IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

CIV-2009-409-613

UNDER	the Companies Act 1993
BETWEEN	GBR INVESTMENT LIMITED Plaintiff
AND	GOOSE BAY RANCH HOLDINGS LIMITED First Defendant
AND	MOANA INVESTMENT PROPERTY LIMITED Second Defendant
AND	MAKURA SETTLEMENT LIMITED Third Defendant
AND	PK CONSTRUCTION LIMITED Fourth Defendant

Hearing: 16, 17 & 18 November 2009

Appearances: A. Forbes QC and K. Foley - Counsel for Plaintiff
H. Van Schreven & J. Angland - Counsel for First, Second, Third and Fourth Defendants
G.J. Ryan - Counsel for Interim Liquidators

Judgment: 27 November 2009 at 4.00 pm

JUDGMENT OF ASSOCIATE JUDGE D.I. GENDALL

This judgment was delivered by Associate Judge Gendall on 27 November 2009 at 4.00 pm pursuant to r 11.5 of the High Court Rules.

Solicitors: Buddle Findlay, Barristers & Solicitors, PO Box 2929, Christchurch 8140
Clark Boyce, Lawyers, PO Box 25433, Christchurch 8144
Duncan Cotterill, Solicitors, PO Box 5, Christchurch

[1] Before the Court are two applications:

(a) An application by the plaintiff GBR Investment Limited ("GBR Investment") under s. 241(4)(d) Companies Act 1993 ("the Act") for orders to place each of the first, second, third and fourth defendants into liquidation.

(b) An application by the defendant companies for removal of the interim liquidator appointed on GBR Investment's without notice application for each of the defendant companies on 31 March 2009.

[2] GBR Investment's liquidation application is opposed by each of the defendant companies and the application by the defendants opposed by GBR Investment.

[3] An important recent development has occurred which affects an aspect of this proceeding. On 2 November 2009 the fourth defendant, PK Construction Limited ("PK Construction"), was placed into liquidation by order of this Court on the application of a third party creditor, City Care Limited. The interim liquidators of PK Construction Mr. David Donald Crichton ("Mr. Crichton") and Ms. Kieran Anne Horne ("Ms. Horne") were appointed permanent liquidators.

[4] As a result, GBR Investment no longer needs to seek the liquidation of PK Construction here.

[5] Mr. Crichton and Ms. Horne at this point, however, remain as interim liquidators of the first, second and third defendants. Mr. Ryan advised that he appears as counsel for the interim liquidators here simply as a courtesy to the Court. This is noted.

Background Facts

[6] GBR Investment is an investment company and has as its sole director, Mr. Grigori Koulanov ("Mr. Grigori Koulanov"). The effective control of the plaintiff lies with Mr. Grigori Koulanov and other members of his family including, in

particular, his father Mr. Nikolai Koulanov ("Mr. Nikolai Koulanov") who together in this judgment are called "the Koulanovs".

[7] The first defendant, Goose Bay Ranch Holdings Limited ("GBRH") is a farming and tourist development company in which GBR Investment owns a minority shareholding. The second to fourth defendants, Moana Investment Property Limited ("Moana"), Makura Settlement Limited ("Makura") and PK Construction are wholly owned subsidiaries of GBRH.

[8] The sole director of GBRH, Moana, Makura and PK Construction is Mr. Seng Bou (Paul) Keung ("Mr. Keung").

[9] The present shareholders of GBRH are:

(a) GBR Investment the Koulanov's company as to 1,099,500 shares (a 12.2% share);

(b) GBR Trustees Limited ("GBR Trustees") a company broadly owned and controlled by Mr. Keung as to 7,636,500 shares (a 84.6% share);

(c) Ballantyne Trustees Limited a company controlled by Ms. Yvonne Ballantyne ("Ms. Ballantyne"), a friend of the defendant as to 132,000 shares (a 1.5% share);

(d) Mr. Bruce Raymond Head ("Mr. Head"), a relative and business associate of Mr. Keung and Mrs. Averil Noeline Head his wife as to 66,000 shares (a 0.75% share); and

(e) Calm Water Enterprises Limited Pty Limited an Australian company controlled by Mr. Keung's sister, as to 66,000 shares (a 0.75% share).

[10] According to Mr. Keung, once an agreed restructuring arrangement for the company was to be in place and the total share capital increased to 13,200,000 shares, the effective percentage shareholding in GBRH was then to revert back to:

(a) GBR Investment – 8.33%;

(b) GBR Trustees – 89.67%;

(c) Ballantyne Trustees Limited – 1%.

(d) Mr. and Mrs. Head – 0.5%.

(e) Calm Water Enterprises Pty Limited – 0.5%.

[11] In addition to the subsidiary companies Moana, Makura and PK Construction, GBRH formerly held all the shares in another company Beach Road Commercial Limited ("Beach Road"). These shares in Beach Road, however, were transferred to Keung Custodian Limited a company associated with Mr. Keung on 7 October 2008.

The Goose Bay Property

[12] Between March 2003 and April 2004 Goose Bay Ranch Limited, a company associated with Mr. Keung acquired a 314.375 hectare farm property at Goose Bay, Kaikoura ("the Goose Bay property") for a total price I understand of $500,000.00.

[13] On 13 December 2006 Goose Bay Ranch Limited sold the Goose Bay property to Keung Developments Limited, a company owned and controlled by Mr. Keung at a stated price of $4,450,000.00 (plus GST). Mr. Keung contends that this $4,450,000.00 (plus GST) price was supported by a registered valuation and took into account zoning changes proposed and improvements which had been made on the property since its original purchase.

[14] On 14 August 2007 Mr. Keung as agent for GBRH (which was then unincorporated) entered into an agreement to purchase the Goose Bay property from his company Keung Developments Limited for $5,500,000.00 (plus GST). This agreement for sale and purchase amongst other things provided:

(a) That the vendor, Keung Developments Limited would construct a new Manager's residence on the property in accordance with existing plans and specifications up to a budget of $500,000.00; and

(b) If Keung Developments Limited had not completed construction of the Manager's residence before settlement, the sum of $250,000.00 would be held in Trust until the fifth working day following completion of the residence.

GBR Investments' Shareholder Interest in GBRH

[15] Also on 15 August 2007, Mr. Grigori Koulanov (or his nominee) agreed to purchase from the existing 100% shareholder GBR Trustees the 8.33% shareholding in GBRH for a price of $2,500,000.00. This purchase was on the basis that prior to settlement of the share acquisition, the company GBRH would complete its purchase of the Goose Bay property and this property and the company itself would be free of any debt or mortgage.

