

14 December 2022

Circular to Creditors

Dear Sir/Madam

**TINY TOWN PROJECTS LIMITED (IN LIQUIDATION) (“the Company”)  
Directions Application by the Liquidators**

On 15 November 2022 Tony Leonard Maginness and Jared Waiata Booth (“the Liquidators”), Licensed Insolvency Practitioners, were appointed joint and several liquidators of the Company.

The Liquidators refer to previous correspondence in relation to the liquidation of the Company:

1. On 8 December 2022 the Liquidators filed an application with the High Court at Auckland pursuant to section 284(1)(a) of the Companies Act 1993 for directions in relation to the liquidation of the Company. The directions application concerned the following:
  - a. Six incomplete tiny homes at the premises of the Company at the date of the Liquidators’ appointment; and
  - b. A payment made by a customer to the Company after the date of the Liquidators’ appointment.
2. In accordance with orders of the High Court on 8 December 2022, we **attach** a copy of the directions’ application, joint memorandum of counsel, and the minute of Justice Lang dated 8 December 2022.
3. The application is being called in the Duty Judge List at the High Court at Auckland at **10am on Wednesday 8 February 2023**. Orders are sought that:
  - a. The solicitors for the Liquidators, Lowndes Jordan, will present argument for the position on behalf of the general body of creditors; and
  - b. Andrew Butler KC and Jol Bates of Brown & Bates will present argument for the position for the purchasers of the six tiny homes. Jol Bates and Andrew Butler KC can be contacted by email at jol@brownandbates.nz and andrew.butler@chambers.co.nz respectively.

Should you have any queries please contact Daniel Zhang of our office by email at daniel.zhang@bakertillysr.nz.

Yours faithfully

**Tiny Town Projects Limited (In Liquidation)**



Tony Maginness  
**LIQUIDATOR**

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Jared Booth  
**LIQUIDATOR**

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

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

**CIV 2022-404-**

**UNDER** Part 19 of the High Court Rules 2016 and section 284(1)(a) of the Companies Act 1993

**IN THE MATTER** of an application pursuant to section 284(1)(a) of the Companies Act 1993 for directions in relation to the liquidation of Tiny Town Projects Limited (in liquidation)

**BETWEEN** **TONY LEONARD MAGINNESS** and **JARED WAIATA BOOTH**, both of Auckland, Licensed Insolvency Practitioners, as liquidators of Tiny Town Projects Limited (in liquidation)

**Applicants**

**AND** **TINY TOWN PROJECTS LIMITED (IN LIQUIDATION)** (6354914) having its registered offices at Baker Tilly Staples Rodway Auckland Limited, Level 9, 45 Queen Street, Auckland 1010

**Respondent**

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**ORIGINATING APPLICATION FOR DIRECTIONS UNDER SECTION 284(1)(a) OF THE COMPANIES ACT 1993**

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Dated: 8 December 2022

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Solicitors:

  
**Lowndes  
Jordan**

PO Box 5966 Auckland 1141  
DX CP21511 Auckland  
Person Acting: Liz Gellert / Zong-Pei Zhao  
Email: [ecg@lojo.co.nz](mailto:ecg@lojo.co.nz) / [zpz@lojo.co.nz](mailto:zpz@lojo.co.nz)  
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3000-251.0029

