

Coastal Cuisine NZ Limited (In Receivership & In Liquidation)

Receivers' Third Report

1 INTRODUCTION AND APPOINTMENT

On the 27 August 2012, Peri Micaela Finnigan and Roy Horrocks, Insolvency Practitioners of Auckland, were appointed jointly and severally as receivers and managers of Coastal Cuisines NZ Limited by Tegel Foods Limited pursuant to all present and after acquired goods of Coastal Cuisine NZ Limited under the powers contained in the supply agreement, and the terms of the supply agreement dated the 30th day of April 2009 (which terms were reconfirmed in a supply agreement dated 8 June 2012) and which property consists of all goods supplied from time to time by the Secured Creditor to the company and includes all proceeds of such goods.

On 4 September 2012, Peri Micaela Finnigan and Roy Horrocks, Insolvency Practitioners of Auckland, were also appointed jointly and severally as receivers and managers of all the assets, property and undertakings of the company under the powers contained within a mortgage agreement dated 20 December 2011 in favour of S.H. Lock (NZ) Limited.

Pursuant to section 24 of the Receiverships Act 1993 ("the Act"), the receivers report herewith on the progress of the receivership. This third report should be read in conjunction with the receivers' previous reports.

On 7 December 2012, Gregory Sheriff and Timothy Downs of Grant Thornton were appointed liquidators of Coastal Cuisine NZ Limited by special resolution of the shareholders.

2 RESTRICTIONS

This report has been prepared in accordance with Section 24 of the Act. Whilst all care and attention has been taken in compiling this report, we do not accept any liability whatsoever to any party as a result of the circulation, publication, reproduction or use of this report.

We reserve the right (but are under no obligation) to review and, if we consider necessary, revise this report in respect of any information existing at the date of this report which becomes known to us after that date.

Events Leading Up To Our Appointment

The appointment arose as a result of the company being placed in receivership on 9 August 2012 by the second ranking General Security Agreement holder, Weekend Holdings Limited. The receivers appointed by Weekend Holdings Limited retired on 6 September 2012.

Trading On / Closure of Business

The previous receivers ceased trading the business on 31 August 2012 and continued with a skeleton staff of 5 employees until 4 September 2012 reducing stocks held. On 4 September 2012 these staff were terminated. The general manager and operations manager gave their formal resignations to the new receivers.

3 CONDUCT OF THE RECEIVERSHIP DURING THE PRECEDING SIX MONTHS

Asset Realisations

The business assets were sold on 13 September 2012. The net proceeds have been paid to S.H. (NZ) Lock Limited in reduction of their debt. Debtors continue to be collected. There is now a reasonable prospect of recovery from Poultry Distributors NZ Limited ("PDNZ") which may lead to a distribution to preferential creditors.

3.1 *Fixed Asset Recoveries*

The BMW was sold by Turners Auctions. The vehicle reached a sale price of \$10,870 plus GST. After commissions and sale costs, the Receivers recovered \$9,800 (excl GST).

The Receivers successfully negotiated the sale of the larger walk in freezer with the landlord. The freezer was sold for the value attributed by an independent valuer (for removal). The value for use "as is" was higher.

The labelling machine was sold for \$435.

The supplier of a Point of Sale system contacted the Receivers after date of sale of the business assets. The supplier had not registered a specific security but also had only supplied the unit in the six months prior to Receivership. As a result, the Receivers were obligated to pay the supplier for the proceeds relating to the supply. This reduced the total recovery from sale of business assets.

To date, the Receivers have paid \$95,000 to SH Lock from the sale proceeds in reduction of their secured claim.

3.2 Debtor Recoveries

The Receivers spent considerable time updating the debtors' information and allocating receipts to invoices. Many earlier receipts pre receivership were not allocated. The allocation towards the correct invoices was an important exercise to properly calculate the entitlements of the specific security holders with claims to proceeds. The security position in regard to entitlements of secured creditors was complex.

The debtors' value reported in our first report originally estimated recovery of debtors of \$586,000. This was adjusted only by rebates and moneys due by PDNZ. However, this estimated recovery of debtors has subsequently been reduced significantly due to the difficulty associated with collecting the debts. Many of the debts were disputed and were not recoverable.

