

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

**CIV 2008-485-2574**

UNDER the Companies Act 1993

BETWEEN TRADESTAFF GROUP LIMITED  
Plaintiff

AND ALUMEN LIMITED  
Defendant

Hearing: 9 March 2009

Counsel: N. Levy – Plaintiff

Judgment: 9 March 2009

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**ORAL JUDGMENT OF ASSOCIATE JUDGE D.I. GENDALL**

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Solicitors: Kevin McDonald & Associates, Solicitors, DX BP66086, Takapuna

[1] Before the Court is an application by the plaintiff seeking an order for appointment of a liquidator on the grounds that the defendant company is insolvent, it having failed to comply with a statutory demand.

[2] When the matter was called before me today Ms Levy, counsel for the plaintiff, drew to my attention the fact that on 3 March 2009 the company had purportedly appointed a liquidator by Shareholders' Resolution.

[3] An affidavit of service of the present liquidation proceedings is on file. It confirms that these proceedings were served on the defendant company on 2 December 2008.

[4] The purported appointment of the liquidator/s by the Shareholders' Resolution would appear on its face to contravene s. 241AA *Companies Act 1993*. This states that a liquidator may only be appointed by Shareholders' Resolution within 10 working days after service on the company of a creditor's liquidation application. The Shareholder's Resolution in this case would seem to be outside that time band by some considerable time and is therefore prohibited by the *Companies Act 1993*.

[5] Whilst no affidavit evidence has been placed before the Court I am satisfied that the necessary facts establishing the date of the Shareholders' Resolution are properly put before me by reference to the public records maintained in the New Zealand Companies Office which have been provided by Ms Levy.

[6] Section 284 *Companies Act 1993* provides me with the power in particular under sub-paragraph 1(g) to declare whether or not a liquidator was validly appointed or validly assumed custody or control of a company's property.

[7] On the application of the plaintiff I now exercise that power and declare that the liquidator/liquidators appointed on 3 March 2009 to the defendant company Alumen Limited were not validly appointed.

[8] That therefore clears the way for the plaintiff in this proceeding to progress its application before the Court for an order for appointment of a liquidator.

[9] Advertising of that application is still to take place.

[10] That said this matter is adjourned to a call at 10.00 am on 30 March 2009 for advertising.

**‘Associate Judge D.I. Gendall’**