

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

CIV-2017-404-922

UNDER the Companies Act 1993 ss 280 and 286
and Part 19 of the High Court Rules

AND

IN THE MATTER OF an application concerning **TRENDS
PUBLISHING INTERNATIONAL LTD**

AND

IN THE MATTER OF an application by **KARE JOHNSTONE**
and
ANDREW JOHN GRENFELL
of Auckland, Insolvency Practitioners
Applicants

On the papers:

Counsel: S Bisley/O Gascoigne for Applicants

Minute: 11 May 2017

MINUTE of ASSOCIATE JUDGE R M BELL

Solicitors:

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[1] Ms Kare Johnstone and Andrew Grenfell, insolvency practitioners with McGrathNicol, apply for an order allowing them to act as liquidators of Trends Publishing International Ltd.

[2] Unless the court orders otherwise, they are disqualified under s 280(1)(cb) of the Companies Act 1993 because their practice has been in a continuing business relationship with a secured creditor of Trends Publishing International Ltd, the Bank of New Zealand.

[3] Creditors have applied for Trends Publishing International Ltd to be put into liquidation and have approached Ms Johnstone and Mr Grenfell to act as liquidators. Ms Johnstone and Mr Grenfell have applied by originating application for an order under s 280 of the Companies Act. That procedure is standard for applications under s 280 of the Companies Act when it is proposed to put a company into liquidation by shareholders' resolution. But in Auckland at any rate, when there is an application for the court to order a company to be put into liquidation, the standard procedure is for the proposed liquidators to provide in their consent under s 282 of the Companies Act a qualification to their certificate under s 280(4) by noting any disqualifying factors. Orders under s 280 are routinely made when the court orders the liquidation and appoints liquidators.

[4] The circumstances of this case are relatively standard. Ms Johnstone and Mr Grenfell are experienced insolvency practitioners who can be counted on to value their reputations. They have a vested interest in maintaining a reputation for integrity, objectivity, independence and skill. While McGrathNicol has from time to time carried out work for the Bank of New Zealand within the last two years and the practice does undertake corporate recovery and advisory work for the bank, Ms Johnstone and Mr Grenfell have not acted for the bank in relation to Trends Publishing International Ltd. They also confirm that McGrathNicol has not received any instructions from Trends Publishing Ltd, its directors or shareholders.

[5] In similar circumstances, Judges routinely make orders allowing liquidators in their position to act. That is primarily because the courts are confident that there is

minimal risk that the liquidators' independence and ability to carry out their task professionally and effectively could be compromised through having a business relationship with a secured creditor.

[6] Given the routine circumstances, I suggest that it is unnecessary for Ms Johnstone and Mr Grenfell to make a separate application under s 280 of the Companies Act.

[7] It follows from the above that I am satisfied that an order should be made under s 280. The effect of the order is to remove a bar to their appointment as liquidators, but this decision does not make that appointment. That can be made only on the hearing of the liquidation application. Ms Johnstone and Mr Grenfell will still need to provide their consent under s 282 – so far only Ms Johnstone has given her written consent. They will also need to include in their consent their certificate under s 280(4).

[8] I make these orders:

[a] Leave is granted to apply without notice and by originating application.

[b] Ms Johnstone and Mr Grenfell are not disqualified from being appointed liquidators by reason of the bar under s 280(1)(cb) of the Companies Act.

[c] If Ms Johnstone and Mr Grenfell are appointed liquidators, notice of these orders is to be given to each known creditor of the company at the same time as they give notice of the first creditor's meeting by:

[i] uploading those documents to McGrathNicol's website; and

[ii] providing creditors with a link to those documents.

[d] Any creditor of the company is given leave to apply to the court within **ten working days** of service to satisfy their appointment as liquidators.

[9] Costs of this application, including solicitor/client costs, are expenses within Schedule 7 clause 1(1)(a) of the Companies Act 1993.

[10] Leave is reserved to apply further.



Associate Judge R M Bell