IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

CIV-2005-485-1820

UNDER	the Receivership Act 1993
BETWEEN	SERVICE FOODS MANAWATU LIMITED (IN RECEIVERSHIP AND IN LIQUIDATION)
AND	RICHARD GRANT SIMPSON AND RONALD WALTON Applicants
AND	NZ ASSOCIATED REFRIGERATED FOOD DISTRIBUTORS LIMITED Respondent

Hearing: 11 November 2005

Appearances: G J Toebes for Applicant Receivers
B D Gustafson and D M Hughes for Respondent
S M P Dawson for Liquidator

Judgment: 30 January 2006

JUDGMENT OF GODDARD J

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[1] This is an application by the receivers of Service Foods Manawatu Limited ("Service Foods") for orders determining whether NZ Associated Refrigerated Food Distributors Limited ("NZARFD") has a perfected purchase money security interest in respect of collateral held by the receivers at the premises of Service Foods. If NZARFD does not have a perfected purchase money security interest in the collateral held, then the proceeds of that collateral will be paid to Westpac Banking Corporation (“Westpac”) pursuant to a general security agreement granted in favour of Westpac by Service Foods dated 14 October 2003.

[2] The determination sought involves three questions:

> Whether NZARFD has a "security interest", as that expression is defined in s 17 of the Personal Property Securities Act 1999, in any goods supplied by it to Service Foods and still in the possession of Service Foods at its premises at the time the receivers were appointed, or in proceeds of those goods held; secondly, if there is such a security interest, whether that security interest was perfected in the collateral by the financing statement registered by NZARFD on or about 23 December 2004; closely allied to that second question is the related question as to whether there is any "seriously misleading" defect, irregularity, omission or error in the financing statement so as to render it "invalid"?

[3] The first question is a question of fact: the second two questions involve the interpretation and application of various provisions of the Act. There is as yet no direct authority bearing on those particular interpretative issues, although there is academic writing in point. Assistance is also to be gained from the Canadian law, as the New Zealand Act has employed concepts not only used in the USA Uniform Code but in 9 states of Canada (Alberta, British Columbia, Manitoba, Saskatchewan, Nova Scotia, New Brunswick, Ontario, Prince Edward Island and Newfoundland). Two of those Canadian states have a Personal Property Securities Register which uses the same registration and search criteria as New Zealand. However, and notwithstanding the borrowed nature of the New Zealand registration and search criteria, the effect of the New Zealand legislation may not be wholly identical to that of the "various Canadian jurisdictions" (as per the observation of the Court of Appeal in *New Zealand Bloodstock Limited v Waller/Agnew* CA 269/04 27 October 2005, paras 16 and 17).

The competing security interests

[4] NZARFD's security interest was registered on the Personal Property Securities Register on 23 December 2004. The Financial Statement details on the Register are as follows:

Collateral type:	All Present and After Acquired Property
Description:	Being all the debtors personal property and all other property.

[5] Westpac's general security interest is also in all of the property (including the personal property) of Service Foods and is by virtue of a signed general security agreement dated 14 October 2003, perfected by registration of a Financing Statement on the Personal Property Securities Register on 22 October 2003 under the debtor name "Service Foods Manawatu Limited" with the description of the collateral type as "all present and after acquired personal property".

[6] Although NZARFD's claimed security interest is later in time than Westpac's security interest, NZARFD will have priority of security over the net resale proceeds of stock supplied by it to Service Foods as an unpaid vendor under the retention of title terms.

[7] The critical question in determining which security interest has priority is whether NZARFD's Financing Statement contains an adequate description of the collateral which it says secures Service Foods' contractual obligation to it; or whether the collateral type and description therein contained does not relate to the security instrument and so cannot perfect it. Put shortly, the question is: has NZARFD failed to register a Financial Statement for its claimed security interest and thus failed to perfect its claimed security interest?

