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- between:* **Financial Markets Authority**  
*Applicant*
- and:* **PTT Limited (in liquidation)**  
*First respondent*
- and:* **Maxwell Foster Limited (in liquidation)**  
*Second respondent*
- and:* **Gibson McLeod Limited (in liquidation)**  
*Third respondent*
- and:* **Alba International Limited (in liquidation)**  
*Fourth respondent*
- and:* **S Robertson (in receivership)**  
*Fifth respondent*
- and:* **L J Robertson**  
*Sixth respondent*
- and:* **Steven Robertson and Xavier Trustees Limited as trustees of the Steven Robertson Family Trust (in receivership)**  
*Seventh respondents*

Interlocutory application by the receivers of the fifth and seventh respondents for:

- (1) an order directing this proceeding to be heard together with CIV-2015-404-2869
- (2) an order lifting the APOs on the basis of directions for distributing the assets of the fifth and seventh respondents to:
  - a. the creditors of the fifth and seventh respondents; and
  - b. the first to fourth respondents; and
- (3) directions as to service on creditors

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Dated: 11 September 2020

Before: The Honourable Justice Palmer

**INTERLOCUTORY APPLICATION OF THE RECEIVERS OF THE FIFTH  
AND SEVENTH RESPONDENTS FOR:**

- (1) AN ORDER DIRECTING THIS PROCEEDING TO BE HEARD  
TOGETHER WITH CIV-2015-404-2869**
- (2) AN ORDER LIFTING THE APOs ON THE BASIS OF  
DIRECTIONS FOR DISTRIBUTING THE ASSETS OF THE  
FIFTH AND SEVENTH RESPONDENTS TO:**
  - a. THE CREDITORS OF THE FIFTH AND SEVENTH  
RESPONDENTS; AND**
  - b. THE FIRST TO FOURTH RESPONDENTS; AND**
- (3) DIRECTIONS AS TO SERVICE ON CREDITORS**

**To:** The Registrar of the High Court at Auckland

**And to:** The respondents

**And to:** Any other party the Court directs

**This document notifies you that—**

- 1 John Howard Ross Fisk and David John Bridgman, the receivers of the fifth and seventh respondents (together, the *Receivers*), will on 2020 at apply to the Court for:
  - 1.1 an order that this proceeding be heard together with *Fisk v PTT Limited & Ors*, CIV-2015-404-2869, a proceeding filed on 9 December 2015 in the High Court at Auckland (*Liquidation Proceeding*) (the *Consolidation Order*);
  - 1.2 an order (the *APO Order*) that the Asset Preservation Orders (*APOs*) made on 13 August 2015 (including all variations and extensions up until and including 31 August 2020) be lifted, on the basis that the Court directs the Receivers (the *Receivership Directions*):
    - (a) to transfer to the first to fourth respondents in liquidation (the *PTT Group*):
      - (i) all funds and property held by the Receivers,
      - (ii) less a sum constituting:
        - (A) any priority secured amount determined by the Court; and

- (B) a sum representing the aggregate pari passu share of unsecured creditors of the fifth and seventh respondents (such amount to be approved by the Court, including the approved costs and expenses of the receiverships); and
- (b) to distribute the balance to:
  - (i) meet the approved costs and expenses of the receiverships;
  - (ii) meet any secured creditor claims that the Court determines should be treated as a priority claim against the receiverships; and
  - (iii) each unsecured creditor of the receiverships in an amount of their pari passu share; and
- 1.3 directions that this interlocutory application and all other documents related to this application are to be:
  - (a) served on certain creditors identified in **Schedule One** (the *Schedule One Creditors*); and
  - (b) published on the website of PwC and notified to all other identified creditors by way of a communication by the Receivers;
- 1.4 the costs of this application be awarded to the applicants; and
- 1.5 leave be reserved for the Receivers to apply for final directions confirming the precise figures for distribution and payment.
- 2 The grounds upon which each order is sought are as follows:
  - 2.1 The *Consolidation Order*, outlined in paragraph 1.1, is sought on the grounds that:
    - (a) the discretion to make an order under r 10.12 of the High Court Rules 2016 is wide and to be exercised broadly in the interests of justice;
    - (b) this proceeding and the Liquidation Proceeding contain sufficient common threads to justify being heard together as a matter of justice, including:

- (i) there is a considerable overlap of respondents between this proceeding and the Liquidation Proceeding, and the PTT Group companies in liquidation were formerly under the management of the Receivers who remain liquidators of those companies (in that capacity referred to as the *Liquidators*);
  - (ii) the subject matter of the two proceedings is essentially the same, being concerned with the distribution of assets held by entities controlled by Mr Robertson and providing for reparations to the victims of Mr Robertson's criminal conduct;
  - (iii) similar issues regarding proper distribution of the assets held by the Receivers and Liquidators will be explored in both proceedings;
  - (iv) the same legal representatives are involved for current parties named in both proceedings; and
  - (v) both proceedings will require similar and/or duplicated actions relating to the proposed distribution of assets;
- (c) savings will be achieved in time and cost to the parties (and judicial resources), if the two proceedings are heard together.

