

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

**I Te Kōti Matua O Aotearoa
Tāmaki Makaurau Rohe**

CIV–2019–404–

Under Part 19 of the High Court Rules and sections 239F, 239ACD, 280 and 286 of the Companies Act 1993

In the matter of an application pursuant to sections 239F, 239ACD, 280 and 286 of the Companies Act 1993 for an order that Mitchell Wayne Mansfield and Jason Aleksander Kardachi not be disqualified from appointment as administrators, deed administrators or liquidators of Tamarind Taranaki Limited

and in the matter of **Tamarind Taranaki Limited**, an incorporated company having its registered office at Level 6, 54 Gill Street, New Plymouth, 4310

In the matter of an application by **Mitchell Wayne Mansfield** of the Cayman Islands and **Jason Aleksander Kardachi** of Singapore, chartered accountants and insolvency practitioners

Applicants

Originating application without notice for orders that Mitchell Wayne Mansfield and Jason Aleksander Kardachi be permitted to act as administrators, deed administrators or liquidators

Dated: 5 November 2019

KensingtonSwan

18 Viaduct Harbour Avenue
Private Bag 92101
Auckland 1142

P +64 9 379 4196
F +64 9 309 4276
DX CP22001

Solicitor: J A McMillan
E james.mcmillan@kensingtonswan.com
7988473.2

Originating application without notice for orders that Mitchell Wayne Mansfield and Jason Aleksander Kardachi be permitted to act as administrators, deed administrators or liquidators

To: The Registrar of the High Court at Auckland.

This document notifies you that—

- 1 The applicants, **Mitchell Wayne Mansfield** of the Cayman Islands and **Jason Aleksander Kardachi** of Singapore, both chartered accountants and insolvency practitioners, apply for orders that:
 - a this application be permitted to be made by way of an originating application;
 - b notwithstanding s239F(2), ss280(1)(ca) and ss280(1)(cb) of the Companies Act 1993 (**Act**), Mitchell Wayne Mansfield and Jason Aleksander Kardachi of Borrelli Walsh (**Proposed Administrators**) may be appointed as joint and several administrators of Tamarind Taranaki Limited (**Tamarind**);
 - c notwithstanding s239ACD(2), ss280(1)(ca) and ss280(1)(cb) of the Act, the Proposed Administrators may be appointed as joint and several deed administrators or liquidators of Tamarind, if appointed as such at a watershed meeting of creditors in the voluntary administration of Tamarind;
 - d in the event that the Proposed Administrators are appointed as administrators of Tamarind, then:
 - i this application be adjourned to a date convenient to the Court;
 - ii a copy of this application and orders of the Court be served on all known creditors of Tamarind notified of the first meeting of creditors in Tamarind's voluntary administration pursuant to s239AO(1)(a) of the Act, at the same time and in the same manner as notice under s239AO is given by the administrators to those creditors, with a copy of this application and the Court's orders also to be posted on Borrelli Walsh's website;
 - iii the administrators' notice to creditors under s239AO(1)(a) of the Act shall include advice to creditors of the next mention date of this application, and advice that, if they wish to challenge the interim orders made, they are entitled to do so by filing and serving a notice of opposition within 10 working days of service of the Court's orders to set

aside the Proposed Administrators' appointment as administrators of Tamarind; and

iv the creditors of Tamarind shall have leave to apply to the Court within 10 working days of service of the Court's orders to set aside the Proposed Administrators' appointment as administrators of Tamarind; and

e the Proposed Administrators' solicitor-client costs and disbursements of this application are to be an expense incurred by the Proposed Administrators in carrying out their duties as administrators of Tamarind.

2 The grounds on which each order is sought are as follows:

Application should be made by way of originating application

- a No objection to the orders sought is anticipated and it is appropriate that applications of this nature be made by way of originating application.
- b The Court has previously permitted applications under s280 of the Act to be made by way of originating application (see *Re Tubbs* [2014] NZHC 385).
- c It is in the interests of justice, and of the speedy and inexpensive determination of this application, that it be made by way of an originating application.

Sections 239F, 239ACD and 280 of the Act preclude Proposed Administrators' appointment as administrators, deed administrators or liquidators of Tamarind without permission of the Court

- d In an absence of an order from the Court, ss239F(2), 239ACD(2), 280(1)(ca) and 280(1)(cb) of the Act preclude the Proposed Administrators from being appointed as administrators, deed administrators or liquidators of Tamarind.
- e Section 280(1)(ca) of the Act precludes the appointment of the Proposed Administrators because, within two years immediately before the administration would commence, Borrelli Walsh and Jason Kardachi provided professional services to Tamarind, in the form of investigating accountant services.
- f Section 280(1)(cb) of the Act precludes the appointment of the Proposed Administrators because, within two years immediately before the administration would commence, Borrelli Walsh and the Proposed

Administrators have had a “continuing business relationship” with a party that is a secured creditor of Tamarind. Borrelli Walsh and the Proposed Administrators have provided and continue to provide professional services to Orchard Capital Partners (**OCP**).

