



High Court of New Zealand

5 August 2016

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

PRIEST v ROSS ASSET MANAGEMENT LIMITED (IN LIQUIDATION)
[2016] NZHC 1803

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.

The Ponzi scheme run by Mr Ross collapsed in November 2012. That collapse has caused significant losses to large numbers of investors. The Liquidators have estimated that, at the date of their appointment, the companies through which Mr Ross ran his Ponzi scheme only held some \$10.26 million in cash or shares. At the same point, the cash and shares that should have been held for investors was \$449.6 million.

Of that residual pool of \$10.26 million, some \$2 million reflects the value of shares purchased by RAM/Dagger at Mr Priest's direction and still held at that time.

The Priests contend they are entitled to have those shares (the Priest Holdings) transferred to them. They applied to the High Court for declarations to that effect.

The Liquidators opposed that application. The Liquidators argued that all investors with Mr Ross were entitled to the benefit of the Priest Holdings. That benefit should be shared, as will be the case with all the funds the Liquidators recover for investors at the end of the day, amongst them in proportion to their losses. That outcome will be subject only to a relatively small number of claims which the Liquidators have already recognised. Those are where investors have established, applying the FIFO

(first in, first out) principle that their money was used to purchase the shares in question.

In a decision released today the High Court has found in favour of the Priests, and has made declarations in the terms they sought.

It has held that RAM/Dagger held the Priest Holdings as bare trustees, or nominees, for the Priests. The Priests did not give Mr Ross discretionary powers to manage investments on their behalf. As such, the Priests were in a different position to the other investors with Mr Ross. Mr Ross did defraud the Priests when, without authority, he sold certain of their shares and paid the proceeds into his Ponzi scheme. To that extent the Priests are (as they accepted) in the same position as other Ross investors.

They are, however, entitled to the Priest Holdings.