IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CIV-2017-404-000337
[2017] NZHC 1884

BETWEEN	KEVIN JOHN WHITLEY Applicant
AND	RIBBLE LIMITED (FORMERLY GROUND SUPPORT (WGTN NO. 1) LIMITED) First Respondent
	MICHAEL EDWIN KOOIMAN Second Respondent

Hearing: 10 May 2017

Appearances: Robert Hucker for the Applicant
Second Respondent in Person

Judgment: 9 August 2017

JUDGMENT OF MOORE J

This judgment was delivered by me on 9 August 2017 at 2:00 pm
pursuant to Rule 11.5 of the High Court Rules.

Registrar/ Deputy Registrar

Date:

Introduction

[1] The applicant, Kevin Whitley, is the receiver of the first respondent, Ribble Limited ("Ribble"). He applies for orders that the second respondent, Mr Kooiman, be directed to deliver up all books, records and documentation relating to Ribble's affairs. Mr Kooiman is the sole director of Ribble.

[2] Mr Kooiman opposes the application on the grounds that he claims Mr Whitley was not validly appointed as a receiver, all the personal property owned by Ribble is exempt collateral and, in any event, Mr Whitley failed to advertise his appointment as required by the Receiverships Act 1993 ("the Act").

Background

[3] The relevant facts can be stated briefly. They are these.

[4] FM Custodians Limited ("FM Custodians") agreed to advance monies to Ground Support (Wgtn. No 1) Limited ("Ground Support") the sole director of which was Mr Kooiman. The advances were secured by way of a general security agreement ("GSA") executed on 19 March 2013. The purpose of the advance was to enable Ground Support to build a tunnel to provide access to land in Island Bay, Wellington.

[5] Subsequently, Ground Support changed its change to Ribble.[1] For the purposes of this judgment and for the sake of convenience I shall refer to the company only as Ribble. Thus references to Ribble should be taken to include Ground Support where appropriate.

[6] On 5 December 2016, after Ribble had defaulted on its obligations under the GSA, FM Custodians purported to appoint Mr Whitley as Ribble's receiver.

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1 In July 2016.

[7] On 17 January 2017 Mr Whitley sent Mr Kooiman a letter requesting information under ss 12 and 14 of the Act. It read as follows:

> **"Information Request**
> **Ribble Limited (in receivership)**
>
> This information request is made under s 12(1)(a) and (b) and s 2(2) of the Receivership Act 1993 coupled with s 14(2)(f) and (g).
>
> You will be required under s 12(1)(b) to verify by statutory declaration that the books, documents and information are complete and correct.
>
> I request you to deliver up all such books, records and documents.
>
> - All financials, debtors, creditors etc.
> - All Tax-INC, PAYE, GST etc – their work papers, IRD forms and correspondence etc.
> - Bank Statements for all accounts.
> - Planning Information – reports, Geotech, traffic typography, hydrology, services, electrical, gas, water, sewerage, correspondence with neighbours and contact details and anything related to Ribble ST.
>
> in your possession or under your control immediately.
>
> This list is not exhaustive, it is an indicative, full information request in regards to all matters relating to Ribble St.
>
> Please collate everything and contact us on … to arrange a courier to pick up said documentation.
>
> Yours faithfully
>
> Kevin J Whitley B.B.S. (Receiver)"

[8] Despite subsequent requests, Mr Kooiman refused to deliver up any of the documentation or material referred to in Mr Whitley's request.

The application and its opposition

[9] Mr Whitley now applies under s 12 of the Act seeking orders that Mr Kooiman, as director of Ribble, deliver up the documentation listed in his information request. The purpose of the request and the reason for seeking the information is that Mr Whitley needs this to identify the collateral secured under the GSA.

[10] Mr Kooiman opposes the application. He advances the following arguments:

(a) Mr Whitley was not validly appointed as the receiver because his appointment was made under terms which did not form part of the GSA entered into between Ribble and FM Custodians;

(b) any and all personal property owned by Ribble constitutes "exempt collateral" under the GSA; and

(c) Mr Whitley's appointment as Ribble's receiver is invalid because he failed to give notice of his appointment in terms of s 8 of the Act.

[11] In the course of argument, Mr Kooiman accepted that he was in a position to provide the first three categories of information listed in Mr Whitley's information request. However, he maintains his opposition in respect of the fourth category of material.

[12] I turn now to consider each of Mr Kooiman's grounds of opposition.

Was Mr Whitley validly appointed pursuant to the terms of the GSA?

