

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

CIV 2008 409 002517

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| UNDER | Receiverships Act 1993 |
| IN THE MATTER OF | the receivership of Anthem Holdings Limited |
| BETWEEN | PAUL GRAHAM SARGISON AND JOHN MAURICE LEONARD Applicants |
| AND | ANTHEM WINE COMPANY LIMITED First Respondent |
| AND | SECURED FINANCE LIMITED Second Respondent |
| AND | SECURED LENDING LIMITED Third Respondent |

Hearing: 9 July 2009

Appearances: S O McAnally for Applicants
A J Forbes QC for Respondents
F Goldsmith for Vinpro Limited

Judgment: 31 July 2009

**FURTHER JUDGMENT OF ASSOCIATE JUDGE OSBORNE
As to Preservation Order**

[1] I gave judgment on 26 June 2009 in relation to the applicants' application for a Preservation Order. I reached conclusions both as to the making of an order and as to the draft formulation of an order, and then invited further submissions as to the final terminology of the order. The parties did not agree on the final terms and I heard further submissions on 9 July 2009.

[2] Following the hearing counsel conferred. As a result counsel for the applicants and for Vinpro Limited submitted (on 16 July 2009) an amended form of

Preservation Order. The Preservation Order reflected the agreement of the parties in all respects bar one.

[3] Having regard to the consent position between the parties on all matters other than that single issue, this judgment focuses upon the remaining issue.

Deed of Indemnity

[4] For the purposes of achieving sales of the wine stock, Anthem Company Limited (“AWCL”) and Vinpro negotiated and concluded a Deed of Indemnity dated 18 December 2008. Other parties were involved including Mr Henderson. The deed by its nature was a contractual arrangement entered into between those parties with no involvement of the Court. For the purposes of the Court’s judgment dated 26 June 2009 the existence and content of the Deed of Indemnity was primarily a matter of factual background. The Court was not seized of any application which invited the Court to rule on the contractual rights or obligations of parties flowing from the deed.

[5] Indeed, as paragraph [56](4)(b) of the judgment dated 26 June indicates, the Court’s understanding was that AWCL and Mr Henderson had expressly offered to leave the indemnity and guarantee in place.

[6] Against this background the judgment included a recognition within the proposed Preservation Order that AWCL’s indemnity and Mr Henderson’s guarantee in favour of Vinpro Limited would remain unaffected by the Preservation Order.

[7] The draft final order proposed by the applicants and Vinpro Limited envisages a paragraph 4 that “Upon implementation of this order –”:

(c) Subject to paragraph 4(b), the rights and obligations of the parties to the Deed of Indemnity dated 18 December 2008 under the Deed of Indemnity shall remain unaffected by this order.

[8] Counsel for the applicants and for Vinpro explained that counsel for the respondents had emphasised that the Deed of Indemnity had been provided to enable despatches of wine by Vinpro. Counsel for the respondents believed that clauses

4(a) and (b) of the proposed Preservation Order now provide Vinpro with the protection it seeks in relation to historic despatches and the Deed of Indemnity serves no further purpose.

[9] For its part, Vinpro does not agree to the Deed of Indemnity being cancelled.

[10] In response Mr Forbes for the respondents filed a brief submission to confirm that the position of the respondents is that there is no need for the Deed of Indemnity to remain in force.

[11] As my judgment dated 26 June 2009 indicates, the Court had reached a clear view that it was not appropriate that the Court in any way purport to alter rights arising out of the Deed of Indemnity. The parties had put that deed in place for their own purposes independently of the Court. The Court has been dealing with Preservation Order which speaks from the date of the Preservation Order. Acts done by any party after the date of the Preservation Order will be done pursuant to the Preservation Order. It is not for the Court in the present context to take upon itself an opposed alteration of such contractual rights as may have accrued previously

Order

[12] I order that there will be a Preservation Order in the terms of the attached draft (the emboldened passages in paragraphs .3(a) and 4(c) to be printed in the formal order in ordinary font.)

[13] Costs are reserved.

Solicitors
Keegan Alexander, Auckland for Applicants
AJ Forbes QC Christchurch for Respondents
Anderson Lloyd Caudwell, Dunedin for Vinpro Limited