



**Supreme Court of New Zealand
Te Kōti Mana Nui**

7 November 2014

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

**JENNINGS ROADFREIGHT LTD (IN LIQUIDATION) and BORIS VAN DELDEN AND ROY HORROCKS AS LIQUIDATORS OF JENNINGS ROADFREIGHT LTD (IN LIQUIDATION) v COMMISSIONER OF INLAND REVENUE
(SC 118/2013) [2014] NZSC 160**

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz

Jennings Roadfreight Limited (Jennings) was placed into liquidation on 24 March 2011. It owed approximately \$50,000 in PAYE for the month ended 28 February 2011. This appeal concerns \$14,076.38 held in Jennings’ bank account at the time Jennings was placed in liquidation. After liquidation, the bank paid the funds to the Commissioner of Inland Revenue.

The liquidators of Jennings made applications, under ss 251 and 292 of the Companies Act 1993, to recover the funds from the Commissioner.

The liquidators were successful in the High Court. That decision was overruled by a majority in the Court of Appeal (Wild and White JJ) which held that, under s 167(1) of the Tax Administration Act 1994, any credit balance in Jennings’ bank accounts at the time of liquidation was held on trust for the Commissioner. As such, it did not form part of Jennings’ estate in liquidation and therefore did not need to be refunded by the Commissioner. Ellen France J dissented.

The Supreme Court has unanimously held that any s 167(1) trust ceases upon liquidation of a company if one of the two situations in s 167(2) is met: first, where the employer has failed to deal with the amount withheld or deducted in the manner required by s 167(1), and secondly, where the employer has failed to deal with the amount in accordance with the PAYE rules.

85 Lambton Quay, Wellington
P O Box 61 DX SX 11224
Telephone 64 4 918 8222 Facsimile 64 4 471 6924

This means that, in the event of liquidation, s 167(2) and the priorities set out in that subsection apply to all amounts of PAYE withheld which fell due before liquidation but were not paid before liquidation to the Commissioner. Section 167(1) does not apply to such amounts, except (possibly) to unpaid PAYE that has been segregated by the employer in a separate account. Amounts of PAYE that fall due for payment after liquidation will remain subject to s 167(1).

In the current case, the PAYE had been deducted but not paid to the Commissioner on its due date and it remained unpaid at the time of liquidation. The funds were not kept by Jennings in a separate account. This means that all of the PAYE that was unpaid at the time of liquidation in this case (including the credit balance in the bank account of \$14,076.38) is to be dealt with under s 167(2) and thus distributed in accordance with the priorities set out in sch 7 of the Companies Act 1993.

Accordingly, the appeal is allowed and the Commissioner must repay \$14,076.38 to the liquidators.

Contact person: Gordon Thatcher, Supreme Court Registrar (04) 471 6921