

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY
I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU 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 ORDER



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AND

CHOO BOON LOO

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 Respondents

ANDREW PHILLIP WHITEHEAD

Seventh Respondent



TO the Respondents

AND TO the Financial Markets Authority

INTERLOCUTORY ORDER

1. The interlocutory application made by Morgan John Kelly and Philip Alexander Quinlan (in their capacity as liquidators of Halifax NZ) ("**Liquidators**") on 20 May 2020 was determined by the Honourable Justice Venning on 2 July 2020.
2. The determination was made following a joint hearing with the Federal Court of Australia (by Microsoft Teams) held on 22 May 2020. E Holmes, M Kersey and S Jones appeared for the Liquidators, E Hyde appeared for the First Respondent, A Kawalsky appeared for the Second Respondent, A Munro appeared for the Third Respondent, J Caird appeared for the Fourth Respondent, S Munro appeared for the Fifth Respondent, and E L Smith appeared for the Sixth and Seventh Respondents.
3. The following orders were made:

Remuneration method

- (a) Pursuant to the inherent jurisdiction of the Court or under HCR 9.36 the Court appoints Mr Tony Tesoriero ("**Assessor**") to inquire and report in accordance with the rules of the Court as modified by these directions:
 - (i) whether the remuneration claimed by the Liquidators for the period from December 2019 to May 2020 is reasonable taking into account all relevant matters and if not, what remuneration is reasonable;
 - (ii) whether the remuneration claimed by the Liquidators for the period from June 2020 to August 2020 is reasonable taking into account all relevant matters and if not, what remuneration is reasonable; and
 - (iii) whether the remuneration claimed by the Liquidators for the period from September 2020 to November 2020 is reasonable taking into account all relevant matters and if not, what remuneration is reasonable.
- (b) The inquiry is to be conducted as follows:
 - (i) for each question the Liquidators are to submit the following to the Assessor:
 - (aa) a remuneration report for the period covered by each inquiry; and
 - (bb) a work in progress spreadsheet for the period covered by each inquiry; and



- (ii) for each question the Assessor will provide the Court with a report in accordance with HCR 9.38 and serve a copy of the report on the Liquidators within 21 days of receipt of the material submitted to the Assessor in accordance with Order (3)(b)(i) or such further time as the Court determines in advance that the Assessor reasonably requires.
- (c) The Liquidators are to serve a copy of any report provided to them pursuant to Order (3)(b)(ii) forthwith.
- (d) HCR 9.41(2) is varied to the extent that the costs of the Assessor are to be treated as an expense of the liquidation and are to be paid from the same funds that the Liquidators' (and trustees') expenses are paid.
- (e) HCR 9.40 is varied to the extent that liberty is granted to the Liquidators and the Respondents to apply to be heard on the questions of whether the Court should adopt, vary or object to any report given to the Court in accordance with these orders and whether to make a remuneration determination in accordance with the report, such application to be filed and served within three working days of the report being served on the Liquidators and representative Respondents. Any such application must state briefly the reasons for the application.
- (f) The Court will determine on the papers whether to adopt, vary or reject any report given to the Court in accordance with these orders and whether to make a remuneration determination under s 284 of the Companies Act 1993 or its inherent jurisdiction (in relation to the FMCR Trust) in accordance with the report.

Source of funds

- (g) The Court directs that the Liquidators are justified in applying the following funds in the specified accounts of investors of Halifax New Zealand Ltd (in liquidation) ("**Halifax NZ**"), and Halifax Investment Services Pty Limited (in liquidation) ("**Halifax AU**") to their remuneration, costs and expenses and the legal expenses reasonably incurred by the First, Second, Third, Fourth and Fifth Respondents in acting as representative respondents to the extent that the funds are held by Halifax NZ or the Liquidators on behalf of Halifax NZ:
 - (i) Australian dollars ("**AUD**") in client accounts on the Interactive Brokers AU trading platform ("**IB AU**") and Interactive Brokers NZ trading platform ("**IB NZ**"), which hold only AUD as a base currency, have positive cash balances and have no open positions;
 - (ii) AUD in client accounts on IB AU and IB NZ, which hold AUD as the base currency and have open positions comprised entirely of cash in other currencies and where all cash balances are positive;



- (iii) US dollars ("**USD**") in client accounts on IB NZ, which hold only USD as a base currency, have positive cash balances and have no open positions;
 - (iv) USD in client accounts on IB NZ, which hold USD as the base currency and have open positions comprised entirely of cash in other currencies and where all cash balances are positive;
 - (v) New Zealand dollars ("**NZD**") in client accounts on IB NZ, which hold only NZD as a base currency, have positive cash balances and have no open positions; and
 - (vi) NZD in client accounts on IB NZ, which hold NZD as the base currency and have open positions comprised entirely of cash in other currencies and where all cash balances are positive.
- (h) The Court notes that:
- (i) Order 3(g) is without prejudice to the funds identified therein being restored for the purposes of distribution, or of calculating entitlement to distribution, of funds to the investors who hold those funds during distribution; and
 - (ii) the access and use of the funds identified in Order 3(g) is without prejudice to any claims of investors who hold those funds in relation to the continued existence of a trust in respect of those funds or claims that those funds, or any part of them, are traceable.

Date: 30 July

2020



(Registrar/Deputy Registrar)

R KUMAR
DEPUTY REGISTRAR