Question 1

The terms of trade agreed between NZARFD and Service Foods

[8] The first challenge to NZARFD's claim to a perfected purchase money security interest in the collateral of Service Foods is directed to the terms of trade agreed by NZARFD and Service Foods. The receivers' contention is that the written terms of trade between those parties do not reflect the actual terms of trade as conducted. The receivers therefore argue that there is no written agreement between

the parties and thus no enforceable security held by NZARFD in terms of s 36 of the Act, s 36(1)(b)(i) of which provides:

> **36 Enforceability of security agreements against third parties**
>
> (1) A security agreement is enforceable against a third party in respect of particular collateral only if—
>
> (b) The debtor has signed, or has assented to by letter, telegram, cable, telex message, facsimile, electronic mail, or other similar means of communication, a security agreement that contains—
>
> (i) An adequate description of the collateral by item or kind that enables the collateral to be identified; or
>
> (ii) A statement that a security interest is taken in all of the debtor's present and after-acquired property; or

[9] The evidence of Mr Forbes, the Managing Director of NZARFD, is that NZARFD sold product to Service Foods from mid-2004 onwards on the agreed basis that Service Foods would pay for any product purchased on the last trading day of the month following. However, because of the level of indebtedness soon incurred by Service Foods, NZARFD asked for a credit account application to be executed by its directors, to include terms of trade. On 15 December 2004 Service Foods returned the required credit application form signed by one of its directors, together with terms of trade signed by both of its directors. Mr Forbes' evidence is that those terms of trade then formed the basis of trade between the parties, save for the existing agreement that payment on the last trading day of the month would be acceptable. The terms of trade also provided for NZARFD to take a security interest over any goods which it supplied, until those goods were paid for. The terms further provided for NZARFD to take a security interest in the proceeds of any goods sold by Service Foods but not paid for.

[10] The following are the relevant terms of trade, as described, for present purposes:

> **5. Ownership/Recovery of Goods**
>
> **Prior to the Buyer paying in full for all goods supplied to the Buyer by the Company, ownership of any such goods will remain with the Company.** If the Buyer fails to pay on the due date or breaches these terms, **or is placed in receivership, or**

> **liquidation** or enters into a composition with its creditors, the Buyer authorises the Company to enter any premises to recover goods owned by the Company. The Buyer will indemnify the Company for any losses or cost the Company incurs in recovering such goods. If the premises are those of a third party, the Company may enter and recover the goods as the Buyer's agent. The Company will be entitled to sell any goods held by the Company and apply the proceeds towards amount owned by the Buyer if the Buyer failed to pay any amount. **If the Buyer on-sells any goods (supplied by the Company) before ownership has passed to the Buyer, the proceeds of such sale shall be received and held by the buyer in trust for both the Company and the Buyer**. The Buyer's interest as beneficiary under that Trust shall be that portion of the proceeds which does not exceed the Buyer's indebtedness to the Company. The Company's right in this clause are in addition to its right to take recovery action by way of the issue of Court proceedings for any amounts unpaid under these terms of trade.
>
> 9. **Security Interest**
>
> **The Buyer agrees that, for the purposes of the Personal Property Securities Act 1999 ("the PPSA"), the Company has a security interest in the good supplied by the Company to the Buyer (as detailed) in each invoice supplied to the Buyer as well as the proceeds of such goods.** The Buyer agrees to sign any document required for the Company to perfect the Buyer's security interest under the PPSA and authorise the Company to sign any such documents as the Buyer's attorney.
>
> …
>
> 11. **Goods**
>
> The term "goods", as used in these terms and conditions, means all personal property supplied by the Company to the Buyer from time to time, together with the proceeds of such goods and includes: frozen, chilled and dry foodstuffs, packaging and paper products, plastic utensils, all goods and/or services which are described on any invoice, delivery docket or order form, all inventory." (Emphasis added by respondent's counsel.)

[11] The receivers' view is that the effect of Mr Forbes' evidence about the terms of trade is that the written terms of trade do not record the contractual terms because they do not reflect the most material term, which is that of payment for supply; and furthermore that those payments that were made, were not made either on the 20th of the month (as the written terms provided) or on the last day of the month following (as actually agreed).

[12] NZARFD says in response that varying the terms of payment in practice (as per the practice in existence at the time of Service Food applying for a trade account

and signing the terms of trade) did not mean that all of the terms of trade automatically became void. At most, the variation as to the timing of payment was an indulgence, as Mr Forbes' evidence on the matter makes clear:

> I can confirm, from NZ Associated's position, that I always believed the terms of trade … were the terms of trade between NZ Associated and Service Foods apart from the understanding as to when payment was due …. While Service Foods fell behind in making payments as agreed, and it was necessary to try and hound its directors and extract promises to pay arrears and bring accounts up to date, I never agreed, indicated or contemplated that NZ Associated had waived its rights in the terms of trade and in particular its rights as a purchase money security interest holder. Service Foods never indicated to NZ Associated, with the amendment as to payment …, that the terms of trade did not apply to the relationship between NZ Associated and Service Foods.