**ORIGINATING APPLICATION FOR DIRECTIONS UNDER SECTION 284(1)(a) OF THE COMPANIES ACT 1993**

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

**AND TO:** The Interested Parties (set out in Schedule A, Part 1)

**This document notifies you that-**

1. The applicants, Tony Leonard Maginness and Jared Waiata Booth, as liquidators of Tiny Town Projects Limited (in Liquidation) (the **Company**), will at \_\_\_\_\_ am/pm on \_\_\_\_\_ 2022 apply to the Court for orders or directions as to:
  - 1.1 For the purposes of section 53 of the Personal Properties Securities Act 1993 (**PPSA**), whether the purchasers of tiny homes as described in the standard form Agreement for Sale and Purchase of a Tiny Home (**Tiny Homes**) (**Tiny Home Purchasers**) (**Agreement**) have acquired the Tiny Homes prior to liquidation free of any security interest;
  - 1.2 If the Tiny Home Purchasers did not acquire the Tiny Homes prior to liquidation, whether there is an equitable lien in relation to any or each respective Tiny Home in favour of the Tiny Home Purchaser for payments made to the Company by the Tiny Home Purchaser;
  - 1.3 If the Tiny Home Purchasers did not acquire the Tiny Homes prior to liquidation, whether any or all of the Tiny Homes are held on trust for any of the respective Tiny Home Purchasers (whether by way of implied, resulting, constructive, or otherwise);
  - 1.4 If the answer to 1.3 is yes then:
    - 1.4.1 When did each trust come into existence?
    - 1.4.2 What are the terms of each trust (including as to the beneficiaries)?

- 1.5 Whether the sum of \$46,430 paid by Bernardus and Lydie Warmerdam to the Company on 15 October 2022 (the **Warmerdam Payment**) is to be returned to the payers or transferred to Fundtap Seascope (2010) Limited trading as Fundtap (**Fundtap**).
- 1.6 Lowndes Jordan, solicitors for the liquidators, present the arguments to the Court on behalf of the general body of creditors in the liquidation, and Jol Bates of Brown & Bates and Andrew Butler KC present the arguments to the Court on behalf of the position of the Tiny Homes Purchasers;
- 1.7 This application, any subsequent pleadings, directions or judgment of the Court be served on the Interested Parties listed in Schedule A, Part 1, by:
- 1.7.1 email (where an address has been provided to the Company) or by post to the postal address that has been provided to the Company (if an email address has not been provided to the Company); and
- 1.7.2 posting a copy of the application on Baker Tilly Staples Rodway's website which is able to be accessed by the Company's creditors; and
- that service on any other creditor or the Company be dispensed with.
- 1.8 The reasonable fees and disbursements of the liquidators' solicitors (to a cap of \$35,000 plus GST) and Brown & Bates and Andrew Butler KC (to a cap of \$25,000 plus GST) (together, the **legal fees**) shall in the first instance be payable from the Tiny Homes.
- 1.9 If the Court directs that Tiny Homes are not an asset in the liquidation, that orders are made to give effect to the above order that the legal fees are payable from the Tiny Homes.
- 1.10 The total reasonable fees and disbursements of the liquidators in relation to this application are a necessary and reasonable expense of the liquidation, of and incidental to the protection, preservation,

recovery, management and administration of the assets of the Company.

- 1.11 Leave is reserved for the applicants to apply for such further ancillary orders as are necessary.
2. The grounds on which each order is sought are as follows:
  - 2.1 At 9.30 am on 15 November 2022 Tony Leonard Maginness and Jared Waiata Booth were appointed as liquidators of the Company following a special resolution of the shareholders.
  - 2.2 The principal duty of the liquidators is to take possession of, protect, realise, and distribute the assets, or the proceeds of the realisation of the assets, of the Company to its creditors in accordance with the Companies Act 1993, in a reasonable and efficient manner.
  - 2.3 Prior to liquidation, the ordinary business of the Company was to sell tiny homes pursuant to standard terms of an Agreement for Sale and Purchase of a Tiny Homes, but to particular specifications for each purchaser (**Agreement**).
  - 2.4 The Company ceased trading upon liquidation. Since liquidation the liquidators have, among other things, secured the Company's assets, spoken to the sole Company director and key personnel, undertaken an initial investigation of the financial position of the Company, and communicated with creditors.
  - 2.5 A key (potential) asset of the Company are six tiny homes which were in the possession of the Company at its leased premises in New Plymouth at the date of liquidation (**Tiny Homes**).
  - 2.6 In relation to payments for the Tiny Homes as described in the respective Agreements:
    - 2.6.1 Three of the Tiny Homes were paid for in full by the purchasers, prior to liquidation.

