

GM

From: Mark Hinton <mark.h@wcmlegal.co.nz>
Sent: Monday, October 7, 2019 4:35 PM
To: Greytown Trustlands Trust
Cc: GM
Subject: RE: Arbor House - mobility van

Hi Helga.

As you noted, I was on leave at the end of last week and only now been able to address your query. I understand however, that you have had a preliminary discussion with Michael Bale of our office who has updated the situation relating to the liquidation insofar as the Arbor trustees are concerned.

Background

1. I now understand that the GDTLT had made a donation of \$3500 towards the purchase of a van to transport patients
2. The general manager had requested that the GDTLT be able to take possession of the van as part of the repayment of the loan to the Arbor trustees which was repaid at sale and was supported by the caveat.
3. It became apparent at the time of the debt repayment that the Arbor trustees still required the van for transporting patients while they continued to provide care. An agreement was requested between the GDTLT and the Arbor trustees to return the van when and if the charitable trust stopped providing care services.
4. A draft agreement had been prepared but last week the Arbor trustees put the trust into the hands of a liquidator.

Ownership of the Van

4. Ownership of the van was with Arbour House Trust. The van was never in the ownership of the GDTLT.
5. The GDTLT had contributed (or donated) \$3,500 to the purchase (total price \$69,000.00). The balance of the cost of the van was funded by the registered charitable trust through other donations of about \$50,000 and an HP agreement. The financing company registered a financing statement in respect of the debt. There is, I understand approximately \$9000 owing under that arrangement.
6. We are not aware of any documentation between the GDTLT and the Arbor trustees in connection with the contribution of \$3500. None is shown on the PPSR register.
7. There is no security document linking the \$3,500.00 donation to the other advances (since repaid) made to the Arbor trust which was subject to the caveat.

The legal position relating to the van at Liquidation of the Arbor Trust.

8. The GDTLT is not the owner of the van. Without any linking documentation completed, the claim that GDTLT has to the van or the proceeds sale is at best an unsecured debt and could not take priority at liquidation to staff and entitlements.
9. Any transfer of (or indeed agreement to transfer) the van to the GDTLT would be ineffective against the Arbor trust liquidator even if the van had been returned when the caveat was released. Put another way, even if an agreement had been put in place for the return of the van in exchange for the release of caveat, that agreement would not operate to put the GDTLT in a secured position. This is because security interests are determined by time and the arrangements for this return of the van postdate the advances protected by the caveat. In any event such a transfer would be voidable by the liquidator because it would amount to GDTLT receiving a preferred status over other creditors.
10. Without ownership of the van or a loan arrangement in relation to the contribution / donation in place and supported by a financing charge registered against the van, the GDLT cannot defeat the priority claim of the liquidator. The van is an asset of the Arbor House Trust, not the GDTLT.

So now what happens?

11. The liquidator will assess the assets and liabilities of the Arbor House Trust once the patients have been rehoused by the DHB. Priority creditors (wages and other secured creditors) will be assessed. Claims will be considered from unsecured creditors and surplus funds (after deduction of the costs of liquidation) will be allocated equally to those creditors.

If there are any queries, I am happy to discuss

Regards

Mark Hinton
Principal



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To learn more about this please follow this link: [Law Society - AML/CFT Act 2009](#)

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