

MAINZEAL GROUP LIQUIDATION

Liquidators' Six Monthly Report to Creditors and Shareholders

Pursuant to Section 255 of the Companies Act 1993

Reporting Period: 28 August 2019 - 28 February 2020

1. Introduction

Brian Mayo-Smith and Andrew James Bethell, of BDO Auckland, and Stephen John Tubbs, of BDO Christchurch, all Chartered Accountants (“the Liquidators”), were appointed joint and several liquidators of the below Companies on 28 February 2013 by special resolution of the shareholders in accordance with Section 241(2)(a) of the Companies Act 1993 (“the Act”) with approval of the High Court.

- Mainzeal Property and Construction Limited (“MPCL”)
 - Mainzeal Living Limited (“MLL”)
 - 200 Vic Limited
 - Mainzeal Group Limited
 - Building Futures Group Holdings Limited
 - Building Futures Group Limited
 - Mainzeal Residential Limited
 - Mainzeal Construction Limited
 - Mainzeal Limited
 - Mainzeal Construction SI Limited
 - MPC NZ Limited
 - RGRE Limited
- (together “the Companies”)

Stephen Tubbs retired as liquidator on 8 December 2016 prior to his retirement from BDO Christchurch. Andrew Bethell and Brian Mayo-Smith remain in office.

The Liquidators were earlier appointed liquidators of King Facade Limited (“KFL”) on 12 February 2013 also by special resolution of the shareholders in accordance with Section 241(2)(a) of the Act.

In accordance with Section 255 of the Act we are obliged to report to all creditors and shareholders on the conduct of the liquidation during the preceding six-month period. On 25 June 2013, Keane J granted an order, among others, that the liquidations of the Companies and KFL be conducted as if those Companies and KFL were one company. Accordingly, we report on all the Companies and KFL together using 28 February 2013 as the liquidation commencement date.

This report should be read in conjunction with our previous reports for the Companies and KFL pursuant to Section 255(2)(c) of the Act.

2. Restrictions

This report is not intended for general circulation, nor is it to be reproduced or used for any purpose other than that outlined above without our written permission in each specific instance.

We do not assume any responsibility or liability for any losses occasioned to any party as a result of the circulation, publication, reproduction or use of this report contrary to the provisions of this paragraph.

We reserve the right (but will be under no obligation) to review this report and if we consider it necessary to revise the report in the light of any information existing at the date of this report which becomes known to us after that date.

3. Conduct of the liquidation within the reporting period

Investigations into the affairs of the Companies and KFL

As previously advised, MPCL's directors Richard Yan, Dame Jennifer Shipley and Messrs Gomm and Tilby (collectively, the **Directors**) were held jointly liable for reckless trading and were ordered to pay \$36m - with Mr Yan being liable for \$18m alone and Dame Jennifer Shipley and Messrs Tilby and Gomm liable for \$6m each jointly with Mr Yan. Sir Paul Collins was found not liable.

In May the High Court heard arguments around quantum and costs and confirmed the \$36.0m judgment. The plaintiffs were awarded costs and disbursements of \$2,349,458.99 against the directors. Sir Paul Collins was awarded costs of \$342,653.98 against the plaintiffs. The liquidators paid these costs on 2 September 2019.

As previously advised, Mr Yan and the other defendant directors filed notices of appeal and the liquidators have cross-appealed. A Court of Appeal fixture has been allocated for a five - day hearing commencing on 20 April 2020. That is likely to be rescheduled due to the restrictions on the Court's operation by the COVID-19 alert at level 4, which are unlikely to be lifted by 20 April 2020.

The insurers for Dame Jennifer Shipley and Messrs Tilby and Gomm have confirmed that \$18m has been paid into a trust account to secure the liability of those directors under the judgment pending the outcome of the appeals process. The insurers also paid the costs award.

Mr Yan has failed to pay the remaining \$18m or secure that part of the judgment. The liquidators are pursuing that amount and during the period obtained leave from the Court to serve the bankruptcy notice outside New Zealand. Applications by Mr Yan to set aside the bankruptcy notice and for a stay of execution of the judgment were heard and dismissed by the Court on 27 November 2019. Following that, the Liquidators filed an application for orders adjudicating Mr Yan bankrupt. Mr Yan has made a further application opposing an order for adjudication and seeking an order halting the liquidators' application. A court fixture for the hearing of these applications has been allocated for 3 July 2020.

The Liquidators intend continuing to pursue enforcement of the High Court judgment against Mr Yan or, if necessary, against his property under the control of the Official Assignee.

The High Court also entered judgment in the sum of \$2,164,474.09 plus interest of \$711,896 against Isola Vineyards Limited (In Liquidation) and the Mainzeal liquidators have filed a claim in the liquidation of Isola. The Isola liquidators have admitted the claim and a distribution of \$621,380.58 was received during the period.

Contract receivables and retentions

In the last reporting period, the Liquidators engaged in a mediation process with one of the last remaining outstanding debtors which resulted in a settlement. No further debtor recoveries are expected.

Receipts and payments

Attached as **Appendix 1** is a Statement of Receipts and Payments for the reporting period.

Creditor claims

Preferential creditors

Preferential creditors have been paid in full.

Unsecured Creditors

Of the approximately 1,400 claims totaling \$158.3m received from creditors of the Companies and KFL, a total of 1,390 claims have been admitted either in full or in part totaling \$111m.

Liquidation Committee

A liquidation committee (“Committee”) was appointed by creditors at the creditors’ meeting on 3 April 2013. When required there have been meetings with the Committee to discuss the conduct and strategy of the liquidation. The Liquidators will continue to meet with the Committee when appropriate.

4. Further proposals for completing the liquidation

The Liquidators propose at this stage to take the following further actions:

- Collect any GST recoveries;
- Oppose appeals being pursued by certain Defendants;
- Complete the appeal and cross-appeal process;
- Pursue the enforcement of the High Court judgment against Mr Yan; and
- Distribute available funds (if any) to unsecured creditors.

The Liquidators will take further action as appropriate should additional information regarding the Companies’ and KFL’s affairs come to the Liquidators’ attention. Further actions will be subject to the availability of funding and an assessment of the benefits of pursuing recoveries.

Likely distribution to unsecured creditors

We expect that there will be some funds available for distribution to unsecured creditors. The quantum of any ultimate distribution to unsecured creditors will depend on the Liquidators being able to recover the amounts awarded against the Directors and Isola including the outcome of the appeals or cross-appeals.

Estimated Date of Completion

It is not practical to estimate the date of the completion of the liquidation at this stage. Our subsequent reports to creditors and shareholders will, when appropriate, advise of an estimated completion date.

5. Contact Information

If you require any further information, please direct enquiries to:

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4 Graham Street
Auckland 1140

Dated this 26th day of March 2020

A handwritten signature in black ink, appearing to read 'Andrew Bethell'.

Andrew Bethell
Liquidator

APPENDICES

Appendix 1 - Receipts and Payments

From:	28-Aug-19
To:	28-Feb-20

Receipts and Payments	
28 August 2019 to 28 February 2020	\$'000

Opening Balance	5,479
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Receipts

Net Costs Awarded	2,007
Isola Interim Distribution	621
Litigation Funding	556
Net Interest	39
Net GST	7
Total Receipts	3,229

Payments

Payment to Litigation Funder	2,628
Legal Fees	400
Liquidators' Remuneration	80
Records Storage	36
Administrative Expenses	4
IT Hosting	4
Total Payments	3,153

Net Receipts/ (Payments)	76
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Funds on Hand	5,555
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