- 2.6.2 One purchaser (the **Warmerdams**) paid the balance owing on the date of liquidation, following the appointment of the liquidators.
- 2.6.3 Two purchasers had amounts outstanding at the date of liquidation, which remain unpaid.
- 2.7 The Tiny Homes have been constructed to varying degrees of completion, described by Company records as variously between 40% and 95% complete. No Tiny Home has been completed in accordance with the definition of Completion in the Agreement.
- 2.8 There are insufficient assets of the Company to meet the claims filed by the creditors in the liquidation.
- 2.9 The liquidators are, among other expenses, currently incurring the costs of storage and insurance of the Tiny Homes.

#### **Tiny home directions**

- 2.10 There are legal issues arising in the liquidation for which the liquidators reasonably require the direction of the Court:
- 2.10.1 At least three of the Tiny Home Purchasers have asserted a proprietary interest in the Tiny Homes described in their respective Agreements either as owner, arising under an equitable lien, and/or on the basis that the Tiny Homes are held on trust by the Company for them as beneficiaries.
- 2.10.2 There is no express term as to when title in the Tiny Homes passes to the purchasers contained in the Agreement.
- 2.10.3 The Agreement does not contain a security interest, including by way of a lien, in the Tiny Homes in favour of the purchasers.

- 2.10.4 The Agreement does not contain an express term that the Tiny Home is held by the Company on trust for the benefit of the purchaser.

#### **Payment directions**

- 2.11 There is a legal issue as to entitlement to the Warmerdam Payment:
- 2.11.1 On 6 October and 18 October 2022 the Company entered into a factoring arrangement with Fundtap in which the Company granted a purchase money security interest to Fundtap over invoice number INV-0439 payable by the Warmerdams to the Company in the amount of \$96,430 (**Warmerdam Invoice**).
- 2.11.2 On or about 18 October 2022, the Company received funds from Fundtap pursuant to that factoring arrangement and the Warmerdam Invoice.
- 2.11.3 The Warmerdam Invoice was the final invoice to be paid under the Agreement for the tiny home being purchased by the Warmerdams.
- 2.11.4 On 31 October 2022 the Company issued the Warmerdam Invoice to the Warmerdams. On 14 November 2022 (prior to liquidation) the Warmerdams made a first payment of \$50,000 against the invoice. On 15 November 2022 the Warmerdams made a second and final instalment payment of \$46,430 against the Warmerdam Invoice to the Company.
- 2.11.5 The first Warmerdam payment of \$50,000 was paid into an overdrawn bank account, which remained overdrawn upon the Liquidators' appointment. The second Warmerdam payment of \$46,430 was transferred to the liquidators and is currently held on trust by the liquidators pending the outcome of this application.

2.11.6 Both the Warmerdams and Fundtap have each requested that the liquidators pay to them the Warmerdam Payment.

**Procedural directions**

2.12 It is the duty of the liquidators to inform the Court and seek directions in the circumstances of this Application.

2.13 The interests of the creditors will be addressed by this application:

2.13.1 The liquidators will act in accordance with the directions of the court;

2.13.2 The respective interests of the creditors will be addressed before the court as a consequence of submissions by counsel in relation to the competing creditor's / parties' interests; and

2.13.3 Those creditors who could be affected by the outcome of this application will be served.

2.14 There are approximately 104 creditors in the liquidation. It is in the interests of justice, and of the speedy and inexpensive determination of this proceeding that the directions as to counsel appearing and service be made, as sought.

2.15 The fees being incurred are a necessary and reasonable expense of the liquidation, of and incidental to the protection, preservation, recovery, management and administration of the assets of the Company.

