IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2025-404-1547
[2026] NZHC 2295

UNDER	the Companies Act 1993
IN THE MATTER	of an application to appoint a liquidator to KARAKA ESTATE LIMITED
BETWEEN	HENRIETTE MICHELE NAKHLE Plaintiff
AND	KARAKA ESTATE LIMITED Defendant
	DANIEL ELIAS NAKHLE Shareholder of Defendant (50%)

CIV-2025-404-1548

UNDER	the Companies Act 1993
IN THE MATTER	of an application to appoint a liquidator to BYERLEY PARK LIMITED

Continued/…2

Hearing:	29 April 2026 (further submissions completed 14 May 2026)
Appearances:	R K P Stewart KC and J Nolen for H M Nakhle No appearance by or on behalf of the Defendants G M Sandelin and N R Frith for D E Nakhle D H McLellan KC and R A Idoine for R and D Nakhle and Nakhle Treasury Ltd
Judgment:	7 August 2026

JUDGMENT OF POWELL J

This judgment was delivered by me on 7 August 2026 at 3.00 pm, pursuant to r 11.5 of the High Court Rules

Registrar/Deputy Registrar Date:

BETWEEN	HENRIETTE MICHELE NAKHLE Plaintiff
AND	BYERLEY PARK LIMITED Defendant
	DANIEL ELIAS NAKHLE Shareholder of Defendant (50%)

Solicitors/counsel:
Nolen Walters/R Stewart KC, Auckland
MinterEllisonRuddWatts, Auckland
Anthony Harper/D H McLellan KC, Auckland

Introduction

[1] In these two related proceedings the plaintiff, Henriette Nakhle (Henriette), applies to place the defendants, Byerley Park Ltd (BPL) and Karaka Estate Ltd (KEL), into liquidation. The defendants are the corporate trustees of the Byerley Park Trust (BPT) and Karaka Estate Trust (KET) respectively.

[2] Henriette makes the application in her capacity as a director of both companies, pursuant to s 241 of the Companies Act 1993 (Act). She says the grounds for ordering liquidation are established because:

(a) It is just and equitable as the boards of both companies are deadlocked due to an irretrievable breakdown in trust and confidence between the directors and shareholders.[1]

(b) The companies are insolvent.[2]

[3] Henriette notes that the deadlock arises from fundamental disputes over the control and management of assets owned by the Nakhle family. Those disputes are now the subject of multiple proceedings that will take years to resolve such that there is no prospect of the deadlock resolving in the meantime.

[4] With regard to insolvency, Henriette relies on the unchallenged expert accounting evidence of Grant Graham that both defendant companies are balance sheet insolvent and unable to pay their debts as they fall due, noting that both BPL and KEL in addition to having significant net liabilities and accumulated losses over the last four years for which accounts are available have been reliant on ad hoc, discretionary related-party funding to keep trading, but which cannot be repaid.

[5] The applications appear to be supported by Henriette's husband Elias Nakhle (Elias). Although Elias has taken no formal steps in the application, he holds 50 per cent of the shares in the defendant companies and does not oppose the orders sought. Two of the couple's three sons, Rogere Nakhle and David Nakhle (Rogere

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1 Companies Act 1993, s 241(4)(d).
2 Section 241(4)(a).

and David) also support the applications in their capacity as beneficiaries of BPT and as directors of the Nakhle Treasury Limited (NTL), which is the trustee of the Nakhle Treasury Trust (NTT) (the supporting parties).

[6] Together, Henriette and the supporting parties contend that as the defendant companies are deadlocked and otherwise insolvent there is no alternative to liquidation.

[7] The liquidation applications are opposed by Henriette and Elias's eldest son, Daniel Nakhle (Daniel), Henriette's co-director of, and the other 50 per cent shareholder in, the defendant companies.

[8] As a result of the split within the family, the defendant companies have been unable to take any position on the applications. Instead, Daniel opposes the liquidation applications as a 50 per cent shareholder of the defendant companies.

