IN THE HIGH COURT OF NEW ZEALAND
NAPIER REGISTRY

CIV 2015-441-88
[2016] NZHC 146

UNDER	the Companies Act 1993
IN THE MATTER	of the liquidation of Central Tyres Waipukurau Limited (in Liquidation)
BETWEEN	CENTRAL TYRES WAIPUKURAU LIMITED (IN LIQUIDATION) First Plaintiff
AND	DAMIEN GRANT AND STEVEN KHOV Second Plaintiffs
AND	MICHAEL JOHN PALLESEN First Defendant
AND	MICHAEL JOHN PALLESEN, KAYLENE RUTH PALLESEN AND MARCUS EDWARD MCCARTHY Second Defendants

Hearing:	5 February 2016 (Heard at Wellington)
Counsel:	B J Norling for Plaintiffs No appearance for First Defendant
Judgment:	12 February 2016

JUDGMENT OF BROWN J

Introduction

[1] Central Tyres Waipukurau Limited (in Liquidation) (CTWL), formerly known as CHB Dairies Limited, was placed into liquidation on 16 April 2015 at 10:20 am in the High Court at Napier. Michael John Pallesen was the sole director of CTWL from the date of its incorporation.

[2] At the date of liquidation CTWL had only $405.01 in its bank account and the Liquidators could only realise $140,692.98 from the disposal of CTWL's assets. Those realisations were used to part-pay CTWL's creditors and some of the costs of the Liquidators. After making those part-payments 19 creditors remained unpaid totalling $343,137.77 (the Debts).

[3] The Liquidators incurred $144,008.75 in fees but after the part-payment of those fees the amount owed to the Liquidators was $84,695.25 (the Liquidators' fees) which excludes costs relating to this proceeding.

[4] In this proceeding:

(a) CTWL claims that Mr Pallesen has an overdrawn current account of $63,196.12 plus interest and that Mr Pallesen has an obligation to repay this to CTWL.

(b) The Liquidators claim that at all material times Mr Pallesen failed to keep proper accounting records of CTWL pursuant to s 194 of the Companies Act 1993. As a result and pursuant to s 300 the Liquidators seek that Mr Pallesen be declared personally liable for the Debts.

(c) The Liquidators claim that from January 2013 Mr Pallesen was in breach of his director's duties pursuant to s 135. As a result and pursuant to s 301 the Liquidators seek that Mr Pallesen contributes to the assets of CTWL the value of all debts incurred by CTWL from January 2013, being $326,863.80, and the Liquidators' fees, namely $84,659.25.

(d) The Liquidators claim that at all material times Mr Pallesen was in breach of his director's duties pursuant to s 137. As a result and pursuant to s 301 the Liquidators seek that Mr Pallesen contributes to the assets of CTWL the full extent of the Debts and the Liquidators' fees.

[5] Mr Pallesen failed to file a statement of defence. Accordingly, the hearing proceeded by way of formal proof pursuant to r 15.9 of the High Court Rules. In compliance with r 15.9(4) the Liquidators filed in support of the claim an affidavit of Mr K M Jones, a senior insolvency officer employed by them.

Overdrawn current account

[6] The last annual financial statements prepared for CTWL were for the year ended 31 May 2012. Although they were unsigned, Mr Pallesen confirmed in an interview under oath with Mr Khov and Mr Jones on 24 June 2015 that those financial statements were familiar to him and that he believed they were accurate.

[7] Those financial statements recorded that as at 31 May 2012 Mr Pallesen had an overdrawn current account of $5,162.00.

