

Meltzer Mason Heath

Chartered Accountants practising as insolvency specialists

Company No: 967580

Refer to: Arron Heath

Receivers' First Report on the State of Affairs

of

Freemont Design & Construction Limited (In Receivership)

"The Company"

Introduction

Jeff Meltzer and Arron Heath of Meltzer Mason Heath were appointed Receivers and Managers of the Company on 22 August 2006. The appointment was made by Easy Factors International Limited ("Easy") under powers contained in a General Security Agreement granted by the Company to Easy and registered on the Personal Property Securities Register on 15 March 2005.

Events Leading to the Appointment of Receivers

The Company was incorporated on 2 July 1999 under the name Egghead Investments Limited and changed its name to Freemont Design & Construction Limited on 27 April 2000. It was a construction company involved in building projects for developers, local authorities, schools and other customers in the Auckland area.

Problems were encountered with a contract, for a development in Beaumont Street, Auckland City, which led to the developer cancelling the contract with the Company in May 2005.

The developer is claiming \$1.8 million against the Company and the Company has claimed \$5.5 million against the developer. The claim and counter-claim have been referred to arbitration but, as at the date of the Receivers' appointment, the substantive matter as to whether or not the developer was correct in cancelling the contract had not been determined. The matter of whether or not the arbitration can be continued by the Company is discussed further under the heading – *Proposal for Disposal of Receivership Property*.

As a consequence of the cancellation and problems experienced on other contracts the Company incurred considerable legal and management expenses which, together with reduced cash receipts from contract debtors, led to cash flow problems for the Company.

Other than debtors the Company has few assets. With deteriorating cash flow and consequent mounting pressure from creditors, the directors decided they had no option but to request Easy to appoint Receivers and Managers.



Trading On

The Company is not actively trading, except for undertaking some minor remedial works. Staff have been retained in order to assist with preparing information required for arbitrations, collating creditor information and company records.

Proposals for Disposal of Receivership Property

The Company's main asset is its debtors ledger totalling approximately \$8.6 million. However, those debtor balances appear to be mostly disputed or there is some other reason for non-payment. For those debtors balances that are disputed, the main remedy is to refer the matter to arbitration. Each balance will need to be assessed in order to establish the amount of funding required to provide the Company's evidence as required by the arbitrator and any security for costs that may be ordered.

In cases where legal proceedings may be required to effect recovery of balances due, again, funding will be required to pay for legal and other costs.

Negotiated settlements with debtors will be attempted, if possible.

The Company has a small amount of fixed assets. These will be disposed of, probably by auction, in due course.

Amounts Owing to Holders of General Security Agreements

According to the Personal Property Securities Register, the Company has granted four General Security Agreements, which have been registered on the Register. The details of the holders of the Agreements are:

		<i>Amount Owing at 22.08.06 \$</i>
1.	<i>Granted to:</i> ANZ National Bank Limited <i>Created:</i> Unknown (registered 9 December 2003) <i>Address:</i> PO Box 2218 Auckland	Nil
2.	<i>Granted to:</i> Great Lakes Reinsurance (UK) Plc <i>Created:</i> Unknown (registered 16 December 2003) <i>Address:</i> PO Box 7527 Wellesley Street Auckland	*305,000

* plus legal fees of \$10,000 to \$15,000

		<i>Amount Owing at 22.08.06 \$</i>
3.	<i>Granted to:</i> Lovegroves Trustee Company Limited / BM Trustee Company Limited <i>Created:</i> 2 August 2004 <i>Address:</i> C/- Duncan Cotterill PO Box 5326 Auckland	Unknown
4.	<i>Granted to:</i> Easy Factors International Limited <i>Created:</i> Unknown (registered 15 March 2005) <i>Address:</i> PO Box 47 062 Ponsonby Auckland	3,194,838
		<u>3,499,838</u>

Preferential Creditors

1. *Employees*

According to payroll records and claims submitted to the Receivers, employee preferential claims total \$29,883, as follows:

	\$
Wage Arrears	11,323
Holiday Pay	<u>18,560</u>
	<u>29,883</u>

2. *Inland Revenue Department*

	\$
PAYE	91,033
GST	<u>140,269</u>
	<u>231,302</u>

Preferential claims are payable from the proceeds of accounts receivable and inventory – Section 30(2), Receiverships Act 1993. The Company has no inventory and recovery of accounts receivable is dependent on funding being available for recovery and/or work that may be required. The possibility that no funds will be available to satisfy the claims of preferential creditors cannot be discounted.

