IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV 2017-404-002327
[2018] NZHC 1534

UNDER	The Companies Act 1993
IN THE MATTER OF	The liquidation of CHEN HONG CO LIMITED
BETWEEN	JIA WEN MAO Applicant
AND	INNO CAPITAL NO. 4 LIMITED First Respondent
AND	DAMIEN GRANT and STEVEN KHOV as liquidators of CHEN HONG CO LIMITED (In liquidation) Second Respondents

Hearing: 29 May 2018

Appearances: L Ponniah for the Applicant
A Botterill and S Chambers for the Second Respondents

Judgment: 27 June 2018

JUDGMENT OF ASSOCIATE JUDGE P J ANDREW

This judgment was delivered by me on
27.06.18 at 11:30am, pursuant to
Rule 11.5 of the High Court Rules.

Registrar/Deputy Registrar

Solicitors:
A Kashuap, Barristers & Solicitors, Auckland
A S Botterill, Albany
Counsel:
L Ponniah, Barrister, Auckland

Introduction

[1] The applicant, Ms Jia Wen Mao, was the director of Chen Hong Co Ltd ("the Company"), a company placed in liquidation by order of this Court of 15 December 2017. She seeks an order pursuant to s 250 of the Companies Act 1993 ("the 1993 Act") terminating liquidation. She contends that the order for liquidation was fundamentally flawed because there was no affidavit verifying the amended statement of claim. She also relies on the cumulative effect of a multitude of procedural irregularities. It is thus contended that the liquidation proceedings were a nullity, incapable of being rectified and that it is just and equitable that the liquidation be terminated.

[2] The second respondents, the Court-appointed liquidators, oppose the application. They say the proceedings were not a nullity and that even if there were procedural irregularities, it is not just and equitable to terminate the liquidation. The creditors have not been paid in full and do not consent to the application and it would be contrary to the public interest to allow an insolvent company to start trading again. They say that a property development that the applicant relies on to meet any obligations to the creditors, has no realistic prospect of success.

[3] The critical issues I must determine are whether the proceedings were a nullity, whether I retain a discretion under s 250 and how that discretion should be exercised in this case.

Relevant legal principles

[4] The Court has a discretion to make an order terminating a liquidation at any time after appointment of liquidators, if satisfied that it is just and equitable to do so.[1] The discretion is a broad one and is generally exercised if three factors identified in *Re Bell Block Lumber Ltd (in liq)* are met.[2] In that case, Tipping J held that the discretion to order the stay of the liquidation should not be exercised unless:[3]

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1 Companies Act 1993, s 250(1).
2 *Re Bell Block Lumber Ltd (in liq)* (1992) 5 PRNZ 642 (HC).
3 At 643.

(a) all creditors had been paid in fully or satisfactory provision has been made for them to be paid in full or they consent to the application;

(b) the liquidators' costs have been fully paid or secured; and

(c) all shareholders consent, or would be no worse off than if the liquidation had proceeded to its conclusion.

[5] In *Canterbury Squid Co Ltd v Southwest Fishery Ltd*, Gallen J noted a fourth factor that the Court should take into account, namely the public interest:[4]

> … the public should not have … insolvent companies foisted upon them or allowed to operate in such a way that members of the public may be put at risk.

[6] *Re Bell Block Lumber Ltd (in liq)* and *Canterbury Squid Co Ltd* were decisions on applications for stay under s 250 of the Companies Act 1955. That legislation did not contain a power to terminate the liquidation of a company. However, these principles have been consistently held as applicable to a consideration under s 250 of the 1993 Act.[5]

[7] In *Foundation Securities (NZ) Ltd v Direct Labour Services Ltd (in liq)* Cooper J cautioned that the factors identified in *Re Bell Block Lumber Ltd (in liq)* should not be regarded "as an exclusive set of criteria for the exercise of what is a very broadly expressed power".[6] His Honour noted that the Court will have regard to the public interest, and be concerned to protect the interest of the present creditors of the company, as well as the interests of those parties who would, in future, have dealings with it if the liquidation were terminated.[7]

[8] Cooper J further held that even if it appeared "that the order placing the company in liquidation may have been tainted by some error, that would not

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4 *Canterbury Squid Co Ltd v Southwest Fishery Ltd* HC Whanganui M31/93, 24 August 1993 at 6.
5 See *Bunting v Buchanan* [2012] NZHC 766, (2012) 11 NZCLC 98-005 at [11] and the cases cited therein.
6 *Foundation Securities (NZ) Ltd v Direct Labour Services Ltd (in liq)* [2008] NZCCLR 1 (HC) at [21].
7 At [22].

necessarily be decisive."[8] The position of the creditors and the wider public interest would still need to be considered. That might result in a decision to decline the application, if the Court was not able to conclude it would not be just and equitable to terminate the liquidation.