[13] On this preliminary issue I am satisfied that, although the terms of trade provided for any modification to them to be in writing by agreement between the parties, the effect of an indulgence over the timing of payments (not expressed in writing) does not void the whole of terms of trade agreed. I accept the respondent's submission that Mr Forbes' evidence makes it clear that he never intended that NZARFD would give away any right in the security available, and that this is supported by NZARFD's registration of its Financing Statement in the context of that background of erratic and late payments.

Do the terms of trade create a security interest that is a purchase money security interest under the Act?

[14] The receivers also challenge the retention of title clause (clause 5 in the terms of trade) as of no effect and not in a form consistent with the Act but rather "a hangover" from the pre-Act era. The submission made was that:

> … the provisions of PPSA do not allow for, or recognise, the concept of a trust for resale proceeds; and in any case a trust is inconsistent with a security interest. The concept of ownership is irrelevant to the status, and priority, of security interests.

[15] In relation to the "security interest" clause itself (clause 9 in the terms of trade) the receivers say that, in any case, NZARFD never sought to enforce any security interest when seeking to repossess stock it had supplied: rather it did so as owner of the goods and not in reliance on the trust in clause 5 for the proceeds of

sale of any goods supplied. They say that, as a matter of fact, Service Foods sold "heaps of stock" without holding the proceeds in trust for NZARFD and without complaint from NZARFD. They also point out that the resale proceeds now available (before costs) amount to only about $131,000, whereas the amount owing to NZARFD is $579,732.

[16] NZARFD refutes these contentions and points to Service Foods' acceptance of clause 9 as a term of trade creating a security interest and says that is supported by its subsequent registering of its Financing Statement. It asserts that its security interest is not limited to the goods it actually supplied to Service Foods but encompasses also the proceeds of sale of those goods. In this regard, Mr Gustafson referred to section 74 of the Act, which deals with purchase money security interests in both inventory and its proceeds. He is correct that the provisions of s 74 make clear that a purchase money security interest covering proceeds as well as inventory has been expressly contemplated by the Act. Section 74 states:

> **74 Priority of purchase money security interest in inventory or its proceeds**
>
> A purchase money security interest in inventory **or its proceeds** has priority over a non-purchase money security interest in the same collateral given by the same debtor if the purchase money security interest in the inventory or its proceeds is perfected at the time the debtor, or another person at the request of the debtor, obtains possession of the collateral, whichever is earlier. (Emphasis added.)

[17] Mr Gustafson referred also to s 24, as effectively scotching the receivers' objection that "a trust [relationship (equitable title vested with a beneficiary)] is inconsistent with a security interest". Relevantly, s 24 provides:

> **24 Application of Act not affected by secured party having title to collateral**
>
> The fact that title to collateral may be in the secured party rather than the debtor does not affect the application of any provision of this Act relating to rights, obligations, and remedies.

[18] I am satisfied that the terms of trade as agreed to by Service Foods and NZARFD do come within a definition of a "security agreement' in s 16 of the Act, as they amount to:

> (a) … an agreement that creates or provides for a security interest; and
>
> (b) Include a writing that evidences a security agreement. (If the context permits).

[19] A security interest is defined in s 17(1) of the Act as follows:

> **17 Meaning of "security interest"**
>
> (1) In this Act, unless the context otherwise requires, the term security interest—
>
> (a) Means an interest in personal property created or provided for by a transaction that in substance secures payment or performance of an obligation, without regard to—
>
> (i) The form of the transaction; and
>
> (ii) The identity of the person who has title to the collateral; and
>
> (b) Includes an interest created or provided for by a transfer of an account receivable or chattel paper, a lease for a term of more than 1 year, and a commercial consignment (whether or not the transfer, lease, or consignment secures payment or performance of an obligation).