[16] On 19 October 2007 GBR Investment was incorporated and Mr. Grigori Koulanov nominated it as purchaser into the agreement for the purchase of the shares. Settlement occurred a short time after on 1 November 2007 when the $2,500,000.00 was paid by GBR Investment to GBR Trustees.

[17] Effectively therefore by 1 November 2007 GBR Investment owned one-twelfth (8.33%) of the shares and Mr. Keung's company, GBR Trustees owned eleven-twelfths of the shares in GBRH. At that time the only asset of GBRH was the Goose Bay property which had been purchased from Keung Developments Limited for $5,500,000.00 (plus GST). Mr. Keung has said GBRH also had then the benefit of "goodwill" and his development plans for the property.

[18] Settlement of the transfer of the Goose Bay property from Keung Developments Limited to GBRH was also completed on 1 November 2007.

[19] Back tracking somewhat, there seems to be little dispute that the Koulanov's investment through GBR Investment in GBRH came about as a result of a friendship that had developed between Mr. Keung and Mr. Grigori Koulanov in particular during 2007. At the initial stages and up to about mid 2008 it appears that a reasonably high level of trust and confidence had developed from this friendship.

[20] As background to the acquisition by the Koulanovs' interests of the GBRH shareholding, it appears that in mid 2007 Mr. Keung told Mr. Grigori Koulanov about the Goose Bay property he owned in Kaikoura and about his visions and ideas for developing the property into a farming and eco tourism business and sustainable hunting game park. Mr. Keung apparently took the Koulanovs and their family to the Goose Bay property and Mr. Keung offered them the opportunity to invest in the property through a development company he was forming.

[21] According to Mr. Grigori Koulanov, Mr. Keung initially told the Koulanovs that the Goose Bay Property was worth $17,000,000.00. On another occasion, however, it is alleged he said the property was worth $21,000,000.00. The Koulanovs say Mr. Keung indicated that a house would be built on the property for the Koulanov family and this would be included in the share price of $2,500,000.00 for a one-twelfth shareholding in the new company. This placed a total share value on the new company GBRH at $30 million. The Koulanovs contend that Mr. Keung said he had others interested in becoming shareholders in the venture and that his intention was to sell further shares and use the money to develop the Goose Bay property.

[22] It is the Koulanovs' position that on the strength of the representations made by Mr. Keung they agreed to purchase the shares offered and incorporated their company GBR Investment for this purpose. The Koulanovs understood that part of their $2,500,000.00 share purchase would be applied to repay an existing mortgage over the Goose Bay property in order that GBRH was entirely debt free at the time of settlement.

[23] The Koulanovs contend that only a short time after their initial investment in November 2007, problems began to emerge. Amongst these the Koulanovs say were issues with the house that was to be constructed on the property, management fees taken and other payments made by Mr. Keung. Also, they complain that Mr. Keung had failed to introduce any new shareholders. The Koulanovs say they attempted to work through these and other issues with Mr. Keung but found him unwilling to fairly consider and address their concerns. Mr. Keung strongly disputes these allegations.

Papprill Hadfield & Aldous Solicitors Nominee Company Limited

[24] Originally the Goose Bay property owned by Mr. Keung's company, Keung Developments Limited, was subject to a mortgage to Papprill Hadfield & Aldous Solicitors Nominee Company Limited and I understand there may have been something in the region of $1,450,000.00 owing under this mortgage. This amount was repaid on settlement of the sale of the Goose Bay property to GBRH on 1 November 2007. Notwithstanding this, with the Koulanovs' agreement, the $1,450,000.00 mortgage was re-advanced to the new mortgagor company, GBRH from 1 November 2007 on the basis that the monies advanced would be utilised as a form of over draft for the company's future operations.

The Beach Road Property

[25] On 9 June 2008, and with the approval of the Koulanovs, a commercial property at 114 Beach Road, Kaikoura was purchased by a new company incorporated on 1 May 2008 as a wholly owned subsidiary of GBRH, Beach Road Commercial Limited. This purchase was at a price of $725,000.00 (plus GST). Settlement was completed on 9 June 2008 it seems from funds made available to GBRH under the Papprill Hadfield & Aldous Solicitors Nominee Company Limited mortgage.

The Makura Road Property

[26] Also on 1 May 2008 another company Makura, the third defendant, was incorporated as a wholly owned subsidiary of GBRH. Then, on 4 July 2008 after nomination into a contract as purchaser, it completed the purchase of a property at Makura Road, Kaikoura at a price of $230,000.00 (including GST). The funds for this purchase also appear to have been advanced to GBRH under the Papprill Hadfield & Aldous Solicitors Nominee Company Limited mortgage.

The Moana Road Property

[27] On 3 March 2008 Mr. Keung had entered into an agreement for either himself (or his nominee) to purchase a farm property at 20 Moana Road, Kaikoura at a price of $1,600,000.00 plus GST. This agreement was subject to a due diligence clause but was not subject to finance.

[28] Again, on 1 May 2008, Mr. Keung arranged for Moana to be incorporated as a wholly owned subsidiary of GBRH. The purpose was for this company to become the ultimate purchaser of the Moana Road property and Mr. Keung nominated it into the contract as purchaser.

[29] Mr. Keung contends that soon after the contract for the Moana Road property was signed, the Koulanovs made a promise that they would fund the purchase. In his evidence it is clear that Mr. Keung blames the Koulanovs for the initial settlement default. The Koulanovs in turn say (and this appears to receive confirmation from Mr. Head in his evidence before the Court) that they confirmed from the outset and consistently right up to November 2008 that they would act purely as a back-up to purchase the Moana Road property themselves if GBRH was unable to do so, and in that event they would hold the property ultimately for the company. Notwithstanding this, around mid-July 2008 the Koulanovs say Mr. Keung represented in an email to them that he had arranged finance to complete the purchase of the Moana Road property and later on a number of occasions including finally in November 2008 he declined their back-up purchase offers. Earlier, a deposit of $188,125.00 had been paid to the Moana Road vendor from GBRH's funds via a further advance made under the Papprill Hadfield & Aldous Solicitors Nominee Company Limited mortgage.

[30] Settlement under the purchase agreement for the Moana Road property was due to be completed on 1 September 2008 but no finance was in place to complete at that time. Mr. Keung then negotiated an extension of time for settlement to 13 November 2008 on the basis of an additional payment of $100,000.00 to be made to the vendor. This amount was also paid from GBRH's funds, as were "management fees" of $110,000.00 paid to entities of Mr. Keung.

