

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

**CIV-2012-404-004700
[2014] NZHC 623**

UNDER Section 266 of the Companies Act 1993

IN THE MATTER OF the liquidation of NZ Properties Holdings Limited (in liquidation)

BETWEEN DAMIEN GRANT and STEVEN KHOV
as liquidators of NZ PROPERTIES HOLDINGS LIMITED (IN LIQUIDATION)
Applicants

AND CHARLES UDAI NARAYAN PANDEY
First Respondent

JASWANTI DEVI RAI PANDEY
Second Respondent

PRAKASH PANDEY
Third Respondent

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Hearing: 18 March 2014

Appearances: B J Norling and A Ho for Applicant
R B Hucker for Respondents

Judgment: 1 April 2014

JUDGMENT OF COURTNEY J

This judgment was delivered by Justice Courtney
on 1 April 2014 at 2.30 pm
pursuant to R 11.5 of the High Court Rules

Registrar / Deputy Registrar

Date.....

C P ASSET MANAGEMENT LIMITED
Fourth Respondent

C P INVESTMENTS LIMITED
Fifth Respondent

C P ASSET INVESTMENTS LIMITED
Sixth Respondent

C P CARPARKS LIMITED
Seventh Respondent

C P CARR ROAD LIMITED
Eighth Respondent

C P ENTERPRISE PROPERTIES
LIMITED
Ninth Respondent

NORTHBRIDGE TRUSTEE LIMITED
Tenth Respondent

MARAC FINANCE LIMITED
Eleventh Respondent

LUMLEY FINANCE (NZ) LIMITED
Twelfth Respondent

IAG NEW ZEALAND LIMITED
Thirteenth Respondent

[1] The applicants are the liquidators of NZ Properties Holdings Limited (in liquidation). They have applied under s 266 of the Companies Act 1993 for orders requiring the second to tenth respondents to provide information and documents relating to the affairs of NZ Properties.¹

[2] When the matter last came before me on 19 February 2014 Mr Hucker advised that the respondents had provided a substantial number of documents and that these represented all of the relevant documents that were available. Mr Prakash Pandey, the third respondent and director of the first to ninth respondents confirmed this in an affidavit. The respondents resisted an order being made on the grounds that it would imply that there had not been full compliance with the liquidators' request for documents and place the respondents in an impossible position in terms of further requests.

[3] Because the documents had only just been provided to the liquidators, I adjourned the application to allow the liquidators time to consider whether they were satisfied that there had been full disclosure and advise the respondents if there were further documents required. The liquidators identified documents they believed were missing and wrote to the respondents on 7 March 2014 identifying these categories of documents. They included meeting minutes, board resolutions and property valuations. On 14 March 2014 the liquidators were provided with a further documents and a disc containing MYOB data from the respondents.

[4] When the matter came back before me on 18 March 2014, Mr Norling referred me to the affidavits of Damien Mitchell Grant sworn 18 February 2014, and Kieran Michael Jones sworn 17 March 2014, deposing to the reasons that the liquidators consider that not all documents have yet been produced. Mr Norling wished to proceed with the application and obtain orders. Mr Hucker resisted any orders being made. He assured me that the respondents had conducted a thorough and extensive search and had provided all of the documents available to them. In response to particular concerns raised by Mr Norling, Mr Hucker advised that some documents being sought by the liquidator simply did not exist. Rather unfortunately,

¹ An earlier application for orders requiring the first to third respondents to attend an interview was the subject of an order to that effect recorded in my minute 19 February 2014.

the hearing was peppered with advice from counsel on both sides that should properly have been adduced by affidavit.

[5] The liquidators have the following particular concerns about the respondents' disclosure. First, among the documents provided is an undated resolution of C P Holdings Limited (as N Z Properties was previously known) which appears to record a resolution that \$21m of related party debt would be assigned to the tenth respondent, Northwood Trustee Limited, for \$8m. This is a transaction of concern to the liquidators and which they wish to investigate further. However, the original resolution has not been made available. Mr Hucker advised me from the bar that the respondents no longer have the original.

[6] Secondly, notices of assignment of debt refer to a deed of assignment dated 29 July 2011 but the deed was not produced. Mr Hucker provided a copy of the deed from his file during the hearing, advising that, to his knowledge, a copy had previously been provided either to the liquidators or to previous liquidators. Mr Norling was certain that he had not received it.

[7] Thirdly, a resolution dated 9 October 2009 refers to a Minute Book but no minute book has been produced. Mr Hucker advised from the bar that the respondents did not maintain a minute book.

[8] Fourthly, the liquidators have obtained (from a third party) a property valuation relating to a St Heliers property owned by NZ Properties. However, no valuations have been produced

[9] Fifthly, in the copy of a general journal entry 28 February 2008 extracted from the MYOB file provided, there is a reference to resolutions passed in a meeting on 26 February 2008. However, no minutes of any meeting have been produced.

[10] Finally, the liquidators have concerns over the data contained in the MYOB disc. It does not appear to provide continuous data from the relevant period. That conclusion is supported by the comparison of a general ledger for the period 1 April 2004 to 11 August 2012 that was annexed to a proof of debt lodged by a related

company and showed ledger balances between 25 May 2004 and 19 April 2006. However, efforts to locate that same data on the MYOB disc have been unsuccessful because the period being shown is limited to 19 April 2006 – 28 February 2008. Mr Hucker advised that this was likely to be a technical issue with the MYOB system overriding data over a certain age.

[11] As I have indicated, many of the explanations for the absence of documents that might reasonably be expected to have been disclosed have come from Mr Hucker rather than from the respondents themselves. Having regard to the issues just discussed and the lack of any direct explanation from the respondents I concluded that orders should be made. However, I considered that they could be made in a form that would accommodate Mr Hucker's concerns regarding documents that did not exist or which the respondents no longer had.

[12] After discussion with counsel I made the following orders under 266:

- (a) The respondents are to produce all documents not already provided, including but not limited to:
 - (i) An interest register;
 - (ii) Company board meeting minutes;
 - (iii) Minute books;
 - (iv) Directors' resolutions;
 - (v) Property valuations;
- (b) The respondents are to produce an MYOB single data file. The liquidators will have leave to seek further directions in the event that they obtain advice suggesting the MYOB data can be retrieved or recreated.

- (c) If documents in any of these categories do not exist or have been but are no longer in the respondents' power or possession the respondents may file an affidavit to that effect within 14 days;

[13] There are to be costs to the liquidators on a 2B basis. If counsel cannot agree they may file memoranda.



P Courtney J