Family Trust (in that capacity referred to as the *Receivers*);
 - (ii) the subject matter of the two proceedings is essentially the same, being concerned with the distribution of assets held by entities controlled by Mr Robertson and providing for reparations to the victims of Mr Robertson's criminal conduct;
 - (iii) similar issues regarding proper distribution of the assets held by the Receivers and Liquidators will be explored in both proceedings;
 - (iv) the same legal representatives are involved for current parties named in both proceedings; and

- (v) both proceedings will require similar and/or duplicated actions relating to the proposed distribution of assets;
- (c) savings will be achieved in time and cost to the parties (and judicial resources), if the two proceedings are heard together.

2.2 The *Pooling Order*, outlined in paragraph 1.2(a), is sought on the grounds that:

- (a) the discretion to make an order to pool the assets of related companies under s 271 of the Companies Act 1993 can be exercised where a court considers it is just and equitable to do so;
- (b) an order that the liquidations of the first to fourth respondents (the *PTT Group*) must proceed together and their assets be pooled is appropriate as a matter of justice for reasons including:
 - (i) effective management of the PTT Group companies was carried out by Mr Robertson as a director or shadow director of each of the PTT Group companies;
 - (ii) the intermingling of the affairs of Mr Robertson personally, including through the Trust, and the PTT Group, combined with misleading company and customer documentation means establishing which PTT Group company a claim is against is complex;
 - (iii) there is a significant mismatch between where the bulk of the assets are held and where the majority of the creditors lie;
 - (iv) funds of the PTT Group were regularly mixed and transferred between bank accounts of the PTT Group companies, Mr Robertson, and in some cases, the Trust;
 - (v) the circumstances that gave rise to the liquidation of all of the PTT Group companies was the same, being the discovery by the Financial Markets Authority of Mr Robertson's fraudulent mismanagement of the PTT Group; and
 - (vi) the business carried out by the PTT Group companies was essentially the same; and

- (c) balancing the considerations of the conflicting interests of the creditors, justice and expediency, pooling the assets of the PTT Group companies in this way is more likely to achieve an efficient and fair result for the creditors.

2.3 The *Liquidation Directions*, outlined in paragraph 1.2(b), are sought on the grounds that:

- (a) if the Pooling Order is made, for the same grounds as provided in [2.2], the appropriate method of distribution is that the net amount held by the Liquidators, after deducting their approved remuneration and costs, be distributed to the creditors (as their claims are quantified by the Liquidators) on a *pari passu* basis; and
- (b) the assets for distribution to the creditors are only available as a result of a settlement agreement negotiated by the Liquidators on behalf of all creditors and the PTT Group generally. It would not be just for certain creditors to benefit over others depending on Mr Robertson's direction of their funds to a particular entity (particularly where none of those entities hold any significant assets to currently satisfy the creditor claims).

2.4 The *Publication Directions*, outlined in paragraph 1.3, are sought on the grounds that:

- (a) although benefitting the majority of creditors, the proposed pooling orders and subsequent *pari passu* distribution will result in some creditors receiving less than they would be entitled to in the absence of those orders;
- (b) accordingly, it is appropriate that all identified creditors be notified of this application and the proposed distribution by way of a communication from the Liquidators directing those creditors to the website of PwC where this application and all other documents related to the application will be published

3 This application is made in reliance on:

- (a) Rules 7.43A and 10.12 of the High Court Rules 2016, sections 271–272 and 284 of the Companies Act 1993, and the High Court's inherent jurisdiction;

- (b) *Steel and Tube Holdings Ltd v Lewis* [2016] NZCA 366;
Medlab Hamilton Ltd v Waikato District Health Board (2007)
18 PRNZ 517 (HC); *Graham v Arena Capital Ltd (in liq)*
[2017] NZHC 973; and
- (c) the supporting affidavit of John Howard Ross Fisk dated
11 September 2020.

Date: 11 September 2020

Signature:



D R Kalderimis / M G A Lister
Counsel for Liquidators