

IN THE HIGH COURT OF NEW ZEALAND  
CHRISTCHURCH REGISTRY

CIV

UNDER THE

**Companies Act 1993**

BETWEEN

JULIAN DAVID PARBERY of 28 Dunn Street, Somerfield,  
Christchurch

**Plaintiff**

A N D

HEAT EXCHANGER SERVICES LIMITED a duly incorporated  
company having its registered office in Christchurch

**Defendant**

UNDER THE

**Companies Act 1993**

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**AFFIDAVIT OF JULIAN DAVID PARBERY IN SUPPORT OF APPLICATION FOR  
APPOINTMENT OF INTERIM LIQUIDATOR**

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Judicial Officer:

Next Event Date:

**Parry Field Lawyers**  
L15, Forsyth Barr House, 764 Colombo Street  
PO Box 1725, Christchurch Mail Centre, Christchurch 8140  
Phone: (03) 379 4383, Fax: (03) 366 3336

Solicitor: PA Cowey

I, JULIAN DAVID PARBERY of Christchurch, Company Director, say:

**1.0 Authority to Swear Affidavit**

1.1 I am one of the two directors of the defendant. The other director is my brother James.

1.2 James and I each own half of the shares of the defendant, personally and through our respective family trusts.

1.3 I am authorised to swear this affidavit for myself and my family trust, which I do from my own knowledge.

1.4 The once harmonious relationship that existed between James and I has become acrimonious.

1.5 I believe that unless an interim liquidator is appointed, the deadlock between directors will severely impact the livelihoods of staff, greatly inconvenience our customers and destroy the capital value of the company.

**2.0 Background**

2.1 The defendant was established in 1998. The defendant employs 12 staff, and provides radiators to transport companies throughout New Zealand. James and I have always been the only two directors. The ownership has been equally shared between us (and our respective family trusts).

2.2 James and I jointly own the premises the defendant operates from. We jointly established a venture in Australia, which was ultimately not successful.

2.3 The defendant repairs and rebuilds radiators oil coolers and inter-coolers largely for the transport industry. We are able to rebuild heat exchangers at short notice. To do this we source a large number of parts from China and some from USA.

2.4 In 2007 James and I decided to explore the possibility of directly investing in a manufacturing plant in China. This was made possible as my wife, Lisa, is a Chinese National.



2.5 Lisa and I worked in China between July 2007 and March 2008 where we helped manufacture and supply components to the defendant and its related parties with a sole supply agreement for the defendant in New Zealand Australia and UK. No competitors of the defendant have been supplied in those countries.

2.6 The Chinese manufacturing plant ultimately closed, and Lisa and I returned to New Zealand. Disputes have arisen between James and I as to the future direction of the defendant, the viability of the Chinese plant, irregularities in the defendant's accounts while I have been away and management styles.

### 3.0 Deadlock

3.1 In March 2009, James changed the defendant's locks and denied me access to the premises. He advised that there was no work for my wife and I with the defendant.

3.2 The defendant has engaged Layburn Hodgins, Mr Trevor Quirk as the company solicitor since its inception. There have been many meetings with him to solve the issues, yet his efforts to work through disputes have been unsuccessful.

3.3 James required a meeting with an independent person to resolve issues between us before he would allow me to return to the business. Prior to the meeting, I was told I could not see the management accounts, nor would James consent to call a shareholders' meeting. Next on 10 May 2009, James changed the front door lock for a second time.

3.4 I attended a meeting on 22 May 2009 with James and a Mr Matthew Gilligan. James advised Mr Gilligan was an independent mediator. Mr Gilligan informed me at the meeting however that he was attending on behalf of James as an Asset Protection Specialist.

3.5 I became concerned that the accounts showed I was not being paid a salary for my work, rather payments to me were categorised as drawings from my shareholder's account.

3.6 Both Lisa and I have been unable to attend the defendant's premises and have stayed away.

3.7 On about 16 September 2009, Mr Quirk suggested to James that he either buy my shares in the company, or sell me his shares in the company. James replied "I do not want to do either, I will seek independent advice" or words to that effect. After the meeting with Trevor Quirk, James and his wife did not return to work until 29<sup>th</sup> September 2009.