[9] While Daniel accepted at the hearing that as a result of the dispute between Henriette and Daniel there is currently a deadlock with regard to the management of the defendant companies, he suggested that this had been engineered by Henriette such that she does not have clean hands in making the application to liquidate the companies on just and equitable grounds pursuant to s 241(4)(d) of the Act and as a result the Court should decline to order liquidation. Instead, to resolve the deadlock with Henriette, he urges the Court to appoint receivers to both of the defendant companies under s 138 of the Trusts Act 2019. To this end it is noted Daniel filed applications for the appointment of a receiver to both KEL and BPL on 10 April 2026. On 21 April 2026, Gault J determined the present judgment will solely determine the liquidation applications, albeit noting a receiver may still be appointed on the Court's own motion.[3]

[10] Likewise while not disputing the financial position of the companies detailed by Mr Graham, Daniel denies the defendant companies are insolvent for the purposes of s 241(4)(a) of the Act. He proposes to continue to source funding to cover the

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3 *Nakhle v Karaka Estate Ltd* HC Auckland CIV-2026-404-881, 21 April 2026 (Minute of Gault J [Civil List Judge]) at [7].

operating expenses of the companies through an entity he controls, the Darley Investment Trust (Darley), in part by making part payment of monies owing from Darley to BPL.

[11] As Daniel sees it the appointment of receivers and provision of ongoing funding would obviate the need for liquidation. Instead, both defendant companies would be able to continue trading and thereby maintain the existing status quo until such time as the wider issues within the Nakhle family have been resolved.

[12] In response Henriette and the supporting parties reiterated their position that the defendant companies were insolvent and challenged the adequacy, certainty and propriety of the funding proposed by Darley on behalf of Daniel such that in the circumstances liquidation, rather than receivership while continuing to trade, was the only appropriate outcome.

Relevant matters

[13] Both the defendant companies and their associated trusts form part of a complex network of trusts and companies that hold the assets of the Nakhle family (Nakhle Group). The full details of those structures and the assets they hold have not been provided by the parties, but some idea of the extent of the complexity of the Nakhle Group's operations and activities can be gained from the following statement included on one of the Group's websites and produced in Court:

> The Nakhle Group encompasses a number of privately owned and operated businesses including both commercial and residential property development, building, property investment and management, home staging, hospitality, quarrying, water supply, early childhood education, tertiary education, luxury charter boat hire, farming and thoroughbred breeding and training.

[14] It appears that both defendant companies were established in 2000 to hold land located in Kingseat, with the intention that the land would ultimately be subdivided and sold (the Kingseat land). Much of the Kingseat land has, however, since its acquisition been developed and run by BPL as a horse breeding and training facility.

[15] There is no dispute that BPL has never made a profit from its equestrian operations, nor is it likely to. Although in comparison KEL appears essentially

passive, it cannot be considered independently of BPL. In Daniel's words, KEL is a "side car": it has only reported losses as all income with regard to the Kingseat land is received by BPL. As Mr Graham observed, after analysing the last four years of available accounts to 31 March 2024, BPL had:

(a) $2.773 million net liabilities as at 31 March 2024.

(b) $4.2 million accumulated losses over those four years despite receiving $3.4 million in beneficiary income.

(c) $7.6 million of accumulated losses, excluding beneficiary income.

(d) Negative operating cash flows, so it could not meet related party obligations.

[16] Likewise for KEL, Mr Graham determined it had:

(a) $0.77 million net liabilities as at 31 March 2024.

(b) $0.77 million accumulated losses over the four years despite receiving $1.86 million from related parties.

(c) Negative operating cash flows, meaning it could not meet related party obligations.

[17] It is not in dispute that up until 2022 the operations of the defendant companies were propped up by another Nakhle Group entity, the NTT through its trustee, NTL, which at that time is alleged to have been operating largely at the direction of Daniel. When in 2023, initially due to the opposition of Henriette, that avenue of funding became no longer available, BPL (and through it KEL) has nonetheless continued operations through the introduction of further funds by Daniel through other entities he controls.