[13] Mr Kooiman accepts that he signed the GSA on behalf of Ribble on 19 March 2013. However, he said that he did not sign or assent to the "general terms" under which Mr Whitley's appointment as receiver is claimed to have been made. The "general terms" are contained in a "Memorandum of General Terms and Conditions" ("MGTC"). This is a standard form document produced by the Auckland District Law Society. Its purpose is to set out further terms intended to be incorporated with the GSA.

[14] The essence of Mr Kooiman's argument on this point is that "there is no evidence before this Court that constitutes a GSA (complete) between the Lender and the first respondent and which sets out the terms of a GSA that would enable the Applicant to be appointed".

[15] He also submits that the particular MGTC provided in Mr Whitley's evidence was an obsolete and thus invalid form. As a consequence, he says that Mr Whitley's appointment was invalid.

[16] In promoting this argument Mr Kooiman relies on an affidavit sworn by his solicitor, Mr Young, an experienced commercial lawyer. Mr Young deposes that GSAs entered into using an ADLS precedent are comprised of two parts: the specific terms and the general terms. The specific terms are contained in the body of the GSA and the general terms are contained in the MGTC. Mr Young says that it is his custom and practice for the secured party to sign at least the front page of the MGTC to acknowledge that the document containing the general terms and conditions is the one which applies to the borrower's GSA. The effect of Mr Young's evidence is that no general terms were incorporated into the agreement between the parties because the MGTC was not provided to Mr Kooiman nor was it signed by him.

[17] Mr Young also points out that the MGTC included in Mr Whitley's affidavit in support is a 2002 ADLS precedent which was legally redundant at the time Ribble entered into the GSA.

[18] Mr Whitley's affidavit contains, as an annexure, the first page of a ADLS document headed up, "Memorandum of General Terms and Conditions". Beneath are the words:

> "Intended for inclusion in instruments of the following type:
>
> - General Security Agreement
> (ADLS form 6301)
>
> - Memorandum of Mortgage (all obligations)
> (ADLS form 6304, or 6305, or 6306)
>
> Registered pursuant to s 155A of
> the Land Transfer Act 1952 under
> Memorandum No. 2002/4119"

[19] Mr Whitley also annexes a complete copy of the MGTC.

[20] As Mr Young points out in his evidence, this particular MGTC was rendered obsolete when the Property Law Act 1952 was repealed and replaced by the Property

Law Act 2007 on 1 January 2008. Given that the GSA was signed on 19 March 2013 Mr Kooiman's argument is that the MGTC which contained the power to appoint Mr Whitley was invalid and it thus follows that Mr Whitley's appointment was invalid and he thus had no lawful authority to make the 17 January 2017 request in terms of s 12 of the Act.

[21] In response to this claim, Mr Hucker, for Mr Whitley, says that the MGTC was expressly incorporated as part of the GSA by reference. While the general terms of the security agreement were contained in a separate document they were, nonetheless, incorporated into the agreement between the parties.

[22] In advancing that submission he relies on the following term at page 3 of the GSA:

> **"This General Security Agreement (GSA):**
>
> ...
>
> **D. is composed of**
>
> and incorporates this document (including all Schedules and all Annexure(s)) and the memorandum (the general terms), a copy of which is registered pursuant to section 155A Land Transfer Act 1952 under number 2011/4301;"

[23] Mr Hucker submits it makes no difference whether a copy of the MGTC was given to Mr Kooiman let alone signed by him. In support, he submits that clause E of the GSA, acknowledged by Mr Kooiman to have been signed by him, confirms that in signing the GSA the debtor confirms their obligations to the secured party as set out in the general terms. Clause E provides:

> **"E. is in consideration of**
>
> the secured party providing, or agreeing to provide any and all of the secured moneys to the debtor or to others as the request of the debtor so that:
>
> (a) the debtor by signing this GSA:
>
> ...
>
> (v) confirms their obligations to the secured party as set out in the general terms;"

[24] Thus Mr Hucker's proposition is straightforward. He says that Mr Kooiman, by signing the GSA containing these terms, committed Ribble to the terms contained in the MGTC.

[25] In my view that proposition must be correct. Express reference to terms in another document is ordinarily sufficient to incorporate those terms into a contract. If authority is needed for this general proposition then I rely on the observations of the House of Lords in *Smith v South Wales Switchgear Co Ltd.*[2] There a motor manufacturing company contracted with an electrical company for the provision of maintenance work. The contract was made up of several documents of which one was a purchase order issued by the electrical company to the motor manufacturers. The purchase order included the following words:

> "Please supply goods or services specified below subject to the instructions and conditions on the face hereof and our general conditions of contract 24001, obtainable on request, and to the following special conditions, if any, shown on the attached form and numbered."