#### **The effect of deadlock on the company**

3.8 I understand that on 24 September, James and his wife flew to Auckland to meet Mr Gilligan. The next day, James removed \$46,500.00 from the defendant's bank account, and deposited it into a Kiwibank account in his wife's name.

3.9 On 29 September 2009, I was served with a "trespass notice". A copy is annexed here to and marked 'A'. It purported to exclude me from the business, and the business premises at 153 Madras Street. That building is jointly owned by James and me.

3.10 On 29 September, I received copies of statutory demands that Mr Gilligan as James' agent served on the company for repayment of his shareholder's current account. Copies of the statutory demands are annexed hereto and marked 'B' and 'C'.

3.11 Over the next few days, funds totalling \$104,500.00 were withdrawn from the company's bank account to the full extent of its overdraft limit, and deposited into James' wife's bank account.

3.12 On or about 29 September, James changed the factory locks for a third time, and posted a security guard on the factory gate with instructions to exclude Lisa and me. On 2 October 2009 James had a burglar alarm fitted to stop me accessing the factory.

3.13 James and I had agreed with the company solicitor to meet again following our meeting of 16 September 2009. James declined to attend this meeting and notified Mr Quirk.

3.14 By letter dated 2 October 2009, my solicitors advised the company's bank of my concerns, and required further withdrawals to be authorised by both directors. A copy of the Parry Field letter is annexed hereto and marked 'D'.

- 3.15 Someone with a company key, identified as J. Parbery, accessed the Companies Office website and posted a particulars of shareholding, purporting to advise of my resignation as at 29 September 2009. I had not so resigned. A copy of the particulars of shareholding is annexed marked "E".
- 3.16 I was concerned that James would use the Companies Office registration to represent to the company's bank and/or Kiwibank that he was the sole director of the defendant. My solicitor's advised Kiwibank. Because the company's funds had been placed within James wife's account, Kiwibank considered its only duty was to its customer, Janine Parbery. A copy of Kiwibank's email dated 6 October is annexed hereto and marked 'F'.
- 3.17 I am advised that my solicitor has suggested to the company solicitor that operating funds be paid through his office. I understand attempts to discuss this issue with James have been ignored.
- 3.18 The defendant's customers are therefore paying funds into the company's bank account which requires two signatures to operate. James will not cooperate to authorise payments. Without my consent, it appears that James has requested the defendant's customers to pay funds into a Kiwibank account. I do not consent to that course of action.
- 3.19 I understand that James has made numerous statements to the defendant's staff members about my wife and me. I believe this has had a twofold effect. First it has unreasonably besmirched my reputation in the eyes of our staff, and secondly it has caused staff to worry for the ongoing viability of the defendant and their job security.
- 3.20 On 6 October 2009 my solicitors received a letter from a barrister purporting to have been instructed by the defendant to issue proceedings against me. A copy of the Chris Patterson letter is annexed hereto and marked 'G'.
- 3.21 By letter dated 8 October my solicitors responded. A copy of the Parry Field letter is annexed hereto and marked "H".



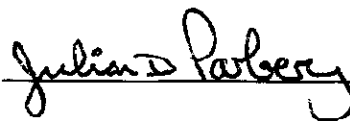
## 3.22 At present therefore;

- (a) The companies accounts to 31 March 2009 are in dispute, and account and treatment of payments is not agreed;
- (b) There is no auditor, and James refuses to cooperate to appoint one;
- (c) The only legitimate company bank accounts require both director's signatures to operate;
- (d) James will not discuss matters, and refuses to meet with me;
- (e) All my income and drawing have been unilaterally stopped, as has my wife's salary;
- (f) Staff morale has become a casualty of the dispute between James and me;
- (g) As a director I am being prevented from accessing all company information including management accounts.
- (h) There are two statutory demands served 29 September 2009, that remain unpaid.

