

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

**I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-Ā-TARA ROHE**

CIV-2012-485-2591

UNDER	sections 271 and 284 of the Companies Act 1993
IN THE MATTER	of Ross Asset Management Limited (in liquidation) and related entities
BETWEEN	JOHN HOWARD ROSS FISK AND DAVID JOHN BRIDGMAN, AS LIQUIDATORS OF ROSS ASSET MANAGEMENT LIMITED (IN LIQUIDATION) Applicants

On the papers

Counsel: M G Colson and R L Pinny for Applicants
P R W Chisnall, Amicus Curiae

Minute: 13 December 2017

MINUTE OF THOMAS J

[1] The liquidators of Ross Asset Management Limited (RAM) and associated companies have applied to the Court for directions as to the distribution of assets (the Application).

[2] The liquidators ask the Court to make four orders on the papers to facilitate the progress of the Application. An affidavit of John Fisk, together with a memorandum of counsel, have been filed in support. Also filed is a memorandum of counsel proposed as counsel to assist the Court in relation to the Application.

Appointment of counsel to assist

[3] The liquidators propose the Court appoints counsel to assist given the importance of the Application to RAM investors, the significant number of persons interested in the Application who are not parties and who may have conflicting interests, and the need to ensure all legal issues are fully canvassed before the Court.

[4] Of particular moment is the model to be used as the basis of distribution of the assets now held by the liquidators. The liquidators, in response to views of the Ross Group Liquidation Committee propose two alternative models: the Net Contributions Model, which is based on the usual approach to distributions to creditors; and the Alternative Model, which seeks to take into account pre-liquidation payments by RAM to investors. The two models present quite different outcomes for investors.

[5] The liquidators suggest it is appropriate for counsel to assist the Court for purposes of:

- (a) consulting with investors, through the Ross Group Liquidation Committee or any other way; and
- (b) provide independent submissions to the Court on the appropriate model for distribution and other parts of the Application as may be necessary.

[6] It is proposed that counsel for the liquidators will provide submissions focusing on the benefits of the Net Contributions Model and counsel to assist the Court should provide submissions focusing on the benefits of the Alternative Model.

[7] Mr Paul Chisnall is proposed as counsel to assist the Court. He has the necessary expertise and no conflicts in that he is not currently acting for any RAM investor or former RAM investor who is the subject of a clawback claim in the liquidations.

[8] I am satisfied it is appropriate to appoint Mr Chisnall as counsel in this case to provide assistance to the Court in a neutral and comprehensive way to ensure all aspects of the dispute are teased out and addressed.¹

Service of the Application

[9] The liquidators seek alternative orders as to service of the Application on investors and creditors of RAM. I note there are approximately 886 investors and creditors with an interest and the significant costs associated with personal service, those costs being deducted from the pool of assets available for distribution. Personal service would be costly, time consuming and significantly delay determination of the Application.

[10] Of the over 860 investors, the liquidators have either a physical address or an email address for all but 59 and the positions of those 59 are set out in counsel's memorandum. I note the liquidators will be making active inquiries to locate, in particular, the nine investors who have a net contributions balance in excess of \$100,000 (and so would expect to receive a distribution of at least \$10,000 each under the Net Contributions Model). I have considered whether any measures other than those proposed by the liquidators would be appropriate but I am satisfied, particularly given the media attention and publicly available information as to the role of the liquidators, that the course proposed by the liquidators is appropriate.

Confidentiality

[11] The affidavit of John Fisk exhibits one month of bank statements from RAM's primary trading account, exhibited for the purpose of illustrating the volume of transactions through that account. I am satisfied it is appropriate to redact those pages, given the confidentiality issues around the identity of individual investors which is not relevant to the Application.

¹ *The Beneficial Owners of Whangaruru Whakaturia No 4 v Warin* [2009] NZAR 523 (CA) at [20].

Timetabling of the Application

[12] The liquidators seek timetabling directions in respect of counsel assisting the Court and a conference in early 2018 to determine further orders to progress the Application. I am satisfied those orders are appropriate.

[13] For the reasons given, I make the following orders:

1. That Mr Paul Chisnall be appointed as counsel to assist the Court in relation to the Application (and any appeal thereof), but with a focus on the benefits of the Alternative Model while acknowledging any merits of the Net Contributions Model or any other model that may be considered in the alternative and that his reasonable costs and that of any lawyer assisting him, on the basis of their usual hourly rates, are a cost of the liquidation;
2. That service of this application (being the Application itself and all supporting evidence and memoranda) on Investors and Creditors be deemed to have occurred upon the following steps:
 - (a) publishing this Application on the PricewaterhouseCoopers (PwC) website on its webpage dedicated to the Ross Group liquidation, <http://www.pwc.co.nz/services/business-recovery/liquidations/ross-group.html>;
 - (b) emailing a link to the Application to all Creditors and Investors who have provided an email address to the Liquidators; and
 - (c) where an email address is not known, sending a letter to the Investor's last known postal address advising that the Application has been made, providing a summary of the Application and directing recipients to the PwC website for more information and a copy of the court documents;

3. That pages 112 to 135 of the bundle of exhibits annexed to the affidavit of John Howard Ross Fisk sworn 11 December 2017 be marked confidential on the Court file and:
 - (a) are not to be inspected or provided to any third party without further order of the Court on notice to the Applicants; and
 - (b) are to be excluded from the documents to be served on Creditors and Investors; and

4. The following timetabling directions:
 - (a) that counsel assisting the Court file a memorandum of counsel by Friday 23 February 2018 on:
 - (i) whether counsel assisting the Court intends to advance and provide submissions on any other distribution model (aside from the Net Contributions Model and the Alternative Distributions Model), and if so, a description of that model;

and

 - (ii) whether counsel assisting the Court intends to advance submissions on any of the other orders sought by the Liquidators in the Application;

with this memorandum of counsel to be served by the Liquidators on Investors and Creditors in the same way as the Application; and
 - (b) that a conference with the Court be set down for the end of February or beginning of March 2018 to determine:
 - (i) the hearing date for the Application;

- (ii) timetabling for any additional evidence and synopsis of submissions;
- (iii) considering the issue of appropriate appeal rights, if any, for affected Investors; and
- (iv) any additional procedural matters.

A handwritten signature in black ink, appearing to be 'Thomas J', written in a cursive style.

Thomas J

Solicitors:
Bell Gully, Wellington for Applicants