[31] From around 29 August 2008 it is alleged that Mr. Keung and his partner resided at the residence at the Moana Road property as their home and had significant work carried out at the property at the expense of GBRH. The Koulanovs contend that this work arranged by Mr. Keung to be carried out at GBRH's expense, although at no time detailed for their information by Mr. Keung, must have been extensive as it seems that between $250,000 and $450,000.00 was spent. Whether or not this is reflected in the books and accounts of GBRH, however is unknown.

[32] Finally, towards the end of November 2008, Mr. Keung had incorporated another company owned and controlled by himself, Moana Coastal Farms Limited and this company managed to borrow funds to itself complete the purchase of the Moana Road property. The deposit for the Moana Road purchase and other monies alleged to have been paid by GBRH towards Moana Road it appears may still be outstanding to GBRH.

Further Shareholders' Contribution

[33] On 1 May 2008, the Koulanovs provided a further shareholder's contribution of $400,000.00 to GBRH. This was apparently made as part of a proposed restructure of the company and in order to complete the purchase of the Beach Road and Makura Road properties. The Koulanovs contend that they made available this further contribution on the basis and in reliance on the fact that Mr. Keung had told them that Australian investors (the Kazal brothers) had agreed to invest in GBRH.

[34] Then, on 31 May 2008 the Koulanovs learned that the Kazals had not agreed to invest but nevertheless the restructuring arrangement proceeded. As I understand the position, this had the effect of Mr. Keung's company GBR Trustees converting $5,500,000.00 of its share capital into a loan to GBRH of this figure. This loan was to be repayable on demand provided that GBRH had either received proceeds from the issue of new shares or had sufficient funds from other sources to repay the loan. A possible reconversion of this loan into share capital was also provided for.

P.K. Construction and The Beach Road Swap

[35] As I have noted above, the Beach Road property was purchased on 9 June 2008 at a price of $725,000.00 (plus GST) by Beach Road Commercial Limited a wholly owned subsidiary of GBRH. Subsequently Mr. Keung effected what was a swap of the shares in Beach Road Commercial Limited for shares in a construction company which he owned and operated, P.K. Construction.

[36] It appears to be accepted that the property owned by Beach Road Commercial Limited was worth around $800,000.00 at the time of the swap while P.K. Construction was said to have equity of around $270,000.00. There was accordingly to have been a cash component of approximately $500,000.00 paid to GBRH but it appears there is some doubt as to whether this amount has been fully paid.

[37] And, as I have noted above, P.K. Construction was placed into liquidation on 2 November 2009 and, as I understand the position, according to the liquidators this company is likely to have a shortfall of assets over liabilities.

Shareholders' Agreements

[38] After the initial investment by GBR Investments in GBRH the parties entered into a first Shareholders' Agreement dated 15 August 2007 which broadly noted first that the intention of the parties was to hold the Goose Bay Property as a long-term investment, secondly that the primary objectives of GBRH would be to maximise opportunities on the property and elsewhere in the farming and eco-tourism businesses and to establish there a sustainable hunting game park and thirdly GBRH would endeavour to provide additional land holdings by acquiring neighbouring properties in order to maximise shareholder value.

[39] Amongst other matters, this first Shareholders' Agreement:

(a) Reaffirmed the appointment of Mr. Keung as the company's initial sole director.

(b) Authorised Keung Investments Limited to act as Farm and Project Manager and to engage a full time farm manager.

(c) Provided that GBR Investments and GBR Trustees would not sell their shareholding within the first 3 years from settlement.

(d) Provided that GBRH would keep proper books of accounts and the Board would ensure each shareholder was supplied with monthly management accounts and such other trading.

As I understand it, a Second Shareholder Agreement was entered into on 31 May 2008.

Interim Liquidators' Report

[40] I have noted at para. [5] above that Mr. Crichton and Ms. Horne remain at this point as interim liquidators of GBRH, Moana and Makura. In her capacity as an interim liquidator, Ms. Horne has provided an affidavit dated 11 November 2009 which she describes as "a report to the Court of the affairs of these companies to assist it in determining the plaintiff's (liquidation) application."

[41] At para. [23] of this affidavit Ms. Horne deposes:

> "23. Mr. Keung makes several statements at paragraph 22 of his affidavit regarding the state of the companies. These statements indicate an ongoing need for other entitles to inject funds for the ongoing survival of the business of the companies. They also provide evidence of intermingling of the affairs of the companies and other entitities associated with Mr. Keung."

and at para. [43]:

> "43. Despite numerous requests to Mr. Keung that I be provided with access to the financial records of the companies, including bank statements, valuations, details of intercompany transactions etc, they have never been provided."

[42] And, at paras. 61 and 62 of her affidavit Ms. Horne addresses the utilisation of the $1,450,000 Papprill Hadfield Aldous Nominees Mortgage by Mr. Keung as director of GBRH and states:

> "61. Analysis of the cheque account for GBRH following the first transfer shows that funds transferred to the cheque account were utilised as follows (volume 3, pages 893 and 894 of exhibit "KAH-1"):
>
> | | | |
> |---|---|---|
> | 11/2/08 | Paul Keung | $100,000 |
> | 15/2/08 | Paul Keung | $100,000 |
> | 20/2/08 | Interest on Mortgage | $12,083.33 |
> | 29/2/08 | Paul Keung advance | $35,000.00 |
> | | | |
> | 10/3/08 | Paul Keung advance | $25,000.00 |
> | 10/3/08 | Management fee | |
> | | On behalf of Moana | $100,000 |
> | 19/3/08 | Deposit on Moana property | $188,125 |
> | 20/3/08 | Interest on Mortgage | $12,083.33 |
> | | | |
> | 9/4/08 | Keung Investments | |
> | | WIP & Management fee | $26,832.00 |
> | 10/4/08 | KI WIP & Management fee | $10,000.00 |
> | 17/4/08 | KI WIP & Management fee | $36,250 |
> | 21/4/08 | Interest on Mortgage | $12,083.33 |
> | 22/4/08 | Paul Keung advance | $3,000 |
> | 30/4/08 | Paul Keung advance | $100,000 |
> | 30/4/08 | Keung Investments advance | $100,000 |
> | 1/5/08 | Makura | $50,000 |
> | | | |
> | 9/6/08 | Beach Road | |
> | | (reimbursement GBR contribution) | $263,754 |
> | 9/6/08 | Makura | $180,000 |
> | 20/6/08 | Interest on Mortgage | $12,385.41 |
> | 25/6/08 | Legal fees | $17,638.13 |
> | 25/6/08 | Accountancy | $22,500 |
> | 7/7/08 | WIP & management fee | $20,000 |
> | 11/7/08 | WIP & management fee | $20,000 |
> | 21/7/08 | Interest on Mortgage | $12,385.41 |
> | 1/8/08 | Keung investments | $20,000 |
> | 4/8/08 | PK Construction | $10,000 |

> 62. Given the extent to which the mortgage funds were utilised to make advances and payments to Mr. Keung and associated entities I would consider that GBRH could be faced with some difficulty in asserting that the interest cost on the same is in fact a deductible business expense. Alternatively, the company could incur a significant FBT liability in respect of the advance of these low interest loans."