[9] The applicant for the order must discharge the burden of satisfying the Court as to the existence of facts that would justify a conclusion that termination is just and equitable.[9]

Background facts

Procedural history

[10] On 4 September 2017 the original plaintiff creditor, Inno Capital No. 3 Ltd, served on the Company a statutory demand in the amount of $548,242.55. The debt was said to have arisen on 2 August 2017 when the Company gave an undertaking to Inno Capital No. 3 Ltd to pay all debts owing by Mangawhai Property Ltd by 31 August 2017.

[11] The order for liquidation was made following an assignment of the debt to Inno Capital No. 4 Ltd. That precipitated an amended statement of claim dated 24 November 2017 which named Inno Capital No. 4 Ltd as plaintiff. It sought an order for liquidation on the basis of a failure to pay the sum of $373,004.39, recording that a repayment of $187,284.81 was paid to Inno Capital No. 3 Ltd by Mangawhai Property Ltd.

[12] Inno Capital No. 3 Ltd filed and served on the Company's registered office an affidavit of Clinton Neil Webber dated 3 October 2017 verifying the statements in the statement of claim. However, there was no affidavit verifying the allegations in the amended statement of claim as required by r 31.24(5)(c) of the High Court Rules 2016. Likewise, no notice of proceeding in form C 3 was filed and served with the amended statement of claim.

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8 At [25].
9 At [26].

[13] On 24 November 2017 Associate Judge Doogue made an order substituting Inno Capital No. 4 Ltd as the plaintiff. He directed that an amended statement of claim was to be filed and served on the Company. The matter was adjourned until 10.45am on 15 December 2017. Associate Judge Doogue further directed that the notice of the next hearing date should also be served on the Company.

[14] The statutory demand, the original statement of claim and verifying affidavit and the amended statement of claim were all served at 423 Ormiston Road, Flat Bush, Auckland. So too was the letter from the solicitor for Inno Capital No. 4 Ltd of December 2017 advising of the hearing date of 15 December 2017.

[15] 423 Ormiston Road, Flat Bush is the registered office of the Company. However, because of a redevelopment of the area around Ormiston Road, and a reassignment of postal street address numbers, what the process servers understood to be 423 Ormiston Road is not, according to the applicant, the registered office. The registered office is at her home nearby. It appears, although the evidence is not entirely clear, that there are two letterboxes with the same address, 423 Ormiston Road, Flat Bush, Auckland. The background to this is set out in the affidavit of Ms Mao dated 26 February 2018. She says that process servers served all the documents at the wrong post box.

[16] Ms Mao says that she was not aware of the liquidation hearing date of 15 December 2017 and that the company was never served with the amended statement of claim. She says that none of these matters brought to her attention prior to the order for liquidation.

[17] At the liquidation hearing on 15 December 2017, a solicitor's certificate of indebtedness dated 15 December 2017 was filed. The solicitor for the plaintiff, Inno Capital No. 4 Ltd, certified:

> After having made due enquiries on 15 December 2017 at 9am that I am satisfied that the debt owing to the plaintiff by the defendant remains unpaid.

[18] The original application to terminate the liquidation was signed by the applicant but prepared and filed by Mr Augustine Lau on 21 December 2017. Mr Lau also swore an affidavit dated 21 December 2017 in support of the application.

[19] In a minute dated 31 January 2018 Palmer J directed that the application needed to be amended to be made by a director, not the company in liquidation. His Honour also recorded that counsel, not Mr Lau or Ms Mao, were needed to represent the application.

[20] On 3 May 2018 Inno Capital No. 4 Ltd filed a memorandum advising that it proposed to take no further steps in the proceedings as its debt owing by the company had essentially been discharged. It abides my decision on this application.

[21] Subsequent to the hearing, I received updating affidavits from both parties.

