

10 August 2020

Circular to Creditors

Dear Sir/Madam

**MIDCENTRAL PHARMACY SERVICES LIMITED and TARANAKI PHARMACY SERVICES LIMITED
(BOTH IN RECEIVERSHIP & ADMINISTRATORS APPOINTED) (“the Companies”)**

PROCEDURAL MATTERS REGARDING SECOND CREDITORS’ MEETING

The Companies were placed into voluntary administration on 8 July 2020 pursuant to section 239K of the Companies Act 1993 (“the Act”). Tony Leonard Maginness and Jared Waiata Booth (“the Administrators”), CAANZ Accredited Insolvency Practitioners (NZ), were appointed joint and several voluntary administrators.

The Administrators refer to previous correspondence in relation to the second creditors’ meeting (“the Watershed Meeting”), at which creditors will vote on the future of the Companies respectively.

On 3 August 2020 the Administrators filed an application with the High Court on a without notice basis, requesting an extension of the convening period for the Watershed Meeting from 5 August 2020 to 30 November 2020, and on 4 August 2020 the High Court granted the following orders:

1. The Administrators are granted leave to bring the application without notice;
2. The convening period for the Watershed Meeting in relation to the voluntary administration of the Companies be extended by 117 days to 30 November 2020, pursuant to section 239AT(3) of the Act;
3. Advice of the Administrators’ application and a copy of the orders shall be served on all creditors of the Companies by:
 - a. sending them to creditors by email; and
 - b. posting a copy of the application on Baker Tilly Staples Rodway’s website (<https://bakertillysr.nz/services/recovery/creditors/>);
4. Leave is reserved for any creditor of the Companies to apply on notice to vary or set aside these orders; and
5. Leave is reserved to the Administrators to apply further in respect of any modifications or ancillary issues arising out of the orders made.

The Receivers were supportive of the extension of the convening period.

We **attach** copies of the Administrators’ application (excluding enclosures) dated 3 August 2020 and the High Court Minute dated 4 August 2020 in relation to this matter.

Should you have any queries please contact Daniel Zhang of our office by phone on 09 968 9149 or by email at daniel.zhang@bakertillysr.nz.

Yours faithfully

**MIDCENTRAL PHARMACY SERVICES LIMITED and TARANAKI PHARMACY SERVICES LIMITED
(BOTH IN RECEIVERSHIP & ADMINISTRATORS APPOINTED)**



Tony Maginness
ADMINISTRATOR

*Direct Line: +64 (9) 968 9165
E-Mail: tony.maginness@bakertillysr.nz*



Jared Booth
ADMINISTRATOR

*Direct Line: +64 (9) 373 1136
E-Mail: jared.booth@bakertillysr.nz*

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

CIV-2020-404-

UNDER section 239AT of the Companies Act 1993 and Part 19 of the High Court Rules 2016

IN THE MATTER OF **TARANAKI PHARMACY SERVICES LTD (IN RECEIVERSHIP AND ADMINISTRATORS APPOINTED)** a duly incorporated company having its registered office at Level 21, 88 Shortland Street, Auckland 1010

AND **MIDCENTRAL PHARMACY SERVICES LTD (IN RECEIVERSHIP AND ADMINISTRATORS APPOINTED)** a duly incorporated company having its registered office at Level 9, 45 Queen Street, Auckland 1010

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

Applicants

ORIGINATING APPLICATION WITHOUT NOTICE FOR ORDERS PURSUANT TO SECTION 239AT OF THE COMPANIES ACT 1993

DATED 3 AUGUST 2020

Russell
McLeagh

M Kersey / S J Jones
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 Leonard Maginness and Jared Waiata Booth, of Auckland, CAANZ Accredited Insolvency Practitioners (NZ), as voluntary administrators of Taranaki Pharmacy Services Ltd (in receivership and administrators appointed) ("**Taranaki**") and Midcentral Pharmacy Services Ltd (in receivership and administrators appointed) ("**Midcentral**") (together, the "**Companies**"), apply for orders that:
 - (a) the applicants are granted leave to commence these proceedings without notice;
 - (b) the convening period for the watershed meeting in relation to the voluntary administration of each of the Companies be extended by 117 days from 5 August 2020 until 30 November 2020, pursuant to section 239AT(3) of the Companies Act 1993 ("**Act**");
 - (c) advice of the application and the orders made shall be served on all creditors of the Companies by:
 - (i) sending notice of them to creditors by email; and
 - (ii) posting a copy of the application and the relevant judgment/minute of the Court on Baker Tilly Staples Rodway's website;
 - (d) leave is reserved for any creditor of the Companies to apply on notice to vary or set aside these orders; and
 - (e) leave is reserved to the applicants to apply further in respect of any modifications or ancillary issues arising out of the orders made.
2. The grounds on which the orders are sought are as follows:
 - (a) Taranaki is a retailer of pharmaceutical products in the Taranaki region. Taranaki operates three pharmacies: Lander & Black Pharmacy and Unichem Bellblock Pharmacy both in New Plymouth, and Unichem Ducks Pharmacy in Inglewood. Taranaki has 13 employees and approximately 75 trade creditors (including approximately 21 secured creditors).
 - (b) Midcentral is a retailer of pharmaceutical products in the Manawatu region. Midcentral operates the Steeds Pharmacy in Levin. Midcentral has approximately has 7 employees and approximately 21 trade creditors (including approximately 9 secured creditors)].
 - (c) On 8 July 2020, Natalie Burrett and Neale Jackson of Calibre Partners (formerly KordaMentha) were appointed by the Bank of