4.0 In order to preserve the status quo, it is therefore inevitable that an independent third party should manage the defendant, and either facilitate a buy-out by either James or me, or alternatively sell the business to a third party.

4.1 As James will not discuss the issue with me, I seek orders in terms of the interlocutory application that PriceWaterhouseCoopers as the Official Assignee be appointed as interim liquidator.

Sworn by JULIAN DAVID PARBERY )  
 at Christchurch )  
 this 4<sup>th</sup> day of November 2009 )  
 before me: )



  
 A SOLICITOR OF THE HIGH COURT OF NEW ZEALAND

**Richard Jeremy Lynn**  
 Solicitor  
 Christchurch

**TRESPASS NOTICE**

To Julian David Parbery  
Date Of Birth 20 March 1962  
Address 28 Dunn Street, Sommerfield Christchurch

**NOTICE UNDER SECTION 4(1)(2) & (4) - TRESPASS ACT 1980**

In accordance with the above Act and Section you are hereby warned to stay

Off the place known as	153 Madras Street, Christchurch
And occupied by	Heat Exchanges Limited

You are advised that in accordance with the provisions of the Trespass Act 1980, it is an offence punishable by a fine not exceeding \$1000 or imprisonment not exceeding 3 months, to enter onto the aforementioned place within the period of 2 years, after you receive this warning.

Notice served personally on the 29th day of September 2009

By order of the Managing Director/General Manager  
Heat Exchangers Limited, James Parbery

Service by:-

Name H October

Signature [Handwritten Signature]

**Exhibit Note**

This is the annexure marked "A" referred to in the annexed affidavit of JULIAN DAVID PARBERY which was sworn at Christchurch this 9th day of November before me:

Signature [Handwritten Signature]

A Solicitor of the High Court of New Zealand  
(Solicitor to sign in part on Exhibit)

**NOTICE DEMAND PURSUANT TO SECTION 289 OF THE COMPANIES ACT 1993**

To: **Heat Exchanger Services Limited**  
153 Madras Street  
Christchurch

From: **James and Janine Parbery As Trustees Of the Parbery Family Trust**  
524 Barkers Road  
Rangiora, RD 2  
NORTH CANTERBURY 7472

Take notice that:

1. As at 31st August 2009 you owe the Trustees of the Parbery Family Trust ("the Creditor") \$36,628 being the shareholder loan outstanding as at that date:
2. The Creditor requires you, within 15 working days of the date of service of this demand (or such longer period as the High Court may order) to:
  - (a) pay the Debt to the Creditor; or
  - (b) enter into a compromise under Part XIV of the Companies Act 1993; or
  - (c) enter into an agreement with the Creditor in relation to payment of the Debt; or
  - (d) give the Creditor a charge over your property to secure payment of the Debt, to the reasonable satisfaction of the Creditor.

Dated 15<sup>th</sup> September 2009

The Creditor by its Accountants and authorised agents, Gilligan Rowe & Associates Limited per:



Matthew Gilligan Director

RECEIVED CAULF E LORD  
RL 29/9/09

Any application to set aside this demand must be made to the High Court within 10 working days of the date of the service of the demand on you (refer to section 290 of the Companies Act 1993).

The Creditor's address for service and place for payment of the money hereby demanded is c/-Gilligan Rowe & Associates Limited, PO Box 9918 Newmarket Auckland, Level 6 135 Broadway Newmarket AUCKLAND Fax +649-522-7970.

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**NOTICE DEMAND PURSUANT TO SECTION 289 OF THE COMPANIES ACT 1993**

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To: Heat Exchanger Services Limited  
153 Madras Street  
Christchurch

From: James and Janine Parbery  
524 Barkers Road  
Rangiora, RD 2  
NORTH CANTERBURY 7472

Take notice that:

1. As at 31<sup>st</sup> August 2009 you owe James and Janine Parbery ("the Creditor") \$69,309 being the shareholder loan outstanding as at that date:
2. The Creditor requires you, within 15 working days of the date of service of this demand (or such longer period as the High Court may order) to:
  - (a) pay the Debt to the Creditor; or
  - (b) enter into a compromise under Part XIV of the Companies Act 1993; or
  - (c) enter into an agreement with the Creditor in relation to payment of the Debt; or
  - (d) give the Creditor a charge over your property to secure payment of the Debt, to the reasonable satisfaction of the Creditor.