The Receivers recovered from debtor collections (since the date of the Weekend Holdings Receivership (9 August 2012)) \$437,510. This includes post receivership sales of inventory.

Coastal Cuisine NZ Limited is a significant creditor of PDNZ but is not a secured creditor and will rank on a pro rata basis with other unsecured creditors. The liquidators of PDNZ have indicated there may be a distribution to unsecured creditors.

The remaining ledger may now be written off. This will lead to a GST refund on bad debtors written off. The refund will be available for distribution to preferential creditors.

The receivers reached an agreement with the former receivers in relation to the level of their fees and paid \$40,000 (including GST) in fees. This was paid from debtor recoveries.

4 OTHER POTENTIAL RECOVERIES TO INVESTIGATE

4.1 Liquidation of Company

On 7 December 2012 Gregory Sherriff and Timothy Downes of Grant Thornton were appointed liquidators of Coastal Cuisine NZ Limited by special resolution of shareholders. Prior to this appointment the receivers identified a number of matters to investigate (refer 4.2 to 4.4).

4.2 Demands on Director

The Receivers made inquiry with the director regarding moneys he withdrew from Coastal to fund the fit out in a related company. Company records clearly show Coastal funds were taken to pay creditors of the related company. The director, Mr Ray Arnesen, claims Weekend Holdings Limited's advances to Coastal funded the payments. The bank account records however do not support this. This is a matter for the liquidators to review.

4.3 *Bulk Meats Direct Limited*

Coastal funds were withdrawn by the director and paid to a Refrigeration company for the installation of a large walk in freezer and some free standing freezers in a related company. The refrigeration company held a specific security over these assets. This is a matter for the liquidators to review.

4.4 *Weekend Holdings Limited*

An investigation is required to be made into whether Weekend Holdings Limited as third ranking secured creditor, received any preferential payments ahead of the earlier ranking secured creditors. The records for the company record payments to Weekend Holdings Limited of \$50,000 in the six months preceding the receivership. In the twelve months preceding receivership, Weekend Holdings Limited withdrew funds of \$214,833. This again is a matter for the liquidators to review.

5 LEGAL ADVICE ON ENTITLEMENT TO PROCEEDS

The Receivers sought legal advice on the correct allocation of proceeds from debtor and asset recoveries.

The appointment of the former Receiver (by Weekend Holdings Limited) and unpaid trading on costs during that period plus challenges under marshalling clauses between parties required some clarification. The advice was, Tegel Foods Limited as a specific security holder registered on the PPSR, has a super priority to all proceeds that relate to their specific supply (material content) and rank in priority to preferential creditors. The preferential creditors (employees and Inland Revenue Department for GST/PAYE) rank behind S.H. Lock who holds a specific security over debtors and a General Security Agreement ("GSA") over all present and after acquired property.

The former receivers agreed to accept \$40,000 (inclusive of GST) in settlement of their fees. The legal advice obtained is that the former Receivers are entitled under the GSA they were appointed under to charge remuneration and recoup expenses from company property charged by the GSA when they in good faith incur personal liability carrying out their duties. The subsequent Receivers have received a benefit from the prior charge holders. The claim of the former Receivers ranks ahead of the current Receivers and in priority to S.H. Lock.

S.H. Lock and Tegel are subject to a Deed of Subordination. However, under a marshalling clause in the Deed of Subordination, S.H. Lock is obliged to seek to meet its debt from GSA assets and the non-Tegel related debtor recoveries first so as not to prejudice Tegel recoveries. With respect to the debtor recoveries that have been paid directly to S.H. Lock's account, S.H. Lock is required to hold Tegel related proceeds on trust for Tegel to the extent that that they are not required to meet S.H. Lock's debt.

Once S.H. Lock has recovered its debt from the GSA assets and the non-Tegel related proceeds, S.H. Lock may then apply Tegel related proceeds to its debt. The application of debtor proceeds has been a complex process and is ongoing.