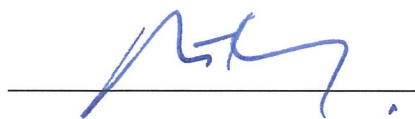
New Zealand ("**BNZ**") as joint and several receivers and managers of the Companies ("**Receivers**"). Since their appointment, the Receivers have continued to trade the Companies, with the intention of selling the business of each company as a going concern, if possible.

- (d) Also on 8 July 2020, the applicants were appointed joint and several administrators of the Companies by the BNZ as secured creditor, pursuant to s 239K of the Act.
- (e) Pursuant to section 239AT of the Act, the applicants must convene the watershed meeting of the Companies on or before 5 August 2020, being 20 working days after the date of their appointment. Section 239AT(3) allows administrators to apply to the Court to extend that convening period.
- (f) The role of the applicants as administrators is to advance the objects set out in section 239A of the Act, being to provide for the business, property and affairs of the Companies to be administered in a way:
 - (i) that maximises the chances of the Companies, or as much as possible of their respective businesses, continuing in existence; or
 - (ii) if it is not possible for the Companies or their respective businesses to continue in existence, that results in a better return for the Companies' creditors and shareholders than would result from the immediate liquidation of the Companies.
- (g) Pursuant to section 239AU, the responsibilities of an administrator also include reporting to creditors about the Company's affairs and advising the creditors in respect of the decision to be made at the watershed meeting.
- (h) Since the applicants' appointment, the Receivers have retained control of the Companies' assets in order to continue to trade the Companies and make preparations for the potential sale of the Companies' businesses as a going concern.
- (i) Sale processes are underway for the businesses of both of the Companies, but neither sale process is likely to be completed within the convening period or before date on which the watershed meetings would be held if convened on 5 August 2020 (being no later than 12 August 2020).
- (j) The applicants require an extension to the convening period in order to allow the Receivers to run effective sale processes with the benefit of the moratorium which applies to the Companies as a consequence of being in administration under sections 239ABC and 239ABD.

- (k) If the watershed meetings occur at this early stage of the receiverships and the Companies are placed into liquidation, the administrations will come to an end. This would end the moratorium period which currently protects the Companies, for example, from landlords terminating leases over land used by the Companies. The pharmacies' leases are likely to be essential to any successful sale as a going concern. For this and other reasons, a loss of the moratorium could be disruptive in terms of managing coordinated and cost-effective processes to realise the assets of the Companies. This would not be in the best interests of creditors of the Companies.
- (l) Under the Medicines Act 1981, a Licence to Operate Pharmacy is required, and it is likely that transfer of the existing licenses will be a condition of any sale as a going concern. Transfer of the licences will require consent from the Ministry of Health and as no purchasers have been identified, this has not yet been obtained and is unlikely to be obtained prior to 12 August 2020.
- (m) An extension to the convening period is also necessary to allow the applicants sufficient time to investigate the Companies' affairs and form a view of the best option available to creditors at the watershed meeting for each company, in order to fulfil their duties under section 239AU of the Act. The applicants are not presently in a position to report fully on the prospects of the ongoing sale processes, and the terms of any such sale may be dependent on whether the convening period and moratorium is extended.
- (n) In the circumstances, it is appropriate that the Court extends the convening period by approximately four months.
- (o) An extension to the convening period should not prejudice:
- (i) unsecured creditors, who retain the ability to apply to vary or set aside the orders made (but who might benefit from a maximisation of returns from a going concern sale);
 - (ii) secured creditors, who include:
 - (aa) the BNZ (the appointer of the applicants and the Receivers under its GSA);
 - (bb) various suppliers of pharmaceutical products with retention of title clauses and/or purchase money security interests ("PMSI"), who are protected by the Receivers' obligation to account for the proceeds of the sale of any PMSI stock; and
 - (cc) other secured creditors (including other PMSI creditors) with security over the Companies' trade assets, who are protected by the Receivers' obligation to respect the priority of higher-ranking security interests;

