

*Receivers' 3rd Six Monthly Report on the State of
Affairs of*

***Ebert Construction Limited (in
Receivership and in Liquidation)**
Pursuant to Section 24 of the Receiverships Act 1993*

March 2020

Company Number: 986366

pwc



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31 March 2020

Ebert Construction Limited (in Receivership and in Liquidation) (Ebert or the Company)

Please find attached our six monthly report in relation to the Company for the period 31 July 2019 to 30 January 2020, pursuant to Section 24 of the Receiverships Act 1993 (the Act).

All information contained in this report is provided in accordance with Sections 26 and 27 of the Act. In preparing this report we have relied upon and not independently verified or audited information or explanations provided to us.

In accordance with the requirement of section 24 of the Act, we report on:

- Property disposed of in the period covered by this report;
- Amounts owing as at the date of this report to any person under whose interests the receiver was appointed;
- Details of the creditors with interests in the property in receivership, including any specific security interests held by creditors over certain assets; and
- Such other information that we consider to be of relevance to readers of this report.

Should you or any reader of this report have any queries, please contact us via the details set out opposite.

Yours faithfully

Ebert Construction Limited (in Receivership and in Liquidation)

Handwritten signature of Lara Bennett in black ink.

Lara Bennett
Receiver

Handwritten signature of Richard Longman in blue ink.

Richard Longman
Receiver

Handwritten signature of John Fisk in black ink.

John Fisk
Receiver

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Introduction and events leading to our appointment

Appointment of Receivers

On 31 July 2018 the directors of the Company passed a resolution requesting that receivers be appointed. We, Lara Bennett, John Fisk, and Richard Longman, all Chartered Accountants Australia and New Zealand Accredited Insolvency Practitioners (NZ) of PwC, were appointed Receivers of Ebert on the evening of 31 July 2018.

The property in receivership comprises all of the assets, property and undertakings of the Company. We note that the majority of the plant and equipment utilised by Ebert during the course of its day-to-day operations was leased from a related entity, which is not subject to the receivership.

This report has been prepared by us in accordance with and for the purpose of Section 24 of the Act and covers the period 31 July 2019 to 30 January 2020. It has been prepared for the sole purpose of reporting on the state of affairs with respect to the property in receivership and the conduct of the receivership.

This report is subject to the restrictions set out at Appendix 1. In particular, all information contained in this report is provided in accordance with Sections 26 and 27 of the Act. Furthermore, in preparing this report we have relied upon and not independently verified nor audited information or explanations provided to us.

Appointment of Liquidators

On 3 October 2018, David Ruscoe and Timothy Downes of Grant Thornton NZ Ltd were appointed Liquidators of the Company by way of shareholder resolution. Subsequently, on 13 November 2018, Iain Shepard and Jessica Kellow of BDO Wellington Ltd were appointed as replacement Liquidators of the Company by way of creditor resolution passed at the Creditor Meeting, at which point Mr Ruscoe and Mr Downes resigned from office.

We continue to work with the Liquidators to provide information and assistance where appropriate.

Appointment as Receivers of the Ebert Retentions Fund

On 12 November 2018, we, Lara Bennett, John Fisk, and Richard Longman, were also appointed as Receivers of Ebert's Retentions Fund (the **Retentions Fund**) by Court Order.

For further information in relation to the receivership of the Retentions Fund please refer to the most recent associated Receivers' report of March 2020.