[18] The change in funding reflected a wider breakdown in relationships within the Nakhle family. It appears from the evidence that Daniel had an initial falling out with

his parents and brothers in 2014. There was a brief reconciliation in 2015 and in the course of this an agreement was reached between Elias, Henriette and Daniel with regard to the disposition of some or all of the Nakhle Group. This agreement has become known as the SBA, short for the "Sir Barry Agreement", because it was brokered by a long-time friend of the Nakhle family, Sir Barry Curtis. The terms of the SBA and whether it can be enforced by Daniel are matters of dispute within the family.

[19] When it became clear to Daniel in 2022 the terms of the SBA as he asserted them to be would not be given effect, he issued proceedings against his parents, his brothers and various entities within the Nakhle Group seeking to enforce the SBA (the 38 proceedings).[4] Some months later, in March 2023, Rogere and David issued proceedings of their own on behalf of the NTT against their parents, Daniel and various Nakhle Group entities including the defendant companies seeking to recover moneys advanced or distributed by NTT while it was administered by Daniel and Elias (the 2844 proceedings).[5]

[20] It is against that background that the present proceedings were filed against both defendant companies in June 2025. Daniel initially protested the Court's jurisdiction to hear the applications on the primary ground that the dispute resolution clause in the BPT and KET trust deeds had not been resolved. This argument was rejected by Associate Judge Brittain who on 6 November 2025:[6]

(a) set aside the protest to jurisdiction; and

(b) declined applications for a stay and restraint in advertising.

[21] As a result, the applications proceeded to hearing. On the day of the hearing, Daniel advised that Ardmore Finance Ltd (AFL), a company in which he was a co-director and 50 per cent shareholder, had "taken an assignment of all of the debt and security formerly held by Westpac New Zealand Ltd (Westpac) in respect of entities in the Nakhle Group" which on 28 April 2026 amounted to $7,746,068.20.

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4 CIV-2023-404-38.
5 CIV-2023-404-2844.
6 *Nakhle v Karaka Estate Ltd* [2025] NZHC 3359.

This included "all of the debt formerly owed, and security provided, by BPL and KEL to Westpac", a total of $355,746.60.

[22] Relevant to the present applications, Daniel advised:

> AFL has sent a letter (AFL Letter) to BPL and KEL, the effect of which is that, subject to the exclusion referenced below, AFL:
>
> (a) will not demand payment of, or take any steps to enforce amounts that would otherwise be due from BPL or KEL until 29 July 2026; and
>
> (b) waives its right to charge interest (including default interest) under facilities provided to BPL and KEL, and the G&I, from the date of the AFL Letter for the period ending 28 July 2026.
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> The exclusion is that AFL's commitments listed above will cease to apply if certain events (including insolvency related events) occur after the date of the AFL Letter.

[23] Paragraph 7 of the letter referred to made it clear:

> The extension, forbearance and waivers in paragraphs 4 to 6 will immediately cease to apply and the Forbearance Period shall come to an end if any Event of Default (as defined in each Loan Agreement) occurs as a result of circumstances arising after the date of this letter. If such an Event of Default occurs Ardmore will be entitled to exercise all of its rights and remedies under the Lending Documents against both Borrowers. For the avoidance of doubt, any Event of Default that has arisen as a result of an application to the court for the liquidation of either Borrower that has already been filed as at the date of this letter will not trigger the end of the Forbearance Period, unless a liquidator is appointed as a result of any such application.

[24] On 1 May 2026, AFL, by way of a letter signed by Daniel, issued a letter of demand to the Nakhle Trust No.2 (NT2) for the immediate payment of $7,090,321.60 under the facility, and advised it may look to commencing enforcement action under the securities and guarantees in favour of AFL.

[25] Counsel for Henriette and the supporting parties submitted that this showed Daniel was now taking a different and more assertive approach than had been indicated at the hearing, and as such was relevant to the just and equitable grounds for the appointment of liquidators to the defendant companies.