Dated 15<sup>th</sup> September 2009

The Creditor by its Accountants and  
authorised agents, Gilligan Rowe & Associates Limited  
per:

  
Matthew Gilligan Director

RECEIVED CAHLE E LORD  
RD 29/9/09

Any application to set aside this demand must be made to the High Court within 10 working days of the date of the service of the demand on you (refer to section 290 of the Companies Act 1993).

The Creditor's address for service and place for payment of the money hereby demanded is c/-Gilligan Rowe & Associates Limited, PO Box 9918 Newmarket Auckland, Level 6 135 Broadway Newmarket AUCKLAND Fax +649-522-7970.



**PARRY FIELD**

**Parry Field Lawyers**  
PO Box 1725, Christchurch 8140  
New Zealand  
[www.parryfield.com](http://www.parryfield.com)

2 October 2009

City:  
L15, Forsyth Barr House  
764 Colombo Street  
Phone: (03) 379 4383  
Fax: (03) 366 3336

Bank Of New Zealand

Fax 03 348 8726

Attention: Vaughn Fraser

Also at  
Riccarton:  
1 Rimu Street  
Phone: (03) 348 8480

**Heat Exchanger Services Limited a/c 02-0800-0658732**

We act for Julian Parbery.

As you are aware, Julian is one of two directors, and owns 50% of the shares of Heat Exchanger Services Limited ("the Company"), personally and through his trust.

Differences have arisen between our client and the other director, Mr James Parbery. It appears that James has removed \$104,500 from the Company account and deposited them into a Kiwibank account in his own name, account number 9006-0342432. This has occurred without the consent of our client, or the formal authorisation of the Company.

**Julian Parbery hereby gives notice that he withdraws his guarantee for this company with respect to all liabilities that are not expressly authorised by both Directors.**

**Julian Parbery hereby gives further notice that he expressly revokes previous operating authorities given to the BNZ by the Company. From 3.00 pm on 2 October 2009, no payments or withdrawals are to be made from the Company's account unless expressly authorised by both Directors.**

Yours faithfully  
**PARRY FIELD**  
Per

**P A Cowey**  
Partner

email: [paulcowey@parryfield.com](mailto:paulcowey@parryfield.com)

cc: Heat Exchanger Services Limited  
153 Madras Street  
Christchurch

cc: Graeme Skeates Law  
09 361 3132

**PARTICULARS OF DIRECTORS**

OK

[Print This Page](#)

**898541 HEAT EXCHANGER SERVICES LIMITED**

**Registration Date:** 05 OCT 2009

**Time:** 11:05:18

**Document Type:**

Online Particulars of Directors

**Submitted By:**

J.Parbery  
153 Madras Street  
Christchurch

**Updated Director Details**

PARBERY, Julian David

28 Dunn Street, Somerfield, Christchurch 8024

**Resigned**

29 Sep 2009

**Exhibit Note**

This is the annexure marked "E" referred to in the annexed affidavit

of JULIAN DAVID PARBERY

which was sworn at Christchurch

this 4<sup>th</sup> day of November before me:

Signature

*A Solicitor of the High Court of New Zealand  
(Solicitor to sign in part on Exhibit)*



Financial Investigations & Security Team  
Kiwibank Head Office  
Level 12, 155 The Terrace  
Private Bag 39 888, Wellington  
New Zealand.

Phone: (04) 460 5308

Fax: (04) 460 9121

Email: [natania.chase@kiwibank.co.nz](mailto:natania.chase@kiwibank.co.nz)

To P A Cowey  
Company Parry Field Lawyers  
Fax no. (03) 366 3336  
From Natania Chase  
Date 2 October 2009  
No. pages 1 Including this cover sheet

Kiwibank account 38-9006-0342432-00

Dear Sir

We have received the letter faxed this afternoon in relation to the above-named account and Heat Exchanger Services Limited.