[43] It seems also to be of some concern to Ms. Horne and others that these payments by GBRH noted in the cheque account and ledgers for the company (as outlined at para. 61 of Ms. Horne's affidavit) may not be reflected in the only set of annual accounts prepared for the company – those for the period ending 31 May 2008. Draft copies of those accounts also seem to differ appreciably in the financial position area. The April 2009 draft accounts show substantial advances to Mr. Keung and his entities totalling $307,800 as assets of the company, whereas the final accounts for GBH prepared mid 2009 have these entries removed. Mr. Keung in his evidence endeavoured to explain this by saying that journal entries reversing management fees (and presumably also these advances) were made by GBRH in mid 2009. Another issue of concern raised by Ms. Horne related to unexplained mortgages registered by Mr. Keung in May 2009 over the Makura Road and Goose Bay properties in favour of his entities securing in each case $1,000,000.00, these mortgages being registered without the consent of the interim liquidators.

[44] Next, at paragraphs 63-65 of her affidavit, Ms. Horne goes on to say:

> "63. Within the financial records for GBRH were a collection of invoices issued from Keung Investments Limited to GBRH. These invoices however do not reconcile to the figures paid above. They include among other things, numerous entertainments charges in relation to meetings, the purchase of a gun, the purchase of a washing machine and invoices for general management fees and Sky subscription. Some specific invoices include: .....
>
> 64. Given that payments do not appear to have been made directly against these invoices a full reconciliation of all company current accounts is, in my opinion, still required. In a liquidation situation several of the charges detailed above would also, in my opinion, require further investigation.
>
> 65. None of the assets identified in these invoices have at any point been disclosed to me by Mr. Keung as assets of the company."

[45] And finally, and importantly, in her conclusion at paragraphs 166 to 169 of her affidavit, Ms. Horne deposes:

> "166. The level of intermingling of company affairs is significant and is likely to be difficult to disentangle. Although I now have all company records, the practice of banking income for an entity into another entity represents a breach of basic accounting and management principles and will further complicate the ability to accurately determine the extent of assets and liabilities of each entity.
>
> 167. Mr. Keung has ensured that for all major transactions resolutions are in place that record that these transactions are in the best interests of the entities. However he appears to have failed to keep records which support or substantiate such a conclusion.
>
> 168. In my view, Mr. Keung has shown significant disregard to the process of the interim liquidations of the companies. As outlined above, he has failed to disclose company assets and company bank accounts, reverted income of PK Construction to his own entitles, and transferred and encumbered assets of the companies.
>
> 169. The extent of advances and management fees paid by the companies to Mr. Keung and his associated entities have, in my opinion, placed the companies in financial hardship and rendered them unable to pay their debts as they fall due. Of the companies, three entities (GBRH, Makura and Moana) generate no income at all and the fourth (PK Construction) has generated significant losses. In the context of the trading of the companies, in my opinion there seems little justification for this."

Preliminary Jurisdiction Issue

[46] GBR Investment's application seeks liquidation orders for the companies in question under s. 241(4)(d) of the Act on the sole basis that the plaintiff GBR Investment is a shareholder in each of those defendant companies. It is clear, however, that although the plaintiff is a shareholder with respect to GBRH, it is not a shareholder in Moana or Makura, the second and third defendants. Instead, these companies are wholly owned subsidiaries of GBRH the first defendant with their shares of course held by GBRH.

[47] An issue has arisen therefore as to whether the plaintiff has status as a shareholder to bring the present liquidation application against Moana or Makura pursuant to s. 241(2)(c)(iii) of the Act.

[48] In this regard, Section 241(2) of the Act provides:

"(2) A liquidator may be appointed by –

(a) special resolution of those shareholders entitled to vote and voting on the question; or

(b) the board of the company on the occurrence of an event specified in the constitution; or

(c) the Court, on the application of: -

(i) the company; or

(ii) a director; or

(iii) a shareholder or other entitled person; or

(iv) a creditor (including any contingent or prospective creditor); or

(v) if the company is in administration, the administrator; or

(vi) the Registrar; or

(d) a resolution of the creditors passed at the watershed meeting held under section 239 AT."

[49] This particular issue was addressed directly by Dobson J earlier this year in *GCA Legal Trustee (2004) Ltd v Consultant Management Services Ltd* HC DUN CIV-2007-412-56, 26 May 2009. There, Dobson J stated:

> "[15] Whilst the state of the evidence is somewhat unsatisfactory, I intend to rely on the Companies Office records. Accordingly, the first plaintiff companies have standing as shareholders in the second and third defendants. On any "look through" basis, the position of the first plaintiffs does give them an ownership right in the fourth and fifth defendants [companies owned by companies which the plaintiffs are shareholders of], but not status as shareholders. Standing to bring an application is extended in s 241(2)(c)(iii) to "…a shareholder or other entitled person" with the latter expression defined in s 2 as including "…a person upon whom the constitution confers any of the rights and powers of a shareholder". There was no suggestion that the constitutions of the fourth or fifth defendant companies extend shareholder rights to those who are shareholders in their parent company.
>
> [16] In most contexts, the circumstances of operation of the Big Sky Group justify treating shareholders in the parent companies as if they were shareholders also in the subsidiaries. Certainly, all the other litigation between the shareholding factions has been conducted on the over-all basis of a one third/two thirds split between the Carr and Humphries' interests. However, it would be impossible to confine the circumstances in which indirect interests were recognised as "shareholders" in a way that prevented abuse of any such extension of the concept of shareholders beyond those registered as such. Accordingly, the first plaintiffs cannot have standing beyond their status as registered shareholders of the second and third defendants.
>
> …" (emphasis added)

[50] Considering the consequences of this conclusion in grouped company situations, in his judgment, Dobson J. went on to note at para. [74]:

> "[74] I am conscious of the potential inconsistency arising by making orders for the appointment of liquidators to some only of a group of companies that appear to have operated very much jointly. That outcome is caused by the limitation in the standing of the plaintiffs to bring these applications. Had there been standing for either of the plaintiffs to seek the orders in respect of the first and fourth and fifth defendants, then I would have made the same orders in respect of those remaining companies. The position in respect of the fourth and fifth defendants will be a matter for the liquidator of the second defendant, which will assume status as a shareholder of the fourth and fifth defendants, so that jurisdiction would arise, at the initiative of the liquidator, to bring them within the companies in liquidation."