Work undertaken to date

As detailed in our last report, upon appointment our immediate priorities were to:

- Ensure adequate health and safety procedures and safeguards were in place and to secure assets of the Company and its stakeholders (including subcontractors and lease creditors, where they had assets located on Ebert's construction sites).
- Assess the financial position of the Company's 15 active projects, including engagement with contract principals, in order to establish whether it was feasible for work to recommence. As a result of this process we concluded that it was not feasible to continue construction work on any of the active projects, and accordingly we made arrangements to return control of the sites to the principals in a controlled manner.
- Assess the staffing requirements to assist with matters such as the orderly exit of construction sites, establishing the financial position of the Company's construction projects as at the appointment date, develop strategies to realise value from the property in receivership, which included:
 - developing negotiation strategies aimed at releasing retentions held against Ebert;
 - recovering trade receivables (comprising certified progress claims); and
 - Pursuing other avenues to realise value for Ebert's creditors.
- Evaluate and reconcile the positions of the Company's preferential creditors, these being employees and the Inland Revenue Department (**IRD**).

During the six month period covered by this report, key activities included:

- Negotiations with customers/principals around the recovery of pre-appointment receivables (comprising invoiced and pending progress claims) and retention funds due to Ebert;
- Disposing of fixed assets owned by the Company;
- Pursuing other avenues for recovering value (e.g. insurance and other claims);
- Addressing creditor queries where appropriate (note that retentions queries in relation to sub-contracts entered into after 31 March 2017 have been addressed under the receivership of the Retentions Fund);
- Liaison with Ebert's Liquidators; and
- Attending to financial and administrative requirements.

A number of these matters are still ongoing, as further detailed in this report.

Particulars of assets and disposal of receivership property

As detailed in our previous report, the following table shows particulars of the Company’s key assets as at the date of our appointment, based on the Company’s records.

Type of Asset	Book Value (\$'000)
① Cash held in respect of subcontractor retentions	3,683
② Contract receivables	18,605
② Client retentions	4,826
③ GST	516
③ Income tax	2,436
④ Other Assets	91
Total	30,158

We have omitted certain details concerning the realisation of receivership assets as we believe that their inclusion would materially prejudice the exercise of our functions, in particular, our duty to obtain the best recovery reasonably obtainable in respect of the Company’s assets.

① Cash held in separate account in respect of subcontractor retentions

As detailed in our previous report, Ebert had been placing funds in a separate bank account in respect of retentions held on subcontracts entered into from 31 March 2017. A separate receivership of these funds was established upon application to the High Court. Separate reporting in this respect can be found on the Companies office and our webpage www.pwc.co.nz/ebert.

② Contract receivables

Ebert’s accounting records as at 31 July 2018 reported total receivables in respect of construction contracts of \$23.43m, represented by invoiced amounts and accruals (\$18.61m) and retentions held by principals (\$4.83m). These were in respect of both active and inactive (i.e. completed) construction contracts.

Projects and contracts were assessed on an individual basis to determine the facts and develop an appropriate strategy to maximise recovery prospects.

As outlined in our previous report, in many instances resolution of outstanding receivables has been a complex and lengthy exercise due to the nature and status of the physical contract works, detailed documentation required and guarantee/warranty issues outstanding and developing during our appointment. We have pursued formal recovery action where appropriate.

To date funds totalling \$3.99m have been recovered in respect of contract receivables.

A number of Ebert clients contacted us to notify ongoing defects in respect of the Company’s construction works. Some of these customers advised that the cost of remedying the alleged defects will exceed the value of the retentions held against Ebert and as such they do not intend to release any funds.

Given the complexities we have worked through these matters on a project by project basis.

Particulars of assets and disposal of receivership property (cont'd)

3 GST and Income Tax

As detailed in our previous report, with the assistance of Ebert staff, the Company's accounting records were updated to 31 July 2018 and a GST return for the July 2018 period was filed.

Since the date of our last report, the receivers have undertaken further reconciliations of the taxation position of the Company. As a result, additional recoveries have been made in respect of GST.

The Company's records also showed a deferred tax asset of \$2.44m at the date of appointment. This is not considered a realisable asset.

4 Other assets

Fixed assets

On appointment, the Company's records showed fixed assets, intangibles and investments with a net book value of \$91k. Fixed assets on hand at appointment predominantly comprised office equipment, IT equipment and minor site plant and equipment.

