

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

**I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE**

CIV-2024-485-629

UNDER Part 15A of the Companies Act 1993 and
Part 19 of the High Court Rules 2016

IN THE MATTER of the voluntary administration of
Wellington Combined Taxis Ltd
(Administrators appointed) and
Wellington Combined Properties Ltd
(Administrators appointed)

RE Iain Shepard and Jessica Kellow
(Administrators)
Applicants

Hearing: On the papers

Counsel: C T Jolliffe for Applicants

Minute: 10 March 2025

MINUTE OF ASSOCIATE JUDGE SKELTON

[1] The applicants seek orders:

- (a) granting leave to make this application without notice;
- (b) further extending the timeframe before which Administrators must terminate any employment contracts in respect of the employees of Wellington Combined Taxis Ltd (WCT) before they become personally liable for wages pursuant to s 239Y(4) of the Companies Act 1993 to 6 June 2025;

- (c) further extending the timeframe before which Administrators must convene watershed meetings for WCT, Combined Finance Ltd (CFL) and Wellington Combined Properties Ltd (WCP) (together, the companies) pursuant to s 239AT(3) to 6 June 2025;
- (d) directing that, within five working days of these orders being granted, notice of these orders is to be emailed to each known creditor's email address;
- (e) granting leave to creditors or employees of the companies to apply to the Court to modify these orders on appropriate notice being given to the applicants and the Court;
- (f) determining that the costs and disbursements of this application are an expense incurred by the applicants to be paid out the assets of the companies; and
- (g) granting leave to the Administrators to apply for further orders if required.

[2] I have previously granted two extensions under urgency pursuant to s 239Y(4) and 239AT(3) on 21 October 2024 (to 28 January 2025) and 16 December 2024 (to 22 March 2025).¹

[3] The applicants have filed a further affidavit of Jessica Kellow in support of their application sworn 5 March 2025 and a memorandum of counsel for the applicants dated 6 March 2025. The applicants seek that urgency is given to the application as the current convening period ends on 22 March 2025.

Background

[4] The applicants were appointed as administrators of the related companies on 24 September 2024. WCT is the leading taxi business in Wellington. CFL's principal activity is factoring TaxiCharge income and other credits card vouchers.

¹ See Minutes of Associate Judge Skelton dated 21 October 2024 and 16 December 2024.

WCP is the property holding arm of the group. The directors of each of the companies are the same six people.

[5] Since their appointment, and their first application for extensions, the complexity of the administration of the companies, particularly WCT, has become apparent to the administrators.

[6] As at December 2024, the administrators believed there were three possible outcomes for the companies, being:

- (a) a restructure of WCT and a recommendation at the watershed meeting that the voluntary administration end ("Option A");
- (b) if a restructure is not possible, the business of WCT may be sold as a going concern and the capital distributed to shareholders. On this basis the administrators recommendation to the watershed meeting would be that the sale is concluded and the companies be placed into liquidation ("Option B").
- (c) if a going-concern sale is not possible the assets of the companies will be realised and the surplus funds distributed to shareholders. On this basis the administrators' recommendation to the watershed meeting would be that the companies be placed into liquidation ("Option C").

[7] Following the outcome of a Special General Meeting on 19 December 2024, it is apparent to the administrators that Option A is no longer a possible option. As a result, the administrators have been investigating Option B. The administrators have received two serious expressions of interest in the purchase of WCT as a going concern. However, any offers received are likely to be conditional on approval of any transfer by WCT of its units held in TaxiCharge Limited Partnership and its shares held in TaxiCharge New Zealand Ltd, and approval of the transfer of WCT's shares in Blue Bubble Alliance Ltd. Any purchaser may also have its own conditions. The administrators consider it may take four to six weeks for any conditions to be satisfied.

[8] While it appears that a sale of WCT as a going concern is possible, it remains possible that Option C (liquidation) may be the administrators' recommendation as a watershed meeting.

[9] WCT is the subject of a current derivative action application in the High Court. These proceedings require the involvement of the administrators. Since their appointment, the administrators have liaised with the parties involved and attempted to facilitate a mediation. Ultimately this mediation has not proceeded, and the derivative action remains on foot.

[10] The companies continue to trade and the administrators are meeting all the claims of employees and creditors. The current level of staff employed by WCT is approximately 50 staff (the numbers can vary due to casual employment of some staff within the call centre). Employees remain concerned about certainty of their employment. Given the possibility that WCT may be sold as a going-concern, the administrators consider it is important to keep the business running through to settlement of any contract, which requires the continued employment of the WCT employees.

[11] At this time, the only significant external creditor of the companies remains the Bank of New Zealand (BNZ) which has provided a \$500,000 overdraft facility. BNZ are aware of the administrators' intention to seek a further extension of time for the convening period. They have provided their verbal confirmation to the administrators that the overdraft facility will continue to be made available to the administrators, at this stage.

[12] The companies remain balance sheet solvent. However, the companies are making sustained losses. Whilst the administrators continue to take steps to alleviate some of the losses being suffered, it remains evident to them that, absent constitutional change, the companies are likely to require new ownership to become financially viable again.