[8] In subsequent years Mr Pallesen made further payments from CTWL to himself amounting to $58,034.12. Mr Jones explained in his affidavit the reasons for his belief that all those transactions were personal transactions of Mr Pallesen:

> 4.2 I believe that all these transactions are personal transactions of Mr Pallesen for the following reasons:
>
> a. CTWL never owned any property or land in its own right. However, payments totalling $21,100.00 were made from the bank account of CTWL to an account described as '*Rapid Repay Home Loan*'. These transactions also include a reference as '*personal*' which leads me to conclude that these transactions are not readily attributable to the business of CTWL which is tyre sale and repair.
>
> b. I am not aware of a credit card that CTWL held in its own right. However, payments totalling $22,000.00 were made from the bank account of CTWL to an account described as '*M J Pallesen Credit Card*'. This leads me to conclude that these transactions are not attributable to the business of

CTWL which is tyre sale and repair. Mr Pallesen also confirmed in his interview held under oath pursuant to s 261 of the Companies Act 1993 (the Act) that he withdrew funds from CTWL as drawings for his personal credit card. …

c. I am not aware of CTWL holding any insurance policies with Sovereign Insurance in its own right. However, payments totalling $13,234.12 were made from the bank account of CTWL to accounts described as '*Sovereign Absolute Health*', '*Sovereign Total Care*', '*Sovereign Partner's Life*' and '*Sovereign ASB Lifestyle*'. I have enquired with Sovereign Insurance as to whether the payments were for policies that CTWL owned and Sovereign Insurance has confirmed that they were not. Mr Pallesen also confirmed in his interview under oath that CTWL made payments towards his personal life insurance policies. ...

d. Two payments totalling $200.00 were made from the bank account of CTWL in the form of ATM withdrawals. These withdrawals appear to be for Mr Pallesen's personal benefit as they are unjustified payments made directly to Mr Pallesen.

e. Two payments totalling $1,500.00 were made from the bank account of CTWL and appear to be personal in nature. Both payments are described as '*personal*' and '*drawings*' so I have concluded that these transactions were not for CTWL's business purposes.

[9] The current account analysis provided by Mr Jones also included an interest charge on Mr Pallesen's overdrawn current account. That interest charge was calculated using the interest rates for low-interest loans to shareholders and employees prescribed by the Inland Revenue Department in accordance with the fringe benefit rules under the Income Tax Act 2007.

[10] Mr Jones explained that if shareholders/employees have an overdrawn current account, it is treated as a loan repayable on demand and generally fringe benefit tax is payable on low-interest loans to shareholders/employees for such loans. The fringe benefit tax is the difference between the market interest rates which the IRD prescribes and the actual interest rates charged to the shareholders/employees by the company. To maintain a tax neutral position (that is, to avoid paying tax) it is a standard accounting practice to charge interest on the overdrawn current account of the shareholders/employees at the rates prescribed by the IRD.

[11] Mr Jones concluded that CTWL practised a tax neutral policy in relation to the overdrawn current accounts. In particular, CTWL did not file any returns for the fringe benefit tax and it was evident from CTWL's financial accounts for the period end 31 May 2012 that CTWL did charge interest on the overdrawn current accounts. It was for that reason that Mr Jones charged interest at the prescribed rates on Mr Pallesen's overdrawn current account.

[12] On the basis of the evidence of Mr Jones I accept that Mr Pallesen had an overdrawn current account in the sum of $63,196.12. I further accept that he is liable to account to CTWL for that sum together with interest at the prescribed rates until 12 February 2016. Mr Norling provided an updated interest analysis to 12 February 2016 which evidenced an amount of interest due in the sum of $15,315.02.

Maintenance of accounting records: s 194

[13] The evidence established that from around August 2012 Mr Pallesen exited from the day-to-day management of CTWL and effectively assumed a mere overseeing role. The day-to-day management of CTWL was left in the hands of an employee of CTWL, Keith Lammas, who was not equipped or qualified to run the business. Even though Mr Lammas had no previous financial training, Mr Pallesen delegated to him the task of managing CTWL's accounting records via Xero and MYOB.

[14] Mr Lammas did not maintain adequate accounting records for CTWL and such records as were kept were inaccurate. It is apparent that Mr Pallesen was aware of this. During his June 2015 interview Mr Pallesen conceded that his only means of assessing CTWL's current financial position was by "its funds in the bank" and he only checked this one or two times a month. The Liquidators' position is that the bank accounts were not sufficient to indicate what CTWL's financial position was at any given point.

