

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

**CIV 2008-404-2202**

IN THE MATTER OF      of the Companies Act 1993

BETWEEN                **STOR-CO MINI STORAGE SYSTEMS  
PTY LIMITED**  
Plaintiff

AND                        **PARNELL STORAGE LEASE LIMITED**  
Defendant

Hearing:      17 March 2009

Appearances: Mr Colthart for plaintiff  
                  Ms Yaqub for defendant

Judgment:    17 March 2009

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**ORAL JUDGMENT OF ASSOCIATE JUDGE DOOGUE**

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Solicitors:  
*Mr Colthart, P O Box 535, Shortland Street, Auckland*

*Hucker & Associates, P O Box 3843, Shortland Street, Auckland*

[1] On 21 January 2009 I directed that the liquidation proceedings were to be stayed until further order of the Court. The reason for that was to give the defendant time to apply for the review of my earlier decision declining to grant special leave to the defendant to file a statement of defence outside the time limits contained in the Rules.

[2] The matter has come back before me for mention today in my Chambers List. Mr Colthart for the plaintiff has orally applied to discharge the stay so that the plaintiff can proceed with its liquidation application. He submitted that the circumstances had changed in an important and material way in that a receiver has now been appointed by Marac Finance Limited to the defendant. In the interests of the creditors generally he submitted that the liquidation matter should now be dealt with. Mr Colthart reminded me that that liquidation proceedings had been advertised already and he told me that one other creditor had filed a notice of intention to appear but had subsequently withdrawn that notice when the claim against the defendant was settled.

[3] The application to review my decision declining to grant special leave is now scheduled for hearing on 3 April 2009.

[4] Ms Yaqub for the defendant tabled a memorandum from Mr Hucker who is the solicitor on the record for the defendant. Essentially in that memorandum the defendant's counsel resisted the application on the part of the plaintiff to set aside the stay order that I had made. The first point taken was that a proper application complying with the Rules should be made for the discharge of the stay order if the plaintiff wishes to proceed in that way. It was submitted that it is not appropriate for an application to discharge stay order to be dealt with by /as it was not one that was covered by r 7.9 in that it is not simply a matter of directions as to the correct method of proceeding. Secondly, the defendant submits that the appointment of receivers does not make any practical difference to the current position.

[5] In general terms I agree that an application to discharge of a stay order should be brought by way of a formal application identifying with clarity the grounds upon

which it is brought, but the matter that is of critical importance here is that even if a stay were discharged today the liquidation proceedings are not going to be dealt with until 22 April 2009. I would expect that by 22 April the review decision will be to hand. When I raised this point, Mr Colthart said that the plaintiff also seeks to have the hearing date for the liquidation proceedings 'brought forward'. I am not persuaded that there is any particular reason why the normal order of work should be altered in this case. The fact that there are indications that the defendant is insolvent does not distinguish it from the run of the mill case therefore, I would expect that it will not be reached before the 22 April 2009 and therefore there would be no practical benefit anyway in granting the application to discharge the stay. For those reasons I decline to make the order sought.

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J.P. Doogue  
Associate Judge