

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

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

CIV-2015-404-1833

BETWEEN	FINANCIAL MARKETS AUTHORITY Applicant
AND	PTT LIMITED (In Liquidation) First Respondent
	MAXWELL FOSTER LIMITED (In Liquidation) Second Respondent
	GIBSON MCLEOD LIMITED (In Liquidation) Third Respondent
	ABA INTERNATIONAL LIMITED (In Liquidation) Fourth Respondent

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Hearing:	On the papers
Counsel:	D R La Hood and R T Manttan for the Applicant D R Kalderimis and M G A Lister for the receivers and liquidators No appearance for the Fifth Respondent No appearance for the Sixth Respondent
Minute:	17 September 2020

MINUTE NO 10 OF PALMER J

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STEVEN ROBERTSON

Fifth Respondent

LISA JANE ROBERTSON (Coates)

Sixth Respondent

STEVEN ROBERTSON and XAVIER
TRUSTEES LIMITED as trustees of the
Steven Robertson Family Trust
Seventh Respondents

What happened?

[1] In August 2015, under s 522 of the Financial Markets Conduct Act 2013, the High Court appointed Mr David Bridgman and Mr John Fisk as receivers and managers of assets owned by the respondents and made asset protection orders (APOs) over the assets.¹ That Act requires them to act in the best interests of “aggrieved persons”, who had paid money into a scheme operated by the first to fifth respondents.

[2] In December 2015 Mrs Lisa Robertson (now Ms Coates) was released from receivership and management but the APOs continued over her assets.² Mr Bridgman and Mr Fisk were appointed liquidators of the first to fourth respondents, (the PTT Group). In July 2016, the PTT Group were released from receivership and the APOs and Mr Bridgman and Mr Fisk resigned as the Group’s receivers.

[3] On 19 August 2019, Mr Robertson was convicted of 23 charges of theft by a person in a special relationship, 11 charges of obtaining by deception and four charges of dishonest use of a document.³ On 30 October 2019, he was sentenced to six years and eight months’ imprisonment with a minimum period of imprisonment of three years and four months’ imprisonment.⁴ In support of his sentencing submissions in the High Court, as recorded by the Court, Mr Robertson provided a binding undertaking that he would “in effect, co-operate in those funds [of Mr Robertson and the Steven Robertson Family Trust] being made available to meet the claims of [his] . . . creditors”.⁵ This resulted in a five per cent discount to his sentence. On 5 June 2020, his appeal to the Court of Appeal against his sentence was dismissed.⁶

[4] Mr Robertson and the trustees of the Steven Robertson Family Trust (the Trust) have executed a confidential settlement with the receivers and liquidators settling all claims between them. So has Ms Coates. Part of the settlements involve Mr Robertson, the Trust and Ms Coates releasing all claims made against the assets subject to the APOs.

¹ *Financial Markets Authority v PTT Ltd* CIV-2015-404-1833, 13 August 2015.

² *Financial Markets Authority v PTT Ltd* CIV-2015-404-1833, 10 December 2015.

³ *R v Robertson* [2019] NZHC 2032.

⁴ *R v Robertson* [2019] NZHC 2773.

⁵ At [26].

⁶ *Robertson v R* [2020] NZCA 218.

Proposed distribution

[5] The receivers and liquidators now apply for directions to give effect to a proposed distribution whereby creditors of both the receiverships and liquidations share equally in the assets as far as possible. This is not straightforward, due to the intermingling of Mr Robertson's affairs with those of the various entities, the potential mismatch between the documentation and the intended relationships between Mr Robertson and his customers and the likelihood the claims received in the receiverships and liquidations do not accurately reflect the overall likely creditor position.