[13] The administrators consider that further extension of the convening period will allow them time to work through the options identified and, in particular, continue with the discussions to sell as a going concern.

Without notice application

[14] The application is made on a without notice basis. In my view, requiring service of the application on all employees and creditors would cause undue delay to the application, and it is in the interests of justice that the application be determined without having to serve the application. The administrators consider that it is in the best interests of the companies, employees and creditors to further extend the relevant periods. The administrators also note that as the companies can meet their debts during the extended period, any extension will have no effect on creditors. Importantly, the employees and creditors will be notified of any orders made and will have the right to challenge the orders made on notice to the applicants.

[15] However I note that, if there is any further application by the applicants for a further extension, it is likely that the application would have to be on notice.

Further extension of relevant periods

[16] Section 239AT(3) of the Companies Act permits the Court to extend the convening period on the administrator's application. This Court has confirmed that the power to extend should be exercised in light of the purpose of the voluntary administration regime and the duties imposed on administrators.² Those objectives are set out in s 239A of the Act and include the administration of a company in a way that maximises the chances of the company continuing in existence, or results in a better return for the company's creditors and shareholders than would result from an immediate liquidation of the company.

[17] This Court has held that this approach requires a balance between the expectation that administration will be a relatively speedy and summary matter on the

² *Re Nylex New Zealand Ltd*, HC Auckland, CIV-2009-404-1217, 11 March 2009; *Re DSE (NZ) Ltd* [2016] NZHC 36; *Re Kumfs Group & Ors* [2019] NZHC 2552; and *Re Advanced Building and Construction Ltd* [2021] NZHC 937.

one hand, and the requirement that undue speed should not be allowed to prejudice actions directed towards maximising the return for creditors and any return for shareholders.³ Justice Courtney held in *Re DSE (NZ) Ltd* that the appropriateness of an extension is, self-evidently, a fact-specific determination. I have had regard to the factors described by Courtney J in determining the current application.⁴ Courtney J also noted that a review of recently decided cases at that time demonstrated that periods of extension of the convening period had been quite variable.⁵ Further, in *Re Ruapehu Alpine Lifts Ltd*, further extensions of the relevant periods were allowed under s 237AT(4) and 239Y(4), so that the total period of extension was approximately seven months.⁶

[18] In the circumstances, I am satisfied that the further extensions sought for the convening period and termination to 6 June 2025 are appropriate for the reasons identified by counsel for the applicants:

- (a) the administrators' view is that this administration is complex and there are a number of stakeholder relationships to be managed;
- (b) the extension will not prejudice creditors. Employees and creditors will continue to be paid by the administrators throughout the extension period. The major creditor in the administration has provided verbal support to the further extension;
- (c) the extensive shareholding and the derivative action proceedings in respect of WCT adds to the complexity of managing stakeholder interests and communications;
- (d) the companies are all inter-related, and the intricate structure of each requires analysis. Whilst it is only WCT that is subject to the derivative action claim, the companies are all related and the

³ *Re Kumfs Group Ltd & Ors*, above n 2, at [13].

⁴ *Re DSE (NZ) Ltd*, above n 2, at [14].

⁵ At [15]. See also *re Black Dog Consulting Ltd* [2023] NZHC 573.

⁶ *Re Ruapehu Alpine Lifts Ltd* [2023] NZHC 1053 at [12]-[32]

administrators are collectively administering them. The extensions sought apply to all three companies; and

- (e) the further time will allow the administrators to conclude any sale of WCT meaning this further extension is likely to result in a better return to creditors as, any sale of the business as a going concern, provides a better return to creditors and other stakeholders than if the companies were to be placed into liquidation.

[19] I consider that the further extension sought is appropriate as it will allow the administrators further time to attempt to finalise the sale of WCT as a going concern.

Result

[20] Accordingly, I order that:

- (a) leave is granted to make this application without notice;
- (b) the timeframe before which the administrators must convene watershed meetings for Wellington Combined Taxis Ltd, Combined Finance Ltd and Wellington Combined Properties Ltd (together, the companies) under s 239(AT)(2) is further extended pursuant to s 239AT(3) **to 6 June 2025;**
- (c) the timeframe before which the administrators must terminate any employment contracts in respect of the employees of Wellington Combined Taxis Ltd before they become personally liable for wages under s 239Y(3) of the Companies Act is further extended pursuant to s 239Y(4) **to 6 June 2025;**
- (d) **within five working days** of these orders being granted, the orders are to be advertised in the *Dominion Post*, posted on the BDO website and emailed to each known creditor's email address by which the companies normally communicate with that creditor;

- (e) leave is granted to the applicants, creditors and employees of the companies, and any other person who can demonstrate a sufficient interest in the administration, to apply to the Court to modify or discharge these orders on appropriate notice being given to the applicants and the Court;
- (f) the costs and disbursements of this application are an expense incurred by the applicants and are to be paid out the assets of the companies; and
- (g) leave is granted to the administrators to apply for further orders if required.

Associate Judge Skelton

Solicitors:
Anthony Harper, Christchurch

NOTICE REQUIREMENT

The solicitors on the record for the parties are to promptly provide a copy of this minute to their clients (r 5.43).