

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

**CIV-2018-404-000306
[2018] NZHC 264**

UNDER	Part 4 of the Insurance (Prudential Supervision) Act 2010 and Part 16 of the Companies Act 1993
IN THE MATTER	of an application to appoint liquidators to the defendant company
BETWEEN	RESERVE BANK OF NEW ZEALAND Plaintiff
AND	CBL INSURANCE LIMITED Defendant

Hearing: 23 February 2018

Appearances: S A Barker for Plaintiff
S C D A Gollin, M D Pascariu and S G Schenone in Person for
Defendant

Judgment: 27 February 2018

JUDGMENT OF COURTNEY J

This judgment was delivered by Justice Courtney
on 27 February 2018 at 4.00 pm
pursuant to R 11.5 of the High Court Rules

Registrar / Deputy Registrar

Date.....

[1] CBL Insurance Ltd (CBLI) is a licensed insurer that is subject to the Insurance (Prudential Supervision) Act 2010 (IPSA). It is a subsidiary of CBL Corporation which is listed on both the New Zealand and Australian stock exchanges. Various entities within the group operate in different areas of the insurance business, including as both insurer and re-insurer and in a number of jurisdictions. In recent months there have been well-publicised adverse developments relating to the group's business in Europe.

[2] Under IPSA, the Reserve Bank of New Zealand (RBNZ) is designated the prudential supervisor of insurers carrying on business in New Zealand, including CBLI. Late on Friday, 23 February 2018, RBNZ commenced proceedings against CBLI seeking an order that it be placed in liquidation and, pending determination of the substantive proceeding, applied for an order under s 246 of the Companies Act 1993 to have an interim liquidator appointed. I heard this application on a Pickwick basis with counsel for RBNZ attending by telephone, and counsel for CBLI attending in person.

[3] After hearing from counsel at some length and also allowing counsel to consult their respective clients on one issue, I made an order appointing Kare Johnstone and Andrew John Grenfell as interim liquidators of CBLI. The terms of the sealed order relevantly provide:

3.1 Kare Johnstone and Andrew John Grenfell be appointed as interim liquidators of the defendant company, with all powers and authorities as given to liquidators under the Companies Act 1993 (Act) that are necessary to maintain the assets of the defendant company (such powers and authorities able to be exercised jointly or individually by the liquidators):

(a) Including pursuant to:

(i) Section 248(1)(a) of the Act (take custody and control of assets).

(ii) Section 253 of the Act (protect and realise assets including seeking freezing orders under Part 32 of the High Court Rules (except for the right to distribute the realisation of proceeds of assets other than for payment of fees and expenses on terms of sub-paragraphs 3(c) and (d) below)), in particular, to take control of all global assets of the defendant company, irrespective of in which country they are located, including:

- (1) To take control of all financial and other records of the defendant company.
 - (2) To conduct any investigations they consider appropriate or necessary.
 - (3) To investigate and, if necessary, to initiate recovery action in respect of monies owing to the defendant company.
 - (4) To instruct counsel, whether inside or outside New Zealand, to advise and assist them in the exercise of their powers.
 - (iii) Section 261 of the Act (obtain documents and information).
 - (iv) Sections 265 and 266 of the Act (examine on oath).
 - (v) Schedule 6, clause 1(b) (carry on the business of the defendant company to the extent that the interim liquidators consider necessary).
- (b) Excluding, pursuant to:
- (1) Section 249 of the Act (completion of liquidation).
 - (2) Sections 292 to 297 of the Act (voidable transactions and securities).
 - (3) Sections 297 to 298 of the Act (undervalue transactions).
 - (4) Sections 312 and 313 of the Act (preferential claims and distribution).
- 3.2 With effect from the commencement of the interim liquidation, unless the interim liquidators agree or the court orders otherwise, a person must not:
- (a) Commence or continue legal proceedings against the defendant company; or
 - (b) Exercise or enforce, or continue to exercise or enforce, the right or remedy over or against property of the defendant company.
- 3.3 The fees of the interim liquidators, and of employees of their firm (McGrathNicol), be charged at rates normally charged for assignments of this kind.
- 3.4 The fees and expenses of the interim liquidators, including expenses incurred in managing of the business of the defendant company from the time of their appointment, be treated and paid in accordance with section 278 and paragraph 1 of the Seventh Schedule of the Act.

- 3.5 Preventing any searches of the Court file except by application on no less than three (3) days' notice to the Bank and the defendant company.
- 3.6 There be no publication of information submitted to the Court in relation to this application. The fact and terms of the order and the names of the interim liquidators may be published
- 3.7 The costs of this interlocutory order are reserved.
- 3.8 Leave is reserved to the respondent to apply to replace the interim liquidators appointed under this order.
- 3.9 Leave reserved to apply for directions if needed.

[4] In the usual course, I would record the reasons for my decision in full. In this case, however, the terms of the order prevent information other than the fact and terms of the order and the names of the interim liquidators being published. I accordingly do no more than record the fact that I was provided with an extensive memorandum of counsel and affidavit in support of the application, that counsel for CBLI were given an appropriate opportunity to respond (within the constraints of the Pickwick process) and that I was satisfied both that the statutory criteria for the order was met and that appointment of interim liquidators was the proper course to take.

P Courtney J