[51] Before me, Mr. Forbes QC for the plaintiff GBR Investment confirmed that its present application to place all defendant companies into liquidation was brought solely in its capacity as "a shareholder" in terms of s. 241(2)(c)(iii) of the Act and not as a creditor, contingent or prospective creditor, or otherwise. Addressing this aspect, I am satisfied that a proper reading of s.241 (2)(c) of the Act must lead to the inevitable conclusion that the list of potential applicants to any liquidation application outlined there is exclusive. That said, and given that the decision in *GCA Legal Trustee (2004) Limited* is directly on point, there is no other conclusion to be reached in the present case but that the plaintiff, GBR Investment, not being a named shareholder of the second and third defendants Moana and Makura, has no standing to bring this liquidation application for those companies in terms of the Act.

[52] The plaintiff's application for orders for liquidation of Moana and Makura is accordingly dismissed.

[53] That said, it must follow also that, as no valid application for liquidation of Moana or Makura was before the Court at the time, then the earlier 31 March 2009 orders appointing interim liquidators of those companies, in terms of the requirements of s.246 of the Act were made without jurisdiction. In dealing with s. 246 of the Act, *Brookers Company & Securities Law* at para. CA246.02 notes:

> "If a company is not in fact put into liquidation, it follows that the Court has no power to appoint an interim liquidator and any existing appointment will come to an end: *Re A Company* [1973] 1WLR1566; ... *JC Scott Constructions v Mermaid Waters Tavern Pty Limited* [1983] 2QD243; ... *Re Highfield Commodities Limited* [1984] 3 ALLER884."

[54] An order is to follow removing the interim liquidators of Moana and Makura.

[55] Notwithstanding that this removal order is to be made, before me Mr. Forbes QC for GBR Investments suggested that there would be a significant down side in allowing Moana and Makura to pass out of interim liquidation prior to any order being made with respect to the parent company GBRH. As I have noted above, the fourth defendant, PK Construction is already in liquidation. Mr. Forbes QC contended that it would be unusual to have two out of four insolvent companies in the same group not being placed into liquidation when the holding company and one subsidiary company were. But it is clear that if an order placing GBRH into liquidation is to be made here then the liquidators appointed, if they saw fit, could pass a resolution to put the subsidiary companies into voluntary liquidation on the basis of their control as the sole shareholder. The question as to whether GBRH is to be placed into liquidation here is to be dealt with in subsequent paragraphs of this judgment. If a liquidation order is to be made, then in my view it would be entirely proper for the appointed liquidators to consider placing the subsidiary companies, Moana and Makura into voluntary liquidation on the basis I have noted above.

[56] I return now to GBR Investments' application to place the parent company GBRH into liquidation. As already noted, GBR Investment does have standing as a shareholder of GBRH to bring that application.

Application to Place GBRH into Liquidation

[57] The application to place GBRH into liquidation is brought under the "just and equitable" ground for liquidating a company under s. 241(4)(d) of the Act. *Brookers Company & Securities Law* at para. CA241.03(4) addresses this ground and provides (in part):

> "(4) **Just and Equitable Grounds**
>
> Section 241(4)(d) empowers the Court to appoint a liquidator on just and equitable grounds. Ebrahimi v Westbourne Galleries Ltd [1973] AC 360; [1972] 2 All ER 492 (HL) established influential guidelines. Lord Wilberforce emphasised that the Court should not be too timorous in giving full force to the words of the provision. His Lordship commented (at p 379; p 500) that a company is more than a legal entity and that the rights, expectations, and obligations of individuals within the company should be recognised:

> "The 'just and equitable' provision does not … entitle one party to disregard the obligation he assumes by entering a company, nor the court to dispense him from it. It does, as equity always does, enable the court to subject the exercise of legal rights to equitable considerations; considerations, that is, of a personal character arising between one individual and another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way."
> In Jenkins v Supscaf Ltd 26/4/06, Heath J, HC Auckland CIV-2005-404-5222, Heath J conducted a review of case law relevant to the application of s 241(4)(d) (in the context of a small joint venture company where one party had lost trust and confidence in the other) and held that s 241(4)(d) places no fetter upon the discretion of the Court, either in relation to the factors justifying an order, or in relation to the circumstances where an order must be refused. The Court proceeded on the basis that it must balance all relevant factors available for consideration at the time the order was sought.
> A party who wishes to rely on the "just and equitable" provision must come to Court with clean hands. Thus, if the breakdown in trust or the deadlock is caused by the conduct of the petitioner, he or she will not be able to rely on s 241(4)(d). In Vujnovich v Vujnovich [1989] 3 NZLR 513; (1989) 4 NZCLC 65,186 (PC), Lord Oliver pointed out that this rule applied where the misconduct was the cause of the breakdown in confidence and not merely where it is a symptom of the breakdown. Where there is no clear cut apportionment of blame, the real determinant for granting relief should be the existence of the breakdown, not the cause of it: Re Rongo-ma-tane Farms Ltd (1987) 3 NZCLC 100,145.
>
> In the past, if the Courts believed a remedy other than liquidation was reasonably available to the applicants, it would decline to order liquidation: s 220(2) unamended 1955 Act; Re Gerard Nouvelle Cuisine Ltd (1981) 1 NZCLC 95,016. Although this is no longer a requirement under the Act, it is likely that the Courts will regard the question of whether the applicants are acting unreasonably in seeking liquidation rather than another remedy, as a factor in evaluating whether liquidation would be just and equitable. In Cornes v Taylor (t/a Kawerau Hotel (1994) Ltd) (1999) 8 NZCLC 261,815, the Court held that neither justice nor equity to the plaintiff required liquidation of the defendant company while his position could be satisfactorily protected by the making of orders under s 174. The more recent case of The Orthodontic Centre Ltd v M D Courtney Orthodontics Ltd 14/9/07, Gendall J, HC Palmerston North CIV-2006-454-238; CIV-2006-454-365; CIV-2007-454-419, came to the same result. Gendall J quoted the observations of Regan J in Marryatt v PC Home Hire Ltd [2002] 9 NZCLC 263,033 with approval: "[A]n order for the liquidation of a company [on just and equitable grounds] is seen as something of a last resort and if it is more appropriate that an order under s 174 requiring the purchase of shares because it is just and equitable to do so, then it is to be preferred."

[58] It is clear there is no fetter upon the Court's discretion when considering applications under s. 241(4)(d) of the Act in relation to the factors justifying an order for liquidation – *Jenkins v Subscaf Limited.* Orders for liquidation under this "just and equitable" ground have been made where a serious deadlock has arisen between directors and shareholders of a company. A breakdown in personal relations

between those parties has also been seen to justify the making of a liquidation order – *Re Gerard Nouvelle Cuisine Limited* and *Re Rongo-ma-Tane Farms Limited*.