[15] Section 194 was amended with effect from 1 April 2014. Relevant to the former section, which applies to the period of Mr Pallesen's directorship prior to 31 March 2014, are the provisions of the Financial Reporting Act 1993 (FRA) which

set out the mandatory requirements for the preparation of the financial statements of a company. The Liquidators accepted that CTWL was an exempt entity and consequently was required to comply with the requirements of s 10 of the FRA.

[16] With regard to the former s 194, the authorities make clear that a company had an obligation to keep such records as may have been necessary and in whatever form as may have been necessary to achieve the objective set out in s 194(1). The obligation to keep such records was not limited to retaining or storing records but also included an obligation to ensure the records were created where they were not already in existence.

[17] In *Maloc Construction Ltd (in liq) v Chadwick* the High Court held that all records kept by the company had to speak for themselves. In particular it was held that:[1]

> ... It does not avail a company to say, as was said here, that those objectives could be achieved by reference to the accounting records available, plus further information and explanations that can be furnished by a company officer or employee.
>
> ... This requirement is not complied with if the company keeps only basic accounting records such as cheque books, deposit books, bank statements, invoices and the like ... the section requires that this basic accounting information should be assembled and recorded in such a way that the record itself will not only enable the financial position to be determined, but will enable that to be done at any time.

[18] Mr Norling notes that the courts have yet to determine how the current version of s 194 is to be applied. However he submits that from the plain reading of the provision it is evident that to comply with the reporting requirements the directors must keep records that:

(a) correctly record the transactions of the company; and

(b) enable the company to ensure that the financial statements of the company comply with generally accepted accounting practice if the company is required to prepare such records under an enactment.

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1 *Maloc Construction Ltd (in liq) v Chadwick* (1986) 3 NZCLC 99,794 (HC).

[19] Relevant to the current version of s 194 is the Tax Administration (Financial Statements) Order 2014 (the TAO) which sets out the minimum requirements for preparation of financial statements of a company. Because CTWL had expenditure in excess of $30,000 in any given year, it did not qualify as a small company and hence CTWL was not exempt from the TAO minimum requirements. Consequently I accept that after 31 March 2014 CTWL was under an obligation to comply with the reporting requirements set out in cl 8 of the TAO.

[20] Mr Jones reviewed in considerable detail the inadequacies and inaccuracies in the financial records of CTWL. It is apparent that CTWL never prepared any end of year financial statements that would comply with the statutory requirements. Although the end of year financial statements were prepared for the year ended 31 March 2012, they were not signed by Mr Pallesen. No financial statements were prepared for CTWL for the years ended 31 March 2013 and 2014. Mr Pallesen's explanation in the course of his interview was that CTWL could not afford the cost of doing so.

[21] Furthermore CTWL never kept any ledgers and registers together with supporting documents which would have correctly recorded and explained the transactions, assets and liabilities of CTWL. Mr Jones stated that to enable a clear determination of CTWL's financial position in any given time the following accounting records should have been kept by CTWL but were not:

- a legible list of debtors and creditors of CTWL;
- records that account for cash transactions of CTWL;
- stock lists and supplier records evidencing what goods CTWL ordered and received from suppliers and what goods CTWL subsequently sold to customers;
- records detailing employees/contractors of CTWL and its PAYE obligations to the IRD; and

– a complete asset register and depreciation schedule that records all of the assets of CTWL and its market values.

[22] On the basis of the evidence of Mr Jones I accept that it is evident that in the period preceding 31 March 2014 Mr Pallesen failed to ensure that CTWL prepared financial statements for the years ending 31 March 2012, 2013 and 2014 as required by s 10 of the FRA and that in the period from 1 April 2014 Mr Pallesen failed to ensure that CTWL complied with the minimum reporting requirements under cl 8 of the TAO.

