

**In the High Court of New Zealand  
Wellington Registry**

**CIV-2018-485-**

**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**  
as receivers of Ebert Construction Limited (in receivership and liquidation) each being  
Chartered Accountants of Auckland or Wellington

Applicants

and

**Ebert Construction Limited (in receivership and liquidation)**  
a duly incorporated company having its registered office at 188 Quay Street, Auckland  
Respondent

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**Memorandum of counsel for the Applicants varying initial procedural orders  
sought**

**Dated:** 26 October 2018

**For hearing:** 8 November 2018

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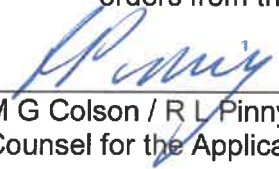
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May it please the Court:

1. This is an application by the receivers of Ebert Construction Limited (in receivership and liquidation) (**Ebert**) for orders:
  - (a) appointing them as receivers to a fund of retention monies held by Ebert on trust for subcontractors (the **Fund**) pursuant to the terms of the Construction Contracts Act 2002; and
  - (b) for directions as to the management and distribution of the Fund(the **Application**).
2. The Application sought some initial procedural orders to progress the Application, being:
  - (a) leave to commence this application by way of originating application, if leave is required;
  - (b) orders as to service of the Application; and
  - (c) timetabling of the Application.The memorandum of counsel dated 23 October 2018 detailed the initial orders sought in a schedule.
3. Counsel have since been advised that the Applicants wish to amend the orders as to service of the Application and accompanying documents on the Subcontractors and Principals listed in Schedules One and Two of the Application to provide that a redacted copy of the Application be served on the Subcontractors and Principals in the manner proposed in the Application.
4. The information the Applicants wish to redact from the Application to be served on the Subcontractors and Principals is:
  - (a) the bank account number listed in paragraph 1(b) of the Application, which is used to define the bank account in which the Fund is held; and

- (b) Schedules One and Two to the Application, which list the Subcontractors and Principals who may have a claim to the Fund.
  
- 5. The Applicants are conscious that the service orders sought involve publishing the relevant documents on the PwC website and therefore they could be seen by persons other than the Subcontractors and Principals. They believe that the Schedules, coupled with the Receivers and Liquidators' reports which identify all creditors of Ebert, will enable third parties to identify which subcontractors are likely to have some recovery in the liquidation of Ebert and which are not. There is no purpose to this information becoming public and the Applicants believe it could, in some circumstances, lead to a competitive disadvantage.
  
- 6. The Application can be readily understood without this information.
  
- 7. For the avoidance of doubt:
  - (a) the unredacted Application has been served on the Liquidators.
  - (b) as the service orders proposed require the Receivers to contact Subcontractors and Principals directly, by email or post, individual subcontractors of Ebert will be aware of whether they personally are a Subcontractor with a potential claim to the Fund.
  
- 8. Counsel respectfully suggest that any party who considers that they are prejudiced by having this information redacted from the Application served on them can apply to the Court within this proceeding for a unredacted copy to be served on them.

9. A list of the orders now sought to progress the Application are set out at Schedule One to this memorandum, with the amendments to these orders from that set out in the Application, in red.

  
M G Colson / R L Pinny  
Counsel for the Applicants

26 October 2018

### **Schedule: Initial orders sought (amendments in red)**

1. Permitting these proceedings to be commenced by way of originating application, if leave is required.
2. That service of this Application on the Subcontractors and Principals be deemed to have occurred upon the following steps:
  - (a) publishing this Application (together with accompanying memoranda and affidavits) on the PricewaterhouseCoopers (PwC) webpage dedicated to the Ebert receivership <https://www.pwc.co.nz/ebert> (the Website);
  - (b) emailing Principals and Subcontractors for whom the Applicants have an email address to advise of the Application and providing a link to the Website; and
  - (c) for the Subcontractor for whom the Applicants do not have an email address, or for any Subcontractors or Principals for whom an email is returned undelivered, couriering a letter to their registered office or last known address advising of the Application and informing them that the Application and associated documents are available on the Website.
3. That the copy of the Application to be served on Subcontractors and Principals pursuant to paragraph 2 above redact the following information:
  - (a) the bank account number listed in paragraph 1(b) of the Application;
  - (b) Schedule One of the Application, comprising a list of the Subcontractors who could have a claim to the Fund; and
  - (c) Schedule Two of the Application, comprising a list of the Principals who may have an interest in management of the Fund.
4. That any person served with a copy of Application redacted in accordance with paragraph 3 above who considers that they are

prejudiced by the redactions be granted leave to apply to the Court in this proceeding for a copy of the unredacted Application to be served on them.

5. As to the timetabling of the Application as follows:
- (a) any application by a Subcontractor, Principal or other interested party for joinder to the Application be filed by 31 October 2018;
  - (b) the Applicants to file written submissions by 2 November 2018 and serve those submissions on the Subcontractors and Principals in accordance with paragraphs 2(a) and (b) above;
  - (c) any submissions by any person joined to these proceedings be filed and served by 6 November 2018;
  - (d) the Application be set down for hearing on 8 November 2018;  
and
  - (e) a telephone conference with the Judge who is to hear the application be held on 25 or 26 October 2018 to discuss various procedural matters in advance of the hearing and the key issues to be determined at the hearing.