

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

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

CIV-2008-409-348

BETWEEN

ERIC MESERVE HOUGHTON
Plaintiff

AND

TIMOTHY ERNEST CORBETT
SAUNDERS, SAMUEL JOHN MAGILL,
JOHN MICHAEL FEENEY, CRAIG
EDGEWORTH HORROCKS, PETER
DAVID HUNTER, PETER THOMAS and
JOAN WITHERS
First Defendants

CREDIT SUISSE PRIVATE EQUITY
INCORPORATED
Second Defendant

CREDIT SUISSE FIRST BOSTON ASIAN
MERCHANT PARTNERS LP
Third Defendant

On papers

Minute: 25 March 2020

MINUTE OF DOBSON J

[1] I have considered the latest round of documents filed in the proceeding, starting with the application by Joint Action Funding Limited (JAFL) dated 13 March 2020 for an extension of the time limit within which it could indicate its compliance with requirements for provision of security for costs and funding for stage two. That application was supported by an affidavit from Mr Gavigan, also dated 13 March 2020.

[2] A joint notice of opposition to that application was filed on behalf of all defendants on 19 March 2020, together with memoranda on behalf of all defendants. A separate

memorandum on behalf of the director defendants other than Mr Horrocks and Ms Withers was filed on 20 March 2020.

[3] The Registry has also received a further memorandum from Mr Gavigan dated 20 March 2020.

[4] There is no suggestion in the documents filed for JAFL that its endeavours to provide security for costs and funding for stage two have ceased because of its failure to comply with the deadline imposed in my 2 March 2020 minute. The practical effect of JAFL's position is that it is continuing with all avenues open to it to comply with its obligations, and if it is subsequently successful I anticipate that it will seek to rely on its application for an extension of time for performing those obligations as part of its argument for approval of arrangements subsequently put in place.

[5] For the defendants, their notice of opposition is the latest in a series of objections to the Court granting any further indulgences to the present funder to carry out the steps needed to enable the stage two hearing to proceed on 11 May 2020.

[6] I anticipate the defendants' position to be that, if JAFL belatedly performs the obligations necessary for the claimants to proceed at the stage two fixture on 11 May 2020, the greater the delay in confirming that position, the stronger will be their opposition to allowing it to proceed.

[7] The possible new constituency that may have a different interest is any group of claimants who are considering providing the resources to run the claimants' stage two hearing, independently of JAFL and Mr Gavigan. The prospect of that occurring was raised by Mr Carruthers QC and the sequence of timetable directions in my minute of 2 March 2020 was intended to afford any such new funding group the opportunity to make such arrangements between 13 March and 20 April 2020, without the prospect of a competing arrangement belatedly procured by JAFL. As matters stand, I am not persuaded that providing certainty to any potential alternative funders that they are the only prospect for funding stage two can outweigh the interests in at least allowing JAFL the opportunity to continue the initiatives as described in Mr Gavigan's 13 March 2020 affidavit. That is not to say that further time beyond the 13 March 2020 deadline will necessarily be granted and, depending on how the matter presents by early May, it may

still be open to the defendants to argue that belated performance by JAFL after that date should not be allowed.

[8] However, I am not prepared to dismiss JAFL's application for an extension of time at the moment. It means that JAFL may, if it considers the prospects are sufficient to justify further effort, continue with attempts to discharge its obligations. Any other claimants' interest wishing to provide funding is free to pursue their opportunity to do so, with an indication required, at least of the prospects of success, by the 20 April 2020 deadline.

[9] I am mindful of the sequence of concerns about the implications for hearing arrangements of the COVID-19 emergency, as raised more than once by Ms Mills. I neither overlook nor underrate the importance of those concerns. The sequence is to ascertain whether stage two can be ready for hearing and, if so, to provide the optimum arrangements for safe appearances and contributions to the hearing consistently with the protocols that are being developed for the Court.

[10] If, for whatever reason, the stage two hearing is unable to proceed on 11 May 2020 and is not struck out on the defendants' application at that stage, the only presently available five week slot in a Wellington courtroom large enough to accommodate the hearing this year is the period commencing 31 August 2020. I do not foreshadow that as an alternative fixture date and it does not suggest any view about the future of the proceeding, if it is not able to proceed on 11 May 2020. However, it is flagged so that counsel can be aware of that limited possible alternative.

Dobson J

Solicitors:

Antony Hamel, Dunedin for plaintiff

Gilbert Walker, Auckland for first defendants (other than Mr Horrocks and Ms Withers)

Clendons, Auckland for Mr Horrocks

Wilson Harle, Auckland for Ms Withers

Russell McVeagh, Wellington for second and third defendants

Counsel:

C R Carruthers QC and P A B Mills for plaintiff

A R Galbraith QC and D J Cooper for first defendants (other than Mr Magill, Mr Horrocks and Ms Withers)

T C Weston QC for Mr Magill

B D Gray QC for Ms Withers

J B M Smith QC and A S Olney for second and third defendants