Liability under s 300

[23] Where a director has failed to comply with s 194, before a declaration can be made against the director under s 300 the Court must be satisfied that the failure to comply has contributed to the company's inability to pay all its debts and/or has resulted in substantial uncertainty as to the company's assets or liabilities and/or has resulted in the liquidation being substantially impeded.

[24] The impact of Mr Pallesen's failure to keep proper accounting records for CTWL was explained by Mr Jones in his affidavit as follows:

> 7.4 Mr Pallesen's failure to keep proper accounting records and prepare financial statements has substantially impeded the orderly winding up of CTWL. In particular:
>
> a. We were compelled to undertake additional investigations to gain clarity on CTWL's financial affairs. Considerable amount of time was spent in trying to determine what records should be available in the liquidation and then attempting to locate the records. This has substantially increased the costs of the liquidation as we were required to make various requests from several entities and sought to reconstruct records from various sources.
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> b. The lack of records relating to the trading relationship between CTWL and its suppliers has substantially impeded the liquidator's recovery actions under the Act. Without adequate documentation from which to reconstruct amounts it is difficult to ascertain the certainty if the liquidators have a claim, such as a voidable transaction, against CTWL's suppliers.

c. We have been unable to collect records detailing the receivables due to CTWL. This has increased the time expended quantifying the actual outstanding debtors and corresponding with various debtors regarding their accounts.

d. We have been unable to accurately identify all existing assets of CTWL as there exists no asset register, stock list/take or other records identifying any assets;

e. Due to lack of sufficient records, we have expended significant time attempting to quantify Mr Pallesen's and the Trust's overdrawn current accounts.

f. We encountered significant impediments to market and sell the business of CTWL as there existed no accurate turnover figures for the liquidators to present to prospective buyers. This caused substantial time to be spent by the liquidators gathering, collating the presenting prospective buyers with raw, hand kept sale records to evidence actual turnover achieved by the business.

7.5 Further, Mr Pallesen's failure to keep proper accounting records and financial statements has resulted in uncertainty as to CTWL's assets and liabilities. In particular:

a. There existed no asset register for use in identifying assets of CTWL upon the liquidators' appointment. Consequently, there was no certainty as to the number and value of assets that were held onsite when we initially secured the trading premises of CTWL.

b. Due to the lack of documentation recording assets of CTWL, there existed several assets that, unbeknown to the liquidators, were held offsite at the premises of several suppliers of CTWL. These assets were eventually discovered and secured, however, much later after the liquidators' initial appointment.

c. Mr Pallesen himself had no ability to accurately track what assets CTWL held and their value. In particular, during the interview under oath, Mr Pallesen confirmed that he had no ability to track CTWL's inventory of tyres nor how much each tyre supplier was owed at any given point. I have not seen any proof of any stock takes being performed or records maintained which could accurately identify the amount and value of tyres held in stock at any given time. ...

d. In terms of creditors of CTWL, we were unable to accurately ascertain at the time of the liquidators' appointment who were creditors of CTWL and for which value. We relied primarily on the creditors filing proofs of debt in the liquidation to quantify the outstanding creditors in the liquidation.

e. The employees of CTWL were not able to provide the liquidators with any written confirmation that they had worked at CTWL for 6 months prior to the liquidation. They received no payslips and there was no record of accrued holiday pay available to the liquidators to verify. Accordingly, the liquidators were unable to accurately ascertain the quantum of the outstanding wages and holiday pay due to each employee with certainty.

7.6 Lastly, Mr Pallesen's failure to keep proper accounting records has contributed to CTWL's inability to pay the Debts. In particular:

a. Mr Pallesen has admitted under oath that he was only able to ascertain CTWL's current financial position at any given point by its '*funds in the bank*' and that he only checked this one or two times a month. Accordingly, Mr Pallesen's lack of financial records and ability to accurately ascertain the financial position of CTWL has contributed to the Debts that it was never in a position to pay. ...

b. Mr Pallesen admitted under oath that he knew as early as October 2014 that CTWL was not going to be able to trade out of the financial predicament that it was currently in. This was some 6 months prior to CTWL's eventual liquidation. ...