[59] Deadlocks may also arise when the principal shareholders of a company are not able to work together in any way for the benefit of the company – *Jaycue Investments Limited (in liquidation) v J Fox Developments Limited*, 2 April 1996, High Court Auckland, Tompkins J, M952/95.

[60] Similarly if there is a justifiable loss of confidence in the conduct and management of a company the Court may find it is just and equitable to appoint a liquidator – *Morgan Roche Limited v Registrar of Companies* [1987] 3NZCLC 100,189.

[61] Turning to consider now the application to place GBRH into liquidation on the just and equitable ground in s. 241(4)(d) of the Act it is clear from the evidence before the Court that the parties here went into business together through GBRH on the basis of a relationship of trust and confidence. This has been confirmed by the Koulanovs throughout in their affidavits and their evidence before the Court and also by Mr. Keung on numerous occasions in emails between the parties:

(a) 22 November 2007 email from Mr. Keung "My relationship with you is very dear to me" – plaintiff's bundle of documents 137.

(b) 27 November 2007 email from Mr Keung "Trust is something we both have been blessed with in our relationship" – plaintiff's bundle of documents page 147.

(c) 13 November 2008 email from Mr. Keung "It is very important that we have complete trust together and I need your support as a shareholder for me and the company" – plaintiff's bundle of documents 431.

(d) 8 February 2009 email from Mr. Keung "I only got into business with you based on our trusting relationship" – plaintiff's bundle of documents 530.

(e) 16 February 2009 email from Mr. Keung "You rightly trusted me in business, for good reasons that you should not sway from." – plaintiff's bundle of documents page 542.

[62] It is also in my view beyond question that the relationship between Mr. Keung and the Koulanovs has irretrievably broken down here. Although the Koulanovs through GBR Investment are only minority shareholders in GBRH, it is significant that they contributed some $2.9 million in cash to the ventures before the present irreconcilable and bitter differences arose between them and Mr. Keung's interests. From all the evidence before the Court, it is difficult to escape the conclusion that the break down in these relationships could not be more absolute. Emails from Mr. Keung dated 23 March 2009 and 1 June 2009 especially provide a ringing confirmation of this.

[63] In his email of 23 March 2009 not only to Mr. Gregori Koulanov but also to other shareholders and his own solicitors, Mr. Keung complains bitterly about the Koulanovs and states amongst other things:

> "Legal action will be taken to mitigate our losses against Buddle Findlay and the Koulanovs however."
>
> and
>
> "My first port of call re business going forward will be to sell GBRH land and assets to keep the company with surplus funds and minimal debts and find ways to protect the assets and other shareholders from the Koulanovs, taking equally aggressive measures at the least in comparison to them in all respects, however ethical and legal measures, thus much stronger actions in every respect, compared to their nonsense shot gun method."
>
> and
>
> "... So we have little hope for the JV with them (the Koulanovs) under the current circumstances, something that I have planned for over 5 years."
>
> and
>
> "Partly it (justice) would have taken place in that the Koulanovs have destroyed their own investments, however, that is not something we have to suffer under also. MIPL (Moana Investment Property Limited) is in grave danger of being insolvent now."

[64] And in his 1 June 2009 email to Mr. Gregori Koulanov which runs to some 6 pages, Mr. Keung amongst other things makes a wide range of allegations against the Koulanovs which include allegations of serious criminal misconduct, perjury, fraud, corruption and sexual misconduct. In addition, Mr. Keung in several places expresses regret that he had ever become involved with the Koulanovs. This email effectively describes the relationship between Mr. Keung and the Koulanovs as being entirely toxic rather than one that had just simply broken down. And finally, the extent of the impasse reached is emphasised when Mr. Keung states on page 2 para. 1 of the email:

> "What next, do you hire a hit man to kill me if you lose all your money, I mean this is how you operate right ....".

[65] In so far as Mr. Keung is concerned he in turn raises strong complaints (confirmed by Ms. Ballantyne at para. 32 of her 13 November 2009 affidavit and generally by Mr. Head at para. 24.4 of his 13 November 2009 affidavit) over comments made by Mr. Mark Russell the solicitor to the Koulanovs at a Shareholders' Meeting of GBRH on 2 February 2009. These were apparently to the effect that Mr. Russell expressed his concern as to the value of GBRH and stated that the current GBRH shareholders, Mr. Keung, its director and associated companies "will experience a world of grief" which he would rein down upon them unless moves were made to extradite the Koulanov's shareholding in the company in a manner satisfactory to them. It needs to be noted at this point, however, that Mr. Russell has had little opportunity himself to respond to Ms. Ballantyne's and Mr. Head's accusations.

[66] But, in any event, these and many other examples before the Court, together with the very magnitude of what are serious allegations made by each party against the other, satisfy me that there has been a fundamental break down in the relationship between the parties here such as would clearly justify the dissolution of a partnership - *Ebrahimi v Westborne Galleries Limited*. The level of distrust between the shareholders has fundamentally affected the joint enterprise carried on by GBRH and its subsidiaries.

[67] And before me counsel for the defendants, Mr. Van Schreven directly acknowledged that this was the case when he said:

> "It would be naive and unrealistic to advance any argument for a continuing relationship between the parties here given the present context which is one of a break down in their relationship of trust and confidence."

[68] Finally on this aspect it is clear that if it is to succeed in its present application, there is a need for GBR Investment as applicant to come to the Court with clean hands. On all the evidence before the Court, I am satisfied that there is no basis to suggest that the break down in trust or deadlock here has been caused solely by the conduct of GBR Investment or the Koulanovs. The position of the Koulanovs is that the relationship broke down because of increasing and justified concerns they held as to the affairs of the various companies being conducted by Mr. Keung. They state that their withdrawal of support for Mr. Keung was a justified response to the issues that had arisen and was not the cause of them. As I see it, there is substance in these contentions advanced for the Koulanovs, and given that both parties through counsel appear to accept that it is now impossible to see how Mr. Keung and the Koulanovs can remain in business together, on its face it would appear that the just and equitable ground for making an order for liquidation of GBRH has been made out.

[69] That said, the authorities including the *Orthodontic Centre Limited v MB Courtney Orthodontics Limited* and *Marryatt v PC Home Hire Limited* establish that:

> "An order for the liquidation of company on just and equitable grounds is seen as something of a last resort and if it is more appropriate that an order under s. 174 requiring the purchase of shares because it is just and equitable to do so, then it is to be preferred."
>
> – O'Regan J in *Maryatt*.