[26] On behalf of Daniel, Mr Sandelin submitted that AFL's demand was not sent by Daniel in his personal capacity or as a 50 per cent shareholder in BPL and KEL:

> … and that AFL has not made any demand on BPL and KEL, … and has no bearing on the liquidation applications

[27] Rogere and David, NTL and Dalkara GP Ltd subsequently issued separate proceedings (the 1086 proceedings)[7] and obtained without notice orders on an interim basis preventing AFL from taking any steps to endorse the security, including where any of the entities that granted security are placed in liquidation (Injunction Orders).[8] Although in the interim AFL had appointed receivers to the corporate trustees of NT2 Mr Sandelin submitted:

> The effect of the Injunction Orders, to which AFL and Daniel have now essentially consented on an interim basis, is to maintain the status quo for the benefit of the Injunction Applicants, as well as [Henriette] and [Elias]. Henriette and Elias have explicitly supported the injunction application.
>
> Absent amendment, the Injunction Orders prevent AFL from taking any enforcement steps, including where any of the entities that granted security (now to AFL) are placed into liquidation. That would mean that, if BPL and KEL were to be placed into liquidation, AFL would be prevented from enforcing its security.
>
> If BPL and KEL were to be placed into liquidation then the above circumstances give rise to an inequity in that Henriette would obtain the means of enforcement that she seeks (i.e. liquidation of BPL and KEL) while supporting, and benefiting from, the Injunction Orders given they would prevent any other means of enforcement.
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> (footnote omitted)

[28] In response Henriette and the supporting parties submitted Daniel's submissions above should be disregarded:

> The injunction should have no bearing on whether liquidation should be ordered. The "interim interim" orders have the effect of returning the parties to the position they were in at the hearing before Your Honour, except that Ardmore Finance Limited (AFL) has asserted events of default under the assigned banking arrangements and has purported to appoint receivers.
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> That Daniel/AFL immediately called up the debt and took enforcement steps strongly suggests anything but a wish to maintain the status quo for which Daniel was previously advocating. His latest assertive steps simply add weight to the plaintiff's arguments in favour of liquidation.
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> Daniel's memorandum also mischaracterizes the plaintiff's applications as "a means of enforcement". The plaintiff sought liquidation because of an

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7 CIV-2026-404-1086.

8 *Nakhle Treasury Ltd v Ardmore Finance Ltd* CIV-2026-404-1086, 8 May 2026 (Minute of Powell J).

irretrievable deadlock and insolvency. This is not enforcement, and accordingly no inequity that arises. Liquidation is the orthodox response to deadlocked and insolvent companies requiring liquidators' investigation and control.

Liquidators have statutory duties that will require them to consider and investigate AFL's involvement, including the assignment of bank debt. The liquidation (if ordered) will also be subject to the Court's supervision and directions if required. There is no justification for the appointment of a receiver when liquidation is the orthodox response to deadlock and insolvency.

For the reasons submitted at the hearing, a receiver could not maintain the "status quo" because the companies would be able to continue to trade at a loss, aggravating their insolvency with each passing day.

Relevant law

[29] Section 241 of the Act provides for the commencement of a liquidation. A liquidator may be appointed by the Court on the application of a director.[9] The court may appoint a liquidator if it is satisfied that the company is unable to pay its debts (s 241(4)(a));[10] or it is just and equitable that the company be put into liquidation (s 241(4)(d)).[11]

Section 241(4)(a) — Unable to pay debts

[30] Section 287 of the Act sets out a range in circumstances in which a company is presumptively unable to pay its debts. None of these apply in this case. However, s 288(2) provides that s 287 does not prevent proof by other means that a company is unable to pay its debts. In determining whether the liquidation of a company can be justified under s 241(4)(a), "it is the cash flow test that counts"; that is, whether a company is able to pay its debts as they fall due in the normal course of business.[12]

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9 Companies Act , s 241(2)(c)(ii).
10 Section 241(4)(a).
11 Section 241(4)(d).
12 Brookers Insolvency Law & Practise (looseleaf ed, Thomson Reuters) at [CA241.03(1)], citing *Re Tweeds Garage Ltd* [1962] Ch 406 (Ch). This commentary was cited with approval in *Commissioner of Inland Revenue v Propellor Property Services Ltd* [2022] NZHC 2856.

