

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

BUILDING AND PROPERTY LIST

VCAT reference No. BP 1403/2017

CATCHWORDS

Security for costs application brought by respondents against applicant (in liquidation). Application granted. Applicant ordered to pay \$65,000 as security for costs.

APPLICANT	Asset Interiors Pty Ltd (ACN: 960 063 327) (liquidator appointed)
FIRST RESPONDENT	Grocon Constructions (Vic) Pty Ltd (ACN: 127 996 436)
SECOND RESPONDENT:	PCL Constructions Pacific Rim Pty Ltd (ACN 140 877 792)
WHERE HELD	Melbourne
BEFORE	Senior Member M. Farrelly
HEARING TYPE	Security for costs application
DATE OF HEARING	15 March 2018
DATE OF ORDER	29 March 2018
CITATION	Asset Interiors Pty Ltd v Grocon Constructions (Vic) Pty Ltd (Building and Property) [2018] VCAT 483

ORDERS

1. By 25 May 2018, the Applicant must lodge with the Principal Registrar security for the Respondents' costs of this proceeding in the sum of \$65,000.
2. If the Applicant fails to comply with order 1 above, its application in this proceeding shall stand dismissed.
3. **I direct the Principal Registrar to refer this file to a Tribunal Member when the security sum referred to in order 1 above is paid, or as soon as practicable after 28 May 2018, whichever occurs first, for the purpose of making orders in chambers for the future conduct of the proceeding.**
4. Costs reserved with liberty to apply.

SENIOR MEMBER M. FARRELLY

APPEARANCES:

For the Applicant

Mr R. Andrew of Counsel

For the Respondents

Ms S. Hooper of Counsel

REASONS

1 This is an application by the respondents for an order that the applicant, which is in liquidation, provide security for costs of the proceeding. The application is brought pursuant to s79 of the *Victorian Civil and Administrative Tribunal Act 1998* (“**the Act**”) which provides:

Security for costs

- (1) On the application of a party to a proceeding, the Tribunal may order at any time—
 - (a) that another party give security for that party's costs within the time specified in the order; and
 - (b) that the proceeding as against that party be stayed until the security is given.
- (2) If security for costs is not given within the time specified in the order, the Tribunal may make an order dismissing the proceeding as against the party that applied for the security.

THE PROCEEDING

- 2 The applicant company was placed into liquidation, by means of creditors’ winding up, on 5 May 2016. The liquidator commenced this proceeding in the name of the applicant company by application, which included Points of Claim, filed at the Tribunal on 24 October 2017. The applicant brings a claim seeking orders against the respondents for payment in a sum of approximately \$432,000.
- 3 At the first directions hearing, on 13 December 2017, orders were made that the respondents file and serve Points of Defence, and any application for security for costs (which had been foreshadowed by the respondents), by 12 February 2018. The proceeding was listed for a further directions hearing on 15 March 2018 for the purpose of hearing the foreshadowed application for security for costs.
- 4 The respondents subsequently filed and served, a little after the due date, their Points of Defence dated 14 February 2018 and their application for security for costs dated 14 February 2018. The application for security for costs included an affidavit of Miranda Sarah Brookes, solicitor for the respondents, with the exhibits thereto, sworn 14 February 2018 (the “**Brookes affidavit**”).
- 5 The applicant subsequently filed and served an affidavit of Richard James Parrish, solicitor for the applicant, with the exhibits thereto, sworn 9 March 2018 (the “**Parrish affidavit**”).
- 6 The hearing of the security for costs application came before me on 15 March 2018. The applicant was represented by Mr R Andrew of Counsel and the respondents were represented by Ms S Hooper of Counsel.
- 7 On the day of the hearing, the respondents filed and served a further affidavit of Michael William Waters, senior contracts manager engaged by

the respondents, with the exhibits thereto, sworn 15 March 2018 (the “**Waters affidavit**”).

- 8 At the start of the hearing, the applicant raised objection to certain matters set out in the Waters affidavit. After some discussion, the parties, through their Counsel, agreed that for the purpose of the security for costs application, paragraph 14 in the Waters affidavit was to be deleted. I duly made a note to this effect on the Waters affidavit in the Tribunal’s file.
- 9 The above-mentioned pleadings and affidavit material constituted all the material before me, other than Counsel’s submissions, at the hearing of the security for costs application. From that material I briefly set out below the background to the dispute between the parties.