[26] The House of Lords unanimously held that the general conditions of contract referred to in the purchase order formed part of the contract between the parties. Lord Keith of Kinkel put it in this way:[3]

> "The purchase order referred to the respondents' "general conditions of contract 24001 obtainable on request". It thus clearly indicated the manner in which the terms of these conditions could be ascertained, and that was sufficient in law, unconditional acceptance having followed, for their incorporation into the contract."

[27] Returning to the present case. Mr Kooiman accepts that he signed the GSA. The GSA explicitly, by operation of clauses D and E, incorporated the MGTC general terms into the GSA. It does not matter whether Mr Kooiman saw the MGTC, let alone signed it. By signing the GSA he expressly accepted to be bound by the general terms.

[28] As can be seen in clause D the GSA refers to "... the Memorandum (the general terms) ... No. 2011/4301" which is the updated version of the 2002 ADLS

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2 *Smith v South Wales Switchgear Co Ltd* [1978] 1 WLR 165 (HL) cited in *BBX Financial Solutions Pty Limited v Trade Management (2010) Pty Limited (in Liq)* [2011] NZCA 667 at [47].

3 At 171.

precedent. The GSA correctly identified the document to be incorporated. Thus it is irrelevant whether Mr Whitley annexed the 2002 version to its affidavit and it is also irrelevant whether Mr Kooiman ever sighted or signed the 2011 version. Express identification of the standard form document to be incorporated gave Mr Kooiman sufficient information to ascertain its terms and conditions. Having signed a document indicating his agreement to be bound by those terms and conditions, Mr Kooiman cannot avoid their operation on the basis he was never provided a copy of the relevant document.

[29] There is a further issue which lends additional support to Mr Hucker's argument and it is this. Mr Young was acting for both Ribble and FM Custodians when the securities were completed. Mr Young received instructions from FM Custodians to draft the security agreement. The instructions included the following:

> "Note we do not provide mortgage or General Security Agreement forms – please use the most recent ADLS forms which must be provided by your firm at your client's expense."

[30] After completing the securities, Mr Young returned the executed GSA to FM Custodians with a covering letter which, amongst other paragraphs, contained the following:

> "4. We have returned to you a properly executed, valid and registerable General/Specific Security Agreement over the collateral detailed in your instructions as additional security for advances to the borrower."

[31] If Mr Young was acting for both parties it is difficult to imagine why he would have provided this certification to FM Custodians if he did not consider that the most recent MGTC formed part of the security agreement between the parties. This must have been the 2011 ADLS form which the GSA incorporated by virtue of clause D.

[32] For these reasons I am satisfied that Mr Whitley was validly appointed under the 2011 MGTC by virtue of the general terms contained in it.

Was Ribble's personal property exempted under the GSA?

[33] Mr Kooiman's argument on this point is that the precast concrete panels and other material associated with the tunnel's construction referred to in Schedule A of the GSA did not form part of the security.

[34] Mr Kooiman submits that the assets of Ribble fall into two categories. The first is the precast concrete panels and other materials to be used in the construction of a tunnel. The second is Ribble's interest in a vacant residential property in Island Bay, Wellington. This property, being real property, cannot be a form of a security under the Act.[4] Thus Mr Kooiman submits Ribble does not own any property secured under the agreement meaning there is no legal basis for the order sought.

[35] On this issue the registered financing statement could not be clearer. It records the collateral type as "All Present and After Acquired Personal Property" and describes the collateral to include "all precast concrete panels for tunnel construction and all other goods acquired and associated with the construction".

[36] However, the GSA signed by Mr Kooiman gives rise to an ambiguity. This is because the body of the document appears to be in conflict with one of its schedules.

[37] Clause C of the GSA contains a box on the standard form document which sets out three options for what is to comprise the collateral under the GSA. Options 1 and 3, which are to be completed where property is to be excluded, have been deleted indicating that no collateral was intended to be excluded. Option 2, which has been initialled by Mr Kooiman describes the collateral as:

> "all the debtor's present and after acquired property, being all the debtor's:
>
> (a) personal property; and
>
> (b) all other property
>
> *If this option is selected then all the debtor's property is subject to this security interest.*"

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4 Personal Property Securities Act 1999, s 23.