2.2 The *APO Orders* and *Receivership Directions*, outlined in paragraph 1.2, are sought on the grounds that:

- (a) the Receivers' initial appointment in respect of the PTT Group, Mr Robertson, and the Steven Robertson Family Trust (the *Trust*), was made, pursuant to ss 522 and 523 of the Financial Markets Conduct Act 2013, for the public interest and in the interest of "*aggrieved persons*", rather than the ordinary interest of receivers being that of a secured creditor;<sup>1</sup>
- (b) receivership of the PTT Group ceased on 27 July 2016 (and the APOs were lifted over the PTT Group's assets), but continued in respect of Mr Robertson and the Trust;

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<sup>1</sup> As recorded in the minute of Bell AJ dated 11 December 2015 in CIV-2015-404-2869 (and CIV-2015-404-1175), at [4], appointing the Receivers as liquidators of the PTT Group (as they would otherwise be disqualified from acting as liquidators of those companies under s 280(1)(c) of the Companies Act 1993).

- (c) the bulk of the assets held by the Receivers (the *Receivership Assets*) are now held in the Trust;
- (d) Mr Robertson, Ms Coates (nee Mrs Robertson) and the trustees of the Trust have released all claims that they may have against the Receivership Assets, leaving the Receivers (subject to orders of this Court) free to distribute those assets to creditors, including by transferring those assets to the Liquidators of the PTT Group for distribution through the Liquidations;
- (e) because:
  - (i) the purpose of the Receiverships – which initially applied to all respondents to this proceeding – is to protect the interests of “*aggrieved persons*”, now being unsecured creditors of variously Mr Robertson, the Trust or the PTT Group companies; and
  - (ii) unsecured creditors of the Receiverships are not in a materially different position from those of the PTT Group,it seems fair and just that the Receivership Assets should be distributed in a way which (insofar as possible) secures an equal *pari passu* share for *all* creditors, subject only to the question of whether the Schedule One Creditors have a priority claim (a matter on which the Receivers respectfully seek directions);
- (f) the Receivership Directions are accordingly sought in order to achieve an equivalent distribution to creditors irrespective of whether they are creditors of Mr Robertson, the Trust or the PTT Group; and
- (g) it is in the circumstances appropriate the Court to sanction and ratify the distribution in a way which operates as an effective release and protection for the Receivers and the trustees of the Trust from any future claims against them. In particular:
  - (i) the Trust deed provides for a range of Discretionary Beneficiaries, including Mr Robertson, his spouse, parents, siblings, nieces and nephews and children;
  - (ii) in the best interests of the “*aggrieved persons*”, the trustees of the Trust have agreed to

relinquish the assets of the Trust for distribution to creditors;

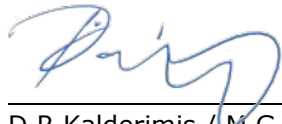
- (iii) as part of settlement, the Receivers agreed to apply to this court for directions for the distribution of the Trust assets. Mr Robertson and Ms Coates have signed deeds of acknowledgment and release of the Trustees. A Court order is necessary, however, to protect against any future claim from any other Trust beneficiaries.

2.3 The *Service Directions*, outlined in paragraph [1.3], are sought on the grounds that:

- (a) the proposed distribution by the Receivers, while in the public interest and providing recovery to the greatest number of creditors, would have the effect of reducing the pool of assets available directly to creditors of the receiverships;
- (b) the Schedule One Creditors had registered caveats against the property of the Trust. When granting the orders removing those caveats, the Court ordered that sufficient funds be held by the Receivers to satisfy such creditors' potential interests;
- (c) the FMA, and the Receivers, recorded their reservations as to whether the Schedule One Creditors did have properly caveatable interests. The question also arises as to whether and how priority interests arising outside the framework of the Receiverships Act 1993 take effect as against Court-appointed receivers;
- (d) as such, this application may impact on the Schedule One Creditors' interests and it is just that they be served with this application and any documents related to it;
- (e) the remaining unsecured creditors of the Receiverships will also be affected by the proposed distribution, though it is largely for their benefit. It is therefore also appropriate that such creditors be notified of this application and the proposed distribution by way of a communication from the Receivers directing those creditors to the website on which this application and other documents related to the application will be published.

- 3 This application is made in reliance on:
- (a) Rules 7.43A and 10.12 of the High Court Rules 2016, section 34 of the Receiverships Act 1993, section 66 and 69 of the Trustees Act 1956 and the High Court's inherent jurisdiction;
  - (b) *FFP Trustee (NZ) Ltd v Peng* [2019] NZHC 3301, (2019) 5 NZTR 29-029; *Medlab Hamilton Ltd v Waikato District Health Board* (2007) 18 PRNZ 517 (HC); *Simpson v Commissioner of Inland Revenue* [2012] NZCA 126, [2012] 2 NZLR 131; and
- 3.2 the supporting affidavit of John Howard Ross Fisk dated 11 September 2020.

Dated: 11 September 2020



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D R Kalderimis / M G A Lister  
Counsel for receivers

**SCHEDULE ONE**

[REDACTED]

[REDACTED]