The broader context: development of the property at Fairburn Road

[22] In 2009 a resource consent was granted by the Auckland Council for the subdivision of the property at 88 Fairburn Road, Otahuhu (the Fairburn Road property). The consent, valid for five years, has now lapsed.

[23] The Company was incorporated for the purpose of purchasing and carrying out the development of the property at the Fairburn Road into townhouses for sale and profit.

[24] In August 2016, the Company purchased the Fairburn Road property for $1.68m. The purchase was funded by a $500,000 mortgage in favour of Best Capital Ltd and a second mortgage for $1m in favour of the applicant's sister, Ms Jia Ling Mao.

[25] In February 2017, the Environment Court granted the Auckland Council enforcement orders under the Resource Management Act 1991 authorising the Auckland Council to undertake remedial works at the Fairburn Road property and to recover the costs and expenses as a joint and several debt due from the company. The only respondent party to have entered an appearance in the proceedings was Mr Lau.

In September 2017, the Environment Court awarded costs against the company, the applicant and Mr Lau (also known as Ee Kuoh Lau) in the sum of $127,500.

[26] The history of the enforcement orders in respect of 88 Fairburn Road is discussed by Moore J in *Lau v Osbourne*.[10] In that judgment, Mr Lau was described as the developer and property manager of the Fairburn Road property.

[27] Auckland Council now has a statutory land charge against the Fairburn Road property for the costs of remedial works carried out. It has filed a proof of debt with the liquidators for the outstanding costs in the sum of $437,135.17, being the costs of remedial works carried out on the property. Two further amounts are also owed to the Auckland Council, in the sum of $127,000 (being the costs award in the Environment Court) and a further $1,227.99 in rates.

[28] Best Capital Ltd has also filed a proof of debt in the sum of $485,507.37 pursuant to its registered mortgage on the Fairburn Road property.

[29] In addition to its ownership of the Fairburn Road property, the Company has registered mortgages over five properties for which Mangawhai Property Ltd is the registered proprietor (the Mangawhai properties).

[30] On 8 December 2017, the Company as vendor, agreed to sell the Mangawhai properties in its capacity as mortgagee for $1.4m. The agreement for sale and purchase states that consideration for the purchase by Niu Niu Bi Co Ltd will be considered as a forgiveness of debt.

[31] On 12 December 2017 caveats were lodged on the title to the Mangawhai properties by Niu Niu Bi Co Ltd. An equitable estate was claimed on the basis of the company's second mortgage over the Mangawhai properties being assigned to Niu Niu Bi Co Ltd pursuant to a deed of assignment dated 8 December 2017.

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[10] *Lau v Osbourne* [2017] NZHC 2874 at [47]–[56]. See also *Lau v R* [2018] NZCA 151 at [13].

The case for the applicant

[32] Mr Ponniah emphasised that the order under s 241 of the 1993 Act placing the company in liquidation was fundamentally flawed because the plaintiff failed to discharge the burden of establishing there was debt owing and that it remained unpaid. In the absence of an affidavit verifying the amended statement of claim, there was no evidence before the Court that the company was unable to pay its debts, as required by s 241(4)(a).

[33] Mr Ponniah submitted the applicant was thus asking the Court to exercise its discretion in the context where the order for liquidation should never have been made. He described this flaw as a "procedural defect of substance that makes it just and equitable for the Court to exercise its discretion to terminate the liquidation". He submits compliance with r 31.24(5), which requires an affidavit, is mandatory. As a consequence of this, the substituted plaintiff, so it is argued, had no standing to be a plaintiff in the liquidation proceeding.

[34] The applicant also relies upon further non-compliance with what are said to be mandatory requirements of the High Court Rules. This includes:

(a) No amended notice of proceeding was filed and served, contrary to r 31.12. It was only the amended statement of claim that was purportedly served on 7 December 2017.

(b) The affidavit of service refers only to service of the amended statement of claim and not the verifying affidavit and amended notice of proceeding, contrary to r 31.13.

(c) Contrary to r 31.14 no advertising of the amended proceedings occurred. Mr Ponniah says he is unaware of any order of this Court dispensing with advertising of the amended statement of claim.

[35] Mr Ponniah contends the respondents could not rely on the affidavit affirming the contents of the original statement of claim to support the liquidation because that was an entirely different debt which arose prior to the assignment to Inno Capital No.

