

**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
RE	JOHN HOWARD ROSS FISK and DAVID JOHN BRIDGMAN Applicants

Teleconference: 9 April 2018

Appearances: N G Colson and R L Pinny for the applicants
P R W Chisnall and J D Haig assisting the court

Minute: 10 April 2018

MINUTE OF ASSOCIATE JUDGE JOHNSTON

[1] This matter was scheduled for a case management teleconference at 9.30 am on 9 April 2018.

[2] In the lead-up to the conference I received a joint memorandum from Mr Colson and Ms Pinny for the applicants and counsel assisting the Court, Mr Chisnall and Mr Haig, for which I thank them.

[3] This memorandum identified three matters which needed to be addressed at the conference.

- (a) the allocation of a fixture and a timetable for the disposal of pre-hearing matters;

- (b) rights of appeal; and
- (c) a technical issue concerning the form of the proceeding which I will describe below.

[4] Immediately prior to the telephone conference I received a memorandum from Mr Gerard Dewar who is apparently acting for one of the Ross Asset Management group investors. In his memorandum, Mr Dewar signalled that he had received instructions from this investor, "Investor A", to seek to be joined to the proceeding effectively to present an argument against the alternative model for distribution referred to by Mr Colson and Mr Chisnall in their joint memorandum. On receipt of Mr Dewar's memorandum, I requested that he be joined in to the conference. However, for one reason or another, he was not able to take part.

Fixture and timetable

[5] By agreement between the parties, the case is set down to be heard on Friday 22 June 2018. One day is to be allowed.

[6] I make orders for the disposal of pre-trial matters in accordance with para [12] of the joint memorandum of Mr Colson and Mr Chisnall.

Rights of appeal

[7] In their joint memorandum, Mr Colson and Mr Chisnall observe that, barring extraordinary circumstances, the liquidators will abide the Court's decision in relation to the methodology for distribution of the monies they hold, and Mr Chisnall as counsel appointed to assist the Court does not have an automatic right of appeal. This means that this Court's decision is unlikely to be the subject of appeal. The Court is simply asked to note that, but the position may be affected in the event of any additional party or parties being joined as discussed below.

Form of proceeding

[8] Mr Colson and Mr Chisnall point out that, technically, the applicants need orders granting them leave to seek the pooling orders sought in this proceeding.

Essentially this is because such an application should be commenced pursuant to pt 18 of the High Court Rules 2016. This is a purely technical point. In order to deal with it, at counsel's request, I make the following orders:

- (a) leave is granted to the applicants to seek pooling orders as part of this application for directions, instead of pursuant to pt 18 of the High Court Rules 2016;
- (b) the notice requirements in s 271A of the Companies Act 1993 are varied as follows:
 - (i) notice of the application for pooling orders is deemed to have been given upon service of the application on investors and creditors in accordance with the minute of Thomas J dated 13 December 2017; and
 - (ii) any creditor or investor who wishes to oppose the pooling orders is to file a notice of opposition to this application within 20 working days which will be deemed to be the statement of defence for the purpose of s 271A.

Investor A

[9] Mr Dewar's memorandum foreshadows an application to be made on behalf of Investor A to be joined as a party in the proceeding so that submissions may be made on his or her behalf as to the proposed methodology for calculating how the residual funds are to be distributed by the liquidators.

[10] If such an application is made and acceded to, then Mr Colson informs me that the liquidators may in turn wish to apply to have another investor joined who takes a different position.

[11] In order to facilitate this, I direct that any application by Investor A is to be made within 10 working days of the date of this minute.

[12] It is conceivable that such an application may interrupt the timetable provided for at para [6] above, and accordingly, it seems prudent to grant leave to any party to apply for an alteration to that timetable should the need arise.



Associate Judge Johnston

Solicitors:
Bell Gully, Wellington for the Applicants