[70] Before me, both Mr. Forbes QC for the plaintiff and Mr. Van Schreven for the defendants conceded that the real issue to be determined by the Court here is whether some alternative remedy to liquidation of GBRH such as relief under s. 174 of the Act should be ordered. Both counsel appeared to accept that there is little alternative but to have the properties owned by GBRH and its subsidiaries sold. The

process by which those sales might be best achieved and the judicious untangling of the various companies' affairs seemed to be the real issues.

[71] Section 174(2) of the Act sets out possible alternative remedies for a prejudiced shareholder's application. Under that section which, by analogy, can be considered here:

> "(2) If, on an application under this section, the Court considers that it is just and equitable to do so, it may make such order as it thinks fit including, without limiting the generality of this subsection, an order –
>
> (a) Requiring the company or any other person to acquire the shareholder's shares; or
>
> (b) Requiring the company or any other person to pay compensation to a person; or
>
> (c) Regulating the future conduct of the company's affairs; or
>
> (d) Altering or adding to the company's constitution; or
>
> (e) Appointing a receiver of the company; or
>
> (f) Directing the rectification of the records of the company; or
>
> (g) Putting the company into liquidation; or
>
> (h) Setting aside action taken by the company or the board in breach of this Act or the constitution of the company."

[72] Before me, counsel for both parties appeared to accept that, under the bitter, acrimonious and uncertain circumstances of GBRH prevailing here, a requirement for one party to acquire the other parties' shares under s.174(2)(a) of the Act was not a realistic possibility as an alternative remedy.

[73] Instead, Mr. Van Schreven for the defendants contended that as an alternative order to liquidation, this Court should direct, if it is able to do so, that GBRH be placed into voluntary administration pursuant to s. 239H(1)(e) of the Act.

[74] In saying this, Mr. Van Schreven did acknowledge however that although the defendant's application for removal of the interim liquidators sought orders for removal on the basis that the company would then appoint a voluntary administrator, he now accepts that, given the provisions of s. 239I(4) of the Act, that could no longer happen. The application for removal was therefore amended to one for removal of the interim liquidators alone. Notwithstanding this, on the plaintiff's

liquidation application for GBRH, Mr. Van Schreven now seeks an order by this Court appointing a voluntary administrator.

[75] On this, s. 239L of the Act enables the Court to appoint a voluntary administrator on the application of a creditor, the liquidator (if a company is in liquidation) or the Registrar. In the present case, although there is no formal application to appoint a voluntary administrator before me, I will consider the request from the defendants on the basis that the parties broadly seek such relief as the Court sees fit or they seek relief as prejudiced shareholders in terms of s. 174(2)(c) of the Act and voluntary administration might be a possible order available as an order:

> "(c) Regulating the future conduct of the company's affairs. ..."
>
> (on this see also Brookers Companies and Securities Law at para. CA239L.4).

[76] In considering the broad purpose and objectives of a voluntary administration order, Section 239A of the Act 1993 provides:

> "The objects of this Part (Part 15A) are to provide for the business, property and affairs of an insolvent company, or a company that may in the future become insolvent, to be administered in a way that –
>
> (a) maximises the chances of the company, or as much as possible of its business, continuing in existence; or
>
> (b) if it is not possible for the company or its business to continue in existence, results in a better return for the company's creditors and shareholders than would result from an immediate liquidation of the company."

[77] This Part 15A of the Act dealing with voluntary administration was inserted into the Act on 1 November 2007 and has not been considered often by the New Zealand courts. No New Zealand cases as far as I am aware have considered voluntary administration as an alternative in an application for liquidation. Of the similar Australian regime, the Federal Court of Australia found that it is not an abuse of process to put a company into administration when it is clear that liqudation cannot be avoided: *Dallinger v Halcha Holdings Pty Ltd* (1995) 18 ACSR 835. It is enough if it can be said that an administration is likely to result in a better return for

creditors than would be the case with an immediate liquidation. (cited in *Brookers Companies and Securities Law* para. CA293A.03). As such, although voluntary administration is usually initiated by the board of directors, it may well be applicable in a situation such as the present, if for example administration might be clearly likely to result in a better price for the company's assets than liquidation. It is also relevant that a liquidator can apply for administration if the liquidator believes that to be appropriate.

[78] Turning back to the evidence before the Court, Ms. Horne concludes her evidence with the statement:

> "The extent of advances and management fees paid by the companies to Mr. Keung and his associates have, in my opinion, placed the companies in financial hardship and rendered them unable to pay their debts as they fall due."

[79] This contention that GBRH (and its subsidiaries) all fail that limb of the solvency test seems to be generally accepted by all parties here. Mr. Keung also acknowledged in cross-examination that the businesses are "in very bad shape" – transcript evidence page 61 Line 24.

[80] In addition, there may be some serious doubt here as to whether GBRH also fails the balance sheet solvency test in the sense that its assets may not exceed its liabilities.

[81] That said, all parties appeared to accept before me first, that there was little chance of GBRH continuing in business here and secondly, as I have noted above, the real issues are how best to manage the sale of its land assets and also to properly consider the short financial history of the company.

[82] GBR Investments position is that an order for liquidation is required here in order that the sale of GBRH's properties can be controlled by liquidators to protect the interests of all creditors and shareholders and further so that the liquidators can carry out a full investigation of the affairs of the company.

[83] The defendant's position is that an order for voluntary administration is sought as it is said this is likely to achieve better prices on the critical sale of the

companies' properties, it provides more flexibility (including possible share sales) and may leave in place arrangements between the current shareholders of the company.

[84] In addressing that issue and noting also that an order for liquidation must always be a last resort, I need to say at the outset that in my view an order for voluntary administration is not appropriate here. I reach this conclusion first noting that all parties accept that, given the circumstances here, there is no chance that GBRH and its business can continue in existence nor that a share sale is a realistic possibility.

[85] Secondly, as to the suggestion by Mr. Van Schreven for the defendants that there is a strong likelihood of substantially reduced values being achieved for the sale of GBRH's assets if sold on a forced liquidation sale basis rather than on a voluntary administration, I note that this is not supported by evidence of any kind before the Court. Although Mr. Van Schreven submitted this was a strong factor mitigating against an order for liquidation here, I do not share that view.

[86] The duty of any liquidator is to obtain the best possible price for company assets in order that the proceeds can be paid to creditors and if a surplus arises to the shareholders.

[87] The evidence of Ms. Horne an experienced company liquidator notes that on occasions sales of particular properties by liquidators have exceeded valuations or achieved better than expected results. She states that in her experience liquidation sales are advertised as such and this can often have a marketing advantage and attract a wider variety of buyers all seeking a bargain but thereby encouraging competition. Occasionally, in her words, "a buying frenzy" is experienced for the right property.