[25] Section 300(2) provides that the Court must not make a declaration under s 300 in relation to a person if the Court considers that the person took all reasonable steps to secure compliance by the company with the applicable provision or had reasonable grounds to believe and did believe that a competent and reliable person was charged with the duty of seeing that the provision was complied with and was in a position to discharge that duty.

[26] Mr Norling submits that there is no evidence suggesting that such defences were available to Mr Pallesen. On the contrary he submits that there is evidence showing that Mr Pallesen neglected to engage an accountant to prepare accounting records and that he delegated his responsibility for keeping CTWL's day-to-day accounting records up to date to Mr Lammas who had no previous financial training and was not qualified to ensure that these records were accurate.

[27] On the evidence I am satisfied that Mr Pallesen was in breach of s 194 at all material times and that the grounds in s 300(1) for making a declaration are satisfied. However the Court retains a discretion as to whether and for what amount a declaration should be made against Mr Pallesen. In determining what quantum is

appropriate under s 300 the following principles govern the exercise of the Court's discretion:

(a) the duration of the conduct that gave rise to the breach of duty;

(b) the extent to which that conduct has caused loss to the company;

(c) the overall culpability of the conduct.[2]

[28] Mr Pallesen was the director of CTWL throughout the period during which the Debts were incurred. On the basis of the evidence of Mr Jones[3] I accept the submission of Mr Norling that there is a clear causative link between Mr Pallesen's failure to comply with his duties under s 194 and the Debts. As the sole director of CTWL at all material times Mr Pallesen chose not to discharge the statutory obligation to prepare proper accounting records. The fact that he was not involved in the day-to-day management of CTWL provides no basis for avoiding liability under s 300.

[29] Consequently I accept the submission for the Liquidators that it is appropriate that an order be made under s 300 declaring Mr Pallesen personally liable for the Debts.

Alleged breach of s 135

[30] Section 135 provides:

> **135 Reckless trading**
>
> A director of a company must not–
>
> (a) Agree to the business of the company being carried on in a manner likely to create a substantial risk of serious loss to the company's creditors; or
>
> (b) Cause or allow the business of the company to be carried on in a manner likely to create a substantial risk of serious loss to the company's creditors.

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2 *Mason v Lewis* [2006] 3 NZLR 225 (CA) at [110].
3 At [24] above.

[31] In *Mason v Lewis* the Court of Appeal discussed what constitutes a substantial risk of serious loss:[4]

> [48] As to what is meant by "substantial risk" and "serious loss" *Ross, Corporate Reconstructions: Strategies for Directors* (1999) suggests:
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> > The first phrase, "substantial risk" requires a sober assessment by directors as to the company's likely future income stream. Given current economic conditions, are there reasonable assumptions underpinning the director's forecast of future trading revenue? If future liquidity is dependent upon one large construction contract or a large forward order for the supply of goods or services, how reasonable are the director's assumptions regarding the likelihood of the company winning the contract? Even if the company wins the contract, how reasonable are the prospects of performing the contract at a profit?

[32] In the same case the Court of Appeal adopted an objective approach to the question whether a director had agreed to, caused or allowed a company to trade while there was a substantial and illegitimate risk of serious loss to the company's creditors. The Court described the essential pillars of s 135 as follows:

- The duty which is imposed by s 135 is one owed by directors to the company (rather than to any particular creditors);
- The test is an objective one;
- It focuses not on a director's belief but rather on the manner in which a company's business is carried on, and whether that *modus operandi* creates a substantial risk of serious loss; and
- What is required when the company enters troubled financial waters is what Ross (above at [48]) accurately described as a "sober assessment" by the directors, we would add of an on-going character, as to the company's likely future income and prospects.

