

Insolvency & restructuring newsletter

David Perry, Scott Barker, Scott Abel, David Broadmore, Jan Etwell, Kelly Paterson, Willie Palmer, Bridie McKinnon, Myles O'Brien, Peter Niven, Jane Maltby, Luke Sizer, Matthew Triggs

11 November 2021

The New Zealand economy has weathered the COVID-19 pandemic better than many commentators predicted in April last year, in part due to the significant economic stimulus from the government, coupled with record high house prices and rock bottom interest rates. This is reflected in RITANZ's latest formal insolvency statistics, which show record low liquidation application numbers for September 2021 compared to the three previous years. There are some early warning signs on the horizon, however, we may start to see a rise in the number of formal insolvency appointments over the coming twelve months. Those warning signs include rising interest rates, high business debt levels, lessening government business support, and the ongoing impacts of Covid lockdowns on consumer behaviour. Adding to this, New Zealand households debt to income ratios have increased to levels not seen since before the GFC.

With that short forecast in mind, we hope you enjoy this edition of our Insolvency and Restructuring newsletter. You may notice one or two themes this quarter, with many judgments touching on matters relating to insolvency practitioner conduct, as well as issues involving the insolvency of corporate or statutory trusts.

Bridie McKinnon looks at the recent High Court decision in *McVeigh v Decmil Australia Pty Ltd* against the background of recent law reforms targeting insolvency practitioner regulation. Honor Kelly summarises the Supreme Court of New South Wales' treatment of cashflow solvency for future debts in the Arrium decisions, and looks at issues of double recovery. Michael Smol considers the rule against double proof in the English Court of Appeal's decision in *Lehman Brothers Holdings Scottish LP 3 v Lehman Brothers Holdings Plc & Ors*. The Court of Appeal in that case considered the rule against double proof when a surety gives up a right of indemnity from the principal debtor. Luke Kibblewhite summarises the conduct of liquidators in litigation, including as to liquidators' remuneration and trustee's rights of indemnity from trust assets. Brooke Marriner summarises the Court of Appeal's consideration of the date for determining claims in the Halifax liquidation. She also looks at the UK Court of Appeal's decision in *Al Jaber v Mitchell* in which the Court considered the interesting question of whether the immunity from suit available to witnesses in court proceedings applies to statements made in the course of examination by a liquidator under the UK equivalent of s266 Companies Act. Finally, we look at the case of the Australian Sawmilling Company, a decision of the Victorian Supreme Court in which the Court upheld the court at first instance' decision to set aside a disclaimer of onerous property, resulting in the liquidator being liable for environmental clean up costs.

We hope you enjoy this edition of our Insolvency and Restructuring newsletter. If we can provide further information on any matters considered, please contact one of our team.

[READ NEWSLETTER HERE](#)

Auckland

188 Quay Street
Auckland 1010

PO Box 1433
Auckland 1140
New Zealand

P: +64 9 358 2555
F: +64 9 358 2055

Wellington

Aon Centre
1 Willis Street
Wellington 6011

PO Box 2694
Wellington 6140
New Zealand

P: +64 4 499 4242
F: +64 4 499 4141

Christchurch

83 Victoria Street
Christchurch 8013

PO Box 322
Christchurch 8140
New Zealand

P: +64 3 379 1747
F: +64 3 379 5659