[20] As Mr Gustafson submitted, s 17(3) is particularly applicable to the present case, as it makes it clear that the concept of retention of title has not been negated by the new Act but can constitute a security interest. In this regard s 17(3) provides:

> (3) Without limiting subsection (1), and to avoid doubt, this Act applies to a fixed charge, floating charge, chattel mortgage, conditional sale agreement (**including an agreement to sell subject to retention of title**), hire purchase agreement, pledge, security trust deed, trust receipt, consignment, lease, an assignment, or a flawed asset arrangement, **that secures payment or performance of an obligation**. (Emphasis added.)

[21] The clear statement, in clause 5 of the terms of trade, that goods will be sold "subject to a retention of title" brings those terms of trade into the category of an arrangement that will constitute a security interest, as provided for in s 17(3). I accept Mr Gustafson's submission that it is the substance of an arrangement securing payment or performance of an obligation that is contemplated by s 17 rather than the form of the arrangement, and that the concept of a trust for resale of proceeds is not inconsistent with a security interest as therein defined.

[22] It follows that in answer to question 1, I find that the written terms of trade accurately record the contractual relationship between NZARFD and Service Foods, notwithstanding the indulgence over payment dates; and that the inclusion of a retention of title clause is a material and permissible term of trade and enforceable; and that the terms of trade create a security interest in goods supplied or in the proceeds thereof, and that that is a purchase money security interest as defined under the Act. Put shortly, the obligation of the debtor (in clause 5 of the terms of trade) is to pay for the goods supplied; and the security interest is in the goods supplied and in their proceeds.

Alternative argument under Question 1

[23] In case they did not succeed in their preliminary argument, the receivers advanced an alternative argument; namely, that NZARFD does not have a "security interest" because the claimed security interest in the terms of trade does not secure any desired obligation. Citing s 17 of the Act, they submitted that Mr Forbes has not deposed as to what obligations are secured by the claimed security interest but has simply referred to the "charge" element of the claimed security (para 2.4 of his first affidavit). On the basis of that "totally uncertain" reference, Mr Toebes queried what the obligation purportedly secured could be?

> Purchaser price? Part of the purchase price? Purchase price overdue? Purchase price not yet due? Resale proceeds? GST? Purchase price of all goods not paid for? Or paid for goods as well? Other? …

[24] Mr Toebes' essential submission was that the total uncertainty of the obligation that NZARFD claim has been created in its favour cannot be "cured by implication" but is "such a fundamental omission that there is no alternative but to find that a security interest … has not been created". By way of contrast he pointed to the Westpac form of General Security Agreement as providing a proper statement of the obligations secured for Westpac's security.

[25] I find nothing of substance in this alternative argument. It is clear from the terms of trade that NZARFD has an interest in Service Foods personal property,

created or provided for by a transaction that has in substance secured payment or performance of an obligation (s 17).

Questions 2 and 3

[26] These questions are essentially related and so are conveniently dealt with together. They address the truly critical issue in this case, which is whether the description of the collateral in the Financial Statement covers the description of the goods in which NZARFD claims a security interest; and, if not, whether the misdescription is a "seriously misleading" misdescription.

[27] The principles relating to enforceability of security are set out in Part 3 of the Act. A security agreement will be enforceable against third parties if it complies with the requirements of s 36(1)(d)(i) of the Act, set out in para [8] above. I have already found that there is an enforceable security agreement between NZARFD and Service Foods in the form of the written terms of trade.

[28] Section 41 of the Act provides that a security interest will be perfected when that security interest has attached and a Financing Statement has been registered in respect of that security interest.

[29] Part 10 of the Act provides for the registration of Financing Statements. For present purposes the relevant data that "must be contained in the Financing Statement in order to register it" is that set out in s 142(1)(e):

> 142 **Data required to register financing statement**
>
> (1) The following data **must** be contained in the financing statement in order to register it:
>
> …
>
> (e) a description of the collateral, including its serial number if required by this Act or by the regulations:

[30] Section 149 of the Act deals with the validity of registrations of Financing Statements in the following way:

> **149 Registration of financing statement invalid only if seriously misleading**
>
> The validity of the registration of a financing statement is not affected by any defect, irregularity, omission, or error in the financing statement unless the defect, irregularity, omission, or error is seriously misleading.

[31] Section 150 provides that a Financing Statement will be "serious misleading" in the following, non-exclusive, circumstances:

> **150 When financing statement seriously misleading**
>
> Without limiting the circumstances in which a registration is invalid, a registration is invalid if there is a seriously misleading defect, irregularity, omission, or error in—
>
> (a) The name of any of the debtors required by section 142 to be included in the financing statement other than a debtor who does not own or have rights in the collateral; or
>
> (b) The serial number of the collateral if the collateral is consumer goods, or equipment, of a kind that is required by the regulations to be described by serial number in a financing statement.