Section 241(4)(d) — Just and equitable to be put into liquidation

[31] The Court's jurisdiction under s 241(4)(d) is broad.[13] It extends to situations where there is a demonstrated lack of trust and confidence between the shareholders and directors of a company,[14] and where a deadlock has arisen in the management of a company.[15] However, where the deadlock is relied on, it must be so serious as to impede the continued operation of the company, the essential basis for relief being frustration by internal discord.[16]

[32] An applicant seeking liquidation on just and equitable grounds must come to the Court with clean hands. If the breakdown in trust and confidence between them and other parties to the dispute appears to have been due to their misconduct, they cannot insist on the company being liquidated if the other parties wish it to continue.[17]

[33] The Act does not prohibit the making of a liquidation order on just and equitable grounds where an alternative remedy exists and unreasonable conduct is made out. However, those factors remain cogent considerations when exercising the discretion to liquidate under s 241(4)(d).[18]

Relevance of the nature of an insolvent trustee company

[34] An insolvent trustee company should, as a general rule, almost invariably be put into liquidation to ensure that the trust is properly administered either by a liquidator or a replacement trustee.[19]

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13 *Jenkins v Supscaf Ltd* [2006] 3 NZLR 264 (HC) at [134]; and *Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360 (HL) at 379.

14 *Ebrahimi v Westbourne Galleries Ltd*, above n 13, at 379. See also *Campbell v Marble Point Winery Ltd* [2017] NZHC 1412 at [33]–[34]; and *Hayes v Taniwha Buses Ltd* [2014] NZHC 1965 at [59].

15 *Strachan v Denbigh Property Ltd* HC Palmerston North CIV-2010-454-232, 10 December 2010 at [28]; *Sea Management Singapore Pte Ltd v Professional Service Brokers* HC Auckland CIV-2011-404-5315, 25 January 2012 at [3]; and *Che v Nutri-Health Holdings Group New Zealand Ltd* [2017] NZHC 2400 at [33].

16 *Sea Management Singapore Pte Ltd v Professional Service Brokers*, above n 15, at [3].

17 *Vujnovich v Vujnovich* [1989] 3 NZLR 513.

18 *Jenkins v Subscaf Ltd,* above n 13, at [98].

19 *Commissioner of Inland Revenue v Newmarket Trustees Ltd* [2012] NZCA 351, [2012] NZLR 207 at [75].

Appointment of a receiver

[35] Section 138 of the Trusts Act establishes the Court may, on an application by an interested person or on its own motion, appoint a receiver to administer a trust. The court must be satisfied that the appointment of a receiver to administer the trust is both reasonably necessary in the circumstances of the trust; and just and equitable.[20]

Discussion

[36] Having considered the submissions of counsel and the evidence available I am satisfied that both KEL and BPL should be placed in liquidation on both insolvency and just and equitable grounds.

[37] As Daniel belatedly conceded, in contrast to his position at the stay hearing, there can be absolutely no doubt that both companies are deadlocked. The concession was appropriate. It is utterly clear the relationship between Henriette and Daniel has broken down irretrievably, as, it appears, has the relationship between Daniel and the rest of the immediate Nakhle family.

[38] The breakdown clearly extends well beyond the inability of Henriette and Daniel to agree with respect to BPL and KEL but to the wider litigation and, in particular the 38 and the 2844 proceedings, as well as the steps taken to enforce the former Westpac loan post the hearing of the liquidation applications which have led in turn to the 1086 proceedings. The language used by both Henriette and Daniel in the affidavits before the Court makes it clear that neither trusts the other. Simply put, they do not mince words. The scale of the allegations is itself telling: Henriette and the rest of the immediate family contend that Daniel has already misappropriated at least $40 million from the Nakhle Group. Daniel's position is that he is entitled under the SBA to specific Nakhle Group assets worth in excess of $60 million, debt free.

[39] There is insufficient information on the evidence currently before the Court to comment on the actual cause of the breakdown in the relationship between Henriette and Daniel and the subsequent deadlock with regard to the management of KEL and

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[20] Trusts Act 2019, s 138(2).

