

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

CIV 2008-485-2695

UNDER the Companies Act 1993

BETWEEN UDC FINANCE LIMITED
Plaintiff

AND CONFERENCE OF SAMOAN
ADVENTIST CHURCH LIMITED
Defendant

Hearing: 30 March 2009

Appearances: A. Kerr - Counsel for the plaintiff
Mr Vatua - Director of Defendant Company

Judgment: 30 March 2009

ORAL JUDGMENT OF ASSOCIATE JUDGE D.I. GENDALL

Solicitors: MinterEllisonRuddWatts, Solicitors, PO Box 3798, Auckland

[1] Before the Court is an application by the plaintiff to place the defendant company into liquidation.

[2] The debt claimed by the plaintiff from the defendant company totals \$67,392.05. It relates to a statutory demand served upon the defendant company on 7 November 2008.

[3] No application to set aside that statutory demand was made.

[4] This is the third call of this matter. Mr. Vatua appeared as director of the defendant company. Ms. Kerr appeared for the plaintiff.

[5] Mr. Vatua has indicated to me on this and earlier occasions when this matter was called, that the sole asset owned by the defendant company is a Church property at 15 Commerce Crescent, Porirua. On an earlier occasion Mr. Vatua thought this property might have a market value of \$1.4 million. It has a mortgage to a bank of \$900,000.00. Mr. Vatua has confirmed that the defendant company also has debts other than the debt owing to the present plaintiff of about \$200,000.00.

[6] With the present debt owing to the plaintiff of some \$67,000.00 the total indebtedness of the defendant company is approximately \$1,167,000.00.

[7] Today, Mr. Vatua produced to the Court a conditional offer for the Porirua property at \$910,000.00 subject to the purchaser obtaining a resource consent within 6 months. This offer, however, was rejected by the defendant company. Mr. Vatua also indicated to me today that the defendant company hopes to negotiate with two other potential buyers for the Porirua property which I understand are Church groups for a potential sale.

[8] Mr. Vatua also confirmed today that the present rating valuation of the property is \$890,000.00 and the defendant holds another valuation which I understand was completed relatively recently at a figure of \$1.1 million.

[9] Mr. Vatua has confirmed that the defendant company, which was incorporated to hold the Church property, has no other assets. The Church

concerned, he tells me today, has only four families who comprise all its Church members.

[10] As I understand the position, it is those families (and with some support from other groups) that meet the current bank mortgage debt on the property which Mr. Vatua tells me requires repayments of some \$7,000.00 per month.

[11] By my calculations, assuming that the property concerned might fetch something in the region of \$1.1 million dollars this will still be insufficient to clear the existing liabilities of the defendant company including the sale costs.

[12] There seems little light at the end of the tunnel for the defendant company.

[13] Whilst I appreciate the no doubt genuine attempts which have been made by Mr. Vatua and the other family group members who are making efforts to clear the defendant company's substantial indebtedness, the real situation appears to me to be a hopeless one.

[14] The debts of the defendant company as I see it clearly exceed its assets.

[15] It may well be that it is in the interests of all concerned for this matter finally to be brought to a head. This would necessarily involve an order for liquidation of the defendant company on the plaintiff's present application.

[16] The down side of an order for liquidation, as Mr. Vatua expressed it to me, would be that any sale of the Porirua property would be on a forced sale basis.

[17] I do not necessarily agree that this would be the case. Mr. Vatua has indicated that the market for the Porirua property is represented by a rather small group being other Church groups in the Porirua district.

[18] That said, a controlled sale or other disposition of the property and a systematic and proper liquidation of the defendant company together with an enquiry by a liquidator into the company's overall position, in my view, would be desirable for all concerned, including the wider community.

[19] That said liquidation here is the appropriate step and the following orders are now made:

- (a) An order is made placing the defendant company, Conference of Samoan Adventist Church Limited into liquidation.
- (b) The Official Assignee is appointed liquidator.
- (c) Costs are awarded to the plaintiff on a category 2B basis together with disbursements as fixed by the Registrar.
- (d) This order is timed at 11.17 am.

‘Associate Judge D.I. Gendall’