

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

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ORDERS OF THE HONOURABLE JUSTICE VENNING

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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

### ORDERS OF THE HONOURABLE JUSTICE VENNING

1. The application made by:
  - (a) Morgan John Kelly and Philip Alexander Quinlan (in their capacity as liquidators of Halifax NZ); and
  - (b) Morgan John Kelly and Philip Alexander Quinlan (in their capacity as trustees, appointed on 18 September 2019 by the Financial Markets Authority, of a trust created by regulation 246 of the Financial Markets Conduct Regulations 2014),

(the "**Applicants**"),

on 3 April 2020 was determined by the Honourable Justice Venning on 5 May 2020.

2. The determination was made following a hearing held on 3 April 2020. A Leopold SC (Aust), E Holmes and M Kersey appeared for the Applicants, E L Smith appeared for the Whitehead Group, S Munro appeared for Fiona McMullin and Chen Wang, E A J Hyde appeared for Choo Boon Loo, J V Gooley appeared for Elysium Business Systems Pty Limited, C Mitchell appeared for Jason Paul Hingston and J C Caird appeared for Atlas Asset Management Pty Ltd (ACN 607 442 679) as trustee for the Atlas Asset Management Trust. Professor John Knight and Rosalie Bouwmeester appeared in person.

3. The following orders were made:
  - (a) An order under section 66 of the Trustee Act 1956 confirming that the Applicants, in their capacity as trustees, are justified in refraining from:
    - (i) realising any and all extant investments (closing out) until the determination of all substantive issues in this proceeding, and in *Kelly, in the matter of Halifax Investment Services Pty Ltd (in liquidation)* (NSD 2191 of 2018); and
    - (ii) applying to the Court for directions to the effect that closing out should proceed as soon as practicable, in advance of the final hearing of the proceeding.
  - (b) An order under section 284(1) of the Companies Act 1993 directing that the Applicants, in their capacity as liquidators, are justified in refraining from:
    - (i) realising any and all extant investments (closing out) until the determination of all substantive issues in this



proceeding and in *Kelly, in the matter of Halifax Investment Services Pty Ltd (in liquidation)* (NSD 2191 of 2018); and

- (ii) applying to the Court for directions to the effect that closing out should proceed as soon as practicable, in advance of the final hearing of the proceeding.



21 May

2020

(Registrar/Deputy Registrar)

R KUMAR  
DEPUTY REGISTRAR