2.16 And upon the grounds appearing in the affidavit of Tony Leonard Maginness, sworn on 7 December 2022.

3. The application is made in reliance on:

3.1 Section 284(1)(a) of the Companies Act 1993; Part 19 of the High Court Rules;



- 3.2 Re *STA Travel (NZ) Limited* [2022] NZHC 1398; *Ruscoe v Cryptopia Ltd (in liq)* [2022] NZHC 728; *Re Newsmaker International Ltd (in liq)* HC Napier M133/86, 24 February 1994; *Bennett & Ors v Ebert Construction Ltd (in rec & liq)* [2018] NZHC 2934.

**Dated:** 8 December 2022



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E C Gellert  
Solicitor for the Applicants

This application is filed by **Elizabeth Catherine Gellert** of the firm of Lowndes Jordan, solicitor for the Applicants. The address for service for the Applicants is at the offices of Lowndes Jordan, Level 15, HSBC Tower, 188 Quay Street, Auckland.

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 5966, Auckland;
- (b) Left for the solicitor at a document exchange for direction to DX CP21511;
- (c) Sent by email to [ecg@lojo.co.nz](mailto:ecg@lojo.co.nz) and [zpz@lojo.co.nz](mailto:zpz@lojo.co.nz).

## SCHEDULE A

### PART 1: INTEREST PARTIES

Description	Name
Customer	Bernardus and Lydie Warmerdam
Customer	Carol Wright
Customer	David and Donna Craft
Customer	Gregor and Kelly Vallely
Customer	Hannah Terry
Customer	Hemant and Alpana Mahagaonkar
Customer	Keith and Donna Veale
Customer	Melissa Williams
Customer	Rebecca and Brendon Gorringe
Customer - Warranty claim	Trevor Pye
Employee	Andrea Julie Marfleet (Jules)
Employee	Ben Giltrap
Employee	Dean Charles Waiwiri
Employee	Hemi Kahutatura Kahui
Employee	James Cathie
Employee	Jamie Cameron (director)
Employee	Kaisha Macgillivray
Employee	Kaleb Pretty
Employee	Lorna Ellen Stewart
Employee	Marcel Tahere
Employee	Michael Healey
Employee	Nathan McArthur
Employee	Norman Mangu
Employee	Sophia Joy Lindsay
Employee	Tane Vano
Employee	Zachary Bunyan
IRD	Inland Revenue Department
Secured Creditor	Applico Limited
Secured Creditor	Bunnings Limited
Secured Creditor	FundTap - (Seascope (2010) Limited)
Secured Creditor	Garner Holdings Limited
Secured Creditor	Heartland Bank Limited
Secured Creditor	Kitchen Things NZ Limited
Secured Creditor	Kiwi Asset Finance Limited
Secured Creditor	Kiwibank Limited
Secured Creditor	Samsung Electronics NZ
Secured Creditor	Steel Building Products (Central) Ltd t/a Metalcraft Roofing
Secured Creditor	UDC Finance Limited

