

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

NO. CIV-2019-404-2787

UNDER

Part 19 of the High Court Rules and sections 239Y,
239AT, 239ADH, 239ADI and 239ADO of the
Companies Act 1993

IN THE MATTER OF

**SUNFRUIT ORCHARDS LIMITED (ADMINISTRATORS
APPOINTED)** a duly incorporated company having its
registered office at 3249 Ohaupo Road, RD2, Hamilton
3282

BETWEEN

**ANDREW JOHN MCKAY AND ANDREW JAMES
BETHELL AS ADMINISTRATORS OF SUNFRUIT
ORCHARDS LIMITED (ADMINISTRATORS
APPOINTED)** Level 4, BDO Centre, 4 Graham Street,
Auckland 1010

Applicants

**ORDERS UNDER SECTIONS 239Y, 239AT, 239ADH, 239ADI
AND 239ADO OF THE COMPANIES ACT 1993**

Dated: 20 December 2019



Simpson Grierson

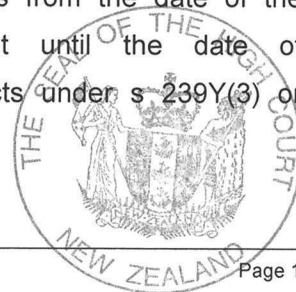
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To: Sunfruit Orchards Limited (Administrators Appointed)

1. The originating application without notice made by Andrew John McKay and Andrew James Bethell (**Administrators**) as administrators of Sunfruit Orchards Limited (Administrators Appointed) (**Company**) on 20 December 2019 was determined by Associate Judge Sargisson on 20 December 2019.
2. The determination was made upon reading:
 - (a) the Administrators' originating application without notice for orders under ss 239Y, 239AT, 239ADI, 239ADH and 239ADO of the Companies Act 1993 (**Act**), dated 20 December 2019;
 - (b) the affidavit of Andrew James Bethell in support of the Administrators' originating application without notice, sworn 20 December 2019; and
 - (c) the memorandum of counsel for the Administrators, dated 20 December 2019.
3. The following orders were made:
 - (a) leave is granted that this proceeding be commenced by way of originating application without notice;
 - (b) the period of 14 days for giving notice of termination of employment contracts (**Employee Period**) under s 239Y(3) of the Act be extended in respect of the Company to 28 April 2020;
 - (c) without prejudice to the Administrators' right to terminate under s 239Y(3) of the Act, the Employee Period be extended on the following terms and conditions:
 - (i) the Company must continue to pay salaries and wages which accrue to employees of the Company under employment contracts from the date of the Administrators' appointment until the date of termination of such contracts under s 239Y(3) or



28 April 2020, whichever is earlier (**Extended Employee Period**);

- (ii) the Company must pay annual leave which has accrued during the Extended Employee Period to any employees of the Company who have their employment terminated during or at the end of the Extended Employee Period;
- (d) the Administrators' personal liability under s 239ADH(1) in respect of proposed funding arrangements with Westpac New Zealand Limited (**Westpac**) will not extend beyond the value of the Company's available assets;
- (e) the Administrators' liability under s 239ADI(2) of the Act for rent and other payments that accrue under agreements relating to the Company's use, possession and occupation of property (**Lease Agreements**) during the administration be limited to the rent or other payments that accrue in the period beginning 28 April 2020;
- (f) under s 239AT(3), the convening period defined in s 239AT(2) of the Act be extended for a period of three months from 28 January 2020 until 28 April 2020;
- (g) under s 239ADO of the Act, notice of the first and subsequent creditors' meetings under s 239AO of the Act, and notice of the watershed meeting under s 239AU of the Act, is to be given to each known creditor of the Company by:
 - (i) emailing copies of the notices to the creditor's email address by which the Company normally communicates with that creditor;
 - (ii) where an email address for a creditor is not known, or at the creditor's request, by posting copies of the notices to the physical address by which the Company normally communicates with that creditor;



- (iii) posting copies of the notices on the Administrators' website at www.bdo.nz/Sunfruit-Orchards-Limited;
- (iv) advertising in accordance with ss 239AO(1)(b) and 239AU(1)(b) of the Act;
- (h) notice of these orders is to be given to each known creditor of the Company in the manner described in paragraph 3(g)(i) to (iii) above;
- (i) leave is granted to any person who can demonstrate a sufficient interest to apply to modify or discharge these orders within 10 working days of service;
- (j) the Administrators' reasonable solicitor/client costs of this application will be an expense incurred by them in carrying out their duties as Administrators of the Company; and
- (k) leave is reserved to the Administrators to apply further in respect of any ancillary issues arising out of the orders made.

Dated

20 December 2019

Signature:


(Deputy) Registrar
SHAND HINDT
DEPUTY REGISTRAR

Sealed: