

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

CIV 2009-404-004343

IN THE MATTER OF the Companies Act 1993

BETWEEN TRIBRO BUILDING CENTRE LIMITED
 (IN LIQUIDATION)
 Plaintiff

AND DAKOTA DEVELOPMENTS LIMITED
 Defendant

Hearing: 10 November 2009

Appearances: N Tabb for the Plaintiff
 E St John for the Defendant

Judgment: 10 November 2009 at 4:45pm

JUDGMENT OF WYLIE J

This judgment was delivered by Justice Wylie
on 10 November 2009 at 4.45pm
pursuant to r 11.5 of the High Court Rules

Registrar/Deputy Registrar
Date:

Solicitors/Counsel:
N Tabb, P O Box 101 972, North Shore Mail Centre, Auckland
J Z Ewart, P O Box 1090, Auckland

E St John, P O Box 105 270, Auckland

[1] Tribro Building Centre Limited (in liquidation) (“Tribro”) has filed a statement of claim seeking to put Dakota Developments Limited (“Dakota”) into liquidation.

[2] The statement of claim was filed on 17 July 2009. It, together with the proceeding, and supporting affidavits, was served on Dakota on the same day.

[3] Dakota initially filed a statement of defence. The document was filed on 31 July 2009.

[4] Tribro alleges that Dakota is indebted to it in the sum of \$24,749.87, for goods supplied and invoiced by it to Dakota. It served a statutory demand on Dakota on 16 June 2009 pursuant to s 289 of the Companies Act 1993. The statutory demand required payment of the sum claimed within 15 working days of the date of service.

[5] Dakota did not seek to set aside the statutory demand. It failed to comply with the same. As a consequence, it is presumed to be unable to pay its debts – s 287(a).

[6] Notwithstanding that it failed to apply to set aside the statutory demand, Dakota, in its statement of defence, asserted that the proceedings were an abuse of process, and that the debt should be set off against moneys it says are owing to it by a related company, Tribro Construction Limited.

[7] Ms Tabb appearing on behalf of Tribro prepared detailed submissions dealing with these allegations and with Dakota’s failure to apply to set aside the statutory demand.

[8] The matter was due to be heard before me today.

[9] In the event, Dakota, through its counsel Mr St John, has filed a memorandum confirming that it no longer offers any defence to Tribro’s claim.

[10] Ms Tabb has filed a certificate confirming that the debt remains due and owing. She has also filed a statement recording that notice of the proceedings was published in the New Zealand Gazette on 6 August 2009, and in the public notices section of the New Zealand Herald on 3 August 2009.

[11] In the circumstances, I am satisfied that Dakota is unable to pay its debts and that it is appropriate that Dakota should be placed in liquidation.

[12] I have received a facsimile copy of a consent signed by a John Robert Buchanan and Callum James Macdonald, insolvency practitioners of Auckland, consenting to their appointment as liquidators of Dakota. Ms Tabb has confirmed that the original will be filed in Court as soon as it is available.

[13] On the application of Tribro Building Centre Limited (in liquidation), which company is a creditor of Dakota Developments Limited, I appoint John Robert Buchanan and Callum James Macdonald, insolvency practitioners of Auckland, as joint liquidators of Dakota Developments Limited. This order is to lie in Court until such time as the original of the consent signed by Messrs Buchanan and Macdonald to such appointment has been filed. The joint liquidators are entitled to their reasonable costs and disbursements for their work in conducting the liquidation. They are to apply (by memorandum) for an order fixing their overall remuneration at the conclusion of the liquidation.

[14] As required by s 241A(1)(c), I record that this order was made at 4.45pm on 10 November 2009.

[15] Tribro is entitled to its costs on a 2B basis, and to its reasonable disbursements in relation to this application. I record that there was no opposition to an order in this regard by Mr St John on behalf of Dakota. I trust that the parties will be able to agree the appropriate amount. If not, any dispute is to be referred to me.

Wylie J