## PART 2: REMAINING CREDITORS

Description	Name
Unsecured Additional SoA Creditor	NZ Fuel Cards Ltd
Unsecured Additional SoA Creditor	Servergroup (BOP) Limited
Unsecured SoA Creditor	AB Equipment Ltd
Unsecured SoA Creditor	ACC
Unsecured SoA Creditor	Adept Prehung Doors
Unsecured SoA Creditor	Advanced Security Group (WGTN) Ltd
Unsecured SoA Creditor	Ag Trader
Unsecured SoA Creditor	BDL Copiers
Unsecured SoA Creditor	Bryce Collins Electrical Limited
Unsecured SoA Creditor	Bullitt Services Ltd
Unsecured SoA Creditor	Carpets Wholesale & Retail
Unsecured SoA Creditor	Check-point time & business systems 2015 ltd
Unsecured SoA Creditor	Constellation Enterprises Limited
Unsecured SoA Creditor	Corys Electrical Limited
Unsecured SoA Creditor	Design Garage Limited
Unsecured SoA Creditor	Digital Advertising Limited
Unsecured SoA Creditor	DuluxGroup Ltd
Unsecured SoA Creditor	Elohim Enterprises Ltd - t/a Elaborate Flooring
Unsecured SoA Creditor	Expressotel
Unsecured SoA Creditor	Flash Roofing Ltd
Unsecured SoA Creditor	Flooring Xtra - Harvey Flooring NZ Limited t/a Classic Carpets
Unsecured SoA Creditor	G J Sole Transport Ltd
Unsecured SoA Creditor	Genesis Energy
Unsecured SoA Creditor	Glass Art Limited
Unsecured SoA Creditor	Grayson Dales Electrical Ltd
Unsecured SoA Creditor	Greenstone Developments Ltd
Unsecured SoA Creditor	Heatcool Taranaki Limited
Unsecured SoA Creditor	I & G Couriers 2019 LTD t/a Aramex New Plymouth
Unsecured SoA Creditor	Insulation Wholesalers
Unsecured SoA Creditor	Jones & Sandford Timber & HDW 1999 t/a Mitre 10 Mega
Unsecured SoA Creditor	Just Water
Unsecured SoA Creditor	Kate Whittaker Design Ltd
Unsecured SoA Creditor	Katere Surface Coatings Ltd
Unsecured SoA Creditor	Konnect
Unsecured SoA Creditor	Lighting Direct
Unsecured SoA Creditor	Lighting Plus Limited
Unsecured SoA Creditor	Mad Media
Unsecured SoA Creditor	Mcalley Painters Limited
Unsecured SoA Creditor	Morris Toolshed
Unsecured SoA Creditor	Naki Host Limited t/a OurCloud
Unsecured SoA Creditor	Newline
Unsecured SoA Creditor	Nichol Glass & Aluminium
Unsecured SoA Creditor	Norfolk Cleaning Limited
Unsecured SoA Creditor	NPDC
Unsecured SoA Creditor	NZ Hardware Ltd
Unsecured SoA Creditor	Oji Fibre Solutions (NZ) Ltd
Unsecured SoA Creditor	Pack Centre

<b>Description</b>	<b>Name</b>
Unsecured SoA Creditor	Panelform
Unsecured SoA Creditor	Paul Garland Contracting
Unsecured SoA Creditor	Pickaplumber & Gas
Unsecured SoA Creditor	Precision Benchtops Limited
Unsecured SoA Creditor	Presco Hire
Unsecured SoA Creditor	Resene Paints Ltd
Unsecured SoA Creditor	Seabridge Logistics Group (NZ) Limited
Unsecured SoA Creditor	Seymour Windows & Doors Ltd
Unsecured SoA Creditor	Spark
Unsecured SoA Creditor	Steelhaus 2014 Limited
Unsecured SoA Creditor	Tauranga Glass (2012) Ltd
Unsecured SoA Creditor	Te Pukenga trading as WITT
Unsecured SoA Creditor	The Glass Man 2021 Limited
Unsecured SoA Creditor	Tool Hire Taranaki
Unsecured SoA Creditor	Vicki Cameron
Unsecured SoA Creditor	Waste Management
Unsecured SoA Creditor	Webber Refrigeration
Unsecured SoA Creditor	Wurth New Zealand Limited
Unsecured SoA Creditor	Young Carrington + Ussher Solicitors

IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA  
TĀMAKI MAKĀURAU ROHE

CIV 2022-404-

**UNDER** Part 19 of the High Court Rules 2016 and section 284(1)(a) of the Companies Act 1993

**IN THE MATTER** of an application pursuant to section 284(1)(a) of the Companies Act 1993 for directions in relation to the liquidation of Tiny Town Projects Limited (in liquidation)

**BETWEEN** **TONY LEONARD MAGINNESS** and **JARED WAIATA BOOTH**, both of Auckland, Licensed Insolvency Practitioners, as liquidators of Tiny Town Projects Limited (in liquidation)

