

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

CIV-2019-404-

UNDER

Part 19 of the High Court Rules 2016 and sections
280 and 286(4) of the Companies Act 1993

IN THE MATTER OF

CBL CORPORATION LIMITED
(ADMINISTRATORS APPOINTED), a duly
incorporated company having its registered office at
Level 16, 45 Queen Street, Auckland

AND IN THE MATTER OF

an application by **NEALE JACKSON** and
BRENDON JAMES GIBSON, insolvency
practitioners of KordaMentha, Level 16, 45 Queen
Street, Auckland

Applicants

ORIGINATING APPLICATION WITHOUT NOTICE FOR ORDERS UNDER
SECTIONS 280 AND 286(4) OF THE COMPANIES ACT 1993
DATED 23 JANUARY 2019

Russell
McAugh

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TO: The Registrar of the High Court at Auckland

THIS DOCUMENT NOTIFIES YOU THAT:

1. The applicants, Neale Jackson and Brendon James Gibson ("**Applicants**"), insolvency practitioners of KordaMentha, apply to the Court for orders that:
 - (a) the Applicants are permitted to commence this application by originating application;
 - (b) the Applicants may be appointed and act as liquidators of CBL Corporation Limited (administrators appointed) ("**CBL Corporation**"), notwithstanding section 280(1)(cb) of the Companies Act 1993 ("**Act**");
 - (c) notice of this application and a copy of these orders shall be served on all creditors of CBL Corporation by:
 - (i) writing to creditors as soon as practicable after the appointment of liquidators takes place, at the same time as statutory notices under section 243(2) of the Act are issued summoning a creditors' meeting, or under section 245 of the Act dispensing with a creditors' meeting;
 - (ii) providing copies of the application and orders for inspection at the first creditors' meeting; and
 - (iii) posting a copy of the application and orders on KordaMentha's website <https://www.kordamentha.com>;
 - (d) leave is reserved to any creditor of CBL Corporation to apply (on notice) to vary or set aside these orders; and
 - (e) the Applicants' solicitor/client costs of this application will be expenses incurred by the Applicants in carrying out their duties as liquidators of CBL Corporation.
2. The grounds on which each order is sought are as follows:
 - (a) It is practically efficient that applications of this nature be made by way of originating application.
 - (b) The Applicants are likely to be appointed liquidators of CBL Corporation:
 - (i) CBL Corporation may be placed into liquidation by either the creditors at the watershed meeting (which is due to be held on or before 15 February 2019) or by the Court (with the next call of the liquidation application set down for 4 February 2019).
 - (ii) The Applicants are currently the voluntary administrators of CBL Corporation. If CBL Corporation is placed into liquidation by the creditors, the Applicants (as the current

administrators) will be the default liquidators by operation of the Companies Act.

- (iii) The Applicants are unaware of any other potential liquidators being suggested by creditors or other stakeholders if CBL Corporation is put into liquidation by either its creditors or the Court.
 - (iv) The Applicants will consent to being appointed as liquidators of CBL Corporation.
- (c) A court order is necessary if the Applicants are to be appointed as liquidators:
- (i) The Applicants are partners of KordaMentha.
 - (ii) Certain partners of KordaMentha, including the Applicants, have been appointed in the past two years by ANZ Bank New Zealand Limited (together with Australian and New Zealand Banking Group Limited, "ANZ") as receivers and/or have advisory roles in respect of certain customers of ANZ.
 - (iii) On this basis, KordaMentha (and therefore, the Applicants) have a continuing business relationship with ANZ.
 - (iv) ANZ is a secured creditor of CBL Corporation but by reason only of security granted by the Applicants in their roles as administrators of CBL Corporation, in respect of funding obtained from ANZ for the purposes of the voluntary administration.
 - (v) Section 280(1)(cb) of the Act appears to preclude the Applicants from being appointed as liquidators of CBL Corporation at least by order of the Court, in the absence of an order from the Court.
- (d) There is no actual conflict between the Applicants' continuing business relationship with ANZ and any role as liquidators of CBL Corporation:
- (i) although circumstances addressed in section 280(1)(cb) of the Act exist, there is no actual conflict as the Applicants' independence, competence and integrity have not been compromised by the roles they have performed in relation to ANZ. In all other respects, the Applicants are qualified to be liquidators of CBL Corporation.
 - (ii) The Applicants are experienced insolvency practitioners who are accustomed to undertaking these forms of assignment and are aware of their duties and responsibilities in doing so. Accordingly, neither CBL Corporation nor its creditors will be prejudiced by the appointment of the Applicants as liquidators.

- (iii) Other substantial creditors of CBL Corporation seek the appointment of the Applicants to be liquidators, with knowledge of the Applicants' relationship with ANZ.
 - (iv) The creditors of CBL Corporation retain a right to challenge the appointment of the Applicants as liquidators in court and may vote to have them removed at a creditors' meeting.
- (e) The orders sought are in the interest of creditors as a whole:
- (i) The Applicants are experienced insolvency practitioners.
 - (ii) The Applicants are familiar with CBL Corporation, having acted as administrators of that company since 23 February 2018. The liquidation will benefit from the knowledge of this complex insolvency, which the Applicants have gained over the previous 11 months.
 - (iii) Given the nature of the insolvency market in New Zealand, it is likely that other insolvency practitioners with the expertise and experience to act as liquidator of CBL Corporation will also have a continuing business relationship with ANZ.
- (f) It is in the interest of justice, and of the speedy and inexpensive determination of this proceeding, that this originating application be determined on a without notice basis:
- (i) The persons who might be adversely affected by this application are the creditors of CBL Corporation.
 - (ii) Creditors of CBL Corporation retain a right to challenge the appointment of the Applicants:
 - (aa) the proposed orders protect the interests of those creditors by enabling them to apply to vary or set aside the orders; and
 - (bb) creditors of CBL Corporation have the ability to vote to replace the Applicants at the first creditors' meeting in the liquidation.
 - (iii) The orders made will be made available to all known creditors, by writing to creditors once the appointment has been made, providing copies of the application and orders for inspection at any first creditors' meeting and posting a copy of the application and orders on KordaMentha's website.
 - (iv) Requiring the Applicants to proceed on notice to all creditors at this stage would cause undue delay and prejudice to the Applicants.

- (v) Creditors will not suffer any prejudice by being served with the originating application in the manner proposed.

3. This application is made in reliance on:

- (a) Part 19 of the High Court Rules 2016;
- (b) Part 16 of the Companies Act 1993;
- (c) *Re Meccano 2016 Ltd* [2018] NZHC 131, *Re Joeleen Enterprises Ltd* HC New Plymouth CIV-2008-443-485, 3 October 2008 and *Re Jackson* [2018] NZHC 2447; and
- (d) the affidavit of Brendon James Gibson sworn on 23 January 2019 and filed in support of the application.

4. I certify that:

- (a) the grounds set out in paragraph 2 on which the application relies are made out;
- (b) all reasonable enquiries 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; and
- (c) this application complies with the High Court Rules 2016.

DATED: 23 January 2019



M Kersey / S J Jones
Solicitors for the Applicants
Phone number: 09 367 8124 / 09 367 8383

This document is filed by **Matthew Kersey**, solicitor for the Applicants, of Russell McVeagh. The address for service of the Applicants is Level 30, Vero Centre, 48 Shortland Street, Auckland 1010.

Documents for service on the Applicants may be left at that address for service or may be:

- (a) posted to the solicitor at PO Box 8, Auckland 1140; or
- (b) left for the solicitor at a document exchange for direction to DX CX10085.