BPL. I do, however, reject Mr Sandelin's assertion on behalf of Daniel that the breakdown was demonstrably caused by Henriette such that she has made the present applications to liquidate KEL and BPL with unclean hands. There is simply no evidence to support such a submission other than the observation that there were no issues with the management of the defendant companies prior to Henriette becoming a director. As a result Mr Sandelin's submission appears based on the proposition that Henriette was not entitled to question the way that the companies had previously been run by Daniel with the tacit agreement of Elias. Such a submission misunderstands the nature of the role of a director and indeed it would have been wrong in principle for Henriette to acquiesce to Daniel's decisions in breach of her own obligations as a director of both BPL and KEL.

[40] On the evidence before the Court, it is clear that notwithstanding the breakdown between Daniel and Henriette, Daniel has been able to effectively sideline Henriette from the management of the companies by independently providing funding to the defendant companies to continue operations, notwithstanding their balance sheet insolvency as without the introduction of funds from Daniel, neither company would be in a position to pay its debts as they fall due.

[41] Daniel's response to the present applications is in effect to request the Court to allow this approach to continue. There are a number of issues that arise:

(a) No detail has been provided as to the terms of the funding proposed to be provided to meet the ongoing operational costs of BPL and KEL, nor the ongoing costs of the receiver, including the length of any commitment and whether interest is sought.

(b) Daniel has likewise provided no information with regard to either his own financial resources nor those of Darley. As a result it is not clear:

(i) whether the funds proposed to be used are monies Daniel has obtained from the Nakhle Group or whether they have been independently sourced; nor

(ii) how long Darley can sustain payment of the ongoing costs noting that $300,000 of the funding proposed are part of a total of $1,317,000 already owing from Darley to BPT which have been outstanding since at least 2019 and no explanation has been provided as to why these sums have not previously been paid nor why Darley is only prepared to pay a small proportion at this point.

(c) Daniel has not provided any information to back up his cashflow projections for the ongoing operational expenses for both BPL and KEL but Mr Graham's evidence, based on his analysis of the accounts to 31 March 2024, indicate that Daniel's analysis is not realistic. The operating cash outflow for BPL for the 2024 financial year was in fact $652,262.

(d) In any event it is clear that further funding by related parties will simply increase the debt levels of both defendant companies through related party payables and Daniel's proposal does contain any plan to reduce that debt. The debt is already significant and increasing even before the present applications:

(i) By 31 March 2024 the accounts for BPT (prepared under Daniel's direction) recorded BPT owed the NTT $10,161,816; Dessam Investments Ltd (another entity controlled by Daniel) $2,325,990; and Daniel personally $75,216. The notes record that interest was payable on the balance outstanding to both NTT and Dessam, and the amounts outstanding to NTT were repayable on demand. There is no evidence of repayment since then notwithstanding the fact that the NTT has in the interim made demand, meaning the related party payables are inevitably already significantly higher.

(ii) The accounts likewise record that as at 31 March 2024 KET owed the NTT $349,794; Dessam $2,000; and BPT $2,150,054.

These are all also recorded as repayable on demand but not interest bearing. As with BPT's ongoing trading since 31 March 2024 this means that related party payables will have only increased since then. Moreover the fact KET owes the BPT $2,150,054 repayable on demand confirms that KET cannot independently survive the liquidation of BPT.

(e) As a result of the increase in related party debt that will inevitably result it follows that the assets of both BPT and KET will be diminished in the event that they are allowed to keep trading. For example the $300,000 owing from Darley and proposed by Daniel to be made available to BPL to continue trading will be dissipated to meet the expected operational losses.

[42] As the above analysis shows, on the evidence before the Court there can be no dispute that both BPL and KEL are insolvent, both on a balance sheet basis and because, without substantial external support, neither of the defendant companies is able to pay their debts as they fall due. It is clear that Daniel's proposal to pay the ongoing operational expenses through a receiver falls well short of providing sufficient resources to avoid the conclusion both companies are insolvent. On the contrary, Daniel's proposal represents a selective position that would permit BPL and KEL to continue trading without addressing their underlying insolvency and without providing any guarantee that the underlying assets of both trusts will not be put at an even greater risk if Darley/Daniel are no longer willing and/or able to continue to financially support BPL and KEL.

