

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

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

**CIV-2024-404-002802  
[2024] NZHC 3968**

BETWEEN APRA NEW ZEALAND LIMITED  
Plaintiff

AND 123 CASINO LIMITED (IN  
LIQUIDATION)  
Defendant

Hearing: On the papers

Counsel: A Ho for Ms Guan, director of the Defendant

Judgment: 20 December 2024

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**JUDGMENT OF ASSOCIATE JUDGE COGSWELL**

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This judgment was delivered by me on 20 December 2024 at 11.30 a.m.  
pursuant to Rule 11.5 of the High Court Rules.

Registrar/Deputy Registrar

Date.....

Solicitors:

Crimson Legal, Auckland

Official Assignee, Auckland

[1] This liquidation application came before the Court on Wednesday, 18 December 2024. It was the first call of the application.

[2] There was no appearance by or on behalf of the defendant company.

[3] The Court made an order liquidating the defendant company and ordering it to pay costs and disbursements in favour of the plaintiff in the sum of \$4,997.83.

[4] The history is that the defendant company failed to pay a Disputes Tribunal award in the plaintiff's favour and the plaintiff commenced liquidation proceedings.

[5] The defendant subsequently paid the Disputes Tribunal award and the liquidation proceedings were discontinued, with costs in the plaintiff's favour of \$4,139.05.

[6] The defendant did not pay that sum either.

[7] The plaintiff then issued a statutory demand for the costs order, which the defendant company failed to meet.

[8] The present proceedings were then filed and an order liquidating the defendant was made.

[9] The sole director and shareholder of the defendant has filed a memorandum seeking the Court to recall the liquidation order under r 11.9 of the HCR. She is a non-party to the proceeding.

[10] She has filed an affidavit which sets out the relevant background, including the following factors which are relevant to the application to recall the liquidation order. Those factors are:

- (a) the defendant is a longstanding company operating a bar and restaurant with gaming facilities that has been operating for 24 years;

- (b) the sole director and shareholder of the defendant did not appreciate the seriousness of the situation the company faced in failing to respond to the statutory demand or the consequent liquidation proceedings;
- (c) the defendant company has sufficient funds on hand to pay the debt, having provided evidence of its financial position by way of bank statements exhibited to the affidavit;
- (d) the debt the subject of the statutory demand is a modest one;
- (e) liquidation is a disproportionate outcome given the circumstances, including the modest debt, the company's ability to pay, and the consequent destruction of the company's longstanding business should the liquidation continue;
- (f) the liquidation will result in the loss of income for seven people either employed by or contracted to the company;
- (g) the company is able to pay its due debts and ought not to be liquidated.

[11] The Court has jurisdiction to recall a liquidation order under the Court's inherent jurisdiction and r 11.9 of the HCR. A formal application under r 11.9 is not mandatory, the application can be made by memorandum. A non-party can apply for recall.<sup>1</sup>

[12] In support of the application for recall of the judgment, the defendant relies on *Horizon Printing Ltd v Mustang NZ Ltd*.<sup>2</sup> There, the liquidation was recalled on the basis that the debt was subsequently paid after liquidation. The Court noted that to refuse to recall the order would require an application under s 250 of the Companies Act 1993 to be made, which would place an unnecessary financial burden on the defendant.

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<sup>1</sup> *Taharoto Motels Ltd v Ritz Enterprises Ltd (In Liq)* [2023] NZHC 1290 at [9]

<sup>2</sup> *Horizon Printing Ltd v Mustang NZ Ltd*, HC Auckland, CIV-2008-404-5146, 24 April 2009.

[13] In the present case, the defendant has not paid the debt, nor has it provided a sufficient explanation for the failure to respond to the plaintiff's liquidation application.

[14] However, standing back and considering the factors set out in paragraph [10] above, this is a case where it is appropriate to recall the judgment.

[15] Considered overall, the Court having jurisdiction under r 11.9 to recall the judgment, and the background to this matter, the Court makes an order that the judgment placing the defendant company in liquidation is recalled.

[16] However, that order is to lie in Court unsealed until the non-party provides proof that the defendant has paid the plaintiff the sums of:

(a) \$4,139.05; plus

(b) \$4,997.83.

[17] The defendant has two working days to provide proof of payment to the plaintiff. Should the defendant not provide proof of payment within that time, then this order may not be sealed and should the defendant wish to terminate the liquidation it will have to apply under s 250 of the Companies Act 1993 to do so.

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Associate Judge Cogswell