

**IN THE HIGH COURT OF NEW ZEALAND  
CHRISTCHURCH REGISTRY**

**I TE KŌTI MATUA O AOTEAROA  
ŌTAUTAHI ROHE**

**CIV-2025-409-753  
[2026] NZHC 1822**

UNDER Part 16 of the Companies Act 1993 and part  
31 of the High Court Rules 2016

IN THE MATTER of an application for liquidation of the  
defendant companies

BETWEEN FINANCIAL MARKETS AUTHORITY  
Plaintiff

AND CHANCE VOIGHT INVESTMENT  
CORPORATION LIMITED  
First Defendant

AND CHANCE VOIGHT INVESTMENT  
PARTNERS LIMITED  
Second Defendant

AND CVI PARTNERS MORTGAGE FUND  
LIMITED  
Third Defendant

[continued over page]

On the papers

Counsel: R S May and S T Harley for Plaintiff

Judgment: 26 June 2026

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**JUDGMENT OF ASSOCIATE JUDGE GAMBRILL  
[Costs]**

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This judgment was delivered by me on 26 June 2026 at 3.30 pm  
pursuant to Rule 11.5 of the High Court Rules

Registrar/Deputy Registrar

AND CVI PARTNERS MORTGAGE INCOME  
FUND LIMITED  
Fourth Defendant

AND CVI SECURITIES LTD  
Fifth Defendant

AND CVI FINANCIAL LIMITED  
Sixth Defendant

[1] This Court placed each of the defendant companies (the Companies) in interim liquidation on 9 December 2025.<sup>1</sup> The interim liquidators provided a report to the Court in relation to their investigations regarding the Companies' affairs.

[2] Mr Whimp has previously appeared with leave to represent the Companies. On behalf of the Companies, he applied for an order suppressing the interim liquidators' report from publication and seeking other orders. Osborne J essentially dismissed that application for suppression on 31 March 2026, although Osborne J did make some minor redactions at Mr Whimp's request (the Judgment).<sup>2</sup>

[3] In accordance with the directions of Osborne J,<sup>3</sup> the Financial Markets Authority (FMA) has filed memoranda as to costs. The FMA also seeks an order that Mr Whimp be liable to pay those costs.

[4] Mr Whimp asked for extensions of time for the purpose of engaging counsel. Mr Whimp's most recent request was for an extension of time to 20 May 2026. While I did not grant Mr Whimp's request, that date has now passed without Mr Whimp filing any memorandum contesting the FMA's costs claim.

### **The FMA's costs claim**

[5] The FMA seeks costs on a 2B basis (with two minor exceptions) in the sum of \$14,579. The FMA also seeks disbursements of \$2,370.85, comprising Court filing and hearing fees, courier costs, and senior counsel's travel, accommodation and meal costs for the hearing.

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<sup>1</sup> *Financial Markets Authority v Chance Voight Investment Corporation Ltd* [2025] NZHC 3825.

<sup>2</sup> *Financial Markets Authority v Chance Voight Investment Corporation Ltd* [2026] NZHC 805.

<sup>3</sup> At [80(d)].

[6] The FMA has proposed two exceptions to the categorisation of the proceeding as band B for time allocations:<sup>4</sup>

- (a) The FMA considers that a comparatively small amount of time was reasonable (band A) for additional preparation of oral submissions for the hearing (step 24); and
- (b) The FMA considers that a comparatively large amount of time was reasonable (band C) for the preparation of the bundle for hearing (step 25) (which the FMA completed).

[7] I accept the rationale for these two exceptions. I also consider that the amount that the FMA claims for costs and disbursements is appropriate. I fix costs and disbursements in the amounts that the FMA has claimed.

#### **Mr Whimp's personal liability for costs**

[8] The FMA would not have incurred these costs if Mr Whimp had not made an application on behalf of the Companies. The question is whether, having made the application on the Companies' behalf, Mr Whimp should be liable for those costs.