BACKGROUND

- 10 In around 2010, the respondents, together forming a joint venture, entered into a contract with ‘Plenary Health (CCC) Pty Ltd’ for the design and construction of building works forming part of the proposed ‘Victorian Comprehensive Cancer Centre’. As I understand it, the proposed works included the construction of a 13 storey building as well as the addition of four new floors above the existing Royal Melbourne Hospital.
- 11 On or about 26 August 2014, the respondents engaged the applicant to carry out internal fit out works for a base contract sum of \$3,619,950 (excluding GST). On or about 5 January 2015, the respondents engaged the applicant to carry out further internal fit out works for a base sub contract amount of \$5,375,000 (excluding GST) (“**the subcontracts**”).
- 12 The applicant says that, during the course of it carrying out the works under the subcontracts, there were numerous design changes and variations to the works. The applicant says:

The scope and extent of the Variations went well beyond what could reasonably have been anticipated or intended at the time the Subcontracts were entered into, and each request formed a new and separate agreement for urgent work to be undertaken without delay, to be paid for at a reasonable rate.¹
- 13 The applicant says that, while the respondents agreed to pay for some of the variations, the parties fell into dispute during July-August 2015 as to payment for variations and the works generally under the subcontracts.
- 14 On or about 28 August 2015, at which time the applicant had, by reason of its dispute with the respondents, reduced the resources it was applying to the subcontract works, representatives of the parties attended a meeting in an attempt to negotiate settlement of the dispute. An agreement of sorts was reached. The applicant says the agreement included, amongst other things:

¹ The applicant’s Points of Claim, paragraph 14

- agreement that the final amount to be paid to the applicant for works under the subcontracts would be not less than \$9,750,000 (excluding GST); and
 - an undertaking by the applicant to immediately redeploy resources to site to complete the subcontract works; and
 - a commitment by the parties to work together to review and clarify all of the applicants variations claims, with a commitment on the part of the respondents to pay a reasonable price for the variation works.
- 15 The applicant says that, in accordance with the agreement, the applicant met its commitment to immediately redeploy resources to site.
- 16 The respondents do not accept the applicant's version of the agreement reached on 28 August 2015. The respondents say that:
- agreement on a minimum final sum of \$9,750,000 for the subcontract works was conditional upon the applicant committing adequate resources to complete the subcontract works in a timely manner; and
 - the agreement was otherwise not a final agreement in resolution of the dispute between the parties, but rather an agreement to commit to a process aimed at resolving the dispute, such process to include a cooperative approach to reviewing and clarifying the numerous variation works claims of the applicant.
- 17 The applicant says that the respondents breached the agreement reached on 28 August 2015 by:
- failing to pay the minimal agreed sum for the contract works; and
 - failing to provide documentation to the applicant relevant to assessment of the applicants' works claims; and
 - failing or refusing to negotiate a reasonable price for the variations.
- 18 The applicant says that, as a result of the respondents' breach of the August 2015 agreement, the applicant suffered significant cash flow problems which led to it being placed into administration in March 2016. As noted above, on 5 May 2016 the creditors of the applicant voted to place the company into liquidation.
- 19 The applicant, by its liquidator, brings a claim against the respondents for approximately \$432,000. It appears from the applicant's Points of Claim that the sum is claimed as the amount due under the subcontracts and/or the August 2015 agreement, or alternatively as a quantum meruit.
- 20 The respondents deny the claims brought against them. They say the parties entitlements are as set out in the subcontracts contract documents. They say that the applicant, and not the respondents, was responsible for its financial position which led to the appointment of the administrator in March 2016. Upon appointment of the administrator, the respondents terminated the

subcontracts, as they say they were entitled to do under the terms of the subcontracts.

- 21 The respondents say that the applicant failed to satisfactorily complete the subcontracts works and that, as a result, the respondents had to engage other subcontractors to complete the subcontracts works at a cost of around \$606,000. To the extent the respondents may be found liable to the applicant, they claim a set-off in respect of this additional expense.
- 22 It is apparent that the content and enforceability of any agreement that may have been reached on 28 August 2015 will be a significant issue in the proceeding.
- 23 The nature and extent of variation works claimed by the applicant will also be a significant issue in the proceeding, and will likely involve extensive discovery and inspection of documents prior to the final hearing.

