

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

CIV 2009 409 001804

BETWEEN CITY CARE LIMITED
Plaintiff

AND PK CONSTRUCTION LIMITED
Defendant

Hearing: 2 November 2009

Appearances: B G Frowein for Plaintiff
J Angland for Defendant
S Weston for Inland Revenue Department
J Rae for A. Davis
W Hampton for Combined Rural Traders

Judgment: 2 November 2009

JUDGMENT OF ASSOCIATE JUDGE OSBORNE

[1] This is a creditor's application for an order putting the defendant company into liquidation.

[2] A statutory demand served in July 2009 was not met. The presumption of insolvency arises under the Act. The Court has seen enough material to know that the company is in any event insolvent in the cash flow sense which applies under the Companies Act 1993.

[3] Three creditors appear in support, although I note Mr Angland's indication for the defendant company that at least two of those debts are subject to dispute.

[4] The plaintiff (represented today by Ms Frowein) wished to proceed today. This was against a background of adjournments granted on 21 September, 5 October and 19 October.

[5] Mr Angland provided to the Court this morning a number of documents relating to attempts the defendant has been making to realise its assets and to deliver to the creditors what it sees as the best outcome through an orderly realisation of those assets.

[6] The proceeding also has a related proceeding in that the parent of the group is the subject of an interim liquidation order involving this and other companies which is to be the subject of revisiting by this Court on 16 November 2009.

[7] Mr Angland provided to the Court his submissions upon the basis of documents which he had only received overnight. He was not able to persuade me against the background of the adjournments that have previously been granted and against the opposition of the plaintiff and the supporting creditors that there were just and equitable grounds to grant a further adjournment in relation to this particular company. As I say, the defendant is demonstrably insolvent quite apart from the presumption of insolvency.

[8] I declined the company's request for a further adjournment and indicated it was now for the plaintiff to indicate to the Court course it wished to adopt. I stood the proceeding down so that Mr Angland and Ms Frowein could take further instructions and confer, Mr Angland having an indication from his instructing principal that the company as a matter of sincerity of position might be able to obtain further funding from its principal shareholder. It transpired that those funds would take further time to come from overseas. I was not prepared to make an order winding up the company conditional upon other outcomes or suspended pending other outcomes. Ms Frowein then indicated that her instructions were to proceed.

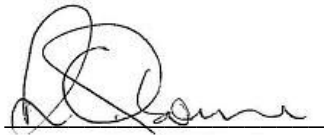
[9] The company is insolvent and the creditor is entitled to proceed.

[10] There will be an order of liquidation. I appoint David Donald Crichton and Keiran Anne Horne as liquidators.

[11] I order that the defendant pay the costs of this procedure on a 2B basis, together with disbursements to be fixed by the Registrar.

[12] I award the supporting creditors each costs on a 2B basis, together with disbursements to be fixed by the Registrar.

[13] I time this order at 2.25pm-

A handwritten signature in black ink, appearing to read 'Goodman', written over a horizontal line.

Goodman Steven Tavendale Reid, Christchurch
J S Angland, Christchurch