In reply to your letter, one of the duties of the bank is to give customers access to their funds. We require evidence to show that should the bank allow funds to be paid away we will be assisting unlawful activity.

We would need a statutory declaration with supporting evidence, an affidavit or court order to place a hold or freeze on the account.

Should you wish to discuss this further you can contact Tim Bennett on 027 2715 666.

Regards,

  
Natania Chase  
Financial Investigations & Security

### Exhibit Note

This is the annexure marked "F" referred to in the annexed affidavit of JULIAN DAVID PARBERY which was sworn at Christchurch this 4<sup>th</sup> day of November before me:

Signature \_\_\_\_\_

A Solicitor of the High Court of New Zealand  
(Solicitor to sign in part on Exhibit)

Caution: This facsimile message is confidential. If you are not the intended recipient, you are notified that any use, dissemination, distribution or copying of this message or data is prohibited. If you have received this facsimile in error, please notify us immediately and return the original to us. Thank you.

Parry Field Lawyers  
Christchurch

CHRIS PATTERSON  
LL.B. B.Com, Hond

Attention: P A Cowey

**BY EMAIL:** [paulcowey@parryfield.com](mailto:paulcowey@parryfield.com)

Tuesday 6 October 2009

### HEAT EXCHANGER SERVICES LIMITED

1. I recently received instructions from Skeates Law to act for Heat Exchangers Services Limited ("HES"). I have been provided with a copy of your letter dated 30 September 2009. My letter should be read in conjunction with the particulars of the allegations against your client that were set out in my client's letters to him dated and served on him during 30 September 2009,
2. Your client and his brother James Parbery founded HES on the 16 August 1998. I understand from James Parbery that it was he (James Parbery) who had the majority control in respect to the day to day operations of HES. During July 2007 your client left HES so that he and his wife, Jie Zhao ("Lisa"), could pursue their own interests in mainland China.
3. Your client and Lisa (with the assistance of her family and associates) set up a factory in mainland China to manufacture products using a company called Guangzhou Zhengrun Heat Exchanger Manufacturing Limited ("GHHEM"). It has transpired that this was a bigger joint venture than disclosed at the time, which could operate in competition with HES. My client had no knowledge of your client's conflict of interest at the time, and no attempt was made to discharge the conflict.
4. HES was unaware of your client's activities while in mainland China. Importantly, HES was unaware that your client had provided GHHEM with HES' confidential information, trade secrets and know how. Specifically, your client while still a director of HES and continuing to owe HES the duties of a

director was replicating HES' manufacturing source. Your client was simply copying the products which HES has historically sourced for itself in China. Additionally, and unknown to HES, your client had arranged and co-ordinated the theft of HES' intellectual property from one of its suppliers Ningbo Halei Plate Heat Exchanger Company Limited and Guangzhou Huadu Heat Exchangers. Specifically, Scania Volvo and ZF Cooler dies. HES had commissioned Ningbo Halei Plate Heat Exchanger Company Limited and Guangzhou Huadu Heat Exchangers to produce the dies. As such, the intellectual property contained in the design of the dies is owned by HES which your client has stolen.

5. Your client operated GHHEM which I understand was not terribly successful. However, your client was producing products that were counterfeit to the products owned by HES and were in direct competition with HES' interests.
6. Your client returned to New Zealand with Lisa Zhou on or about 20 April 2009. Your client and Lisa Zhou then unilaterally appointed themselves as employees of HES. I have read the notices of suspension pending investigation letters dated 28 September 2009 that was sent to your client and Lisa Zhou. I have requested and obtained the further particulars of the allegations against your client.
7. I am instructed that your client, especially since his return in April 2009 has spent little to no time whatsoever furthering the interests of HES. Rather, he simply used HES' staff, resources and property to further his own business interests. Your client, in short, was operating his business out of HES without disclosing the nature and extent of his activities which he was conducting in secret.
8. Your clients business has been marketed through a number of channels including the following website [www.alibaba.com](http://www.alibaba.com).
9. HES sent your client to the United States during the early years of the business for the purpose of learning to overhaul Caterpillar Radiators in order to bring the knowledge and experience gained back to New Zealand for HES' benefit. He did so at the time, however he has subsequently set himself up