To date, the Receivers have paid \$95,000 to S.H. Lock and have paid \$16,000 towards the costs and expenses of the former Receivers (employees/Tegel purchases) and paid \$40,000 (including GST) to the former receivers for their fees. The receivers have paid Tegel \$70,000.

6 CREDITORS' CLAIMS

6.1 Secured Creditor

At the date of this report the amounts due to our appointer were as follows:

	\$
Amount owing at the commencement of receivership being 9 August 2013	
S.H. Lock (NZ) Limited – First Ranking GSA	refer note 1 262,258
Weekend Holdings Limited – Second Ranking GSA	(approx) 4,000,000
Tegel Foods Limited – Specific Security (in debtor proceeds)	224,917
Balance outstanding (before interest and costs)	\$5,374,350

Note 1: S.H. Lock (NZ) Limited (“S.H. Lock”) (following the trading on by the former receivers’) is further owed a post receivership balance of \$96,972. S.H. Lock on commencement by the current receivers, were therefore owed \$359,230.

6.2 S.H. Lock – Likely Outcome

S. H. Lock at the date of the current receivers’ appointment was owed \$359,230. They incurred a further \$20,208 in costs. They have received \$284,439 from debtors who have paid to their account direct and \$95,000 from asset recoveries since the appointment of the Weekend Holdings Receivers. The debtor funds are held by them awaiting reallocation in accordance with the terms of the Deed of Subordination with Tegel.

S.H. Lock as a consequence of a factoring arrangement is also entitled to the balance of debtors proceeds (subject to the terms of the Deed of Subordination) after payment of Receivers costs and disbursements. S.H. Lock are first entitled (after reasonable costs) to any recoveries from other actions taken pursuant to the terms of their General Security Agreement.

S.H. Lock holds \$284,439 which comprises Tegel and non Tegel related recoveries.

6.3 Tegel Foods – Likely Outcome

Tegel Foods Limited was owed \$224,917 at date of appointment and are owed further costs arising from the Receivership. To date, Tegel have received payment for post receivership purchases (the prior Receivers' trading on purchases) and received \$70,000 on 11 March 2013. As at the date of this report, Tegel's total debt including costs is \$214,798. This shortfall is subject to further change based on additional costs and potential future collections that Tegel may have entitlement to.

An MYOB consultant successfully extracted the Tegel content on all debtors' recovered balances. The outcome of this analysis which spans many pages of line entries was that at 6 November 2012 no less than \$88,308.75 of total pre receivership proceeds collected was Tegel content. The receivers have taken the view that \$88,308.75 of debtor receipts come within Tegel's security interest and paid Tegel \$70,000 on this basis. This means S.H. Lock currently hold no less than \$18,308 of Tegel funds. Since our last report the receivers have recovered a further \$10,875 in debtors. These funds have been applied to collection costs and fees.

A report has also been provided to estimate the likely position should outstanding debtors pay. At this stage it is likely that there will be a substantial shortfall to Tegel. The outcome will depend on the success with further collections. Tegel will be entitled to lodge an unsecured claim in the liquidation for any shortfall. The shortfall will likely be upwards of \$200,000 unless the liquidators of PDNZ have a good recovery. At this stage the recovery is likely to be approximately \$20,000. Any PDNZ recovery is subject to priority given to Receivers' fees and S.H. Lock entitlement to non Tegel related recoveries.

6.4 Preferential Creditors

At the commencement of the receivership, the following amounts were owed to preferential creditors.

	\$
Employees Claims –Holiday Pay and Redundancy	37,062
Inland Revenue – PAYE	83,236
Total	<u>\$120,298</u>

Employees will be paid from surplus debtors recovered (if any).

All employees need to provide their contact details to the Receivers /Liquidators.

Any recovery by employees will depend on the success of recoveries under heading 5 and recoveries made from the liquidation of PDNZ.

6.5 Unsecured Creditors

At this stage, the receivers do not anticipate that there will be funds available for distribution to unsecured creditors from the realisation of assets. Weekend Holdings Limited as a secured creditor and the preferential creditors, rank ahead of these creditors.

It is not currently known whether the directors have sufficient means to meet any successful claim against them for breaches of directors' duties. This is a matter the Liquidators will need to consider.