4 Ltd. That affidavit makes no reference to the assignment, which was the basis of Inno Capital No. 4 Ltd's right to make the application for liquidation. Furthermore, the person authorised to make the affidavit in relation to Inno Capital No. 3 Ltd cannot be said to have authority to act on behalf of Inno Capital No. 4 Ltd which relied on a different debt for a different amount.

[36] He also submits that, in accordance with *Charter Financial Services Ltd v S T L Linehaul Ltd*, the aim of the rules in relation to service of the proceedings was not achieved in this case.[11] Had the company known of the adjourned hearing date it would have arranged for representation and opposition.

[37] The absence of service in the sense contemplated by the High Court Rules (i.e. bringing the date of hearing to the attention of the party directly affected) is yet a further error, so it is argued, that renders the order for liquidation unsafe.

[38] As an alternative argument, the applicant contends the assignment which Inno Capital No. 4 Ltd relied upon was invalid. An assignment, whether absolute or not, of a legal chose in action does not entitle the assignee (Inno Capital No. 4 Ltd) to issue in its own name enforcement proceedings. The assignee, it is claimed, has no independent right or entitlement to enforce the alleged debt. Even if an assignment existed, Inno Capital No. 4 Ltd had no standing to bring the proceedings due to the absence (prior to the filing of the amended statement of claim) of an effective notice of the alleged assignment. Furthermore, there was no evidence of any demand by Inno Capital No. 4 Ltd under the alleged assignment prior to 15 December 2017.[12]

[39] In order to address the issue of the liquidator's costs, the applicants' solicitors are currently holding $61,000.00 in their trust account.

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11 *Charter Financial Services Ltd v S T L Linehaul Ltd* HC Wellington N433/98, 25 February 1999 at 7 per Wild J.

12 The applicant relies on John Burrows, Jeremy Finn and Stephen Todd *Law of Contract in New Zealand* (5th ed, LexisNexis NZ, Wellington, 2016) at 636.

The case for the liquidator's in opposition

[40] Focussing on the "just and equitable" threshold in s 250, the second respondents contended the creditors have not been paid in full, the Company is insolvent and unable to pay its debts and it would be contrary to the public interest to terminate the liquidation. In short, Mr Botterill submits the grounds for an order have accordingly not been made out.

Analysis and decision

Were the proceedings a nullity?

[41] At the time of the making of the liquidation order in December 2017 the Court had before it the following evidence that the Company was insolvent:

(a) The solicitor's certificate of indebtedness dated 15 December 2017.

(b) The affidavit of Cornelia Lifan Mu, solicitor at Anthony Harper, attaching a copy of the deed of assignment dated 20 November 2017 and a copy of the notice of the assignment given to Mangawhai Property Limited. Anthony Harper were the solicitors for both Inno Capital No. 3 and Inno Capital No. 4 Ltd. That affidavit, dated 21 November 2017 also explains the origins of the debt and was filed in support of the orders for substitution.

[42] In these circumstances, I reject the submission of Mr Ponniah that the proceedings were a nullity because there was no evidence before the Court that the Company was unable to pay its debts.

[43] I accept that the affidavit of Mr Webber verifying the allegations in the original statement of claim could not have been relied upon by the plaintiff creditor, Inno Capital No. 4 Ltd. However, in the circumstances, it did not need to do so. The solicitor's certificate, which in my view is akin to evidence, can properly be interpreted as referring back to the debt described in the amended statement of claim. In addition, the circumstances giving rise to the debt owed to the substituted creditor Inno Capital No. 4 Ltd are set in the affidavit of Ms Mu. The proceedings were not fundamentally

flawed for lack of any evidence of the Company's inability to pay the debt. There clearly was evidence of insolvency.

[44] In any event, as Cooper J held in *Foundations Securities (NZ) Ltd v Direct Labour Services Ltd (in liq)*, some error tainting the order placing the Company in liquidation is not necessarily decisive. That conclusion is reinforced by r 1.5 which provides that a failure to comply with the requirements of the High Court Rules does not nullify the proceeding. The Court retains a discretion as to whether and what form of relief should be granted.

