

**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)**

**BETWEEN MORGAN JOHN KELLY and PHILIP ALEXANDER
QUINLAN (in their capacity as liquidators)**

First Applicants

**HALIFAX NEW ZEALAND LIMITED (IN
LIQUIDATION)**

Second Applicant

**MORGAN JOHN KELLY and PHILIP ALEXANDER
QUINLAN (in their capacity as trustees)**

Third Applicants

(continued on next page)

**INTERLOCUTORY APPLICATION FOR DIRECTIONS UNDER THE COMPANIES
ACT 1993 AND ORDERS UNDER THE TRUSTEE ACT 1956
BY THE FIRST AND THIRD APPLICANTS
DATED 11 MAY 2020**

Next event date: 30 November 2020 (final hearing)

Judicial officer: Venning J

**Russell
McAugh**

Counsel: A Leopold SC (Aust)
E Holmes

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AND

CHOO BOON LEE

First Respondent

ELYSIUM BUSINESS SYSTEMS PTY LTD

Second Respondent

JASON PAUL HINGSTON

Third Respondent

ATLAS ASSET MANAGEMENT PTY LTD (as trustee for the Atlas Asset Management Trust)

Fourth Respondent

FIONA McMULLIN

Fifth Respondent

ANDREW PHILLIP WHITEHEAD and MARLENE WHITEHEAD (as trustees for the Beeline Trust)

Sixth Respondent

ANDREW PHILLIP WHITEHEAD

Seventh Respondent

TO: the Registrar of the High Court at Auckland

AND TO: the Respondents

THIS DOCUMENT NOTIFIES YOU THAT:

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

Remuneration

- (a) 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 trustees of the FMCR Trust in the amounts set out in paragraphs [39], [44], [46], [56], [70], [75] and [81] of the affidavit of Morgan John Kelly affirmed on 9 May 2020 may be paid out of some or all of the following accounts of Halifax NZ, 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;

(iv) IB Proprietary Account U1439482;

(together, the "**Accounts**"); and

(v) IB NZ Master Account U1439481; and

(vi) ANZ Appointee Account 06-0323-0537865-00 ("**Liquidators' Trading Account**"),

(together, the "**Additional Accounts**")

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

Ancillary orders

- (c) 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;

- (d) 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 affidavits of Morgan John Kelly affirmed 12 December 2019 and 9 May 2020 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) *Re Kelly in the matter of Halifax New Zealand Limited (in liq) (Remuneration judgment)* [2019] NZHC 3434, (2019) 5 NZTR 29-028;
 - (h) the inherent jurisdiction of the High Court;
 - (i) the affidavit of Morgan John Kelly affirmed on 9 May 2020 in support of this application;
 - (j) the affidavit of Morgan John Kelly affirmed on 12 December 2019 in support of the First Remuneration Application; and
 - (k) the affidavit of Morgan John Kelly affirmed on 24 September 2019 in support of the Directions Application and
 - (l) the affidavit of Ian Phillip Sutherland sworn on 24 September 2019 in support of the Directions Application.

DATE: 11 May 2020



M Kersey
Solicitor for the Applicants

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.