[32] The starting point of the analytical exercise is to examine the purpose of the Personal Property Securities Register, as provided for by the Act. As Mr Toebes advised there are two constituent groups using the Register: those who register Financing Statements in respect of security interests; and those who search for prior registration of security interest. Mr Toebes described the situation succinctly thus:

> The search function exists to provide information to prospective buyers and lenders who are purchasing property or taking property as collateral for a loan. Thos parties will want to know if there are any prior security interest claims on the property which could affect a decision to buy the property or accept it as collateral. The test is an objective one – there is no need to prove anyone was actively misled by the error (s 151). Would a reasonable searcher be misled? "Reasonable searches" must be referenced to persons who would usually be prospective purchasers or lenders because they will be concerned with questions of enforceability and priority of security interests. That is a wide section of the population but it is not the entire population. A reasonable searcher does not include:
>
> (a) Persons simply doing a credit check on the debtor – to see who their secured lenders are;
>
> (b) Persons using PPSR as an alternative to Auto-check – putting the identification details of a vehicle to find out who owns it;

> Reasonable searchers must be deemed to be both familiar with the search mechanisms available and be able to use them reasonably competently – knowing the search criteria available in the system and the result produced by each type of search.

[33] Under regulation 8 of the Personal Property Securities Regulations 2001, every Financing Statement must contain all applicable data specified in Part 1 of Schedule 1 of the Regulation. Part 1 of Schedule 1 of the Regulations includes para 8, which relevantly provides as follows:

> *Data entry for description of collateral*
>
> **8 Description of collateral: general requirements**
>
> 8(1) All collateral must be assigned to 1 or more of the following collateral types:
>
> …
>
> (e) goods: other:
>
> …
>
> (l) all present and after-acquired property;
>
> …
>
> 8(2) A further description must be provided for all collateral that has not been assigned to the collateral type described in sub-clause (1)(l).

[34] Registration of a Financing Statement is done electronically via a simple selection of menu options each of which must be completed before progression to the next page. One of the steps is the requirement to choose one of the collateral types specified in clause 8 in Part 1 of Schedule 1 to the Regulations. For all but the collateral type "all present and after-acquired property" the next menu page makes provision for a description of the collateral that is subject to the claimed security interest. Mr Toebes' submission was that registration of a Financing Statement for "all present and after-acquired property" cannot be perfection of a security interest in specific goods because that category of collateral (all present and after-acquired property) does not require any more specific identification of the subject collateral. This, he submitted, must be contrary to s 36(1)(b)(i), set out in para 8 above.

[35] The short answer is, however, that s 36(1) relates to the enforceability of security agreements against third parties but does not prescribe what constitutes an

adequate description of the collateral in question. Whilst s 150 provides two specific examples of when a Financing Statement will be seriously misleading, the category is clearly not closed and must be a question of fact.

[36] The answer to whether a broad collateral description like "all present and after-acquired property" is adequate or seriously misleading is helpfully summarised by *Widdup and Mayne* in *"Personal Property Securities A conceptual approach"* (revised edition) (tab 1 para 20.19) as follows:

> The PPSA does not penalise overly board collateral descriptions in financing statements. The security agreement, not the financing statement, governs the terms of the security and reflects the intentions of the parties with respect of the collateral provided to secure the obligation. An overly broad financing statement collateral description should not be viewed as an attempt by the secured party to subject the collateral to the security agreement to which the debtor did not agree. The PPSA indicates that the secured party will only have a valid security interest in the property described in the security agreement and this is not affected by the fact that the financing statement defines the collateral.
>
> **For example if a secured party registers a financing statement describing the collateral as all of a debtor's present and after acquired property, but the security agreement evidences that a security interest is taken in all of the debtors accounts receivable only, then the financing statement perfects the security interest in the accounts receivable only, but not in any other property.** (Emphasis added.)