**Applicants**

**AND** **TINY TOWN PROJECTS LIMITED (IN LIQUIDATION)** (6354914) having its registered offices at Baker Tilly Staples Rodway Auckland Limited, Level 9, 45 Queen Street, Auckland 1010

**Respondent**

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**MEMORANDUM OF COUNSEL FOR LIQUIDATORS AND COUNSEL PRESENTING SUBMISSIONS**

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Dated: 8 December 2022

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Solicitors:

  
Lowndes  
Jordan

PO Box 5966 Auckland 1141  
DX CP21511 Auckland  
Person Acting: Liz Gellert / Zong-Pei Zhao  
Email: ecg@lojo.co.nz / zpz@lojo.co.nz  
Telephone: (09) 309 2500  
Facsimile: (09) 309 1445  
3000-251.0029

**MEMORANDUM OF COUNSEL IN SUPPORT OF ORIGINATING APPLICATION**

May it please the Court:

**Background**

1. This is an originating application seeking directions in the liquidation of Tiny Town Projects Limited (in liquidation) (**Company**) under section 284(1)(a) of the Companies Act 1993 (**Act**).
2. The Company was placed into liquidation on 15 November 2022 by shareholder resolution. Messrs Maginness and Booth were appointed liquidators (**Liquidators**). The business of the Company was to manufacture tiny homes in New Plymouth, for delivery to customers throughout New Zealand. Business ceased upon liquidation.
3. As at the date of liquidation, among other assets, six tiny homes were located at the Company's leased New Plymouth premises (**Tiny Homes**). The Tiny Homes had been built to various degrees (between 40% and 95% as described in the Company records). The Company had received payments from the respective purchasers (**Tiny Home Purchasers**), meaning some Tiny Homes have been paid in part, and some in full.
4. The Liquidators seek the direction of the Court in relation to legal issues arising in the administration of the liquidation. It is proper that they do so to ensure the distribution of the assets in accordance with their duties as Liquidators.<sup>1</sup> The legal issues arising are:
  - 4.1 Whether the Tiny Home Purchasers have acquired the Tiny Homes prior to liquidation free of any security interest under s53 of the Personal Property Securities Act 1993 (**PPSA**). Alternatively, whether the purchasers have an equitable lien over the Tiny Homes, or whether the Tiny Homes are held on trust by the Company for the benefit of the Tiny Home Purchasers.
  - 4.2 Whether a payment made by a Tiny Home Purchaser following the appointment of the Liquidators is properly payable to a factoring

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<sup>1</sup> *Avoca Holdings Ltd (in liquidation) v Dennehy* [2021] NZHC 2443 at para [15].

company or the Tiny Home Purchaser who made the payment. Both parties have claimed the payment.

### **Urgency**

5. The Liquidators seek the urgent determination of the issues:
  - 5.1 The Tiny Homes are the key asset in the liquidation. The Liquidators have significant monthly storage and insurance costs in relation to the tiny homes.<sup>2</sup>
  - 5.2 The financial position is such that if the Tiny Homes are not an asset in the Liquidation, there is a real possibility that there will be insufficient funds to meet the Liquidators' costs and expenses, even to 31 January 2022. That is in relation to expenses payable by the Liquidators, even before consideration of the Liquidators' fees, which are also properly recoverable.
  - 5.3 Even if the Tiny Homes are assets in the liquidation, there is still urgency. There will be additional time needed following issuance of the Court's directions to market the Tiny Homes for sale, during which time the Liquidators will need to continue to meet storage and insurance costs. The costs of this application together with the delayed sale time pending resolution of these issues is impacting any potential return to creditors. Given the Liquidators' principal duty,<sup>3</sup> they wish to promptly progress the sale of the Tiny Homes (assuming they are entitled to do so).
  - 5.4 On the other hand, if the Tiny Home Purchasers are entitled to the Tiny Homes, then they should be able to take possession promptly. The Liquidators are conscious that the Company's liquidation will be causing the purchasers both personal and financial stress.

