

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY
I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE
COMMERCIAL PANEL

CIV-2019-404-2049

UNDER section 284 of the Companies Act 1993, section 66 of
the Trustee Act 1956 and Part 19 of the High Court
Rules 2016

IN THE MATTER of HALIFAX NEW ZEALAND LIMITED (IN
LIQUIDATION)

AND of an application by MORGAN JOHN KELLY and
PHILIP ALEXANDER QUINLAN

First Applicants

AND of an application by HALIFAX NEW ZEALAND
LIMITED (IN LIQUIDATION)

Second Applicant

AND of an application by MORGAN JOHN KELLY and
PHILIP ALEXANDER QUINLAN

Third Applicants

WITHOUT NOTICE INTERLOCUTORY APPLICATION FOR DIRECTIONS UNDER
THE COMPANIES ACT 1993 AND ORDERS UNDER THE TRUSTEE ACT 1956
BY THE FIRST AND THIRD APPLICANTS
DATED 12 DECEMBER 2019

Russell
McAeagh

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TO: the Registrar of the High Court at Auckland

THIS DOCUMENT NOTIFIES YOU THAT:

1. The Applicants, Morgan John Kelly and Philip Alexander Quinlan, of Sydney, Australia, insolvency practitioners, apply for directions and/or orders that:

Remuneration

- (a) in their capacity as trustees, appointed on 18 September 2019 by the Financial Markets Authority ("**FMA**"), of a trust created by regulation 246 of the Financial Markets Conduct Regulations 2014 ("**Regulation 246 Trust**") and for the purposes of s 38(2) of the Trustee Act 1956, the Applicants are allowed to be paid remuneration for professional services performed, and to be indemnified for any costs and expenses incurred, in relation to:

- (i) their appointment as trustees of the Regulation 246 Trust; and
- (ii) the administration of the Regulation 246 Trust, from their appointment as trustees on 18 September 2019 until the distribution of property subject to the Regulation 246 Trust is completed,

and to pay those amounts out of the property subject to the Regulation 246 Trust or with which the property subject to the Regulation 246 Trust has been commingled;

- (b) An order or direction that the remuneration, costs and expenses of the Applicants in their capacity as liquidators of Halifax New Zealand Limited (in liquidation) ("**Halifax NZ**") and the remuneration, costs and expenses of the Applicants as voluntary administrators and the remuneration, costs and expenses of the Applicants as trustees of the Regulation 246 Trust in the amounts set out in paragraphs 116, 261, 262, 263 and 273 of the affidavit of Morgan John Kelly affirmed on 12 December 2019 may be paid from time to time out of some or all of the following accounts of Halifax NZ ("**Accounts**"), pending the determination of the application for directions filed by the Applicants (together with Halifax NZ) on 25 September 2019 in proceeding CIV-2019-404-2049 ("**Directions Application**):

- (i) ANZ Business Current Account 01-0121-0135307-02;
- (ii) ANZ Foreign Currency Account 205964USD00001;
- (iii) ANZ Foreign Currency Account 205964EUR00001; and
- (iv) IB Proprietary Account U1439482;

- (c) the remuneration, costs and expenses in paragraphs (a) and (b) above may be paid from the Accounts prior to any distributions to clients of Halifax NZ or other persons beneficially entitled to the funds in the Accounts;

Ancillary orders

- (d) the application and sealed orders in this proceeding are to be posted on the webpage maintained by KPMG Australia for the purpose of the liquidation of Halifax NZ (<https://www.ferrierhodgson.com/au/creditors/halifax-new-zealand-limited>) within 5 working days of the sealing of these orders;
 - (e) leave is reserved to the Applicants to apply further in respect of any ancillary orders.
2. The grounds on which each order is sought are set out in the affidavit of Morgan John Kelly affirmed 12 December 2019 and the memorandum of counsel filed in support of the application.
 3. The application is made in reliance on:
 - (a) section 284(1) of the Companies Act 1993;
 - (b) sections 38, 66 and 72 of the Trustee Act 1956;
 - (c) rules 7.23, 7.32 and 7.46 of the High Court Rules 2016;
 - (d) *Finnigan v Yuan Fu Capital Markets Limited (in liquidation)* [2013] NZHC 2899;
 - (e) *Ngai Tai Ki Tamaki Tribal Trust v Karaka* [2012] NZCA 268, [2015] NZAR 266;
 - (f) *Re Berkeley Applegate (Investment Consultants) Limited* [1989] 1 Ch 32 (EWHC);
 - (g) the inherent jurisdiction of the High Court;
 - (h) the affidavit of Morgan John Kelly affirmed on 12 December 2019 in support of the application; and
 - (i) the affidavit of Morgan John Kelly affirmed on 24 September 2019 in support of the Directions Application and
 - (j) the affidavit of Ian Phillip Sutherland sworn on 24 September 2019 in support of the Directions Application.
 4. The application is made without notice to any other party on the following grounds:
 - (a) that requiring the applicant to proceed on notice would cause undue delay or prejudice to the applicant; and
 - (b) that the interests of justice require the application to be determined without serving notice of the application.
 5. I certify that:

- (a) the grounds set out in paragraph 4 on which the application relies are made out; and
- (b) all reasonable inquiries and all reasonable steps have been made or taken to ensure that the application contains all relevant information, including any opposition or defence that might be relied on by any other party, or any facts that would support the position of any other party.

DATE: 12 DECEMBER 2019



M Kersey
Solicitor for the Applicants
Phone: 09 367 8124

This document is filed by **MATTHEW KERSEY**, solicitor for the Applicants, of the firm Russell McVeagh, whose postal address is Level 30, Vero Centre, 48 Shortland Street, PO Box 8, DX CX10085, Auckland 1010.

The address for service of the Applicants is Level 30, Vero Centre, 48 Shortland Street, Auckland 1010. Documents for service may be left at that address or may be:

- (a) posted to the solicitor at PO Box 8, Auckland, 1010;
- (b) left for the solicitor at a document exchange for direction to DX CX10085; or
- (c) emailed to the solicitor at matt.kersey@russellmcveagh.com with a copy to sam.jones@russellmcveagh.com.