

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

**CIV-2023-404-**

**UNDER** Part 19 of the High Court Rules 2016 and sections 239AT, 280 and 286 of the Companies Act 1993

**IN THE MATTER** of **REMARKABLE ROOFING LIMITED (IN LIQUIDATION)** and **REMARKABLE HOLDINGS (NEW ZEALAND) LIMITED (ADMINISTRATORS APPOINTED)**, duly incorporated companies having their registered offices at Level 9, 45 Queen Street, Auckland 1010

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

**Applicants**

---

**ORIGINATING APPLICATION WITHOUT NOTICE FOR ORDERS AS TO THE  
VALIDITY OF APPOINTMENT LIQUIDATORS AND SECTION 239AT OF THE  
COMPANIES ACT 1993  
14 DECEMBER 2023**

---

---

**Russell  
McAugh**

M Kersey / A R MacDuff  
P +64 9 367 8000  
F +64 9 367 8163  
PO Box 8  
DX CX10085  
Auckland

**TO:** The Registrar of the High Court at Auckland

**THIS DOCUMENT NOTIFIES YOU THAT:**

1. The applicants, Tony Maginness and Jared Booth ("**Applicants**"), of Auckland, insolvency practitioners, Chartered Accountants and directors at Baker Tilly Staples Rodway Auckland Limited ("**BTSR Auckland**"), apply to the Court for orders that:

*Remarkable Roofing Limited (in liquidation)*

- (a) this application be permitted to be made by originating application;
- (b) notwithstanding s 280(2)(h) of the Companies Act 1993 ("**Act**"), the Applicants may be appointed, and may continue to act, as liquidators of Remarkable Roofing Limited (in liquidation) ("**Remarkable Roofing**");
- (c) if the Court makes the order at paragraph 1(b), 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 Remarkable Roofing;

*Remarkable Holdings (New Zealand) Limited (Administrators Appointed)*

- (d) the convening period for the watershed meeting in relation to the voluntary administration of Remarkable Holdings (New Zealand) Limited (administrators appointed) ("**Remarkable Holdings**" and together with Remarkable Roofing, the "**Companies**") be extended by 21 days from 10 January 2024 until 31 January 2024, pursuant to section 239AT(3) of the Act;

*Ancillary orders*

- (e) the Applicants are granted leave to commence these proceedings without notice;
- (f) leave is reserved to any creditor of the Companies to apply to vary or set aside these orders;
- (g) the Applicants be permitted to send any notices required to be sent pursuant to Part 15A and Part 16 of the Act by:
  - (i) email, where an email address has been provided to the Companies; or
  - (ii) if a creditor has not provided an email address to the Companies, by post to the postal address that has been provided to the Companies; and
- (h) advice of the application and a copy of these orders shall be served on all creditors of the Companies by:
  - (i) notifying all known creditors in the manner contemplated by paragraph 1(g); and

- (ii) posting a copy of the application and orders on Baker Tilly Staples Rodway's website.

2. The grounds on which each order is sought are as follows:

*Remarkable Roofing*

- (a) It is practically efficient that applications of this nature be made by way of originating application and the application is substantially similar to a directions application (which is required to be commenced by originating application).
- (b) The Applicants are directors of BTSR Auckland and BTSR Corporate Finance Limited ("**BTSR Corporate**").
- (c) One of the Applicants' fellow directors in BTSR Corporate provided professional services to Remarkable Roofing within the previous two years, which (in the absence of an order from the Court) which may disqualify the Applicants from acting as liquidators of Remarkable Roofing.
- (d) There is no actual or perceived conflict of interest in these circumstances because:
  - (i) the Applicants were not personally involved in the professional services provided to Remarkable Roofing;
  - (ii) the professional services should not be relevant to, at issue in, or compromise the Applicants' independence in, the liquidation of Remarkable Roofing;
  - (iii) the professional services were of *de minimis* value and BTSR Corporate is not a creditor of Remarkable Roofing;
  - (iv) in all other respects, the Applicants are qualified to be liquidators of Remarkable Roofing;
  - (v) the Applicants are appointed in their capacity as directors of BTSR Auckland, which is related to BTSR Corporate;
  - (vi) the Applicants are experienced licensed insolvency practitioners who are known to the Court as competent and reputable practitioners;
  - (vii) neither Remarkable Roofing nor its creditors will be prejudiced; and
  - (viii) have been appointed also to four other Remarkable group companies to which no disqualification issues arise and there are likely efficiencies from being appointed to all entities.
- (e) Creditors retain the right to challenge in Court the appointment of the Applicants as liquidators, apply to vary these orders and vote to have the Applicants replaced at a creditors' meeting.