### **Impacted persons and counsel appearing**

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<sup>2</sup> Affidavit of Tony Maginness sworn on 7 December 2022 at para [19.2].

<sup>3</sup> Section 253 of the Act.

6. The Liquidators seek directions under s284(1)(a) of the Act on the basis that the directions are necessary for the efficient administration of the company.<sup>4</sup> The affidavit filed by Mr Maginness exhibits the factual information known to the Liquidators which they believe is relevant to provide the Court with the necessary factual context in which to consider the legal issues which have arisen.
7. There are two bodies of interested parties who may be impacted by the directions sought from the Court:
  - 7.1 the general pool of creditors. If the tiny homes are assets of the Company for realisation, the proceeds of the Tiny Homes will be applied under Part 16 of the Act to the creditors (preferential, secured and unsecured) in the usual way; and
  - 7.2 the Tiny Home Purchasers, who would take possession of the tiny homes if it transpires that they acquired the Tiny Homes under section 53 of the PPSA, have an equitable lien, or the Tiny Homes are held in trust on their behalf. If so, the tiny homes are not an asset in the Company's liquidation.
8. There are no disputes of fact arising. The Liquidators are neutral as to the outcome of the application, but are concerned to ensure a correct interpretation of the law so that the assets are appropriately dealt with. To provide the court with argument as to the respective legal positions, orders are sought that:<sup>5</sup>
  - 8.1 The solicitors for the Liquidators, Lowndes Jordan, present argument for the position on behalf of the general body of creditors; and
  - 8.2 Jol Bates of Brown & Bates and Andrew Butler KC present argument for the position for the tiny home purchasers.

### **Service**

9. As to service, directions are sought to serve specific creditors. There are 104 known creditors of the Company, listed in Schedule A to the application, and

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<sup>4</sup> *Gibson v Norris* [2019] NZHC 1348 at para [21].

<sup>5</sup> *In re STA Travel (NZ) Ltd* [2022] NZHC 1398 at para [7].



whose respective positions and amounts owed are set out in Mr Maginness' affidavit.<sup>6</sup> Realistically, taking into account potential recoveries by the Liquidators, at best the preferential, PMSI and secured creditors could be impacted by the outcome of the application (as well as the Tiny Home Purchasers). On that basis, directions as to service on those creditors by email and publication on Baker Tillers' website are sought. The Liquidators seek that service otherwise be dispensed with as an unnecessary expense in an already modest liquidation.

10. Leave is reserved to the applicants to apply further in respect of any modifications or ancillary issues arising out of the orders made.

### **Costs**

11. The application seeks orders that the reasonable costs and disbursements of the Liquidators and counsel appearing are paid from the assets in issue (i.e the Tiny Homes), to an agreed cap. This cap has been agreed between the Liquidators and Brown & Bates taking into account the financial position of the liquidation, and the possible outcomes for the respective impacted creditors.
12. This order is sought on the basis that the application has been brought in relation to assets for the benefit of the creditors and/or owners, and so there is an obvious underlying equity that costs for all counsel be met.<sup>7</sup> The Liquidators should not be personally liable for legal costs if there are insufficient assets in the liquidation.
13. There will be practical issues as to how this order should be given effect if the Tiny Homes are not an asset in the liquidation, and so are not realisable for funds to be available for payment of legal costs. Orders have previously been made that property be realised to funds for payment of fees.<sup>8</sup> No issue will arise if the Tiny Homes are an asset of the Company.
14. Counsel are currently conferring to attempt to resolve this issue by consent. However orders may be required.

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<sup>6</sup> Affidavit of Tony Maginness sworn on 7 December 2022 at paras [26] & [27].

<sup>7</sup> *Ruscoe v Cryptopia Ltd (in liquidation)* [2020] NZHC 728 at para [212].