[43] It follows that the only way that the assets of the trusts are not at risk of further dissipation is if the defendant companies are put into liquidation. I conclude both defendant companies are appropriately placed in liquidation on the basis they are insolvent.

[44] Even if this was not the case and I was satisfied that an appropriate and adequate funding stream was in place to avoid insolvency and the ongoing risk to the

assets of the trusts, I consider it would still be appropriate to liquidate the companies on just and equitable grounds given the existing deadlock.

[45] Both the application and supporting evidence filed by Daniel in support of the appointment of a receiver in these proceedings suggests that the appointment of a receiver would be comparatively inexpensive because there would be little for the receiver to do as the operations of the company would continue to be carried out by its staff. Effectively this is what is already happening. The only difference post-receivership would be that funds sourced from Daniel/Darley would go through the receiver rather than directly to the staff. It is clear from the limited amount of information about the operations of BPL and KEL that the equestrian centre operated by BPL is a passion project for Daniel, and it can be inferred that Daniel is close to the staff of both companies and that those relationships could be expected to continue even under the receivership.

[46] The result of any receivership would therefore be to sanction Henriette's continued exclusion from management while reinforcing Daniel's position within both companies. In those circumstances it is difficult to see how the receiver could be expected to operate independently, given Daniel is both the overall source of the ongoing funding to enable BPL and KEL to continue trading and a discretionary beneficiary of both trusts. Indeed, Daniel's position would be strengthened even further if a receiver was authorised to take steps to defend the 38 and/or 2844 proceedings as Daniel has proposed, notwithstanding, as noted, the acceptance by both BPL and KEL, and documented in the accounts of BPT and KET dated 31 March 2024 and prepared at the direction of Daniel, that there are significant amounts owing by both defendant companies to the NTT as at 31 March 2024.[21]

[47] It is therefore clear that appointment of a receiver would markedly advantage Daniel, and is therefore, contrary to Mr Sandelin's submission, quite different in nature to the Injunction Orders made in the 1086 proceeding. For the reasons set out above, it is clear that the appointment of a receiver as urged by Daniel would not preserve the position of the parties pending determination of the substantive litigation between

[21] See [41(d)] above.

them but rather would inevitably favour Daniel and his interests over those of the rest of the family.

[48] When the wider financial position of both defendant companies is taken into account together with the clear deadlock in the management of both defendant companies and the wider issues between the parties, the liquidation of both BPL and KEL is a necessary step to preserve the position of the various parties. As Mr McLellan submitted on behalf of the supporting parties:

> Liquidation is the orthodox mechanism for addressing an insolvent trustee company. It resolves the insolvency at the level of the corporate trustee while leaving the trust structure intact. Concerns about value destruction through liquidation are misplaced; if anything, receivership of a trading trust is more likely to signal distress and erode value.
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> A liquidator assumes control of the trustee companies and, in that capacity, administers the trust assets. That includes a duty to preserve and protect those assets and to act in the interests of creditors and beneficiaries.[22]

[49] Overall, I have no hesitation in concluding that it is just and equitable and indeed the only appropriate outcome of the present applications for both BPL and KEL to be placed in liquidation.

Decision

[50] Orders are made placing Karaka Estate Ltd and Byerley Park Ltd into liquidation.

[51] This order is timed at 3:00 pm on 7 August 2026.

[52] Paul Vlasic and Derek Ah Sam are appointed liquidators of both companies.

[53] An order is made approving the rates of the liquidators' remuneration in accordance with the consent to act as liquidator dated 29 April 2026 subject to s 284 of the Companies Act 1993.

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22 *Re Crest Realty Pty Ltd (No 2)* [1977] 1 NSWLR 664 at 672.

[54] Daniel is to pay costs on the application to Henriette and the supporting parties. If costs cannot be agreed within one-month memoranda are to be filed on behalf of Henriette/supporting parties by **11 September 2026**. Daniel will have until **25 September 2026** to respond. I will then determine costs on the papers.

Powell J