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IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

A.56/84

IN THE MATTER of the Judicature
Amendment Act 1972

BETWEEN COOPERS & LYBRAND
Applicant

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A N D THE MINISTER OF JUSTICE
First Respondent

A N D THE SECRETARY OF JUSTICE
Second Respondent

A N D THE REGISTRAR OF COMPANIES
Third Respondent

A N D GRAHAM CHARLES EDGAR
and JOHN STEELE HENRY
Fourth Respondents

Hearing : 9th February 1984

Counsel : R.P. Smellie Q.C. and G.R. Halford for Applicant
D.J. Neutze for Respondents

Judgment : 9th February 1984

(ORAL) JUDGMENT OF BARKER, J.

The applicant has sought interim orders under Section 8 of the Judicature Amendment Act 1972; these are now consented to by counsel for the respondents. Accordingly, the following three orders are made by consent:

- "1. That until the Motion for Review herein is determined the Fourth Respondents be prohibited from taking any further action that is or would be consequent upon the exercise of the statutory power of decision, namely, disclosing, making available or communicating in any form the Report prepared or being prepared pursuant to Section 9A of the Companies Act 1955 relating to the Securitibank Group, or any material used in preparation thereof, to any other party other than and apart from the Third Respondent herein.

2. An Order by Way of Declaration that until the Motion for Review herein is determined the Third Respondent ought not to take any further action consequential upon the exercise of his statutory power of decision and in particular disclosing, making available or communicating in any form the Report prepared or being prepared pursuant to Section 9A of the Companies Act 1955 relating to the Securitibank Group, or any material used in preparation thereof, to any other person or party other than and except for the Third Respondents own permanent departmental officers and legal advisers but not otherwise.

3. An Order by Way of Declaration that until the Motion for Review herein is determined the Third Respondents departmental officers and legal advisers ought not to disclose make available or communicate in any form the report prepared or being prepared pursuant to s.9A of the Companies Act 1955 relating to the Securitibank Group or any material used in the preparation thereof to any other person or party other than another departmental officer or legal adviser."

In addition, the respondents give the following undertaking to the Court:

"Until the Motion for Review herein is determined the First and Second Respondents will not take any action to exercise the power vested in them pursuant to 9A(4) of the Companies Act 1955 in relation to the report being prepared by the Fourth Respondent and any materials being used in the preparation thereof."

As this motion was conveniently heard in connection with various Securitibank matters, Mr Thomas Q.C. for the liquidator of Securitibank sought leave to be heard in respect of the subject matter of this application under the Judicature Amendment Act. He claimed that the liquidator would be adversely affected by the orders made in these proceedings in that the liquidator, having been provided with the interim report of the four respondents under Section 9A of the Companies Act 1955, wishes to have the final report in his possession for the purposes of the litigation which he is conducting against the auditors, directors and shareholders of Securitibank.

I had made earlier orders to the effect that the liquidator was required to discover to the third parties to that litigation (i.e. the shareholders and directors) draft reports which had come into his possession through the purported authority of the third respondent.

Mr Smellie acknowledged that the liquidator ought to be heard on the substantive hearing. To save time, I exercised my power under Section 10 of the Judicature Amendment Act 1972 and convened an instant conference of counsel; Mr Smellie and Mr Neutze had no opposition to that course.

Accordingly, I make the following procedural and timetable orders under the authority of that section:

- (a) The liquidator of the Securitibank companies, Mr Harold Goodman, is to be joined as a party to the present application and to be served forthwith with the relevant documents;

- (b) The applicant is to have until Monday, 13th February 1984 within which to file an amended statement of claim;
- (c) The present four respondents are to have 30 days from date of service of the documents within which to file both a statement of defence and any affidavits in reply;
- (d) Copies of the respondent's statement of defence and affidavits are to be served not only on the applicant's solicitors but also on the solicitors for the liquidator, Messrs Sturt & Harrison;
- (e) The liquidator is to have a further 7 days within which to file his statement of defence and affidavits in reply;
- (f) The applicant is to have yet another 7 days within which to file its affidavit in reply;
- (g) The applicant alone is to file a praecipe to set down and/or ready list application;
- (h) The substantive hearing is to take place in the week commencing 30th April 1984, during which time has been set aside for Securitibank matters.

Liberty to apply is reserved. The judicial conference is adjourned sine die to be brought on at short notice in Chambers if necessary.

The applicant's two appeals under Sections 9A and 9B of the Companies Act 1955 are also to be dealt with in the week commencing 30th April, at the same time as the present substantive application.

By consent, the first respondent is hereafter to be known as "The Minister of Justice".

R. P. [Signature]

SOLICITORS:

Nicholson, Gribbin & Co, Auckland, for Applicant.

Crown Law Office, Wellington, for Respondents.