<sup>8</sup> *ibid* at para [213].

**Hearing / Procedure to hearing**

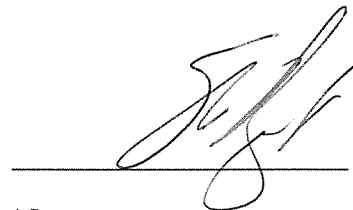
15. Counsel for the Liquidators and Mr Bates have conferred. Counsel respectfully request by consent that:
- 15.1 Orders are made prior to a hearing as to counsel appearing and service;
  - 15.2 A half-day fixture is allocated as soon as possible before 15 December 2022;
  - 15.3 Counsel will simultaneously file and serve submissions the later of 5pm on Monday, 12 December 2022 or 24 hours before the fixture. Counsel will in the interim liaise regarding the arguments to be presented to make best endeavours in refining and focusing the key legal arguments for consideration by the court; and
  - 15.4 Counsel for the liquidators will prepare a joint bundle of authorities for filing and provision to Brown & Bates in advance of the hearing.
16. Mr Bates confirms his availability to appear and present argument for the position of the Tiny Home Purchasers and has signed this memorandum in that regard.

**Dated:** 8 December 2022



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E C Gellert  
Solicitor for the Applicants



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J Bates  
Counsel to present argument for the interests of the Tiny Home Purchasers

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

**CIV-2022-404-2282**

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

UNDER Part 19 of the High Court Rules 2016 and s  
284(1)(a) of the Companies Act 1993

IN THE MATTER of an application pursuant to s 284(1)(a) of the  
Companies Act 1993 for directions in relation  
to the liquidation of Tiny Town Projects  
Limited (in liquidation)

BETWEEN TONY LEONARD MAGINNESS and  
JARED WAIATA BOOTH, as liquidators of  
Tiny Town Projects Limited (in liquidation)  
Applicants

AND TINY TOWN PROJECTS LIMITED (IN  
LIQUIDATION) (6354914)  
Defendant

Hearing: On the papers

Counsel: E C Gellert for Applicants

Date of Minute: 8 December 2022

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**MINUTE OF LANG J**

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[1] This joint memorandum of counsel dated 8 December 2022 has been referred to me as Duty Judge this week.

[2] I note that counsel seek the allocation of an urgent fixture prior to 15 December 2022. As counsel will be well aware, there is significant pressure on Court hearing time at this time of year. It will only allocate urgent fixtures where it is genuinely of the view that an urgent determination is required.

[3] Having read the material on the file I am not satisfied this proceeding is of sufficient urgency to warrant priority over other urgent matters. The liquidators' primary concern is financial. They are concerned that, if the issues on which they seek directions are not determined promptly, they will continue to incur storage costs. This may occur in circumstances where the assets they are storing may be found not to be assets of the company. In that event there may be insufficient funds available to meet the liquidators' costs and disbursements.

[4] I understand the liquidators' concern. However, the storage costs are not particularly large. They amount to \$14,556.67 for the period up to 31 January 2023. Furthermore, the liquidators are entitled to proceed on the basis that the Court will ensure they are reimbursed for any costs incurred in storing and preserving assets even if those assets are subsequently found to be held in trust for others. The liquidators can also seek funding from those who claim ownership of the assets if they consider this to be appropriate. Any payments made by those persons would obviously be refunded in the event that assets were found to belong to the company.

[5] I am prepared to make directions as to service as sought in paragraphs 9 and 10 of the joint memorandum. Counsel are also welcome to file and serve their submissions within the next week on the basis that time may be available in February 2023 to allocate the proceeding a hearing. At this stage, however, I am not prepared to direct that the application for directions is to be heard this year.

[6] The proceeding is to be referred to the Civil List Judge on 1 February 2023 so that he can determine whether a fixture can be allocated during the month of February 2023.

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Lang J