

In the High Court of New Zealand  
Wellington Registry

CIV-2018-485- 792

I Te Kōti Matua o Aotearoa  
Te Whanganui-ā-Tara Rohe

Under the Receiverships Act 1993 and Part 19 of the High Court Rules

In the matter of Ebert Construction Limited (in receivership and liquidation)

Between

**Lara Maree Bennett, John Howard Ross Fisk, and Richard Michael Longman**

Applicants

and

**Ebert Construction Limited (in receivership and liquidation)**

Respondent

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**Third affidavit of Lara Maree Bennett clarifying two matters in the Second Affidavit of Lara Maree Bennett in support of Applicants' originating application.**

**Sworn:** 7 November 2018

**For hearing:** 8 November 2018

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 Simpson Grierson

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I, **Lara Maree Bennett**, of Auckland, Accountant, swear that:


1. I refer to my earlier two affidavits filed in support this Application (referred to as my First Affidavit and my Second Affidavit respectively).
2. This affidavit clarifies two matters referred to in my Second Affidavit, being:
  - (a) retentions under Wrongly Classified Subcontracts; and
  - (b) Subcontractors with paid BCTIs for work undertaken in June and July 2018.
3. In this affidavit I use the same defined terms as in my First and Second Affidavits.

***Breakdown of retentions under Wrongly Classified Subcontracts***

4. My Second Affidavit quantified the retentions in respect of the Wrongly Classified Subcontracts to 31 July 2018 as being \$170,340.39 (Second Affidavit, para 7.12).
5. If Subcontractors have a claim to the Fund in respect of retentions relating to Wrongly Classified Subcontracts, those retentions would be categorised as follows:
  - (a) \$160,018.17 are retentions to 31 May 2018 and therefore would be analogous to Reconciled and Transferred Retentions;
  - (b) \$766.89 would be Calculated but Not Transferred Retentions; and
  - (c) \$9,555.33 would be Uncalculated and Not Transferred Retentions.

***Subcontractors with paid BCTIs for work undertaken in June and July 2018***

6. I mentioned in my Second Affidavit that some June BCTIs were paid, but most were not.

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7. Some Subcontractors were on weekly or fortnightly payment schedules. This meant their BCTIs were processed and paid earlier than the usual monthly arrangement. This was rare – to date I have only located four Subcontractors with an interest in the Fund on such an arrangement who received payments in July for June and July work, although I have not reviewed the contracts for each of the 152 Subcontractors nor have I reviewed each payment from Ebert's general accounts in June and July 2018 (which would be over a thousand transactions). The position is therefore currently somewhat unclear.
8. I have reviewed the bank statement for Ebert's general account for July 2018 in order to try to get further clarity on this issue. The key points from that review are:
- (a) On 3 and 4 July 2018 there were large batches of payments (by project) which represent the payment of May 2018 BCTIs (totalling around \$7.7 million) with very few exceptions. It is possible these payments include a small number of weekly or fortnightly payments in respect of June BCTIs.
  - (b) Following those payments on 3 and 4 July 2018, and up to its receivership on 31 July 2018, Ebert made 16 payments relevant to this Application, totalling around \$563,000 to eight Subcontractors.
  - (c) One of those payments for \$68,229.50 related to a May BCTI.
  - (d) Of the remaining 15 payments totalling around \$495,000:
    - (i) 11 payments totalling \$412,141.07 related to four Subcontractors who had weekly or fortnightly payment schedules. These payments related to June (\$225,573.85), crossover between June/July (\$90,346.37) and July (\$96,220.85) BCTIs.
    - (i) The remaining four payments totalling \$83,085.48 relate to June BCTIs in respect of four Subcontractors.

9. For the avoidance of doubt:
- (a) the figures above are the amounts paid under the relevant BCTIs, not the amount of retentions under those BCTIs; and
  - (b) even if these Subcontractors' BCTIs for June and July 2018 were paid, no moneys were paid into the Retention Account in respect of those BCTIs.
10. As some (limited) July BCTIs were in fact issued, subcontractors in respect of those issued July BCTIs had their retentions calculated by Ebert. This means they would be Subcontractors with Calculated but Not Transferred Retentions in respect of retentions relating to those July BCTIs (up to approximately \$18,000 of retentions). My Second Affidavit allocated these retentions as Uncalculated and Not Transferred Retentions. Therefore, based on our current understanding of possible claims to the Fund:
- (a) the Calculated but Not Transferred Retentions is approximately \$493,000; and
  - (b) the Uncalculated and Not Transferred Retentions is approximately \$362,000.

Sworn at Auckland  
on 7 November 2018

Yifei Zhang  
Solicitor  
Auckland

  
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Lara Maree Bennett



before me:

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A Solicitor of the High Court of New Zealand