[33] The evidence on this question was again set out in some detail in the affidavit of Mr Jones. Mr Norling helpfully summarised it in his submissions, contending that from the beginning of January 2013 the business of CTWL was carried on in a manner likely to create substantial risk to CTWL's creditors. He drew attention in particular to the following:

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4 *Mason v Lewis*, above fn 2.

a. CTWL started experiencing financial difficulties from the beginning of January 2013. This is the start of the period when CTWL filed tax returns for GST and PAYE but was unable to make payments towards these debts which were due. Accordingly, CTWL became insolvent from the beginning of January 2013.

b. Mr Pallesen confirmed in his interview under oath that from this point CTWL did not have enough funds to pay all of its outstanding debts.

c. In the liquidators' view, at that time CTWL had no reasonable prospects of generating a revenue stream that would sufficiently cover all of its liabilities.

d. Despite these financial predicaments, CTWL continued trading by incurring the Debts. This created a real risk of CTWL being placed into liquidation by one of its unpaid creditors leaving CTWL's creditors in loss. In fact, this is exactly what happened down the track.

e. Accordingly, trading CTWL beyond the beginning of January 2013 created a substantial and illegitimate risk of serious loss to CTWL's creditors.

[34] Mr Norling further submitted that there was sufficient evidence to support a finding that on an objective basis Mr Pallesen caused or allowed CTWL to be run in a manner might that create a substantial risk of serious loss to CTWL's creditors. He emphasised that Mr Pallesen knew that CTWL had financial difficulties from the outset but continued to trade CTWL by paying urgent creditors whilst allowing other creditors' debts to increase and he continued to allow Mr Lammas to have control of the day-to-day management of CTWL.

[35] On the basis of the evidence of Mr Jones and counsel's submissions I conclude that the allegation of reckless trading by Mr Pallesen is established.

Alleged breach of s 137

[36] Section 137 states:

> **137 Director's duty of care**
>
> A director of a company, when exercising powers or performing duties as a director, must exercise the care, diligence, and skill that a reasonable director would exercise in the same circumstances taking into account, but without limitation, –

(a) The nature of the company; and

(b) The nature of the decision; and

(c) The position of the director and the nature of the responsibilities undertaken by him or her.

[37] Mr Norling accepted that, while s 137 makes it clear that the requisite standard is the objective standard of a reasonable director, an element of subjectivity is introduced by the requirement to take account of the director's position in the company and the nature of the duties undertaken by the director.

[38] Again the evidential analysis was provided in the affidavit of Mr Jones which provided the basis for Mr Norling's submission as follows:

> 8.3 It is submitted that at all material times Mr Pallesen failed to exercise the care, diligence, and skill that a reasonable director would exercise in the circumstances by:
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> a. Allowing CTWL to trade whilst insolvent by agreeing to paying creditors that were essential for keeping the business open and causing other creditors' debts to accelerate. Allowing a company to continue trading whilst insolvent has been previously found to be in breach of director's duties pursuant to s 137.
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> b. Despite being responsible for CTWL's compliance with tax, failing to ensure that CTWL was able to meet its tax obligations or alternatively entered into payment arrangement with the IRD.
>
> c. Allowing Mr Lammas, who was not competent, to be in control of CTWL's day-to-day management and accounting with no, or little, oversight in place.
>
> d. Failing to ensure at all material times that CTWL was able to maintain accurate financial records and that those records would have an ability to speak for themselves as to the financial position of CTWL. ...
>
> e. Making payments using CTWL's funds to himself for personal use and benefit while CTWL was insolvent. In the case of *Blanchett v Keshvara*, the director was found to be in breach of his duties under s 137 for allowing corporate funds to be paid to related parties while the company was insolvent.
>
> f. Failing to dispose of CTWL's assets for fair value.

[39] I am satisfied on the basis of the evidence that, with one exception, Mr Pallesen failed to discharge the duty of care imposed by s 137. The exception relates to item (f) in Mr Norling's submission above. I was not satisfied on the evidence that the sale price of the Ford Ranger vehicle for $20,000 was shown to be not at fair value.