- (iii) other suppliers of goods and/or services, who are protected by the applicants' obligation to pay for post-appointment trading liabilities that the Companies incur;
 - (iv) employees may benefit from the Receivers continuing to trade the business (and any sale); and
 - (v) landlords, who are paid to the extent that their land is used or occupied during the administration.
- (p) 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.
- (q) The service orders sought will be effective and appropriate.
- (r) The further grounds appearing in the affidavit of Tony Leonard Maginness filed on 3 August 2020 in support of this application.
3. This application is made in reliance on:
- (a) Part 19 of the High Court Rules 2016, in particular rule 19.2(c);
 - (b) Part 15A of the Companies Act 1993, in particular section 239AT;
 - (c) *Re Pumpkin Patch Ltd* [2016] NZHC 2771;
 - (d) *Re Fiber Fresh Feeds Ltd (in receivership and administrators appointed)* [2019] NZHC 1565; and
 - (e) the affidavit of Tony Leonard Maginness filed on 3 August 2020 in support of this application.
4. The application is made without notice to any other party on the following grounds:
- (a) that requiring the applicants to proceed on notice would cause undue delay or prejudice to the applicants; and
 - (b) that the interests of justice require the application to be determined without serving notice of the application.
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 3 August 2020



M Kersey

Solicitor for the Applicants

Phone number: 09 367 8124 / 027 280 5340

This document is filed by **MATTHEW KERSEY**, solicitor for the Applicants, of Russell McVeagh. The address for service of the Applicants is Level 30, Vero Centre, 48 Shortland Street, Auckland 1010.

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 8, Auckland 1140;
- (b) left for the solicitor at a document exchange for direction to DX CX10085; or
- (c) emailed to the solicitor at matt.kersey@russellmcveagh.com, with a copy to sam.jones@russellmcveagh.com.

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

CIV-2020-404-001290

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

UNDER Section 239AT of the Companies Act 1993
and Part 19 of the High Court Rules 2016

AND

IN THE MATTER of TARANAKI PHARMACY SERVICES
LTD (IN RECEIVERSHIP AND
ADMINISTRATORS APPOINTED)

AND MIDCENTRAL PHARMACY SERVICES
LIMITED (IN RECEIVERSHIP AND
ADMINISTRATORS APPOINTED)

AND TONY LEONARD MAGINNESS and
JARED WAIATA BOOTH
Applicants

On the papers: 4 August 2020

Appearances: M Kersey for the Applicants

Date of Minute: 4 August 2020

MINUTE OF ASSOCIATE JUDGE R M BELL

Solicitors / Counsel:

Russell McVeagh, Auckland

Case officer: Aukuso Lesa

[1] Mr Maginness and Mr Booth were appointed administrators of Taranaki Pharmacy Services Limited and Midcentral Pharmacy Services Limited on 8 July 2020. On the same date receivers for the two companies were appointed.

[2] Taranaki Pharmacy Services Limited operates three pharmacies in New Plymouth / Inglewood. Midcentral Pharmacy Services Limited operates one pharmacy in Levin. The two companies have the same directors and shareholders. Meetings of creditors of the two companies were held on 17 July 2020.

[3] Unless time is extended, the administrators must convene watershed meetings by 5 August 2020, with the meeting to take place within a further 5 working days.

[4] The administrators seek extensions of time for both companies. They propose that time be extended by 117 days to 30 November 2020. The main purpose of seeking the extension is to enable an orderly sale of both businesses. The receivers have kept both companies operating in the meantime. The effect of the companies going into administration is to protect the companies from enforcement by creditors (Companies Act s 239ABC – s 239ABJ).

[5] The administrators have applied without notice. Such applications are typically made without notice, with the Court ordering that advice of the application and orders are to be served on creditors, and reserving leave to the creditors to vary or set aside the orders.


[6] The administrators have applied by originating application. Leave is required and is granted. This is a very clear case for an originating application.

[7] I also see no difficulty with the administrators applying in a single application for orders for the separate administration of related companies. While the affairs of each company are distinct and need to be kept separate, there are common factors which make it convenient for the applications for the two companies to be combined in a single proceeding.

[8] The administrators' reasons for extending the time to call a watershed meeting are conventional and orthodox. I note that similar orders were made in respect of *Bay of Plenty Pharmacy Services Ltd (in Receivership and Administrator Appointed)* CIV-2020-404-0583, the minute of 23 April 2020.

[9] I am also satisfied that the interests of creditors generally will not be prejudiced by extending the time for a watershed meeting. That gives better prospects of a better overall outcome for all creditors.

[10] I am accordingly satisfied with the application and make orders in terms of the application.


Associate Judge R M Bell