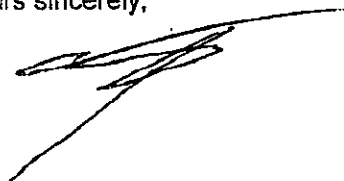
as a franchisor and then began attempting to sell franchises using the information that he obtained while in the United States at HES' expense.

10. Your client is also engaged in a course of conduct with the purpose of undermining, damaging and/or destroying critical business relationships between HES and at least two of his suppliers. Your client's actions have caused at least two suppliers to terminate their terms of trade with HES and impose a requirement that HES pay them various sums of money and cash in advance before being supplied with product. Specifically, the two suppliers that HES is aware of that your client has unlawfully interfered with its contractual relationships with are Foshan Kanui and also China National Machinery.
11. Your client without the authority to do so has removed HES products from its premises. Specifically, 13 cores which have an approximate value of \$1,500 each or total value of \$19,500. HES requires your client to immediately arrange for the return of the product or to account to it.
12. Your client has not only deliberately sought to damage relationships with HES suppliers he also deliberately interfered with HES' employment relationships with its staff. Specifically, he made a number of false accusations to Gayle Lord who is one of HES' employees. He made the false accusations to her with the purpose of obtaining an adverse reaction from her. He then without any authorisation, justification or following any process issued her with a warning threatening to terminate her employment when she understandably reacted to his unfounded and vexatious allegations.
13. Your client also reconfigured at least one security camera and installed audio recording equipment for the purpose of covertly recording HES' staff without either their or HES' knowledge. Your client's actions in doing so have exposed HES to liability for legitimate complaints in respect of breaches of the Privacy Act 1993.
14. Your client has approached a number of HES' staff in an attempt to solicit them. He has offered the staff share capital in his competing business if they were willing to agree to terminate their employment relationships with HES and come and work for him. Attached is a statement that HES has received

from Chris Casserly which will be used as evidence of your client's flagrant disregard for his duties and obligations.

15. Your client has, via your letter of Friday, 2 October 2009, approached my client's bankers (BNZ and Kiwibank) for the purposes of interfering with my client's relationships with its bankers.
16. Finally, your client has threatened to contact the Inland Revenue Department for the purpose of encouraging the IRD to conduct an audit of my client. Obviously, my client will incur significant costs which would have otherwise been avoidable if the IRD decides to conduct an audit following your client's request.
17. After several attempts to settle this matter privately On the basis of the above, I have advised HES that it has strong claims against your client for breaching his implied (as a matter of law) duties of good faith, his fidelity, confidentiality, trust and confidence. Additionally, your client would be liable for a penalty pursuant to section 134(2) of the Employment Relations Act 2000.
18. I have also advised my client that it has strong claims against your client for breaching the tort of confidence, deceit, unlawful interference with contractual relations, inducing a breach of a statutory duty, misuse of confidential information, unlawful means conspiracy, breaches of the Fair Trading Act 1986 and the Companies Act 1993.
19. I have been instructed to issue proceedings seeking injunctive relief in both the High Court and the Employment Relations Authority unless the following attached undertakings are provided by no later than 5pm, Friday, 9 October 2009. I have also been instructed to seek damages (including exemplary damages) and an enquiry into your client's profits and costs on a solicitor client basis.
20. Please advise whether you are authorised to accept service on behalf of your client and Lisa Zhao.

Yours sincerely,

A handwritten signature in black ink, consisting of several overlapping, fluid strokes that form a stylized, somewhat abstract shape.