[38] Significantly, the deleted third option, had it been selected, would have permitted the parties to exclude certain property from being collateral under the GSA. This is because Option 3 reads:

> "all the debtor's present and after acquired property, excluding the debtor's personal property noted in the Schedules (if any) as being excluded.
>
> *If this option is selected then all the debtor's property is subject to this security interest except for the personal property that is marked as excluded in the Schedules.*"

[39] Thus, in the body of the GSA, the document is clear and unambiguous. The collateral is to include all present and after required property, which would include the precast concrete panels and other material.

[40] The ambiguity arises from Schedule A of the GSA. The relevant box refers to:

> "Goods – other
> exclude collateral"

[41] This is described as, "precast concrete panels to be used in the construction of the tunnel and all other goods acquired and associated with the construction". The box has been initialled. Thus the effect of Schedule A is to contradict what is contained in the main body of the GSA.

[42] In my view, this ambiguity must be resolved in favour of the secured party. My reasons follow.

[43] First, Schedule A to the GSA is only invoked if Option 3 is selected. That option has been deleted. Only Option 2 remains and Mr Kooiman has initialled it. Thus Schedule A, irrespective of its contents, does not become operative until the selection has been made in clause C.

[44] Clause E is also relevant. It provides that the debtor, by signing the agreement "grants the secured party and **interest** in all **collateral** that is **personal property**". "Collateral" appears in bold. This is because it is a defined term. Its definition is parasitic on the selection made under clause C. By initialling the only

option left undeleted, that is Option 2, the collateral is defined as all present and after acquired property. Given the fundamental significance of this definition to the operation of the contract, clause C must take precedence over Schedule A.

[45] Secondly, the instructions provided to Mr Young assist in this interpretation. FM Custodians' letter of instruction stated that the lender was relying on Mr Young to take all necessary steps to ensure that it was fully and properly secured in accordance with the instructions and with the loan offer provided to Mr Young. The loan offer specifically described the security required to include:

> "First Charge General Security Agreement" over all of the assets (present and future) of the borrowing company including the precast concrete panels to be used in the construction of a tunnel and all other goods acquired and associated with the construction."

[46] Thus, Mr Young's instructions were clear. Significantly, the Option 2 selection made under clause C is entirely consistent with those instructions. I find it next to impossible to accept that Mr Young departed from those clear and explicit instructions and thereby excluded the precast concrete panels and other materials only to then provide FM Custodians with a certification that the security agreement had been executed in accordance with those instructions as he did in his letter to the company when he returned what he described as the:

> "properly executed, valid and registrable … agreement over the collateral detailed in [FM Custodians] instructions …"

[47] Finally, to find otherwise would result in a commercial absurdity. If the precast concrete panels and other materials were excluded there would be no other personal property of any value available as collateral. According to Mr Kooiman, Ribble has no personal property beyond that connected with the tunnel construction.

[48] The task in contractual interpretation is always to give effect to the mutual intentions of the parties as they objectively appear.[5] For the reasons set above I am satisfied the ambiguity appearing between the body of the GSA and the Schedule

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[5] See for example *Vector Gas v Bay of Plenty Energy Limited* [2010] NZSC 5, [2010] 2 NZLR 444.

must be resolved in favour of the secured party. That conclusion accords with the mutual intentions of the parties as they objectively appear.

[49] Thus, I conclude that the GSA correctly describes the collateral type as "all Present and After Acquired Personal Property" and describes the collateral as including "all precast concrete panels for tunnel construction and all other goods acquired and associated with the construction".

Does the failure of Mr Whitley give notice of his appointment invalidate the appointment?

[50] As previously observed Ribble's assets include both real and personal property. The real property at Island Bay was sold to Ribble by the same lender and was secured by an all obligations mortgage.

[51] Mr Kooiman acknowledges that Mr Whitley was appointed as Ribble's receiver under both the GSA and the mortgage. However, he raises an issue as to whether Mr Whitley properly advertised his notice of appointment under the mortgage. No such challenge is made in respect of Mr Whitley's appointment under the GSA.

[52] Mr Kooiman submits:

> "... the appointment has not been advertised and was not contained in the NZ Gazette Notice or the Dom Post Public Notice nor it is registered on any public register that the second respondent is aware of including the companies register. There have been no reports filed in respect of this appointment. These are breaches and offences under s 3, 10, 23, 25 and 26 of the Receiverships Act 1993."