[6] Mr John Fisk of PwC, one of the receivers and managers of the first to seventh respondents, provides an affidavit.⁷ He considers the most equitable way to distribute the assets is to effectively pool the assets of all entities and make them available on a pro-rata basis for distribution to all creditors of all the entities.⁸ The receivers and liquidators propose to accomplish the pooling by the Court directing, in summary:

- (a) The APOs are lifted, subject to a sufficient amount being reserved to satisfy creditors of Mr Robertson and the Trust, on a pari-passu basis across the whole pool of unsecured creditors under the receiverships and liquidations.
- (b) The receivers are permitted to transfer the remaining funds in the receivership to the liquidators, less a sum constituting any priority secured amount determined by the Court.
- (c) The assets of the PTT Group are pooled.
- (d) The pooled receivership and liquidation assets, less approved costs and expenses, are distributed to the receivership creditors and liquidation creditors.

⁷ Affidavit of John Fisk, 11 September 2020.

⁸ At [19].

[7] Mr Fisk attaches an estimate of the result of the proposed distribution. There are \$1,927,329.09 of total assets available.⁹ There are possible claims of \$5,127,202.69 and \$2,886,352.86 of claims received. There are unpaid administration costs of \$309,614.10. Creditors would likely receive between 31.55 and 56.04 cents in the dollar, depending on whether and how many additional claims are received. Mr Fisk says the proposed method has the advantage of efficiency and cost-effectiveness. Mr Fisk recognises that some creditors will be individually worse off and better off than if an alternative distribution method was adopted. But he supports the proposal as the fairest and most equitable way of distributing assets between all the creditors and achieving the aim of acting in the best interests of the aggrieved persons.¹⁰

Alternative and specific issues

[8] Mr Fisk says the alternative is to unwind each of the entities separately and distribute assets amongst the creditors of the respective entities.¹¹ But, given the informal way in which money passed between entities, this will indirectly make money available from certain entities to pay the creditors of other entities. Some creditors will receive more towards their claims than creditors of other entities. It is also much more complicated and will incur significant increased costs.

[9] The trustees of the Trust request that the Court makes orders directing the transfer may take place in accordance with, and sanctioning, the relevant deed of settlement.

[10] One of the assets of the Trust was a property in Waimuku. It was subject to a mortgage to ANZ and had caveats registered against it by [REDACTED]

[REDACTED] On 10 October 2016 the Court ordered the property to be sold and ANZ was repaid. At the Court's direction, funds were set aside so the claims of [REDACTED]

[REDACTED] could be satisfied if so ordered. The receivers understand the money they advanced Mr Robertson does not qualify them as aggrieved persons.¹² The

⁹ At Appendix 1.

¹⁰ At [23] and [47].

¹¹ At [50].

¹² At [34].

receivers have been provided with two separate documents (one unsigned, one undated) said to give rise to the mortgageable interest. The receivers currently treat the caveators' principle interest in the same manner as all other creditors. They seek directions as to whether the ordinary regime of paying priority claims to secured creditors applies to this situation, given the receivers are not appointed in the interests of secured creditors.

[11] Mr Fisk notes that the proposal does not deal with claims they have received from creditors of Harrington Group Ltd, which was liquidated in March 2014 and removed from the companies register in January 2015.

[12] Mr Robertson and Ms Coates have been given the opportunity to respond to the proposal but have not done so. The liquidators and receivers understand some creditors may wish to be heard on their distribution proposal. So they seek specific service directions on the creditors affected by the proposed distribution.

[13] The Financial Markets Authority (FMA) supports the proposed distribution methodology as being in the interests of the aggrieved persons. It supports the application to lift the APOs on the condition that sufficient funds remain with the receivers for distribution to creditors of the receiverships on the basis set out in the applications filed, in order to facilitate the proposed direction.

Directions

[14] I agree in principle with the proposed distribution, without prejudice to the Court's ability to decide otherwise having heard further submissions. I direct that these interlocutory applications and all other documents related to the applications, including this minute, are to be:

- (a) served on the creditors identified in Schedule 1 of the receivers' application; and
- (b) published on the website of PwC and notified to all other identified creditors by way of a communication by the receivers.

[15] I grant leave for the receivers and liquidators to file a further affidavit confirming the ultimate distribution made and to file an application for final ancillary directions. In the meantime, I maintain the APOs on the current terms and conditions pending resolution of the applications.

A handwritten signature in blue ink, appearing to read 'Palmer J', followed by a checkmark symbol.

Palmer J