[9] The Court has the jurisdiction to order costs against non-parties,<sup>5</sup> including directors of company parties.<sup>6</sup> I adopt the approach set out by Associate Judge Paulsen in *Robbies Bar and Bistro Ltd v Robbins Bar and Bistro Franchising Ltd (in liq)*, and his review of the authorities in relation to non-party costs.<sup>7</sup> As His Honour observed:<sup>8</sup>

[29] A director of a company engaged in litigation will often have a personal interest in the matter which operates alongside the duty to creditors and shareholders. Costs will not normally be ordered where a non-party director is genuinely acting in the interests of the company, rather than their own interests. So, the facts of directorship and their financial involvement in the conduct of the proceeding are insufficient on their own to make a director, who has not been named

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<sup>4</sup> High Court Rules 2016, r 14.5(2).

<sup>5</sup> *S H Lock (NZ) Ltd v New Zealand Bloodstock Leasing Ltd* [2011] NZCA 675 at [14] citing *Dymocks Franchise Systems (NSW) Pty Ltd v Todd* [2004] UKPC 39, [2005] 1 NZLR 145 at [7].

<sup>6</sup> *Robbies Bar and Bistro Ltd v Robbins Bar and Bistro Franchising Ltd (in liq)* [2020] NZHC 3484 at [29]–[31].

<sup>7</sup> At [27]–[33].

<sup>8</sup> Footnotes omitted.

as a party to the claim, personally liable for costs. In the words of William Young P ... “[s]omething more is required”.

[10] The FMA has asked me to draw inferences from Mr Whimp’s conduct. The FMA’s principal submission is that, although Mr Whimp was, ostensibly, acting in the names of the Companies (and had been granted leave for that purpose), he pursued the application for his own benefit rather than that of the Companies.

[11] Mr Whimp was acting as a director of the Companies when they were in interim liquidation. Unlike the directors of a company in liquidation, the directors of a company in interim liquidation have the right to instruct counsel on a company’s behalf to conduct litigation to challenge the appointment of liquidators, on both an interim and final basis.<sup>9</sup> Without deciding the point, it is likely that directors’ residuary powers would include the power to instruct counsel to bring appropriate interlocutory applications against the interim liquidators on a company’s behalf.<sup>10</sup>

[12] It is a matter of consequence for a Court to find that a director was acting in his or her own interests in breach of the director’s duty to act in the interests of the company. There is no finding of fact in the Judgment that Mr Whimp was acting for his own benefit. Although the FMA asks me to draw inferences regarding Mr Whimp’s motivations, I am conscious that the Court did direct some modest redactions to the interim liquidators’ report at Mr Whimp’s request, (in many cases, with the FMA’s concurrence).<sup>11</sup> It appears that the FMA accepted that, at least in part, some of Mr Whimp’s requests for non-publication were appropriate (even if they might have related to people other than the companies on whose behalf Mr Whimp appeared).

[13] The FMA did not ask the Court to reserve any aspect of costs questions pending any appointment of liquidators, nor did it ask the Court to adopt any other process for determining whether Mr Whimp should be liable. On the material before me, I am not

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<sup>9</sup> *Re Union Accident Insurance* [1972] 1 All ER 1105; see also *Han v Kuan Yap & Associates Ltd* [2018] NZHC 222 at [7] where the Court articulated the same principle, albeit without citing authority.

<sup>10</sup> *Re Union Accident Insurance*, above n 9, at 1113.

<sup>11</sup> *Financial Markets Authority v Chance Voight Investment Corporation Ltd*, above n 2, at [71]–[72].

satisfied that the FMA has demonstrated that there was “something more”<sup>12</sup> that would make it appropriate to order that Mr Whimp should pay the FMA’s costs personally.

[14] I order that the FMA is entitled to its costs of \$14,579 and disbursements of \$2,370.85, and that the defendants be jointly and severally liable for those costs.

**Associate Judge Gambrill**

Solicitors:

Luke Cunningham Clere, Wellington (for Plaintiff)

Counsel: J S Cooper KC and J C Adams, Barrister, Auckland

Anthony Harper, Christchurch (for Interim Liquidators)

Copy to:

Mr B T Whimp

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<sup>12</sup> *Robbies Bar and Bistro Ltd v Robbies Bar and Bistro Franchising Ltd (in liq)*, above n 6, at [29] citing *Kidd v Equity Realty (1995) Ltd* [2010] NZCA 452 at [16].