

**IN THE HIGH COURT OF NEW ZEALAND  
WELLINGTON REGISTRY**

**I TE KŌTI MATUA O AOTEAROA  
TE WHANGANUI-A-TARA ROHE**

**CIV-2018-485-792**

UNDER the Receiverships Act 1993 and  
pt 19 of the High Court Rules 2016

IN THE MATTER of Ebert Construction Ltd (in receivership  
and liquidation)

BETWEEN LARA MAREE BENNETT,  
JOHN HOWARD FISK, and  
MICHAEL LONGMAN,  
Applicants

AND EBERT CONSTRUCTION LIMITED  
(in receivership and liquidation)  
Respondent

Counsel: Mr Mike Colson and Ms Rachel Pinny for the applicants

Minute: 26 October 2018

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**MINUTE OF ASSOCIATE JUDGE JOHNSTON  
[On the papers]**

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[1] The Court has before it the applicants' substantive application, together with the affidavit of the first-named applicant in support and counsel's memoranda of both 23 and 26 October 2018.

[2] In those memoranda Mr Colson addresses not only the substantive orders sought but also three preliminary procedural matters in respect of which he seeks orders on an ex-parte basis concerning:

- (a) leave to commence this proceeding by way of originating application pursuant to pt 19 of the High Court Rules 2016;

(b) service;

(c) timetabling.

[3] The papers were placed before me to deal with these preliminary points earlier today.

[4] In my assessment, this application is a suitable one to be commenced by originating application. It is analogous to many of the types of proceedings specifically authorised in r 19.2 to be commenced in that way. I can see no obvious prejudice to the proposed respondents in not being served with a notice of proceeding and statement of claim, and of course it would always be open to a respondent who believes that the procedure is prejudicial to apply to the Court for relief. On those bases, I grant leave to the applicants to commence this proceeding pursuant to pt 19.

[5] The directions sought by the applicants in relation to service appear to me to be appropriate. I am satisfied that by the means proposed all parties potentially affected by the orders sought in the proceeding will have an opportunity to participate. Accordingly, I make directions as to service in the terms sought in Mr Colson's memorandum of 23 October as amended by his later memorandum.

[6] The timetabling orders sought by the applicants for the disposal of this proceeding appear to me to be rather compressed. My concern is that the parties served may not have sufficient time to seek advice and take steps to protect their positions. That said, the matter is set down for at least a preliminary hearing on 8 November 2018, and it is hard to see how anything other than a token adjustment of the proposed timetabling orders can be made. In the circumstances I make the orders sought in para 5 of Mr Colson's 26 October memorandum but I amend item 5(a) so as to give any party who wishes to join the proceeding until Thursday 1 November 2018 to apply to do so.

[7] Finally, I direct that any party or intending party may come back to the Court

by memorandum seeking further directions.

Associate Judge Johnston

Solicitors:  
Simpson Grierson, Wellington for applicants