SECURITY FOR COSTS PRINCIPLES

- 24 The power to order security for costs is entirely within the Tribunal's discretion.
- 25 As noted by Senior Member Walker in *Done Right Maintenance and Building Group Pty Ltd v Chatry-Kwin*:²

In applying [s79 of the Act] to an application such as this it is the practice of the Tribunal to have regard to the principles developed in the authorities relating to s1335 of the Corporations Law (see *C & J Mortgages Pty Ltd v Neville* (2009) VCAT 984). However it must not be overlooked that this is a Tribunal set up by the Parliament to provide an efficient and timely remedy in those areas of jurisdiction that have been conferred upon it. It cannot be assumed that in every case where a Court would order security this Tribunal will necessarily order security also".

- 26 Mindful of the principles applied in the courts, in deciding whether to order security for costs, the Tribunal will consider a number of factors,³ including:
 - whether there is credible evidence that the party against whom the security for costs order is being sought will be unable to pay the costs of the party seeking the order in the event the Tribunal makes a cost order in the proceeding in favour of the party seeking the order;
 - whether the claim brought by the applicant in the proceeding can be said to be *bona fide*, and not a claim that has little merit or prospect of success;
 - whether the applicant's lack of funds has been caused or contributed to by the conduct of the respondents;
 - whether an order for security for costs would stultify the applicant's pursuit of legitimate claims;

² [2013] VCAT 141 at paragraph 18

³ See for example *Urumar Marble Pty Ltd v Thiess Pty Ltd* [2005] VCAT 2081

- whether there has been any unreasonable delay in bringing the application for security for costs;
- the extent to which it is reasonable to expect creditors or shareholders of the applicant to make funds available to satisfy any order for security which may be made.

COULD THE APPLICANT MEET A COST ORDER

27 There is no affidavit material from the liquidator, however exhibited to the Brookes affidavit is the ASIC Form 524, the liquidator's *Presentation of Accounts and Statement* dated 28 November 2017. Information in this statement indicates that, as at the date of the statement,:

- a) the applicant had cash at bank in a sum of \$101,996;
- b) there were 27 priority creditors totalling \$237,563;
- c) there were 109 unsecured creditors totalling \$3,401,647;
- d) since his appointment, the liquidator had recovered \$438,343.35 and paid out \$336,346.95. The bulk of the money paid out was in reimbursement of the liquidator's fees and expenses totalling \$260,135.40;
- e) the liquidator estimated that his appointment as liquidator would be completed in November 2018, and that his fees and expenses to be incurred for the remainder of his appointment would be approximately \$232,386;
- f) the liquidator estimated total recoveries from debtors on a "high" [optimistic] basis at \$1,273,996.40, and on a "low" [pessimistic] basis at \$101,996.40. I understand that the "high" [optimistic] estimate includes the sum of approximately \$432,000 sought to be recovered in this proceeding.

28 In paragraph 46 of the Parrish affidavit, Mr Parrish says:

As at the date of this affidavit, I am instructed by the applicant and verily believe that:

- a) the liquidator of the applicant, Brent Morgan... has cash at bank of approximately \$115,456.96;

Now shown to me and exhibited to this affidavit... is a copy of the Applicant's cheque account statement for the period 1 February 2018. I am instructed by the Applicant and believe that no withdrawals have been made from the Applicant's cheque account since February 2018;
- b) as at the date of this affidavit, the Applicant does not have any litigation funding and/or indemnity from any creditor or contributory of the Applicant; and
- c) if the Tribunal makes an order for security for costs, the Applicant would presently be unable to comply, given its limited resources, consequently resulting in the Claim being stultified.

- 29 Having regard to the above matters, in particular the statements in the Parrish affidavit, it appears that in the event security for costs is ordered, the applicant will be unable to meet such order, and as such, the applicant's prosecution of the claim will be stultified. It also seems likely that in the event security for costs is not ordered, and the respondents ultimately obtain an order for costs in their favour in the proceeding, the applicant will be unable to meet such costs order.

BONA FIDE CLAIM

- 30 On the material before me, there is no basis to find that the applicant has not brought a bona fide claim. Nor is there any basis to find that the respondents have not brought a bona fide defence to the applicant's claims.
- 31 As noted above, significant issues for the hearing will include examining the nature and extent of alleged variation works claimed by the applicant, and the content and enforceability of any agreement between the parties reached on 28 August 2015. The hearing will require examination and cross-examination of witnesses, with reference to numerous documents.
- 32 In my view, the factual and legal complexity of the issues in the proceeding warrants the engagement of competent lawyers.

