

**In the High Court of New Zealand
Wellington Registry**

CIV: 2013-485-689

Under Part 18 of the High Court Rules

In the matter of the Companies Act 1993

Between **ANUSHEEL CHANDRA**

(first plaintiff)

And **PETER ROBERT SEWELL**

(second plaintiff)

And **IAIN BRUCE SHEPHARD** and **CHRISTINE
MARGARET DUNPHY**

(defendants)

AGREED STATEMENT OF FACTS

**GIBSON SHEAT
LAWYERS
WELLINGTON**

Solicitor: J W McDougall/E M S Cox
(james.mcdougall@gibsonsheat.com)

Counsel acting: C F J Reid

Plaintiffs' Solicitor
1 Grey Street
PO Box 2966
DX SP22035, Wellington
Tel 04 496 9990
Fax 04 496 9991

AGREED STATEMENT OF FACTS**MAY IT PLEASE THE COURT:**

Counsel for the parties are agreed on the following facts in respect of this matter:

Parties*The plaintiffs*

1. **THE** first plaintiff, Anusheel Chandra, and the second plaintiff, Peter Robert Sewell, are directors of the following companies relevant to this proceeding:

1.1 Command Services Limited (599663) (in liquidation) (**the failed company**); and

1.2 Command Care Limited (4324678);

1.3 Command HVAC Limited (4314738); and

1.4 Command Management Limited (4337458)

(collectively **the successor companies**).

The defendants

2. **THE** defendants, Iain Bruce Shephard and Christine Margaret Dunphy:

2.1 are the joint liquidators of the failed company whose registered office is Level 2, Zephyr Building, 82 Willis Street, Wellington; and

2.2 were appointed as joint liquidators of the failed company by special resolution of shareholders dated 22 April 2013 at 1.00pm.

Incorporation of failed company

3. **THE** failed company was incorporated on 22 October 1993 and carried on business as a consultant and installer of heating, ventilation

and air conditioning (HVAC) until the failed company was placed into liquidation.

Incorporation of successor companies

4. **ON** 27 February 2013 Command Care Limited was incorporated by the plaintiffs for the purpose of purchasing the failed company's HVAC maintenance and servicing business.
5. **ON** 28 February 2013 Command HVAC Limited was incorporated for the purpose of completing the Tory Street project (involving the principals, Future Tory Limited and Arawata Assets Limited).
6. **ON** 4 March 2013 Command Management Limited was incorporated by the plaintiffs for the purpose of purchasing the assets of the failed company, including taking assignments of the employment contracts of the failed company.
7. **THE** plaintiffs were appointed as directors of all three successor companies and have filed director consents with the Registrar of Companies in respect of their directorships of each successor company.

Application for exemption

Filing

8. **ON** 29 April 2013 the plaintiffs filed their application for exemption from the phoenix company prohibitions pursuant to s 386E of the Companies Act 1993 by way of statement of claim and application for directions under Part 18 of the High Court Rules.

Service

9. **ON** 1 May 2013 the statement of claim, application for directions, and a memorandum of counsel were served on the defendants at the failed company's registered office.

Sale of business and assets of failed company

Agreements

10. **THE** defendants, as the liquidators of the failed company, negotiated the sale of the business of the failed company with the plaintiffs and successor companies.
11. **ON** 10 May 2013 the defendants and Command Care Limited executed an agreement for sale and purchase of the failed company's HVAC maintenance and servicing business.
12. **ON** 10 May 2013 the defendants and Command HVAC Limited executed an agreement for sale and purchase of the failed company's HVAC installation business.
13. **ON** 10 May 2013 the defendants and Command Management Limited executed an agreement for sale and purchase of the failed company's assets and business contracts which were not subject to the other agreements.

Settlement

14. **ON** 13 May 2013 the agreements settled and settlement statements and tax invoices were issued by the defendants to the successor companies in respect of each agreement.

Successor Company Notice

15. On 16 May 2013 the plaintiffs signed a successor company notice prepared by their solicitors (**the Notice**).
16. The Notice:
 - 16.1 was sent by the successor companies to all creditors of the failed company for whom they had an address;
 - 16.2 was sent between 16 May 2013 and 30 May 2013 being within 20 working days of the agreements being entered into with the defendants;
 - 16.3 specified:

16.3.1 the name and registered number of the failed company;

16.3.2 the circumstances in which the business has been acquired by the successor companies;

16.3.3 the names that the successor companies have assumed for the purpose of carrying on that business;

16.3.4 the type of business each successor company is to carry on;

16.3.5 the names of the plaintiffs and stated in respect of each plaintiff:

- a. his full name;
- b. the duration of his directorship of the failed company; and
- c. the extent of his involvement in the management of the failed company.

Dated:

July 2013

C F J Reid
Counsel for first and second plaintiffs

K P Sullivan
Counsel for the defendants