Proposed Administrators’ independence, competence, and integrity not compromised

- g Although the Proposed Administrators may arguably be precluded from acting as administrators, deed administrators or liquidators under s280, there is no real or apparent conflict of interest.
- h Borrelli Walsh’s and Jason Kardachi’s provision of professional services to Tamarind does not give rise to a real or apparent conflict of interest because their involvement in providing services to Tamarind has meant that they have gained knowledge of Tamarind’s business that will allow the Proposed Administrators to carry out their duties as administrators, deed administrators or liquidators of Tamarind more effectively and efficiently.
- i Borrelli Walsh’s and the Proposed Administrators’ continuing business relationship with OCP does not give rise to a real or apparent conflict of interest because:
 - i the Proposed Administrators are independent insolvency practitioners; and
 - ii neither Borrelli Walsh nor the Proposed Administrators have provided any services to OCP in relation to its dealings with Tamarind, its directors, its shareholder or any Tamarind group company.
- j Any apparent conflicts of interest arising under s280 of the Act would not compromise the ability of the Proposed Administrators to act professionally and independently.
- k Both of the Proposed Administrators have extensive experience in insolvency. Mitchell Mansfield is:
 - i a director of Borrelli Walsh;
 - ii a Chartered Accountant and member of Chartered Accountants Australia and New Zealand;
 - iii a registered liquidator in Australia; and

iv an official liquidator in the Cayman Islands.

I Jason Kardachi is:

i A managing director of Borrelli Walsh;

ii a chartered accountant and member of Chartered Accountants Australia and New Zealand; and

iii an approved liquidator in Singapore and associate member of the Insolvency Practitioners Association of Singapore.

Appropriate to make orders sought

m The Proposed Administrators will consent in writing to being appointed administrators of Tamarind, subject to this application being granted.

n If orders are made, and any creditors object to the Proposed Administrators' appointment, then those creditors retain the right to challenge the Proposed Administrators' appointment in Court.

o It is in the interests of justice that the application be determined without serving notice of the application on creditors because:

i there is no real conflict relevant to the Proposed Administrators' appointment as administrators of Tamarind;

ii personal service of the application on Tamarind's approximately 104 known creditors and seven employees would be time consuming and onerous, given the urgency of the application;

iii if the Proposed Administrators are appointed administrators of Tamarind, then there is no prejudice to any creditors, as they:

A will be served with a copy of this application and the Court's orders at the same time and in the same manner as notice of the first meeting of creditors under s239AO is given by the administrators to those creditors;

B retain the right to challenge the Proposed Administrators' appointment as administrators of Tamarind in Court; and/or

C may vote to replace the Proposed Administrators at the first creditors' meeting of the administration of Tamarind under s239AN of the Act.

3 The application is made in reliance upon:

- a Sections 239F, 239ACD, 280 and 286 of the Companies Act 1993;
- b rules 7.23, 7.46, 18.7, 19.2, 19.4, 19.5 and 19.10 of the High Court Rules 2016;
- c *Re Huntleigh Downs Ltd* HC Wellington CIV-2009-485-1498, 11 August 2009; *Re Rapson Holdings* HC Auckland CIV-2010-404-2319, 26 April 2010; *Re Tubbs* [2014] NZHC 385; *Re Inglis & Co Ltd* HC Wellington CIV-2009-485-1336, 16 July 2009; *Re Bridgman* [2016] NZHC 933; *Re Jackson* [2018] NZHC 2447; *Re Maginness* [2019] NZHC 1237; and *Re Drikolor New Zealand Limited* [2019] NZHC 2650; and
- d the affidavit of Jason Aleksander Kardachi affirmed in support of this application.

4 The application is made without notice to any other party on the following grounds:

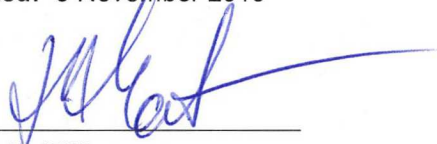
- a that requiring the Proposed Administrators to proceed on notice would cause undue delay or prejudice to the Proposed Administrators; and
- b the interests of justice require the application to be determined without serving notice of the application.

5 I certify that—

- a the grounds set out in paragraph 4 on which the application relies are made out; and

- b all reasonable inquiries and all reasonable steps have been made or taken to ensure that the application contains all relevant information, including any opposition or defence that might be relied on by any other party, or any facts that would support the position of any other party.

Dated: 5 November 2019



J A McMillan
Solicitor for the applicants

Address for service:

This document is filed by **James Alexander McMillan**, solicitor for the applicants, of the firm Kensington Swan, Auckland. The address for service of the applicants is 18 Viaduct Harbour Avenue, Auckland 1010. Documents for service on the applicants may be left at that address for service or may be:

- a posted to the solicitor at c/o Kensington Swan, Private Bag 92101, Auckland 1142; or
- b left for the solicitor at a document exchange for direction to c/o Kensington Swan, DX CP22001, Auckland; or
- c emailed to the solicitor at james.mcmillan@kensingtonswan.com and patrick.glennie@kensingtonswan.com.