CAUSE OF APPLICANT'S INSOLVENCY

- 33 The Applicant says that the Respondents' wrongdoings, in particular the alleged breach of the alleged August 2015 agreement and the failure to make reasonable payment for variation works performed, caused significant cash flow problems which ultimately led to the applicant being placed into administration, and subsequently liquidation.
- 34 There is no affidavit material or other evidence from the liquidator to support this allegation.
- 35 The applicant relies upon financial statements of the applicant, exhibited to the Parrish affidavit. As noted by Mr Parrish in his affidavit, the financial statements indicate:
- a gross profit before tax of \$1,233,330 in the financial year ended 30 June 2012;
 - a gross profit before tax of \$250,041 in the financial year ended 30 June 2013;
 - a gross profit before tax of \$63,187 in the financial year ended 30 June 2014;
 - a net loss of \$608,704.22 for the financial year ended 30 June 2015; and
 - a net loss of \$1,768,338.08 for the part financial year as at 31 March 2016.

- 36 It is true that the statements indicate a rapid deterioration in the applicant's financial position in the period after it entered the subcontracts. But that does not mean that the financial statements support the allegation that the respondents *caused* the applicant's insolvency. In my view the financial statements do not, on their own, support any such allegation. If anything, the statements, on their own, indicate a continuing deterioration in the applicant's financial position from the end of the 2012 financial year.
- 37 It is not difficult to accept that the applicant's involvement in the subcontracts and the applicant's financial position were intrinsically connected, but that does not lead to a conclusion that the respondents caused the applicant's insolvency. On the material before me, the allegation that the respondents caused the applicant's insolvency is no more than an allegation, and one that is strenuously denied by the respondents.
- 38 On the material before me, I am unable to find that the applicant's insolvency was caused by the wrongful conduct of the respondents.

DELAY

- 39 The respondents have issued the application for security for costs in a timely manner. It cannot be said that the respondents have unreasonably delayed bringing their application for security for costs.

STULTIFICATION OF PROCEEDING

- 40 As noted above, it appears that in the event an order for security for costs is made, the applicant will be unable to meet such order and, as such, its prosecution of the proceeding will be stultified.
- 41 That the applicant will likely not proceed with the proceeding if an order for security for costs is made does not, of itself, mean that an order should not be made. I note the comments of Maxwell P and Buchanan JA in the Court of Appeal in *LivingSpring Pty Ltd v Kriger Partners* (2008) VSCA 93 at paragraph 22:

“There are, of course, particular discretionary matters of which the plaintiff must necessary have carriage. If, for example, the plaintiff corporation asserts that an order for security would impose on it such a financial burden as would stultify the litigation, the plaintiff must establish the facts which make good that assertion. We respectfully adopt what the full Federal Court said in this regard in *Bell Wholesale Co Pty Ltd v Gates Export Corporation*:

“In our opinion a court is not justified in declining to order to award security on the ground that to do so will frustrate the litigation unless a company in the position of the appellant here establishes that those who stand behind it and who will benefit from the litigation if it is successful (whether they be shareholders or creditors or, as is the case, beneficiaries under a trust) are also without means. It is not for the party seeking security to raise the matter; it is an essential part of the case of a company seeking to

resist an order for security on the ground that the granting of the security will frustrate the litigation to raise the issue of impecuniosity of those whom the litigation will benefit and to prove the necessary facts”.

[underlining added]

- 42 The creditors of the applicant stand to benefit if the litigation brought by the applicant is successful. However, there is nothing in the material before me to suggest that the creditors *are also without means*. Neither is there anything before me to suggest that the liquidator has made enquiries as to whether any of the creditors are willing to put up funds or some form of security for the purpose of pursuing the litigation. I am satisfied, by reason of the applicant’s failure to present material on these issues, that I should not decline an order for security for costs simply because the applicant says that such an order would have the effect of stultifying the proceeding.