7 MATTERS DELAYING THE COMPLETION OF THE RECEIVERSHIP

We **attach** our report on receipts and payments. The funds recovered are not sufficient at date of writing this report to clear S.H. Lock (NZ) Limited in full. Debtors continue to be collected to reduce the debt due. The collection process is slow. All debtors are now held with MFL Services Limited, a debt collection agent working on behalf of the Receivers.

McDonald Vague holds \$916 in available funds. S.H. Lock holds \$284,439. Tegel are entitled to no less than \$18,309 of these funds. Tegel's entitlement to proceeds recovered since 6 November 2012 has not yet been calculated. It is expected future realisations will warrant this exercise unnecessary as it is expected S.H. Lock will be cleared in full.

The total recoveries to date are insufficient to clear the secured creditors (Tegel and S.H. Lock) and receivership costs. The total owing to the two secured creditors at commencement was \$583,000. Given that there is likely only another \$20,000 available in debtors and these funds will be applied to receivership costs and secured creditors, it is now unlikely there will be funds available for the preferential employee claims.

8 ESTIMATED DATE OF COMPLETION

The Receivers believe the receivership may be concluded within one year.


9 CONTACT DETAILS

Enquiries should be directed to Daniel Zhang on (09) 306 3356 or by email to dzhang@mvp.co.nz.

The Receivers can be contacted at:

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PERI M FINNIGAN
RECEIVER

DATED this 18 day of February 2014

PMF/DZ/gck/220
Coastal Cuisine/Reports/R9b Third Report

Realisations and Distributions

Coastal Cuisine NZ Limited (In Receivership & In Liquidation)
27 August 2012 to 26 August 2013

Realisations	As Per Statement Of Affairs \$	Cash Received Prior Receiver \$	Cash Received Receiver \$
Plant and Machinery (Including Trucks)	73,200	}	
Goodwill	10,000		
Stock	2,000		90,871
High Ceiling Freezer	10,000		
Debtors	585,914		437,510
Vehicle – 2001 BMW X5	10,870		10,870
Interest Received / Sundry	-		645
Lease Income	-		1,731
Bank Account Closure	-		4,864
GST Credits received from write off of bad debts (refer note 1)	-		99,724
Sundry Receipts	-		74
Realisations			\$646,289
Total Realisations for Prior Receiver			
Advance from Lock Finance		98,100	
Bank Account Closure		6,200	
Debtors Recovered		20,497	
Loan Repayments		8,000	
Rent Received		7,500	
Realisations			\$140,297
Total Realisations	\$691,984		\$786,586
Payments			
Costs Charges & Expenses of Receiver (Lock & Tegel)			
Receivers Fees			101,901
Disbursements			3,887
Bank Fees, RWT, Sundry Expenses			1,040
Legal Fees			13,763
Rent			4,091
Debt Collection Costs			13,637
Electricity			1,925

Auction Fees	919
Insurance Premiums	330
Waste Disposal	234
Total Receivers Fees	\$141,727
Costs Charges & Expenses of Prior Receiver	
Receivers Fees	34,783
Trading On Costs incurred by former Receiver (paid by McDonald Vague)	28,250
Trading On Costs	129,473
Total Prior Receivers Fees	\$192,506
Total Costs of Receivership and Trading On	\$334,233
Distributions	
Secured Creditor – S.H. Lock (NZ) limited	95,000
Secured Creditor – Tegel Foods Limited (refer note 2)	70,000
Total Distributions to Secured Creditors	\$165,000
Total Payments	\$499,233
BALANCE HELD (refer note 3)	\$287,353

Note 1: GST credits received were offset against GST payable for the August/September 2012 period. This resulted in a refund of \$64,841.

Note 2: The receivers have since paid \$70,000 to Tegel under their security interest.

Note 3: S.H. Lock holds \$284,439. The liquidators hold \$916 in an ASB account. A GST refund of \$1,998 is recoverable. This totals \$287,353. The receivers have not recovered sufficient more debtors to enable S.H. Lock to apply the full amount held to their balance owing. Tegel still remain entitled to certain proceeds held.