

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

CIV-2009-485-1947

UNDER the Companies Act 1993

BETWEEN MINTER ELLISON RUDD WATTS
Plaintiff

AND NORTHERN CREST INVESTMENTS
LIMITED
Defendant

AND ROBT. JONES HOLDINGS LIMITED
NEIL AND SARAH INGLESON

Hearing: 23 November 2009

Appearances: J. Douglas - Counsel for Plaintiff
T. Stapleton - Counsel for Defendant
D.G. Chesterman - Counsel for Supporting Creditor, Robt. Jones
Holdings Ltd
W. Aldred - Counsel for Supporting Creditors, N & S Ingleson

Judgment: 23 November 2009

ORAL DECISION OF ASSOCIATE JUDGE D.I. GENDALL

Solicitors: Minter Ellison Rudd Watts, Solicitors, PO Box 2793, Wellington
Terence Stapleton, Barrister, PO Box 25420, Wellington
Gillespie Young Watson, Solicitors, PO Box 30940, Lower Hutt
Ellis Law, Solicitors, PO Box 4516, Auckland

[1] Before the Court today is an application by the plaintiff for an order to place the defendant company into liquidation. This is a first call of this matter.

[2] Appearances in support of the application have been filed by Robert Jones Holdings Limited and Neil and Sarah Ingleson. Although not filed, I understand a further appearance in support by a creditor, BDO Spicers has been noted.

[3] At the outset counsel for the plaintiff indicated to the Court that a payment proposal had just been received from the defendant which, as I understand it, entails a substantial part payment of the debt claimed being made before the end of 2009 with a further payment early in 2010.

[4] On this basis before me, counsel for the plaintiff requested that this matter might be adjourned to a call early in the New Year 2010.

[5] Counsel for the defendant, Mr. Stapleton, confirmed that the defendant concurred with this request and he advised further that a creditor in support, BDO Spicers, also supported the adjournment request.

[6] Ms. Aldred, counsel who appeared for the creditors in support, Neil and Sarah Ingleson indicated to the Court that she had no instructions to either consent to the adjournment sought nor to oppose that adjournment.

[7] Mr. Chesterman who appeared for Robert Jones Holdings Limited, a further creditor in support, however, raised a number of issues. I now turn to deal with those issues.

Standing of the Defendant to Oppose the Present Liquidation Application

[8] Mr. Chesterman contended that the Court here should not hear from the defendant in this matter as it was out of time in filing any opposition or statement of defence to the present liquidation application.

[9] Notwithstanding this submission, under all the circumstances here, I am persuaded that the Court needs to have all properly available material before it and, in so far as leave might be required for the defendant to oppose the present application and file a statement of defence, that leave should be granted.

[10] Leave (if required) is therefore granted to the defendant to oppose the present application before the Court and to file any statement of defence required.

Application to add Robert Jones Holdings Limited as a Plaintiff

[11] The second issue raised by Mr. Chesterman today related to an application he made to the Court today for leave to add Robert Jones Holdings Limited as a plaintiff to this proceeding pursuant to r 31.14 High Court Rules.

[12] He advanced this application on the basis that Robert Jones Holdings Limited is a “creditor” of the defendant and therefore is entitled to itself bring an application to place the defendant company into liquidation under s. 241(2)(c) Companies Act 1993. As such, Robert Jones Holdings Limited in Mr. Chesterman’s submission is a creditor who under r 31.14 High Court Rules is entitled to be added as a plaintiff in this proceeding.

[13] So far as the claim by Robert Jones Holdings Limited to be a creditor is concerned, it is clear that pursuant to a judgment issued in this Court on 23 September 2009 summary judgment was granted in favour of Robert Jones Holdings Limited against the defendant for a substantial sum.

[14] As I understand the position, a statutory demand was then served by Robert Jones Holdings Limited upon the defendant around 25 September 2009, claiming the amount outstanding under this judgment but this remained unpaid.

[15] Matters proceeded and it appears on 15 October 2009 Robert Jones Holdings Limited and the defendant company entered into a Deed of Settlement with respect to both this summary judgment and a future quantum amount alluded to in the judgment.

[16] It appears, however, that a condition contained in that Deed of Settlement for payments to be made by the defendant promptly was not met in that a substantial payment of some \$285,000.00 was not paid to Robert Jones Holdings Limited by the due date of 30 October 2009 as promised.

[17] In my view, at the least Robert Jones Holdings Limited remains a substantial creditor of the defendant for the amount for which summary judgment was granted in its favour at the end of September 2009.

[18] I am satisfied therefore that as such it is appropriate here to grant leave to add Robert Jones Holdings Limited as a plaintiff in terms of r 31.14 High Court Rules.

[19] An order is now made granting leave to the addition of Robert Jones Holdings Limited as a plaintiff in this proceeding CIV-2009-485-1947.

Adjournment Request

[20] This leaves outstanding the issue of the adjournment to the end of January 2010 sought by the defendant and agreed to by the plaintiff here.

[21] Under all the circumstances outlined to the Court today I am satisfied this adjournment is appropriate.

[22] This matter is therefore adjourned to a call at 10.00 am on 26 January 2010.

[23] In so far as it may be relevant costs with respect to matters before the Court today are reserved.

‘Associate Judge D.I. Gendall’