[88] In addition, Ms. Horne in her evidence specifically noted the unique character of the Goose Bay property owned by GBRH, a factor that a liquidator would no doubt take into account here when deciding upon a sale strategy for that property.

[89] In the present case, I see no reason why a liquidator might arrange sale of GBRH's properties in anything other than an orderly and measured way and am not convinced here that selling these properties by way of a voluntary administration is likely to lead to better prices.

[90] Lastly, a telling factor here in favour of a liquidator being appointed is the real need, as I see it, for a thorough and independent investigation of GBRH's affairs to be undertaken to achieve some finality between the parties.

[91] The Koulanovs and Ms. Horne have raised in their evidence a range of concerns about what may be inappropriate or improper dealings regarding the assets of GBRH. It is suggested that these may have intended to prefer Mr. Keung and his interests at the expense of the company and its other shareholders. Mr. Keung contests this and states that it is his interests that in fact have kept GBRH and the group afloat. There is no doubt in my view that recent animosity leading to the serious and irretrievable breakdown in the relationship here between the shareholders may well have rendered the governance of GBRH and its associated companies somewhat dysfunctional. This in itself provides an important motivation for the appointment of liquidators here to enable an independent investigation into the company's affairs over its short existence to be undertaken by persons who have appropriate powers.

[92] It must be acknowledged that there are factual disputes apparent from the evidence before the Court. Mr. Keung both in his evidence before the Court and in the raft of emails emanating from him over the last year or so has claimed first that the Koulanovs in his words have intended to "destroy the companies" and secondly that they are taking the path they have chosen because they want to "steal" the properties of the group at an under value.

[93] On Mr. Keung's first claim, little need be said as in my view it is hardly likely that the Koulanovs would take this course of destroying GBRH and its subsidiaries given their large $2.9 million cash investment in the companies.

[94] As to Mr. Keung's second claim, this has been strongly denied throughout by the Koulanovs and there is absolutely no evidence before the Court showing any intention on their party to "steal" any of the properties in question at an under value. There is nothing before the Court to support this claim or any suggestion that the Koulanovs may have an ulterior motive in their actions here other than in so far as they are seeking to have liquidators properly appointed and to investigate the affairs of the company for all shareholders.

[95] In some way, although an order for liquidation must always be seen as something of a last resort, the present case in my view is one like *Jenkins v Subscaf* where an order for liquidation is appropriate because of the serious break down in the relationship between the shareholders and where no other realistic remedy is possible. Given this conclusion, whether indeed liquidators are appointed once grounds exist for doing so is still a matter of discretion for the Court. The Court, however, is to exercise this discretion sparingly once grounds for appointing a liquidator are made out – see *Brookers Companies and Securities Law* CA241.04.

[96] As to this aspect, in my view for all the reasons outlined above, this is clearly a case where the Court should not exercise its discretion to refuse an order for liquidation. An order appointing liquidators of GBRH is to follow.

Identity of Liquidators

[97] GBR Investment contends that Mr. Crichton and Ms. Horne who have been interim liquidators of GBRH since 31 March 2009 and are the present liquidators of P.K. Construction, should be appointed.

[98] Mr. Van Schreven for the defendant contends that they should not be appointed but rather a "fresh look" at the company should be taken and representatives of BDO Spicers should take this role.

[99] Mr. Crichton and Ms. Horne have signed and placed before the Court written confirmation consenting to their appointment as liquidators of GBRH in accordance with s. 282 of the Act. This consent also confirms that they are not prohibited from

acting as liquidators by virtue of their not being in breach of any of the provisions contained within s. 280 of the Act. They are clearly highly experienced, competent and professional liquidators of standing in the Canterbury region.

[100] Despite the defendant's opposition to Mr. Crichton and Ms. Horne being appointed liquidators here, I am satisfied that given they are not disqualified from so acting, they are the appropriate parties to be appointed as liquidators. I reach this conclusion bearing in mind first, that they will have considerable familiarity with the affairs of GBRH through their time as interim liquidators of this company since 31 March 2009, secondly, that there would be significant additional cost involved if new liquidators were appointed and thirdly, and most tellingly, in view of the serious intermingling of assets and affairs of GBRH and its subsidiary companies with those related to Mr. Keung (including P.K. Construction for which Mr. Crichton and Ms. Horne already act as liquidators) they are best placed and the appropriate parties to be appointed liquidators. An order is to follow appointing Mr. Crichton and Ms. Horne as liquidators.

Advertising

[101] As I understand the position, at this point advertising of GBR Investment's liquidation application has not taken place.

[102] Notwithstanding this, before me Mr. Forbes QC and Mr. Van Schreven for all parties to this proceeding confirmed that they were happy for an order to be made waiving the obligation to advertise here.

[103] In my view r 1.5 of the High Court Rules provides the Court with power to waive the advertising requirement in suitable cases seeking liquidation. This was the step Ronald Young J. took in *Burney v Waituna Brewing Company Limited*, HCT, Palmerston North, 9 October 2009, CIV-2009-454-480.

[104] In my view the present case is an appropriate one for the obligation to advertise to be waived. The sole issue here is the break down of the relationship between shareholders and therefore the consequent inability of the company to

function. Outside creditors as I understand it are limited. In my view, advertising at this stage would serve little purpose.

[105] I therefore make an order pursuant to r 1.5 High Court Rules waiving the requirement for advertising GBR Investment Limited's statement of claim in this proceeding.

Result

[106] For all the reasons I have outlined above the application by GBR Investment for an order placing GBRH into liquidation succeeds.

[107] An order is now made placing Goose Bay Ranch Holdings Limited into liquidation.

[108] David Donald Crichton and Kieran Ann Horne are appointed liquidators.

[109] This order is timed at 4.00 pm today, 27 November 2009.

[110] The application by GBR Investment for orders placing Moana and Makura into liquidation for reasons of jurisdiction and standing as outlined at para. [53] of this judgment (and not otherwise) is dismissed.

[111] Similarly, as I have noted at para. [54] of this judgment, an order is now made again solely for jurisdiction and standing reasons removing David Donald Crichton and Kieran Ann Horne as interim liquidators of Moana Investment Property Limited and Makura Settlement Limited.

Costs

[112] As to costs, at the hearing of this matter counsel did not put submissions to me regarding the issue of costs. If counsel are unable to resolve the question of costs between them then they may file memoranda sequentially and, in the absence of either party indicating they wish to be heard on the issue, I will decide the question of costs based upon the material before the Court.

'Associate Judge D.I. Gendall'