[53] The requirements of a receiver to give notice of his or her appointment are contained in s 8(1) of the Act which provides:

> **"8 Notice of appointment**
>
> (1) A receiver must, forthwith after being appointed,—
>
> (a) give written notice of his or her appointment to the grantor; and

(b) give public notice of his or her appointment, including—

(i) the receiver's full name:

(ii) the date of the appointment:

(iii) the receiver's office address:

(iv) a brief description of the property in receivership."

[54] As can be seen, s 8 is not prescriptive as to the way in which a receiver is to advertise their appointment. All that is required under s 8(1) is that notice must be given to the public of the information contained in s 8(1)(b). In this case, Mr Whitley provided a copy of his notice of appointment as receiver to the Companies Office. The Companies Office was thereby able to update the publicly searchable register which it maintains.

[55] However, even if notice was not given I fail to see how such an omission would cause the appointment to be invalid. Mr Kooiman is correct that any failure may amount to the commission of an offence under the Act and prosecution action may follow. But Mr Whitley's appointment was made under the general terms imported by the MGTC into the GSA and for the reasons already given I am satisfied the appointment was valid. That Mr Whitley may be liable to a criminal sanction, and I do not suggest that he is, does not affect the validity of his appointment.

Should the fourth category of documents be ordered?

[56] As previously noted, Mr Kooiman accepts he can provide the first three categories of documentation listed in Mr Whitley's information request. Given my finding that all of Ribble's present and after acquired personal property forms collateral under the security agreement it is entirely appropriate that Ribble delivers up these documents. For the avoidance of doubt I make such an order.

[57] However, it is in relation to the fourth category of documents that Mr Kooiman maintains his opposition.

[58] In resisting Mr Whitley's request, Mr Kooiman refers to the powers of receivers set out in s 14 of the Act; specifically s 14(2)(f) and (g) which provide:

> "(2) Subject to the deed or agreement or the order of the court by or under which the appointment was made, a receiver may—
>
> ...
>
> (f) inspect at any reasonable time books or documents that relate to the property in receivership and that are in the possession or under the control of the grantor;
>
> (g) exercise, on behalf of the grantor, a right to inspect books or documents that relate to the property in receivership and that are in the possession or under the control of a person other than the grantor;"

[59] Mr Kooiman submits that because the receiver's powers are limited to the "right to inspect" Mr Whitley has no right to "request [Ribble] to deliver up all such books, records and documents". For this reason he submits Ribble has acted lawfully in refusing Mr Whitley's request.

[60] Mr Hucker submits that the books, records and documents form part of Ribble's personal property and thus Mr Whitley, as receiver, has a right to possess them under the GSA and s 109 of the Personal Property Securities Act 1999 irrespective of any right to inspect them under the Act. In any event, he submits that the right of inspection must, necessarily, include a right to take copies.[6]

[61] Mr Kooiman replies that this material does not fall within the definition of "goods" in s 16 of the Personal Property Securities Act 1999 and therefore does not need to be provided to the receiver. The relevant provision in that Act defines "goods" as:

> **"goods**—
>
> (a) means tangible personal property; and
>
> (b) includes crops, the unborn young of animals, trees that have been severed, and petroleum or minerals that have been extracted; but

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[6] Mr Hucker cites *ANZ National Bank Ltd v Sheahan* [2012] NZHC 3037, [2013] 1 NZLR 674 at [38] for this proposition. I note that this case concerned with the powers of a liquidator rather than a receiver.

(c) does not include chattel paper, a document of title, a negotiable instrument, an investment security, or money"

[62] With reference to the third limb of the definition, Mr Kooiman submits the documentation sought by the receiver does not constitute "goods" and therefore falls outside the category of property secured by the GSA.

[63] I am satisfied that Mr Kooiman's argument must fail for at least four reasons.

[64] First, the third limb of the definition in s 16 refers to particular types of documents and instruments. "Chattel paper", for example, is defined elsewhere in s 16 to mean "one or more writings that evidence both a monetary obligation and a security interest in, or lease of, specific goods or specific goods and accessions". None of the material sought in respect of category 4 would fall within the third limb of the definition of "goods" in s 16. Rather, all physical documents which do not constitute "chattel paper, documents of title, negotiable instruments, investment securities, or money" would fall within the first limb of the definition as "tangible physical property".