[37] It is perfectly permissible, in terms of the requirements of para 8(1) and (2) (of Part 1 of Schedule 1 of the Regulations) for NZARFD to have selected "all present and after-acquired property) as the collateral type. Mr Toebes did not suggest that it was not an available description of collateral type in the present case. That being so, there was no further requirement for a more particularised collateral description to be added. In the present case NZARFD (by the terms of trade) required a security interest in not only inventory supplied, or its proceeds, but in all of the present and after-acquired property of Service Foods if proceeds of the inventory was used to pay for that property. As Mr Gustafson submitted, with such a far reaching security interest such a description cannot be regarded as too wide. He referred also to the law relating to tracing of proceeds but I do not regard an excursion into that aspect of the law as essential to this judgment.

[38] Where, as in the present case, there is a (perhaps) overly broad collateral description that could include collateral not covered by the security agreement set out in the terms of trade, the secured party may, as the learned author Mike Gedye[1] said, be put to the cost and inconvenience of defending a demand by the debtor that the registered collateral description be narrowed to reflect properly the terms of the security agreement entered into by the parties. The interesting aspect of Mr Gedye's statement is that:

> An overly broad description, while being effective to perfect a security interest in a subclass of the described collateral will be open to challenge by the debtor. The secured party may then be put to the cost and inconvenience of defending a demand by the debtor that the registered collateral description be narrowed to reflect properly the terms of the security agreement entered into parties.

[39] However, the real mischief to which the concept of "seriously misleading" must be directed is the prevention of a searcher from being able to find a Financing Statement because of error in either the debtor name or the collateral's serial number. This was the position with which the Saskatchewan Court of Appeal was concerned in *Kelln (Trustee of) v Strasbourg Credit Union Limited* (1992) 89 DLR (4th 427).

[40] The learned author, Sara Cameron, in her article[2] on what amounts to a seriously misleading Financing Statement, summarised the position in Canada as follows:

> a. The first is whether a reasonably prudent searcher would have located the Financing Statement;
>
> b. The second is whether a properly formatted search would not locate the financing statement in either the debtor name field or the serial number of the collateral.

[41] In conclusion, I am satisfied that there is no material defect or misleading information in the collateral description contained in NZARFD's Financing Statement. It is possibly overly broad but, if that is so, NZARFD's valid security interest will be necessarily confined to the property described as "goods" in the terms of trade, or any proceeds of those goods that can appropriately be traced into

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[1] Gedye, *Reflections on Some Practical Issues which have arisen under New Zealand's Personal Property Securities Act and some lessons for Australia* (2004) 15 JBFLP 20

[2] PPSA – *Seriously misleading financing statements* (2005) NZLJ 107

other property. In thus finding that the collateral description NZARFD's Financing Statement is not seriously misleading, I have not overlooked the concern expressed by Mr Dawson, that too broad a collateral description may affect a liquidator's ability to liquidate by overstating the financing situation. However, that does not negate the fact that the Register is capable of being properly and accurately searched by any interested person and the fact of NZARFD's security interest in all present and after-acquired property of Service Foods immediately disclosed. In this sense no prospective creditor of Service Foods would be misled: quite the contrary.

Conclusion

[42] NZARFD has a security interest, as that expression is defined in s 17 of the Act, in any goods by NZARFD to Service Foods Manawatu Limited and remaining in the possession of Service Foods at its premises at State Highway 3, Bulls, or in the traceable proceeds of those goods. NZARFD have perfected its security interest in the collateral described in its Financing Statement on the Personal Property Securities Register in accordance with requirements of the Act and Regulations. There is no seriously misleading defect, irregularity, omission or error in the description of the collateral recorded in the Financing Statement registered by NZARFD on 23 December 2004 under number FH48P3F049T72B21.

[43] Accordingly, Service Foods is required to account for the value of the collateral to which NZARFD is entitled. As Mr Gustafson submitted, however, the value of the security covered is a complex question which will require full discovery from Service Foods and an analysis to see if proceeds of sale of inventory can be traced into assets in the hands of Service Foods at liquidation and receivership. It is not a matter with which the Court is currently equipped to deal and I understood from counsel that a co-operative approach to ascertaining the value of the security covered would be adopted in the event that I reached the conclusions that I have.

Costs

[44] The respondent is entitled to costs and disbursements. Costs are awarded on a category 2B basis.

Solicitors:
Buddle Findlay, Wellington, for Applicants
Kensington Swan, Wellington for Respondent
Gibson Sheat, Wellington for Liquidator

Delivered at 10.00am on 30 January 2006.