

12/7

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

M. NO. 613/88

IN THE MATTER

of the Companies
Act 1955

BETWEEN

HIGGS CONSTRUCTION COMPANY
LIMITED a duly incorporated
company having its
registered office at
Christchurch and carrying on
business as a Construction
Company.

NOT
RECOMMENDED

66/

Substituting Plaintiff

AND

VARIETY LEISURE CORPORATION
LIMITED a duly incorporated
Company having its
registered office at 205
Manchester Street,
Christchurch and carrying on
business as Leisure Park
Operators

Defendant

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

M. NO. 17/89

IN THE MATTER

of the Companies
Act 1955

BETWEEN

BANK OF NEW ZEALAND a body
corporate duly constituted
under the Bank of New
Zealand Act 1979 with its
Head Office at Wellington
and carrying on business
there and elsewhere as a
Trading Bank

Plaintiff

AND

VARIETY LEISURE CORPORATION
LIMITED a duly incorporated
company having its
registered office at 205
Manchester Street,
Christchurch.

Defendant

Hearing: 12th June, 1989.

Counsel: M. No. 613/88
R.A. Fraser for the Plaintiff
J.G. Matthews for the Defendant
M. No. 17/89
Mr James for the Plaintiff
J.G. Matthews for the Defendant

REASONS OF MASTER HANSEN

This matter came before the Court as an opposed winding up hearing on the 24th May last. At the same time there was an application filed by the Defendant relying on Rule 700K seeking a stay of proceedings. By agreement, the matter proceeded as an opposed winding up hearing on that day, and the Court entertained argument in relation to whether or not the debt founding the Section 218 Notice was a bona fide disputed debt.

In a Reserved Decision handed down on the 30th May last, I ruled that the debt was not bona fide disputed and adjourned the matter to the company winding up list today to enable the Plaintiff to file a Certificate of Indebtedness as at today's date.

Mr Matthews has filed applications in relation to an appeal, and what he says today is he wishes to have a ruling formally on his application for a stay, and then to adjourn the winding up proceedings to enable him to appeal the stay because he finds no jurisdiction to appeal a winding up

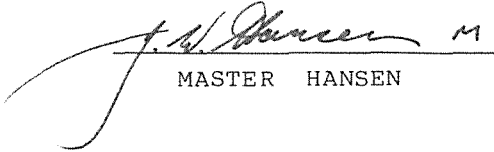
order.

Quite clearly, his application for a stay is refused in view of the Reserved Decision. The stay really amounted to opposition to the disputed debt, or as it then was, disputed debt, in relation to a guarantee. For the reasons given in my Reserved Decision I am satisfied the debt is not disputed, and, therefore, the Defendant company is not entitled to the stay sought and formally the application for stay sought by Variety Leisure Corporation Limited is refused.

There is an application for an adjournment of the former winding up order and a certificate, pursuant to Rule 700 has been handed into the Court. Mr Matthews makes the application so that he can appeal the order I have made refusing the Defendant's application to stay the winding up proceedings. It has provoked some polite interchange this morning in, I hope, the best of spirits, as to the ability or otherwise to appeal a winding up order of the Court. Both solicitors from the Official Assignee's office, and Mr Matthews, and others present in Court can give no previous occasion when a winding up order has been appealed. There are, of course, numerous occasions when injunction proceedings designed to prevent advertising have led to appeal hearings, and, indeed, the bulk of the body of law relating to winding up proceedings seems to arise from hearings of injunction proceedings.

Mr Matthews says he is in a position to immediately file a notice of appeal, and also an application under Rule 35 for stay. Accordingly, I am inclined to grant this application until 9.30 this Friday morning. I would like to do some research in relation to this question of appeal. The problem obviously faced by the Defendant if the order is made, is, as Mr Matthews put it, certain irreversible

consequences flow, but there will be an adjournment to 9.30am on Friday 16th June.


MASTER HANSEN

M. No. 613.88

Solicitors for the Plaintiff: R.A. McL. Fraser, Christchurch

Solicitors for the Defendant: Murchison & Wood, Christchurch

M. No. 17/89

Solicitors for the Plaintiff: Bell Gully Weir, Auckland by their Agents Lane Neave Ronaldson, Christchurch

Solicitors for the Defendant: Murchison & Wood, Christchurch