SECTION 109 OF THE ACT

- 43 Unlike the Courts, in this Tribunal there is no presumption that a costs order will be made in favour of a successful litigant. The Tribunal’s general power to make costs orders is set out in s109 of the Act.
- 44 In *Vero Insurance Limited v The Gombac Group Pty Ltd* (2007) VSC 117 at [20] Gillard J sets out the step by step approach to be taken by this Tribunal when considering an application for costs pursuant to s109 of the Act:
- the prima facie rule is that each party should bear their own costs of the proceeding;
 - the Tribunal should make an order awarding costs, being all the specified part of costs, only if it is satisfied that it is fair to do so. That is a finding essential to making an order:
 - in determining whether it is fair to do so, that is, to award costs, the Tribunal must have regard to the matters stated in s109(3) of the Act.
- 45 As noted by Associate Justice Daly in *Hapisun Pty Ltd v Rikys & Moylan Pty Ltd*,⁴ the presumption imposed by s109 of the Act means that some assessment of the likelihood of a cost order in favour of a respondent, where the respondent is successful in defending a claim, is part of the analysis as to whether security for costs ought be ordered.
- 46 Having regard to the quantum of the applicant’s claim, and noting the factual and legal complexity of issues to be determined, and noting also that it cannot be said on the material before me that the claims of the applicant or the respondents lack merit, I consider there is a reasonable likelihood that an order for costs would be made in favour of the respondents in the event they successfully defend the claim brought against them.

⁴ [2013] VSC 730 at

47 I am satisfied that section 109 of the Act does not, in this case, weigh significantly against the making of an order for security for costs.

BALANCE OF INTERESTS; UNREASONABLE TO CREDITORS?

- 48 Having regard to the prominence of this claim in the liquidators “high” [optimistic] estimate of the total recovery from debtors that may be achieved for the benefit of creditors, it can be said that the creditors of the applicant have a stake in the outcome of this proceeding.
- 49 For the reasons discussed above, I do not accept that the possible or likely stultification of the proceeding, if an order for security is made, is reason enough to decline to make the order.
- 50 The applicant submits that it is a matter of public interest, in the sense that it is in the interests of creditors, to allow a liquidator to bring a claim without the requirement to put up security for costs, when such claim, if successful, will significantly improve the lot of the creditors in a liquidation. I do not agree.
- 51 The respondents face the prospect of incurring considerable expense in defending a claim involving complex issues. I consider it unreasonable to require the respondents to undertake that task in circumstances where the applicant is in liquidation and it is likely that if the respondents succeed in defending the claim and obtaining a costs order in their favour, the applicant will be unable to pay the costs ordered. In my view the respondents are entitled to fair protection on costs, and I do not think it unreasonable in this case to expect creditors, whose interests are at stake, to make funds available to satisfy an order for security. It will be a matter for the liquidator to convince the creditors that it is in their interests to make funds available to allow the claim to proceed. If the creditors are not convinced then, in my view, no injustice will have occurred.

CONCLUSION

52 For the reasons canvassed above, I am satisfied that an order for security for costs should be made. I turn now to considering the appropriate amount of such security.

AMOUNT OF THE SECURITY

- 53 The respondents seek security for costs in the sum of \$229,012.69, the calculation of which is set out in the Brookes affidavit. Of the sum claimed, \$52,607.92 has been incurred up to the application for security for costs.⁵
- 54 In my view it is not appropriate to include legal costs incurred prior to the application for security.
- 55 The respondents do not present any affidavit material or evidence from a costs’ consultant. Instead, Ms Brookes, allowing an estimate of four days

⁵ paragraph 23 in the Brookes affidavit

for the final hearing and based on her experience practising as a solicitor in construction litigation,⁶ makes an assessment of the likely costs and disbursements to be incurred, on the basis of charge rates:

- \$669.38 for a Partner in the respondents' firm of solicitors;
- \$503.13 for a Senior Associate in the respondents' firm of solicitors, of which Ms Brookes is one;
- \$258.13 for a Lawyer in the respondents' firm of solicitors;
- \$2000 per day, and \$200 per hour, for Counsel; and
- approximately \$420 per hour for expert witnesses.

