

**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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**Memorandum of counsel for the Applicants in response to memorandum of  
counsel for Taslo Steel Security Limited**

**Dated:** 5 November 2018

**For hearing:** 8 November 2018

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May it please the Court:

1. Counsel refer to the memorandum of counsel for Taslo Steel Security Limited (**Taslo**) dated 2 November 2018 (**Taslo Memorandum**).
2. The key issue raised by the Taslo Memorandum is one of quantum of costs. As the Taslo Memorandum records:
  - (a) Taslo does not oppose the application in principle, including that the Applicants should be appointed as receivers to the Fund and be entitled to recover their costs in managing and distributing the Fund from the Fund itself (paragraphs 3, 23, 33 and 35); and
  - (b) Taslo accepts that the estimated costs of managing and distributing the Fund (including costs relating to this Application and assuming no significant disputes arise which require resolution) of \$150,000<sup>1</sup> are not unreasonable (para 22).
3. Therefore, the issue raised by the Taslo Memorandum is whether any order that the Applicants could recover their costs from the Fund should be subject to a “cap” of \$150,000, requiring the Applicants to seek a further court order for amounts in excess of that.
4. As the Taslo Memorandum mentions, this issue had been discussed by the parties’ legal counsel in correspondence and by telephone. In particular:
  - (a) Following the concerns raised by counsel for Taslo, the Applicants included paragraphs 10.8 to 10.10 in the Second Affidavit of Lara Bennett sworn 1 November 2018, informing the Court of the concerns raised by a subcontractor as to the quantum of possible costs to be deducted from the Fund and advised that the Applicants would be happy to submit a final report to the Court for approval of costs, if the Court so ordered. (The Affidavit did not identify the subcontractor who raised those concerns, but it was Taslo.)

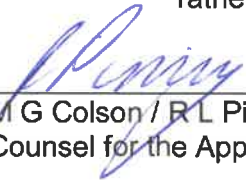
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<sup>1</sup> Excluding GST and disbursements but including legal fees of the Application.

- (b) In response to the proposal for a “cap” on costs the solicitors for the Applicants advised counsel for Taslo that:
  - (i) the Applicants considered the proposal to submit a final report to the Court for approval of costs adequately addressed any concerns on excessive costs;
  - (ii) they were conscious that any further application to the Court would simply incur increased costs which would likely be deducted from the Fund, in circumstances where any issue of excessive costs would be expected to be dealt with as part of the final approval of costs by the Court; and

invited Taslo to take steps to inform the Court of its position, if it remained of the view that the Applicants’ proposal was inadequate.

- 5. The Applicants remain of the view that the proposal to submit a final report to the Court for approval of costs is adequate to address any concerns on costs to be deducted from the Fund.
- 6. There is no need for a telephone conference in advance of the hearing on this issue. The issue can simply be dealt with at the hearing:
  - (a) The issue raised by Taslo is a narrow one.
  - (b) Taslo’s position on a “costs cap” is now before the Court in the form of a detailed memorandum. The Applicants suggest that the Court accepts the Taslo Memorandum as Taslo’s submissions on the cost order and take those submissions as read, without requiring any attendance from counsel for Taslo at the hearing.
  - (c) As the Application affects a large number of subcontractors, in the Applicants’ respectful submission it would not be appropriate to have this issue dealt with discretely in a telephone conference, rather than in open court.

  
M G Colson / R L Pinny  
Counsel for the Applicants