[45] I also reject Mr Ponniah's submission that the cumulative effect of all the procedural irregularities renders the order for liquidation unsafe and a nullity. In any event, it would be inefficient and counter-productive to declare that the liquidation proceedings had failed.[13]

[46] There is no express requirement in the High Court Rules requiring a liquidation to be advertised following amended pleadings. Rule 31.9 refers to a proceeding commenced by a statement of claim being advertised. That occurred in this case, and in accordance with r 31.14, evidence of advertising was filed with the Court. I doubt that the High Court Rules require further advertising beyond the original statement of claim. The advertising is of course notice to the world that proceedings are in train; persons who are interested and wish to follow or join a proceeding are then expected to keep themselves informed about developments in the litigation and not rely on further advertising to keep them up to date.

[47] I accept that the High Court Rules, at r 31.24, do require a fresh notice of proceeding in the required form to be served when an order for substitution is made. However, I do not regard the failure here to serve a fresh notice of proceeding as fatal or decisive; the Court still retains a discretion under s 250 and/or r 1.5. The real question is whether there was prejudice arising from the alleged lack of notice of the hearing date.

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13 *Active Trucking Ltd v Intercivil Ltd* [2018] NZHC 690 at [14].

[48] Mr Ponniah placed significant emphasis on what he said was a lack of effective service of the amended pleadings and notice of the hearing date of 15 December 2017. Had the applicant been aware of that date, she would, so it is said, have arranged for legal representation.

[49] I am sceptical of whether the applicant and Mr Lau, who has been very active in the Company's affairs, were unaware of the orders for substitution and of the hearing date of 15 December 2017.

[50] I find that Ms Mao has not provided to the Court all relevant information about the nature of her relationship with Mr Lau and the extent of communication between them. She of course has the onus of satisfying the Court as to the existence of facts that would justify an order under s 250.

[51] All the relevant documents were served at a post box bearing the number "423 Ormiston Road, Flat Bush". That address, namely 423 Ormiston Road, is the registered office of the Company. The evidence suggests that the change of addresses in the Flatbush area have been known to Ms Mao and the Company for some considerable time but no steps have been taken to change the registered office address or to ensure that the post box at the registered office contained the correct street number.

[52] A notice of hearing from the Environment Court dated 20 October 2016 refers to interim enforcement orders regarding tenancies etc. at 387 (formerly 423) Ormiston Road, Flatbush, Auckland. However, an annual return filed on 9 November 2017 gave the address of 423 Ormiston Road as the registered office of the Company.

[53] On 30 October 2017 Ms Mu of Anthony Harper emailed Mr Lau on behalf of Inno Capital No 3 Ltd with a copy of the proceedings. There is also evidence that in early December 2017 there was email correspondence between Mr Lau and Anthony Harper, also solicitors for Inno Capital No. 4 Ltd in relation to the liquidation proceeding. Mr Lau's actions at that time, including the Company's decision to sell the Mangawhai Properties, all suggest that Mr Lau and the Company were well aware

of the ongoing liquidation proceeding and the imminent prospect of liquidation orders being made.

[54] For the foregoing reasons Ms Mao has failed to satisfy me that she has in any real way been prejudiced by irregularities or problems arising in relation to service of the documents.

The validity of the assignment

[55] As the liquidators submit, the issue of whether there was a valid assignment of the right to recover the debt is to be determined in accordance with the provisions of ss 50 and 51 of the Property Law Act 2007. The liquidators submit a notice of an assignment to the other party of the contract is not a pre-requisite of a valid assignment.[14]

[56] The liquidators say that in the circumstances of this case, a failure to give notice would only be relevant if the Company had made payments to Inno Capital No. 3 Ltd following the assignment. However, no payments were made and nor has this issue been raised. Attached to Ms Mu's affidavit is a copy of the deed of assignment as well as a copy of the notice of the assignment that was provided to Mangawhai Property Ltd. The deed of assignment refers to Mangawhai Property Ltd as the debtor.

[57] In these circumstances, I find it difficult to reach the conclusion that Mr Lau and the applicant were not aware of the assignment. The applicant has failed to provide all relevant information relating to this issue, including the relationship between the Company and Mangawhai Property Ltd and Mr Lau's role in relation to both companies. The applicant has again failed to discharge the burden of establishing the facts that form the basis for her application under s 250. There is no evidential basis to conclude the assignment was invalid.

[58] I conclude that the liquidation proceedings were not a nullity. I now turn to address the issue of the exercise of my discretion pursuant to s 250.

