

NZLR
NOT
RECOMMENDED

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

29/11

M. 1402/91

UNDER THE COMPANIES ACT 1955

2239
IN THE MATTER FERGUSON & YOUNG
LIMITED (IN RECEIVERSHIP
AND IN LIQUIDATION)

A N D

IN THE MATTER of an application for
directions by GRAEME
GEORGE MCDONALD and
GERALD STANLEY REA

APPLICANTS

Hearing: 4 November 1991

Counsel: D.J. Chisholm & M.O. Robertson in support
No appearance for any other party

Judgment: 4 November 1991

ORAL JUDGMENT OF ANDERSON J

The background to this present application for directions and related orders pursuant to Rule 458(1)(bb) of the High Court Rules relates to an investment fund operated in the 1970's and early 1980's by Leonard Bisley & Associates. The scheme of the investment operation was for persons of modest means to make small savings which would be accumulated until the sum of \$100 stood to the credit of a particular investor whereupon various \$100 investor accounts would be pooled for the purposes of purchasing mortgages at discount. Between February

1984 and May 1985, the records of the business being such as to prevent more accurate chronological determination, a Mr B.F. Jannett and Mr L.J. Porter, who were previously managers of the operation, purchased the same from Mr Bisley. Following purchase the operation got into debt and there are now numerous creditors.

The trustee of the investors funds was Mr John Fea, now deceased. Following enquiry it was believed by the trustee, and subsequently by the liquidator, that there was a shortfall in investors' funds, as at the time of acquisition by Messrs Jannett and Porter, of several hundred thousand dollars. Negotiations on behalf of the fund and Mr Bisley led to a payment by Mr Bisley of the sum of \$200,000, with a denial of liability and moral obloquy, advanced specifically for the investors and as a sign of good faith by Mr Bisley. Following the death of Mr Fea that fund has been administered by the liquidator but not so as to create any proprietary interest therein by creditors other than previous investors.

Directions have been sought for the purposes of determining whether the fund, following the deduction of administration costs, should be paid to investors existing in that capacity as at the time Mr Jannett's and Mr Porter's acquisition of the operation, or to creditors, or to creditors and investors.

Having considered the papers and heard submissions from learned counsel, supported by further affidavits and memoranda, I am satisfied that the only proper course is to direct that the fund, following deduction of administration costs, should be distributed on a pro rata basis to investors in the fund as at the time of acquisition by Mr Jannett and Mr

Solicitors for Applicants: Phillips Nicholson,
Auckland