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IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

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BETWEEN

THE REGISTRAR OF THE
HIGH COURT AT AUCKLAND

Applicant

AND

JBL CONSOLIDATED LTD
(In receivership)

Respondent

Hearing: 10 September 1984

Counsel: Mr Ruffin for appellant
Mr Grey for respondent

Judgment: 10 September 1984

ORAL JUDGMENT OF HILLYER J

This is a motion by the Registrar of the High Court at Auckland for an order under s.19 of the Crimes Act 1961 that a writ of sale issue against JBL Consolidated Ltd (in receivership) the respondent.

On 11 July 1977 the respondent was found guilty on four charges of conspiracy to defraud. Those charges were joint charges with a number of other directors and officers of the company. On 8 August 1977 the respondent was fined \$1500 on each of counts 1 and 3 and discharged on counts 2 and 4. Since that time the fines have not been remitted or annulled, and a warrant to collect the sum adjudged to be paid was issued on 18 February 1981.

That warrant was returned with a note by the Constable, that the company was in receivership, and that there were no funds available to satisfy the warrant.

Following that demands were made by the Crown Solicitor on the Government Receiver of the respondent company, Mr D.C. Hazard, and that receiver gave it as his opinion that the \$3000 fine was not a receiver's debt, and that it was not payable by him. Equally therefore, it would not be payable by the issue of a writ of sale against the property in his hands. In addition to that however, the receiver pointed out that any fine payable would only come out of funds otherwise available to the unfortunate investors in and creditors of the company.

After some further correspondence the motion I have mentioned was filed before the Court, supported by an affidavit on behalf of the Registrar of the Court simply reciting that the fine had been imposed and had not been paid.

In opposition, an affidavit by Mr Hazard was filed, deposing that the liabilities of the company substantially exceeded its assets and that there would be an ultimate deficit for creditors of the company of the order of \$4 million, plus interest accrued of \$4,250,000. All of the assets he said, are and were at all material times, subject to charges in favour of secured creditors. Some

of the secured creditors have been repaid in full but second debenture holders remain unsatisfied and they will suffer a deficit of approximately \$1,100,000 plus interest accrued. Unsecured creditors of the respondent will receive nothing. If therefore a writ of sale is issued directed to the properties held by the receiver, and that writ of sale is executed and the proceeds of the writ of sale are paid to the Crown, the effect will be only that the debenture holders will have paid in addition to the money they have lost through the conspiracy of the company, the fine imposed on the company for that very conspiracy.

The fine in this matter was imposed by Somers J, and at the time the fine was imposed of course, the facts I have set out as to the company's position were not and could not have been known. I have however, spoken to His Honour, and he has indicated to me that he would be happy for me to deal with the matter. I think it desirable for me to do so because any extra legal costs that would be incurred by the matter being brought before Somers J perhaps in Wellington, again would come out of the pockets of the debenture holders.

Under S.19C of the Crimes Act 1961, as I have said, provision is made for the collection of fines by the issue of a warrant and a report from the Constable on that warrant. S.19D provides as follows :

"Execution - Where a constable makes a report as mentioned in S.19C of this Act, the Judge who sentenced the offender to pay the fine or who ordered the offender to pay the other sum of money or, if that Judge is not available, any other Judge, shall consider the report and may make such order as he thinks fit including an order for the remission of either the whole or part of the fine or other sum of money, an order for the issue of a writ of sale or an order for the immediate imprisonment of the offender, or an order allowing time for payment or allowing payment by instalments."

I have had put before me a very careful memorandum of submissions to be made by counsel for the applicant, Mr Ruffin in support of the motion. I have also had from Mr Grey for the respondent a brief indication of the nature of the argument he was proposing to present on the question of the issue of a writ of sale against the property of the company. The argument clearly would be an interesting one involving a consideration of whether a company in receivership is in the same position as a company in liquidation for these purposes, and further whether if the writ of sale was issued and executed, the Registrar of the Court would not be bound first to pay from the proceeds of that writ of sale any creditors secured on the property sold pursuant to the writ of sale.

In the end result however, I have come to the conclusion that whatever may have been the result of that argument, it would be proper for me to order the remission of the whole of the fine pursuant to S.19D of the Crimes Act. That of course is because it would not seem fair for the

debenture holders who have already lost substantially because of the conspiracy of which the respondent has been convicted, to pay in addition the fine imposed on the respondent for that conspiracy.

I therefore invited submissions from Mr Ruffin on the question of remission of the fine, and he very properly in my view, indicated that it was more a matter for me to determine on the principles I have set out, that his argument had been directed towards the legal remedies available to the Registrar, and that the Registrar had understandably taken the view that it was necessary for him to obtain a ruling of the Court to deal with this fine which has been, as I say, outstanding since 1977.

Having heard the view I take of the matter, Mr Grey for the receiver submitted that a substantial amount of work had been done in preparation for the hearing, and that indeed Counsel had exchanged legal authorities. He submitted the receiver should be allowed costs. I consider it proper for the Registrar to have taken the action he has to have the matter determined. The determination I have made as to remission of the fine does not determine the questions that might otherwise have been argued before me, and I do not consider that it would be proper to award costs to either side in the matter.

The fine will be remitted with no costs to either side.

P.G. Hillyer J
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P.G. Hillyer J

Solicitors

Crown Solicitor Auckland for the applicant
Bell Gully Buddle Weir for the respondent