- (f) Creditors have been notified of the existence of the matters in paragraph 2(b) and not objected to the appointment of the Applicants.

*Remarkable Holdings*

- (g) The Applicants were appointed joint and several administrators of Remarkable Holdings (the holding company for the Remarkable roofing group of companies) by its directors, pursuant to s 239I of the Act.
- (h) The Applicants must convene the watershed meeting of Remarkable Holdings on or before 10 January 2024. Section 239AT(3) allows applicants to apply to the Court to extend that convening period.
- (i) It is appropriate that the convening period be extended by a period of 21 days in these circumstances because:
- (i) significant work has been, and will continue to be, required in the initial stages of this administration to secure the fixed assets (with the benefit of the statutory moratorium), and identify the creditors, of Remarkable Holdings;
  - (ii) the Applicants require additional time to investigate the affairs of Remarkable Holdings and form a view of the best option available to creditors, in order to satisfy the requirements of section 239AU of the Act;
  - (iii) notices convening the watershed meeting (together with the administrators' report) must be sent to creditors on or before 10 January 2024 and the watershed meeting must be held by no later than 17 January 2024. There is a risk that creditors may not receive this notice, and/or may not be available to attend this meeting, as it falls during or adjacent to the holiday period;
  - (iv) the period of the extension sought is relatively short, is no more than is required in the circumstances and is in the best interests of creditors; and
  - (v) the extension sought should not prejudice:
    - (aa) creditors, who retain the ability to apply to vary or set aside the orders made; and
    - (bb) suppliers of goods and/or services, given the administrators have caused Remarkable Holdings to cease to trade. In any case, those suppliers would be protected by the Applicants' obligation to pay for post-appointment trading liabilities that Remarkable Holdings incurs.


*Method of sending notices*

- (j) The ability to email statutory notices required to be provided to creditors under Part 15A and Part 16 of the Act would save time and cost and is preferable to the alternative of posting such notices.

**Other grounds**

- (k) In respect of all orders, the further grounds appearing in the affidavit of Tony Leonard Maginness affirmed on 14 December 2023 in support of this application.
3. This application is made in reliance on:
- (a) rules 7.23, 7.46, 19.2(c) and 19.5 of the High Court Rules 2016;
  - (b) sections 239AT, 239ADO, 280 and 286 of the Act;
  - (c) *Re Pumpkin Patch Ltd* [2016] NZHC 2771; *Moore v St Clair Homes Ltd* [2023] NZHC 1319; and
  - (d) the affidavit of Tony Leonard Maginness filed in support of this application.
4. This application is made without notice to any other party on the basis that it is in the interests of justice, and of the speedy and inexpensive determination of this proceeding, that this originating application be determined on a without notice basis for the following reasons:
- (a) the persons who might be adversely affected by this application, the creditors of the Companies will:
    - (i) be notified of these orders having been made;
    - (ii) in respect of the creditors of Remarkable Roofing, retain the rights set out at paragraph 2(e) above; and
    - (iii) in respect of the creditors of Remarkable Holdings, retain the right to apply to vary these orders; and
  - (b) requiring the Applicants to proceed on notice to all creditors at this stage would cause undue delay and prejudice to the Applicants and would jeopardise the liquidation process.
5. I certify that –
- (a) the grounds set out in paragraph 4 on which the application relies are made out; and
  - (b) 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:** 14 December 2023



---

M Kersey / A R MacDuff  
Solicitor for the Applicants

This document is filed by **Matthew Kersey**, solicitor for the Applicants, of the firm Russell McVeagh, whose postal address is Level 30, Vero Centre, 48 Shortland Street, PO Box 8, DX CX10085, Auckland 1140.

The address for service of the Applicants is Level 30, Vero Centre, 48 Shortland Street, Auckland 1010.

Documents for service may be left at that address 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.