

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

**CIV 2009-404-004113**

IN THE MATTER OF     the Companies Act 1993  
  
BETWEEN                KERMANI PROPERTIES LIMITED  
                              Plaintiff  
  
AND                       PINK DOLL LIMITED  
                              Defendant

Hearing:     On the Papers

Appearances: M R T Colthart for Defendant

Judgment:   23 July 2009

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**JUDGMENT OF ASSOCIATE JUDGE ROBINSON**

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This judgment was delivered by me on 23 July 2009 at 4.30 pm,  
Pursuant to Rule 11.5 of the High Court Rules

Registrar/Deputy Registrar

Date.....

Solicitors/Counsel:     N Tabb, Barrister & Solicitor, PO Box 101972, Auckland  
                              M Colthart, PO Box 535, Shortland Street, Auckland

[1] The defendant applies on notice for an order under r 31.11 High Court Rules staying the proceedings by the plaintiff to put the defendant company into liquidation. Because the plaintiff intends to proceed with the advertising of the application to put the defendant company into liquidation tomorrow, the defendant also applies on an ex parte basis for an order restraining publication of any advertisement of the application required by r 31.9 of the High Court Rules.

[2] The defendant acknowledges being served with a statutory demand issued by the plaintiff seeking recovery of \$12,553.91. The defendant also acknowledges that it has not paid the amount claimed in the statutory demand nor has it within the required time brought any proceedings to set aside the statutory demand.

[3] In those circumstances, there is a presumption that the defendant is unable to pay its debts. However, to be entitled to bring this application to put the defendant company into liquidation, the plaintiff must establish that it is a creditor.

[4] The plaintiff claims to be a creditor and that the amount owing is in respect of rent. The defendant acknowledges executing a lease but says rent is not payable because it has not received possession of the premises referred to in the lease.

[5] I accept that in appropriate circumstances the Court has jurisdiction to stay liquidation proceedings under r 31.11 even where the defendant has failed to comply with the statutory demand. The principles to be applied in the exercise of that jurisdiction were referred to by Wallace J in *Nemesis Holdings Ltd v North Harbour Industrial Holdings Ltd* (1989) 1 PRNZ 379, at 385.

[6] The evidence I have outlined would indicate that the defendant has a very weak case. In particular there is a complete absence of any evidence establishing the defendant to be solvent. Such evidence is of considerable importance particularly having regard to the acknowledged failure by the defendant to pay what appears to be a very modest sum claimed in the statutory demand.

[7] However, I accept that irreparable harm could befall the defendant if these proceedings were advertised and the defendant's application to stay the proceedings should be ultimately successful.

[8] Very little if any prejudice would befall the plaintiff if I granted the defendant's application to restrain advertising. The plaintiff's application for an order winding up the defendant is for hearing on Friday, 21 August 2009. Pursuant to r 31.9(1) the proceedings must be advertised at least five working days before the hearing. Consequently, the plaintiff has until the 14 August 2009 to advertise the proceedings. As the defendant's application to stay the proceedings is set down for hearing on 5 August 2009 there will still be plenty of time for the plaintiff to advertise the proceedings should the defendant's application be unsuccessful.

[9] In these circumstances I am satisfied that very little prejudice befalls the plaintiff by granting the application. On the other hand serious consequences could follow if the application is not granted and the defendant is successful in its application to stay the proceedings.

[10] There will therefore be orders pursuant to paragraph 1(a) of the defendant's application namely, an order restraining publication of any advertisement required by rule 31.9 of the High Court Rules or any other information relating to the statement of claim filed by the plaintiff in this proceeding.

[11] Such order is to continue until further order of the Court and is to cease on 6 August 2009 unless extended by the Court.

[12] Leave is reserved to the plaintiff to apply to vary or set aside this order on three days notice.

[13] The costs will be reserved.

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**Associate Judge Robinson**