

ACCOUNTS RECEIVABLE MORE THAN BOOK DEBTS - COURT OF APPEAL

20th August 2013

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Confirmation by the Court of Appeal that “accounts receivable” are more than just book debts and include other legally enforceable monetary obligations owed to a company will provide welcome certainty to receivers and liquidators.

The issue is significant because it determines the assets available to pay preferential claims.

The debate about what is an account receivable has raged for several years. The High Court originally limited accounts receivable to book debts (*Commissioner of Inland Revenue v North Shore Taverns Ltd (in liq)* [2009]), before adopting a broader definition (*Burns v Commissioner of Inland Revenue* [2011]). See our comments on these cases [here](#).

The Court of Appeal, in what we hope is a judgment settling the matter, has confirmed the broader definition. In doing so, in the case of *Strategic Finance Limited (in rec & in liq) & Anor v Bridgman & Ors* [2013], it has provided helpful guidance on some of the finer detail of the definition.

THE CASE

Strategic Finance and the Inland Revenue Department (“IRD”) were fighting over \$782,000 (*the Fund*) held by the liquidators of Takapuna Procurement Limited.

Strategic claimed that its GSA (*General Security Agreement*) over Takapuna’s property entitled it to the Fund, because the IRD’s claim as a preferential creditor was limited to book debts and therefore did not include most of the Fund.

Under Schedule 7 of the Companies Act, preferential creditors have priority over GSA holders to accounts receivable and inventory or their proceeds - but not over PMSI (*Purchase Money Security Interest*) holders and factors where they have registered in time.

The Court of Appeal decided that:

- the meaning of accounts receivable in the Companies Act is the same as in the PPSA;
- a monetary obligation in the context of the PPSA means an existing obligation imposed on, or assumed by, one party to pay a certain sum of money to the other party on a specific or ascertainable date;
- accounts receivable is not limited to book debts;
- money held in a bank account will be an account receivable;
- money held in a solicitor’s trust account for a client will be an account receivable;
- a possible liability to pay an unidentifiable sum at an uncertain future date does not amount to an account receivable, but an existing monetary obligation that is not earned by performance under a contract does.

On this basis, the Court held that most of the Fund held by the liquidators should be paid to the IRD.

CHAPMAN TRIPP COMMENT

The broader scope of “accounts receivable” is consistent with the language of the PPSA, and results in a test that is easier to apply. We believe the decision will provide certainty for liquidators and receivers.

We are also pleased that the Court has clarified two important aspects of the test. The first is that the time for determining whether a fund is an account receivable will be the date of appointment of a receiver or liquidator.

Receivables generated after the appointment of a receiver or liquidator will not be subject to any preferential creditors' claim.

Also, the Court explained the impact of the words “whether or not that obligation has been earned by performance”. An amount that will become payable upon the company performing its part of the contract will not be an account receivable as at the date of liquidation if the company has yet to perform its obligations. That is, accounts receivable do not include “an obligation that requires performance in order to come into existence”.

Footnotes

1. *Commissioner of Inland Revenue v North Shore Taverns Ltd (in liq)* [\(2009\) 10 NZCLC 264,429](#)
2. *Burns v Commissioner of Inland Revenue* [\(2011\) 10 NZCLC 264,885](#)
3. *Strategic Finance Limited (in rec & in liq) & Anor v Bridgman & Ors* [\[2013\] NZCA 357](#)