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[14] Jeremy Finn, Stephen Todd and Matthew Barber *Law of Contract in New Zealand* (6th ed, LexisNexis NZ, Wellington, 2018) at 669.

Is it just and equitable to make an order terminating the liquidation?

[59] In determining this issue, I have had regard to the two updating affidavits of the parties, namely the affidavit of Mr Grant, liquidator, dated 6 June 2018 and the affidavit in reply of the applicant dated 13 June 2018.

[60] Mr Grant advises that as at 6 June 2018 at least $1,050,870.50 is still owing by the Company, comprising:

(a) $437,135.17 (including GST) owed to Auckland Council for costs of remedial works (a sum expected to increase);

(b) $127,000.00 owed to Auckland Council for costs pursuant to enforcement orders granted by the Environment Court;

(c) $1,227.99 (including GST) owed to Auckland Council, being rates for 384 instalments of the property; and

(d) $485,507.34 owed to Best Capital Ltd pursuant to a first registered mortgage on the Fairburn Road property.

[61] The liquidator advises that there also remain other creditors of the company who have yet to file proof of debts in the liquidation.

[62] In her affidavit of 13 June 2018, Ms Mao repeats her contention that there is a realistic prospect that the Company can continue with its plans to develop the Fairburn Road property and be in a position to pay off all creditors. In that affidavit, she refers to a $1m second mortgage over the property at Fairburn Road held by her sister, Jialing Mao, who consents to the granting of an order terminating the liquidation. Ms Mao further says that if the only asset of the company, the Fairburn Road property, is sold for $820,000.00 (the price that the first mortgagee is said to be attempting to sell the land) then there will be insufficient funds to pay the second mortgagee and the Council. The better approach, she says, is to terminate the liquidation and allow the Company to develop the land as it had originally proposed.

[63] I find that it would not be just and equitable to terminate the liquidation. The applicant has not satisfied the relevant criteria. I accept the submissions of the liquidators that the creditors of the Company have not been paid in full, that the company is insolvent and unable to pay its debts and that it would be contrary to the public interest to terminate the liquidation. I acknowledge that provision has been made for payment of the liquidators' fees, but that is not in any way decisive.

[64] I reject the contention of the applicant that there is a realistic prospect of the Fairburn Road property being developed and in a way that will discharge all of the creditors.

[65] The resource consent to subdivide the land has now expired and the Auckland Council decided in March 2018 to seal the property for 18 months. It is intended to tag the site as contaminated by asbestos and the Council will insist that any new owner must complete additional work to make the property permanently compliant. As the liquidators have noted, there are very real questions about whether this property is suitable for subdivision and development.

[66] Mr Botterill has also advised that the Auckland Council has not yet completed the remedial work on the property. He says, therefore, that the Company's liability to the Auckland Council is only likely to increase further.

[67] The evidence also establishes that in November 2017 the property was listed for a mortgagee sale. In that context it seems highly unlikely that the Company will be able to discharge its liabilities.

[68] In support of her contention that the Company is solvent, Ms Mao says that the company is owed approximately $1,900,000.00 by Mangawhai Property Ltd and that this is secured over a registered mortgage over five properties. However, as the liquidators point out, that contention is directly contradicted by the caveat lodged by Niu Niu Bi Co Ltd on 12 December 2017.

[69] The applicant has not indicated whether or not Mr Lau would be further involved in any development of the property. It is clear that he has been actively involved in earlier attempts to develop the site.[15]

[70] The applicant has failed to persuade me that it would be in the public interest to grant the order terminating liquidation and to allow the development at Fairburn Road to proceed. It is unlikely to be in the public interest for the Company to continue with the development if Mr Lau were involved. In any event, it would be wrong to allow the Company, clearly insolvent, to commence operation. A further factor relating to the public interest dimension is the evidence from the liquidators that they have received scant information and cooperation from the applicant, who has provided no company records to the liquidators and whose obligations under s 261 of the 1993 Act remain unsatisfied.

[71] I conclude the Company should remain in liquidation and the application for determination be dismissed.

Result

[72] The application for an order terminating the liquidation pursuant to 250 of the Companies Act 1993 is dismissed.

[73] The applicant is to pay costs to the second respondents on a 2B basis.

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Associate Judge P J Andrew

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[15] See *Lau v Osbourne*, above n 10, and *Lau v R*, above n 10.