At the date of this report we have recovered \$107k in relation to fixed assets. Third party valuations of these assets were obtained where appropriate to support the realisation strategies adopted.

We note that most of the significant construction plant and equipment used by Ebert was leased from a related entity or third parties.

Insurance and other claims

We have continued to pursue a small number of insurance and other claims. At the date of this report these matters remain ongoing, though are anticipated to be concluded within the next reporting period.

Overview and secured creditors

The following table shows the particulars of recorded outstanding debts and liabilities of the Company as at the date of appointment:

Class of Creditor	Note	Description	Amount (\$'000)
Secured - general	1	Bank of New Zealand	6,085
Secured - general		Kelvin Eric Hale	3,500
Secured - PMSI		Various	Unknown
Unsecured - preferential		Employees	640
		Inland Revenue	349
Unsecured - non-preferential	2	Trade creditors	24,517
		Subcontractor retentions	9,324
		Employees	1,283
		Contingent creditors	Unknown

Notes

- This amount comprises principal and accrued interest to the date of appointment in respect of the following, and interest will continue to accrue on outstanding balances:
 - Net indemnity liability for bonds on issue prior to receivership
 - Credit card balances
- The Liquidators are handling all unsecured creditor claims in respect of the Company. Please refer to the Liquidators' report for further detail.

Creditors with a general security interest

- The Bank of New Zealand (**BNZ**) has a registered security interest over the Company in respect of a General Security Agreement (**GSA**) dated 12 July 2013. During the period covered by this report a distribution of \$1.8m was made to BNZ from realisations in the receivership.
- Kelvin Eric Hale registered a GSA on 24 July 2018 on behalf of himself and another shareholder in respect of a \$3.5m advance made to the Company.

One further creditor had asserted a general security interest which was inconsistent with the Company's records and our subsequent investigations. This matter was resolved by agreement between the parties.

Creditors with PMSI registrations

On appointment there were 148 specific security financing statements for Purchase Money Security Interests (**PMSI**) registered against the Company.

We have sought to address the financing statements in the following ways:

- Goods/equipment being returned to the creditor;
- Where control of sites reverted to the contract principal, relevant contact details were provided to PMSI claimants to enable them to discuss with the principal any assets subject to security claims that remained on the sites; or
- Confirmation that the creditor did not hold a valid security interest.

We have provided the Liquidators with details of all claims filed with us in respect of outstanding registrations.

Unsecured creditors**Preferential Creditors**

Preferential claims against the Company comprised:

- Employee claims for wages arrears, accrued holiday leave and other entitlements afforded preferential status under section 7 of the Companies Act 1993.
- IRD claims for PAYE for the period from 16-31 July 2018 and GST relating to the month of June 2018.

Employees

At the date of receivership the Company had 113 employees. We calculated that employee preferential entitlements totalled \$642k (inclusive of PAYE, Kiwisaver and other taxes/deductions) and agreed each employee's claim directly with them. In October 2018 a full distribution of this amount was made to employees in respect of preferential entitlements.

Employees have been notified of their remaining claims that did not have preferential status and details of those claims have been passed on to the Liquidators.

Inland Revenue Department

The IRD was owed pre-receivership GST and PAYE totalling \$1.1m (comprising its preferential claim and other amounts due under its set-off rights).

Upon appointment, we finalised and submitted the Company's pre-receivership GST returns with the assistance of Ebert staff, which reflected a refund due to Ebert of \$1.19m for the month of July 2018.

Following IRD's preferential claims and set-off rights, Ebert received a net refund of \$91k.

Unsecured Creditors

The Company's accounting records as at 31 July 2018 reported unsecured trade creditors of \$33.84m comprising accounts payable (\$24.52m including GST) and retentions (\$9.32m excluding GST).

Based on the realisations achieved to date, it is unlikely that there will be any surplus funds available from the recoveries made during the receivership. However, we note that \$3.7m of retentions held aside in trust are being dealt with and distributed under the separate receivership of the Retentions Fund.