Liability under s 301

[40] Having found that Mr Pallesen was in breach of his duties under ss 135 and 137, it is necessary to assess the measure of contribution which Mr Pallesen ought to make to CTWL pursuant to s 301. In *Mason v Lewis* the Court of Appeal stated that in deciding what quantum was appropriate under s 301, the standard approach is to begin by looking to the deterioration in the company's financial position between the date on which the inadequate corporate governance became evident and the date of liquidation.[5]

[41] With reference to s 135 I accept Mr Norling's submission that Mr Pallesen was in breach of his director's duties from the beginning of January 2013. The deterioration in CTWL's financial position from that date to the date of liquidation is evidenced by the debts incurred by CTWL during that period totalling $326,863.80.

[42] I also accept Mr Norling's submission that Mr Pallesen was in breach of s 137 at all material times and that the deterioration of CTWL's financial position is evidenced by the Debts.

[43] The relevant considerations to be considered are the factors referred to above in the context of s 300, namely duration, causation and culpability.[6] So far as duration is concerned, all of the Debts were incurred during the time Mr Pallesen was a director. I accept Mr Norling's submission that there is a clear causative link between Mr Pallesen's actions and omissions and the loss caused to CTWL's creditors.

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5 *Mason v Lewis*, above fn 2 at [109].
6 At [27] above.

[44] In reviewing Mr Pallesen's overall conduct, his culpability cannot be reduced on the basis that he relied on the statements of others. Indeed he knew that CTWL was in financial difficulties but he caused or agreed to it being traded in the manner noted previously. I accept Mr Norling's submission that Mr Pallesen cannot escape liability under s 301 because he was not involved in the day-to-day management of CTWL. Mr Pallesen knew what was happening to CTWL but failed to take appropriate steps and instead entrusted the business to Mr Lammas who, as previously noted, was not equipped or qualified to run the business.

[45] The Liquidators also seek a finding that Mr Pallesen should be liable to pay compensation for the amount of the costs and disbursements incurred in the liquidation, not including the costs which relate to this litigation. In my view the present case is similar to *Richard Geewiz Gee Consultants Ltd (in Liq) v Gee*[7] and *Grant v Guo*[8] where orders of such a nature were made. Accordingly I direct that the orders for compensation in respect of the breaches of ss 135 and 137 shall include the balance of the Liquidators' unpaid costs and disbursements in the sum of $84,659.25.[9]

[46] In accordance with those conclusions I assess the measure of Mr Pallesen's contribution to CTWL pursuant to s 301 as:

(a) $411,523.05[10] in respect of his breach of s 135;

(b) $427,797.02[11] in respect of his breach of s 137.

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7 *Richard Geewiz Gee Consultants Ltd (in Liq) v Gee* [2014] NZHC 1483.
8 *Grant v Guo* [2015] NZHC 2480.
9 The figure at [3] above.
10 The sum of $326,863.80 and the balance of the Liquidators' costs and disbursements.
11 The sum of the Debts and the balance of the Liquidators' costs and disbursements.

Orders

[47] For the reasons stated above the following orders are made:

(a) On the first cause of action an order that Mr Pallesen pay to CTWL the sum of $63,196.12 and interest in the sum of $15,315.02.

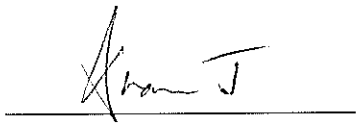
(b) On the third cause of action an order pursuant to s 300 of the Companies Act 1993 that Mr Pallesen is personally responsible without limitation of liability for the Debts in the sum of $343,137.77.

(c) On the fourth cause of action orders pursuant to s 301 of the Companies Act 1993 that:

(i) in respect of the breach of s 135 Mr Pallesen pay to the second plaintiffs $326,863.80 and the balance of the Liquidators' costs and disbursements of $84,659.25;

(ii) in respect of the breach of s 137 Mr Pallesen pay to the second plaintiffs the amount of the Debts in the sum of $343,137.77 and the balance of the Liquidators' costs and disbursements of $84,659.25.

[48] The plaintiffs are entitled to one set of costs on a 2B basis.



Brown J

Solicitors:
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