56 Allowing the above charge rates, and with the bulk of the hours estimate being allocated to the Senior Associate and Lawyer charge rates, Ms Brookes estimates the respondents' likely future costs in the proceeding as:

- a) *directions hearings*: \$10,434.49 for professional fees and \$3000 for the cost of Counsel;
- b) *interlocutory disputes*: \$4230.68 for professional fees and \$2000 for Counsel;
- c) *day-to-day conduct*: \$4873.80 for professional fees, \$2000 as the disbursement cost of printing and \$2000 for Counsel;
- d) *discovery*: \$23,769.78 for professional fees and \$1200 for Counsel;
- e) *mediation*: \$10,447.62 for professional fees and \$2000 for counsel
- f) *reviewing applicant's evidence*: \$7945.10 of professional fees and \$2000 for Counsel;
- g) *preparing respondents' evidence*: \$26,889.16 for professional fees, \$4000 for Counsel and \$10,000-\$15,000 for expert witnesses; and
- h) *trial hearing*: \$35,674.14 for professional fees, \$18,940 for Counsel and \$2940 for expert witnesses.

TOTAL: \$124,264.77 for professional fees and \$53,193.84 – \$58,193.84 for disbursement costs including Counsel's fees, printing costs and expert witness fees.

57 The applicant has provided no contrary material or submissions as to the quantum of security for costs. However, as noted by Counsel for the respondents, the quantum to be allowed is ultimately at the Tribunal's discretion.

58 In my view, the allowances estimated by Ms Brookes, in particular the allowances for professional fees, are excessive.

59 Ms Brookes' estimates are the estimates of the actual costs the respondents may incur for legal professional fees, counsel's fees and expert witnesses.

⁶ paragraph 27 in the Brookes affidavit

However the costs actually incurred in a proceeding, and the costs which would be ordered in the event an order was made are two different things.

- 60 Where the Tribunal is minded to make an order for costs, the Tribunal will often identify the basis and scale upon which the sum of costs is to be assessed in the event the parties are unable to agree on the sum of costs.
- 61 As to the *scale* of costs, the Tribunal will usually identify a scale operative within the Magistrates Court, the County Court or the Supreme Court. If the Tribunal does not nominate any particular scale, the applicable scale will, by virtue of rule 1.07 of the *Victorian Civil and Administrative Tribunal Rules* 2008, be the County Court scale.
- 62 As to the “basis” of costs, there are now generally two alternatives, namely “standard” and “indemnity”. The “standard” basis generally includes all costs necessary or proper for the attainment of justice or for defending the matter. The higher “indemnity” basis generally includes all costs *actually* incurred, save to the extent they are of an unreasonable amount or have been unreasonably incurred.
- 63 As I have noted in the past,⁷ indemnity cost orders are made only in exceptional or extreme cases such as where the conduct of a party is vexatious or particularly obstructive, or where a party’s case is hopeless or fanciful and with no real prospect of success, or where a claim is brought for an ulterior purpose.
- 64 There is nothing in the material before me to suggest that, in the event the respondents succeed in obtaining a costs order in their favour at the conclusion of this proceeding, such costs would be awarded on an indemnity basis.
- 65 In my view it is appropriate to quantify the sum of the security to be provided as an estimate of the sum payable on a standard basis pursuant to the County Court scale. Costs assessed on this basis would be significantly less than costs assessed on an indemnity or ‘actually incurred’ basis.
- 66 Quite apart from the basis upon which Ms Brookes estimates have been made, I also consider that her allowance for the total number of hours to be charged to be excessive.
- 67 Allowing for a final hearing of four days duration, which I think is reasonable, and allowing for the usual range of interlocutory steps including discovery and inspection of documents, preparation and attendance at a compulsory conference or mediation , and preparation of witness statements and a Tribunal book of documents for the final hearing, I consider it reasonable to allow a sum of \$65,000, calculated as follows:
- lawyer professional fees: \$32,000
 - Counsel’s fees: \$18,000

⁷ *Taylor v Trentwood Homes Pty Ltd* [2012] VCAT 1125 at paragraph 34

- expert witness:	\$12,000
- printing and sundry disbursements:	<u>\$3,000</u>
TOTAL:	\$65,000

ORDERS

- 68 For the above reasons I will order the applicant to lodge with the Principal Registrar security for the respondents' costs of the proceeding in the sum of \$65,000.
- 69 I think it fair that the liquidator be given some time to discuss the matter with creditors of the applicant, and I will order that the security sum be lodged by 25 May 2018, failing which the proceeding will stand dismissed.
- 70 I will order that the file be referred to a Tribunal Member upon payment of the security sum, or on 28 May 2018 or as soon as practicable thereafter, whichever first occurs, to make further orders in chambers for the future conduct of the proceeding.
- 71 Cost of this application are reserved with liberty to apply.

SENIOR MEMBER M. FARRELLY