

**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 the Companies Act 1993 and the High Court Rules  
In the matter of Ross Asset Management Limited (in liquidation) and related entities

Between

**John Howard Ross Fisk and David John Bridgman,**

Applicants

and

**Eoin David Fehsenfeld,**

Respondent

---

**Memorandum of counsel for the Liquidators in respect of  
application by Barrington Prince for leave to appear and  
file a submission by way of affidavit**

**21 June 2018**

For hearing on **22 June 2018**

Judicial Officer: Associate Judge Johnston

---

**BELL GULLY**

BARRISTERS AND SOLICITORS

J H STEVENS / R L PINNY  
SOLICITOR FOR THE APPLICANTS  
WELLINGTON LEVEL 21, 171 FEATHERSTON STREET  
PO BOX 1291, WELLINGTON 6140, DX SX11164, NEW ZEALAND  
TEL 64 4 915 6800 FAX 64 4 915 6810 EMAIL RACHEL.PINNY@BELLGULLY.COM

MIKE COLSON, STOUT STREET CHAMBERS  
COUNSEL FOR THE APPLICANTS  
LEVEL 6, HUDDART PARKER BUILDING  
1 POST OFFICE SQUARE, WELLINGTON  
PO BOX 117, WELLINGTON  
TEL 04 260 5040 EMAIL MIKE.COLSON@STOUTSTREET.CO.NZ

May it please the Court:

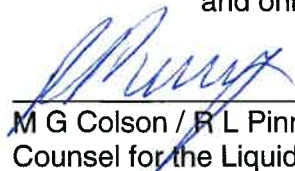
1. This memorandum responds to:
  - (a) the application filed by Mr Barrington John Prince for leave to appear and be heard and file submissions by affidavit; and
  - (b) the affidavit filed in support of that application (the **Affidavit**).
2. Counsel understand that the application is in fact one for joinder, although it is not expressly described in that way, as it also seeks appeal rights on the decision (see Affidavit para 68).
3. The Liquidators do not oppose Mr Prince being joined as a respondent to the proceeding, including him having appeal rights. (Although his request for his costs to be paid by the liquidation is opposed.)  
However:
  - (a) they have some concerns about the content of the Affidavit, as detailed below; and
  - (b) they are concerned to ensure that the very late application by Mr Prince does not prejudice the likelihood that the hearing is completed within the one day allocated.

The Liquidators respectfully propose some directions below to address these issues.

4. The Affidavit is largely submission. Indeed, the title of Mr Prince's application acknowledges that he is filing submissions by way of affidavit. The Liquidators consider that a number of the factual matters raised therein are irrelevant, breach confidentiality or seek to put in evidence privileged legal advice and, in a number of cases, are factually inaccurate.
5. If the Affidavit is accepted by the Court as evidence, rather than submission, the Liquidators will want to file reply evidence for the record in order to correct a number of factual inaccuracies, despite their

view that a number of the factual matters they would want to respond to are irrelevant. The need to deal with these factual (and irrelevant) disputes will add additional and unnecessary time and cost.

6. Accordingly, the Liquidators suggest that the Affidavit be accepted by the Court as a submission by Mr Prince, rather than as evidence. This does not appear to be inconsistent with Mr Prince's intention.
7. Additionally, paragraph 26 in its entirety and the second sentence of paragraph 27 contains information and advice which Mr Prince received in his capacity as a member of the RAM Liquidation Committee and which is legally privileged and/or is confidential (even if his affidavit is not entirely accurate in this regard). The Liquidators have not waived any privilege or confidentiality in that information and advice and accordingly object to that information and advice being produced by Mr Prince in the Affidavit.
8. Pending the Court's ruling on this objection, the Liquidators have served on Creditor and Investors, in accordance with the service directions of Thomas J, a copy of the Affidavit with these parts redacted.
9. Finally, in order to ensure that the Liquidators' application is dealt with in the one day allocated, the Liquidators respectfully propose that:
  - (a) Mr Prince's Affidavit (as redacted) be accepted as his written legal submissions and taken as read; and
  - (b) if Mr Prince seeks to make oral submissions in addition to his written submissions, that such oral submissions be very limited and only to amplify key points.

  
M G Colson / R L Pinny  
Counsel for the Liquidators

21 June 2018