Particulars of Assets and Liabilities

According to available information the Company has the following assets:

<i>Description</i>	<i>Estimated Position 22.08.06 \$</i>
Accounts Receivable	8,685,785
Fixed Assets (auction value)	<u>1,272</u>
	<u>8,687,057</u>

1. ***Accounts Receivable***

The Company's debtors ledger includes all outstanding final accounts, invoices, retentions, arbitrations, adjudications, overpayments, contra charges and damages claims. However, some of the outstanding balances are subject to disputes and recovery is unlikely unless proceedings are issued and the Company is successful in recovering any amounts awarded. Funding will be required for any such recovery action and outstanding balances will need to be carefully assessed regarding merits of the claim and prospects of recovery before a funding request can be made.

We have reviewed the debtor accounts and summarise below the position based on known disputes, counter-claims and other non-payment issues:

	\$
Disputed/counter-claim made by debtor	6,104,178
Doubtful recovery (final account not agreed, recovery doubtful)	1,859,628
Contra charges	586,470
Overcharges and overpayments	29,227
Final account balances	96,282
Other	<u>10,000</u>
	<u>8,785,785</u>

2. ***Fixed Assets***

Fixed assets, comprising mainly office furniture and equipment have been valued at \$1,272 (auction realisation) and \$3,235 (existing use). The Company also has a quantity of tools which have not yet been valued.

Debts and Liabilities to be Satisfied

We set out below our initial estimate of the Company's liabilities. This estimate is based on information provided to us as at the date of this report together with information supplied by creditors.

	<i>Estimated Liabilities</i> \$
<i>Secured Liabilities</i>	
Great Lakes Reinsurance (UK) PLC	305,000
Lovegroves Trustee Company Limited / BM Trustee Company Limited	?
Easy Factors International Limited	<u>3,194,838</u>
	<u>3,499,838</u>
<i>Preferential Liabilities</i>	
Employees	29,883
IRD	<u>231,302</u>
	<u>261,185</u>
<i>Unsecured Liabilities</i>	
Employees	715
IRD	129,444
Finance Company (vehicles)	15,640
Trade Creditors	601,545
Counter-claims	<u>2,365,061</u>
	<u>3,112,405</u>

Amounts Likely to be Available for Payment to Unsecured Creditors

The Receivers are presently unable to provide an indication as to what amounts, if any, are likely to be available for payment to unsecured creditors. Payments to unsecured creditors are dependent on the recovery achieved from the Company's debtors, which in turn is dependent on funding being available to finance the recovery process.

Availability of Relevant Information

As at the date of this report the Company has been unable to provide the Receivers with up-to-date financial statements, a list of assets and some debtor information.

Disclaimer

As required by Section 23 of the Receiverships Act 1993, this report has been prepared by the Receivers and is available to all persons entitled to receive it under Section 26 of the Receiverships Act.

This report is based on information that has been disclosed to the Receivers as at the date of the report. The information has been gathered from various sources, and has not been verified by the Receivers and the Receivers have accepted without review information and explanations that have been provided to them.

Some figures are estimates only. Statements of intention or forecasts of possible outcomes are subject to change upon new information being disclosed to the Receivers.

The Receivers accordingly make no representation or warranty as to the accuracy or completeness of the information contained in this report, and shall not be liable for any statements, information or matters (whether express or implied) contained in, or derived, or omitted from, this report. The Receivers shall not be responsible for the reliance of any person or information contained in, or derived, or omitted from, this report.

The Receivers are agents of the company, and shall not be subject to personal liability for any act, omission or statement (whether negligent or otherwise) made or omitted, arising out of this report.

The Receivers reserve the right (but are under no obligation) to review this report and, if considered necessary, to revise the report in light of any information existing at the date of this report which becomes known to the Receivers after that date.

A L Heath
Joint Receiver and Manager

20 October 2006