

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

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

CIV 2021-404-

IN THE MATTER of an application under Part 19 of the High Court Rules 2016 and section 280 of the Companies Act 1993

IN THE MATTER of **WIDE SPAN SHEDS CONSTRUCTION LIMITED** a duly incorporated company having its registered office at Laurence Greig, Unit 1, 9 Oropuriri Road, Waiwhakaiho, New Plymouth, 4312, New Zealand

AND of an application by **TONY LEONARD MAGINNESS** and **JARED WAIATA BOOTH**, both Licensed Insolvency Practitioners having their place of business at Baker Tilly Staples Rodway Auckland Limited, Level 9, 45 Queen Street, Auckland 1010

Applicants

**ORIGINATING APPLICATION WITHOUT NOTICE FOR ORDERS AS TO APPOINTMENT
OF LIQUIDATORS UNDER SECTION 280 OF THE COMPANIES ACT 1993**

Dated: 9 September 2021

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ORIGINATING APPLICATION WITHOUT NOTICE FOR ORDERS AS TO APPOINTMENT OF LIQUIDATORS UNDER SECTION 280

TO: The Registrar of the High Court at Auckland

This document notifies you that-

1. The applicants, Tony Leonard Maginness and Jared Waiata Booth ("**Applicants**") of Auckland, Directors of Baker Tilly Staples Rodway Auckland Limited, apply to the Court for orders that:
 - 1.1 The Applicants are granted leave to commence these proceedings without notice.
 - 1.2 Pursuant to rule 19.5 of the High Court Rules 2016, the Applicants are granted permission to commence this proceeding by way of an originating application.
 - 1.3 Notwithstanding s280(2)(h) of the Act, the Applicants may be appointed as liquidators of Wide Span Sheds Construction Limited (the **Company**).
 - 1.4 These orders apply to any appointment of the Applicants by the shareholder of the Company pursuant to s 241(2)(a) of the Act.
 - 1.5 Advice of the application and a copy these orders shall be sent to all creditors of the Company by:
 - 1.5.1 Copies of the sealed orders of the Court shall be sent to all known creditors of the Company at the same time and in the same manner as the liquidators' issue of their first report to creditors pursuant to s 255(2)(c) of the Act; and
 - 1.5.2 posting a copy of the orders on Baker Tilly Staples Rodway's website.
 - 1.6 The Applicants be permitted to send any notices required to be sent pursuant to Part 16 of the Act by:
 - 1.6.1 email, where an email address has been provided to the Company; or

- 1.6.2 if a creditor has not provided an email address to the Company, by post to the postal address that has been provided to the Company.
 - 1.7 Leave is reserved to any creditor of the Company to apply to vary these orders within 10 working days of receiving these orders in accordance with 1.5 above.
 - 1.8 If the Applicants are appointed as liquidators of the Company, the Applicants' fees and expenses, including solicitor/client costs of this application, shall be an expense incurred by the Applicants in carrying out their duties as liquidators of the Company.
2. The grounds on which the Orders are sought are as follows:
 - 2.1 This application only affects the Company and relates to a routine matter. It is therefore in the interests of justice, and of the speedy and inexpensive determination of this proceeding, that permission be granted for proceeding to be commenced as an originating application and be determined on a without notice basis:
 - 2.1.1 Applications made under s280 of the Act are routinely commenced as an Originating Application;
 - 2.1.2 the Company shareholder intends to resolve to appoint liquidators and is entitled to appoint appropriately qualified liquidators of his choice;
 - 2.1.3 the persons who might be adversely affected by this application are the creditors of the Company;
 - 2.1.4 Inland Revenue (IRD) is the Company's only preferential creditor and has been informed that the Applicants intend to be appointed acting as liquidators and have not taken a position;
 - 2.1.5 creditors of the Company may exercise the voting rights set out at paragraph 2.4 below;

- 2.1.6 the proposed orders protect the interests of those creditors by enabling them to apply to vary the orders; and
 - 2.1.7 requiring the Applicants to proceed on notice to all creditors is not required where the appointment of liquidators is to be by shareholder resolution, and therefore would cause undue delay and prejudice to the Company.
- 2.2 In the absence of an order from the Court, s280(2)(h) of the Act may preclude the Applicants, who are directors of Baker Tilly Staples Rodway Auckland Limited (**BTSR Auckland**) from being appointed as liquidators because Baker Tilly Staples Rodway Taranaki Limited (**BTSR Taranaki**) has provided professional services to the Company within the previous two years;
- 2.3 There is no actual conflict between the services provided by BTRS Taranaki and the Applicant's proposed role as liquidators of the Company:
- 2.3.1 BTRS Taranaki and BTRS Auckland are two separate legal entities who employ different staff and have different directors and shareholders.
 - 2.3.2 BTRS Taranaki and BTRS Auckland do not share personal client information between organisations.
 - 2.3.3 BTRS Taranaki and BTRS Auckland do not gain commission through referrals between organisations.
 - 2.3.4 In all other respects, the Applicants are qualified to be liquidators of the Company.
 - 2.3.5 The Applicants are experienced insolvency and restructuring practitioners who are known to the Court as competent and reputable practitioners.
 - 2.3.6 The Applicants' independence, competence and integrity has not been compromised by the services provided by BTRS Taranaki.

- 2.3.7 The Applicants are accustomed to undertaking these forms of assignment and are aware of their duties and responsibilities in doing so. As such, neither the Company nor its creditors will be prejudiced by the appointment of the Applicants as liquidators.
- 2.4 The creditors of the Company 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.
- 2.5 The orders made will be made available to all known creditors, by providing the orders to creditors by email or post, and by posting a copy of the application and orders on Baker Tilly Staples Rodway's website.
- 2.6 The ability to email statutory notices required to be provided to creditors under Part 16 of the Act would save time and cost, and is preferable to the alternative of posting such notices.
- 2.7 This application is made in reliance on:
- 2.7.1 rules 7.23, 7.46 and 19.5 of the High Court Rules 2016;
- 2.7.2 sections 280 and 286(4) of the Act;
- 2.7.3 *Re Maginness* [2019] NZHC 1237; *Re Viaduct Quays Hotel Ltds ex parte Booth* [2020] NZHC 1578; *Otuwhero Estate Wines Limited v Jarrold & Anor* CIV-2010-409-2069, High Court Christchurch, 20 September 2010; *Re Joeleen Enterprises Ltd ex parte Blanchett* HC New Plymouth CIV 2008-443-000485, 3 October 2008; and
- 2.7.4 the affidavit of Tony Leonard Maginness filed in support of this application.
3. I certify that –
- 3.1 the grounds set out in paragraph 2 on which the application relies are made out; and all reasonable inquiries 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.

Dated: 9 September 2021



E C Gellert
Solicitor for the Applicants

This application is filed by **Elizabeth Catherine Gellert** of the firm of Lowndes Jordan, solicitor for the Applicants. The address for service for the Applicants is at the offices of Lowndes Jordan, Level 15, HSBC Tower, 188 Quay Street, Auckland.

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 5966, Auckland;
- (b) Left for the solicitor at a document exchange for direction to DX CP21511;
- (c) Transmitted to facsimile 09 309 1445; or
- (d) Sent by email to ecg@lojo.co.nz and bam@lojo.co.nz.