



Receivers' First Report

Arena Capital Limited (In Receivership) ('the Company') Company No. 5104841

24 July 2015 | ARE30611

Introduction

Grant Robert Graham and Neale Jackson of KordaMentha were appointed Receivers and Managers of Arena Capital Limited on Wednesday, 27 May 2015. The appointment was made by order of the High Court, Christchurch Registry, pursuant to s 522 of the Financial Markets Conduct Act, on the application of the Financial Markets Authority ('FMA'). This application followed court orders that were obtained by the FMA on 15 May 2015 preserving the assets of Arena Capital Limited and associated entities and persons.

Restrictions

This report has been prepared by us in accordance with and for the purposes of Section 23 of the Receiverships Act 1993. It is prepared for the sole purpose of reporting on the state of affairs with respect to the property in receivership and the conduct of the receivership. In compiling this report we have relied on the accuracy of all relevant information provided by the Company. While all care and attention has been taken in compiling this report, we do not accept any liability whatsoever arising from this report.

All information contained in this report is for the confidential use of the parties to which it is provided, in accordance with Sections 26 and 27 of the Receiverships Act 1993 and is not to be disseminated or passed to any other person without prior written authority or in accordance with the law.

Background

- Arena was incorporated on 2 April 2014 and traded under the name BlackfortFX. It marketed itself as a foreign exchange trader.
- The sole director is Jimmie Kevin McNicholl. Mr Lance Ryan also appears to have had a key involvement in the company.
- Arena started receiving deposits into its bank accounts from various sources (including clients) in May 2014.
- Our inquiries indicate that clients placed funds with Arena on the understanding that they would receive a profit from trading undertaken by Arena in the foreign exchange markets, through a Swiss trading entity. We understand that at least some clients (possibly all) were given a guarantee. After investing money, we are advised that many clients were provided with statements which purported to report that the client had earned profits. Our investigations so far suggest that the profits reported were fictitious.

Foreign exchange trading account

- Our inquiries indicate that all trading in the foreign exchange markets was said to have been conducted via a foreign trading platform, Dukascopy Bank, Switzerland.
- Dukascopy Bank has confirmed that Arena does not have (and never has had) an account with Dukascopy.
- We have no information suggesting that Arena has conducted foreign exchange trading via any other means.
- We have not identified any evidence that Arena has traded in the foreign exchange markets or that it has generated profits for itself or clients.

Assets

- Pursuant to asset preservation orders obtained by the FMA and the Receivers' powers, the funds remaining in the Arena bank accounts and other assets of Arena have been secured. The bank account holds approximately NZD728k. We have taken possession of four vehicles (three of which are luxury vehicles). We are also pursuing some other minor potential assets.
- Arena does not have a list of any debts owed to it.
- We are aware of a number of parties who have received money from Arena. We have written to people who received payments from Arena for profits that did not exist. Our view is that those fictitious profits need to be repaid. This is consistent with the result in the recent judgment in the Ross Asset Management insolvency administrations, which (in this respect) have similar characteristics to Arena. We are engaging with a number of people in this regard but we expect this process will take some time.
- We have identified numerous related party transactions. Our view is that Arena is entitled to recover money or assets in respect of these transactions. We have started the process of making recoveries against related parties.
- No assets have been disposed of since our appointment.

Liabilities

- Based on the information available to us, the Company's liabilities as at the date of our appointment are as follows:
 - Deposits to the Arena bank account, from all sources, totalled approximately \$9 million. A substantial portion of this money came directly from clients. We have reconstructed individual client 'accounts' based on transactions through Arena's bank account statements as we do not consider the company's records are reliable. Our current analysis shows Arena transacted with approximately 1,100 individual clients. We also know that some money has been repaid to clients. The amount of capital contributions remaining owing to clients is estimated at approximately \$7 million. We are also aware that some clients claim to have a specific interest in specific assets. We will be able to deal with these claims once we establish the overall client position.
 - An employee has filed a claim for unpaid wages, holiday pay and termination notice totalling \$17k. We are investigating the status of three other employees and/or contractors who may have been engaged by either Mr McNicholl or Mr Ryan to provide services to Arena. The quantum of their claims is yet to be determined.
 - We do not yet have a claim from the Inland Revenue Department ("IRD"). We are advised that payroll tax totalling \$42,423.60 retained by Datacom will be released to IRD in regard to outstanding payroll tax due to the IRD.
 - An unsecured creditor has filed a claim of \$1,300 against Arena.
- There are no financing statements registered against the Company on the Personal Property Securities Register.

Next Steps

- We have applied to have ourselves appointed as liquidators (rather than receivers) of Arena. Arena is clearly insolvent and this would provide us with greater powers to recover and realise assets. It may also assist with the distribution of surplus assets. The Court will consider the liquidation application on 24 July 2015.
- Our key focus will now be on asset recovery actions. We are not in the position to make any payments to creditors (including clients) until we have confirmed the company's debts and the nature of creditor claims. We expect we will need to ask the Court to determine the basis for any distribution to creditors.
- We note that we have received co-operation from the Company's director.

For further details on the receivership, a copy of our client updates is available for download from our website at <http://kordamentha.com/creditor-information/new-zealand/146>

Should you have any queries in relation to the contents of this report, please do not hesitate to contact Macy Law of this office.

Yours faithfully



Neale Jackson
Joint Receiver