**PARRY FIELD**

8 October 2009

Graham Skeates Law  
7 Maidstone Street  
Grey Lynn  
Auckland 1021

**By Fax: 09 361 3132**

**Parry Field Lawyers**  
PO Box 1725, Christchurch 8140  
New Zealand  
www.parryfield.com

City:  
L15, Forsyth Barr House  
764 Colombo Street  
Phone: (03) 379 4383  
Fax: (03) 366 3336

*Also at*  
Riccarton:  
1 Rimu Street  
Phone: (03) 348 8480

**Heat Exchanger Services Limited**

We refer to Mr Patterson's letter of 6 October 2009, emailed to us directly.

**Appointment of company solicitor**

Mr Patterson appears to labour under the misapprehension that he had been appointed to act for Heat Exchanger Services Limited ("HES") by you. That is incorrect.

HES has always been represented by Mr Trevor Quirk of Layburn Hodgins. The Directors have never resolved to appoint other solicitors. Our client remains unconvinced of the merits of HES appointing a lawyer in Grey Lynn, although as a director he is open to consider it if the issue is raised.

Mr James Parbury ("James") does not have authority to instruct counsel on behalf of HES, being only 1 of the 2 directors. To have purported to do so, is first a breach of the undertaking contained in paragraph 13 of his letter to Julian dated 28 September 2009; and secondly a breach of his duties as a director. Notwithstanding his adoption of the title "General Manager", he has never been so appointed.

If you and Mr Patterson are company lawyers, you will both be obliged to provide our client, as a director, with copies of your terms of engagement, counsel's brief and all correspondence you have exchanged with HES and James.

If you are simply instructed by James however, you are on notice that none of the fees of you or Mr Patterson are to be paid from HES funds; nor from Kiwibank account number 9006 0342432 (being James' wife's account into which \$104,500 of company funds were recently diverted without the approval of both directors of HES.)

**Mr Patterson's letter of 6 October 2009**

It would seem unnecessary to respond substantively at this point to what, with respect, amounts to little more than a list of disputed facts.

The demand for undertakings is unhelpful. Items 1-10 reflect the current obligations of a director which our client understands and fully intends to fulfil. Items 11-15 are unnecessary and may inhibit our client performing his duties as a director.

**The Substance of the Dispute**

This is a dispute between 2 equal shareholders, and is likely to be treated as a quasi partnership. There seem to be three alternative outcomes:

1. HES is put into liquidation;
2. The Court orders one shareholder to buy the other out; or
3. The parties negotiate an orderly disengagement of their affairs - using mediation, arbitration or negotiation.

Mr Patterson advises that he has been instructed to issue proceedings in the name of HES against our client. HES has issued no such instructions. That course of action is contrary to section 165(6) of the Companies Act 1993, and we are confident that you and Mr Patterson are aware of that.

On the authorities, we consider it to be extremely unlikely that a Court would have much enthusiasm for a derivative action being taken in the name of HES against our client.

Our reading of the law is that the steps taken by James to keep our client away from the HES premises (changing locks and appointing a security guard) appear to be a trespass to the person and oppressive conduct. Diverting HES funds into James' wife's account and unilaterally stopping our client's wages and drawings is clearly a breach of James' directors duties and also likely to be held to be oppressive conduct. Although our client prefers to focus his present efforts on resolving the dispute, he reserves all his rights against James.

#### **Audit**

We note the Company is now in default of its obligations under the Companies Act to provide an annual report and audited accounts by 31 August 2009.

Our client has previously requested an audit of the accounts to 31 March 2009, which James has resisted. Because our client as a shareholder does not consent to the non-appointment of an auditor, an audit is inevitable.

Our client suggests that either Staples Rodway, BDO Spicers or Deloitte be appointed to conduct the audit of the accounts to 31 March 2009. Please advise James' preference by return.

If James does not consent to one of these, please provide the names of three auditors he approves of before midday on 13 October 2009.

Yours sincerely  
**PARRY FIELD**



**Paul Cowey**  
Partner  
email: paulcowey@parryfield.com

cc Layburn Hodgins

Attn: T Quirk