

**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

RE JOHN HOWARD ROSS FISK and
DAVID JOHN BRIDGMAN
Applicants

Counsel: M Colson for Applicants
P R W Chisnall and J D Haig as Amicus Curiae
G Dewar for Investor A

Minute: 15 June 2018

MINUTE OF ASSOCIATE JUDGE JOHNSTON

[1] This matter is set down for hearing on 22 June 2018. Only one day has been allowed. I am concerned to ensure that the hearing is focussed on the key issues for determination so that it can be completed in a day.

[2] At this stage I have:

- (a) Mr Fisk's primary affidavit of 11 December 2017 and supplementary affidavit of 18 May 2018;
- (b) Mr Colson's submission of 18 May 2018;
- (c) Mr Chisnall and Mr Haig's submissions of 11 June 2018;

[3] I have nothing from Mr Dewar on behalf of Mr Eoin David Fehsenfeld.

[4] I have read that material.

[5] The key issues in respect of which there would appear to be genuine contests appear to me to be these:

- (a) first, whether the relevant provisions of pt 16 of the Companies Act 1993 (most particularly s 313) authorise the Court to direct the liquidators to distribute the fund available for distribution, or any portion of it, other than on a “net contributions” basis. As I read them, Mr Colson’s submissions proceed on the basis that the Court may do so and Mr Chisnall’s submissions are to the contrary (at least in relation to the portion of the fund beneficially owned by RAM/Dagger as opposed to the portion impressed with a trust);
- (b) second, whether the Court should direct the liquidators to apply a CPI-based adjustment;
- (c) third, whether the liquidators should distribute either the entire fund, or the funds which are impressed with a trust, on a “net contributions” basis; or on an “alternative” / “rising tide” basis (no useful purpose would be served by distinguishing between these two bases if they achieve exactly the same outcomes).

[6] Subject to hearing from counsel, I am expecting that the hearing will focus on those issues.

[7] Finally, I mention that the Registry has received an email from a Mr Barrington John Prince. A copy of Mr Prince’s email is attached.


Associate Judge Johnston

Solicitors:
Bell Gully, Wellington for Applicants
Thomas Dewar Sziranyi Letts, Lower Hutt for Mr Fehsenfeld

Nunns, Denia

From: Barry Prince <[REDACTED]>
Sent: Wednesday, 23 May 2018 3:57 p.m.
To: WellingtonHC
Subject: Ross Asset Management Distribution Model

For the attention of the Registrar.

In relation to the High Court hearing scheduled for the 22nd June 2018, reference CIV No. 2012-485-2591, I wish to be joined in the proceedings.

My name is Barrington John Prince. I am an interested party as I was an investor in the Ross Asset Management Ponzi fraud. My interest is in the manner in which the liquidated assets will be distributed in that I strongly support the 'Alternative Distribution Model'.

Yours Truly

B.J. Prince

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