[65] Secondly, the right to possession extends not to "goods" but to "collateral", which is defined in s 16 of the Act to mean "personal property that is subject to a security interest". The term "personal property" obviously extends beyond "goods" and would include books, records and physical documents. In fact, it is defined elsewhere in s 16 to include chattel paper, documents of title, negotiable instruments, investment securities, or money", the very phrase Mr Kooiman sought to exclude from the ambit of the security. I have determined that the collateral comprises all of Ribble's present and after acquired property. Therefore, the category of documents sought by Mr Whitley, being personal property of the company, form part of the collateral. It does not matter which particular category of property they fall under. Mr Whitley, as receiver and therefore agent of the secured party, has a right to possess those documents, the debtor being in default.

[66] Thirdly, the general terms contained in the 2011 MGTC refer to the security interest attaching to all possible forms of property including "accounts receivable" which is defined to include "all books, records, documents, papers and electronically

recorded data that has records, evidences or relates" to "any debts, accounts, claims demands, monies and choses in action held by the company".[7]

[67] Fourthly, there is also a contractual right to possess the document under cl 15(vi) of the MGTC which provides:

> "This clause applies if any of the collateral is personal property or other property.
>
> The party granting the security must from time to time and at all times during the continuance of this instrument:
>
> ...
>
> **Deliver business information**: furnish to the security holder any other information relating to the business or undertaking which the security holder reasonably requires from time to time ..."

[68] For these reasons I am easily satisfied that Mr Whitley has a right, both statutory and contractual, to possess the information he seeks.[8] However, I am less certain s 12 of the Act is the correct provision under which orders sought should be made because, as Mr Kooiman points out, that provision imposes an obligation on debtors to "make available" the documentation relating to the property in receivership. And the corresponding provision, s 14 of the Act, confers a right on the receiver only to "inspect the documents".

[69] Accordingly, I propose to make an order under s 34 of the Act requiring Ribble to deliver up possession of the sought documents for the reasons I have given. In doing so I am aware that Mr Whitley has not made a formal application under s 34.

[70] However, in the present circumstances, I am prepared to treat the present application as an application under s 34 of the Act. Alternatively, I am prepared to amend Mr Whitley's application under r 1.9 to include an application under s 34 of the Act and I make an order in terms of the originating application.

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7 Clause 4(c).

8 This conclusion is consistent with the commentary in Blanchard and Gedye *The Law of Private Receivers of Companies in New Zealand* (3rd ed, LexisNexis, Wellington, 2016) at [10.31].

Was Auckland the proper registry for the filing of these proceedings?

[71] Mr Kooiman submitted that the proceeding should be transferred to the Wellington Registry. He submitted that while Ribble's registered office was changed to Auckland by Mr Whitley upon his appointment as receiver that has not changed Ribble's principal place of business, which remains Wellington. He says Ribble has never carried on business in Auckland and only owns and develops property in Wellington.

[72] It is unnecessary for me to determine this point because the hearing proceeded in Auckland as scheduled. However, I record my view that Auckland was in fact the proper registry for the filing of these proceedings. As Mr Hucker submitted, the business and affairs of the company have been conducted from Mr Whitley's Auckland office since his appointment as Ribble's receiver.

Result

[73] The application is granted and the following orders are made:

(a) the second respondent is directed to provide all books, records and documentation within his power, possession and control as contained in the information request from Mr Whitley to Mr Kooiman dated 17 January 2017; and

(b) the second respondent is directed to file an affidavit confirming the location of all books, records, documents and information of Ribble that are not within his power, possession and control and which would be required to be produced under the order contained above; and

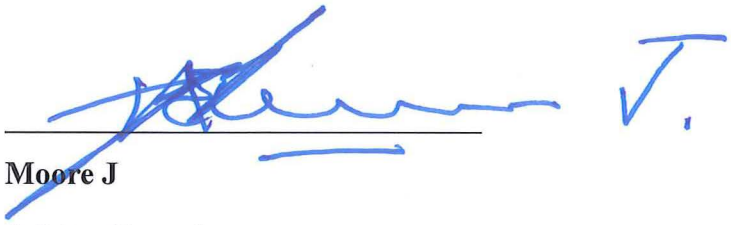
(c) the second respondent is to comply with the above orders within three working days of the issue of this Judgment.

Costs

[74] The applicant, being the successful party, is entitled to an award of costs.

[75] I invite the parties to consult with a view to filing a joint memorandum on the issue of costs.

[76] In the event the parties are unable to agree memorandum not exceeding five pages are to be filed and served within **25 working days of the date of this judgment**.



Moore J

Solicitors/Counsel:
Mr Hucker, Auckland

Copy to:
The Second Respondent