As claims continue to be received directly by the Liquidators, we are unable to advise the current balance of unsecured creditor claims. Please refer to the Liquidators for any updates in relation to this position.

Receipts and Payments The table opposite sets out the receipts and payments for the Company for the period from 31 July 2018 to 30 January 2020. We note the following in respect of the payments summarised:

- Wages & Salaries includes payroll costs for Ebert employees whose services were retained after appointment. Certain employees were retained to assist with specific administrative project tasks and asset realisation strategies.
- Security costs relate primarily to the securing of active construction sites in the initial days following appointment. These costs were necessary for safety purposes, as well as the protection of assets of both Ebert and subcontractors/suppliers.
- Operational costs include utilities, lease costs and other administrative costs associated with the business.
- Legal fees predominantly comprise general legal advice to the Receivers, specific advice around security matters (whether GSA or PMSI creditors), employment law advice and litigation advice, where required.

**Ebert Construction Limited (In Receivership and In Liquidation)
Receipts and Payments
for the period 31 July 2018 to 30 January 2020**

	Total
Receipts	
Contract Receivables	3,986,860
Pre-Receivership GST Refund	1,906,094
Sale of Fixed Assets	107,176
Other Income	55,347
Total Receipts	6,055,477
Payments	
Wages & Salaries	304,313
Security Costs	115,838
IT Costs	37,235
Professional Fees	56,553
Insurance	11,168
Operating Expenses	76,943
Legal Fees	354,449
Payment in respect of security claims	750,000
Distribution to secured creditor	1,800,000
Receivers' Remuneration	1,050,449
Receivers' Disbursements	55,509
Preferential Distribution - Employees	642,235
Distribution - Inland Revenue	421,001
GST Receivable	9,889
Total Payments	5,685,583
Cash in Bank (as at 30 January 2020)	369,894

Other matters**Amounts likely to be available for payment to unsecured creditors**

Based on the realisations achieved to date and level of debt owing under the first ranking security interest, it is unlikely that there will be any surplus funds available for unsecured creditors from the recoveries made during the receivership.

As claims continue to be received directly by the Liquidators, we are unable to advise the current balance of unsecured creditor claims. Please refer to the Liquidators for any update in relation to this position.

Communication

We recognise that this has been an extremely difficult situation for the many people and businesses impacted and would again like to thank all parties for their ongoing patience and support as we work through the complexities of the receivership.

Our next statutory report under Section 24 of the Act is due to be issued in September 2020. It is anticipated that the receivership may be completed prior to that time, in which case a final report will be issued.

Material updates will be communicated either in writing to relevant parties or via our webpage. In the interim, should creditors or other stakeholders have any queries arising from this report, please contact us as follows:

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Appendix 1 - Restrictions

Area	Detail
Statutory requirements	All information contained in this report is provided in accordance with Sections 26 and 27 of the Receiverships Act 1993.
Basis of reporting	The statements and opinions expressed herein have been made in good faith, and on the basis that all information relied upon is true and accurate in all material respects, and not misleading by reason of omission or otherwise.
Information available	<p>We have not independently verified the accuracy of information provided to us, and have not conducted any form of audit in respect of the Company. Accordingly, we express no opinion on the reliability, accuracy, or completeness of the information provided to us and upon which we have relied. Whilst all care and attention has been taken in compiling this report, we do not accept any liability whatsoever arising from this report.</p> <p>The statements and opinions expressed in this report are based on information available as at the date of the report.</p> <p>We reserve the right, but will be under no obligation, to review or amend our report, if any additional information, which was in existence on the date of this report was not brought to our attention, or subsequently comes to light.</p>
Other	<p>Certain numbers in tables throughout this report have been rounded and therefore may not add up exactly.</p> <p>Unless otherwise stated all amounts are expressed in New Zealand dollars.</p>



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