

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

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

**CIV-2025-404-003217
[2026] NZHC 376**

UNDER the Companies Act 1993
IN THE MATTER OF the liquidation of Vijay Holdings Limited (in
Liquidation)
BETWEEN DAMIEN GRANT
Applicant
AND KIWI HIRE AND SALES LIMITED
Respondent

Hearing: 23 February 2026

Appearances: B McLeish and K Cocks for the Applicant
A S Nair and M A Deleat for the Defendant

Judgment: 27 February 2026

JUDGMENT OF GARDINER J

*This judgment was delivered by me on 27 February 2026 at 4.00 pm
pursuant to r 11.5 of the High Court Rules 2016.*

Registrar/Deputy Registrar

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Solicitors:
Waterstone, Auckland
Nair & Associates, Auckland

Introduction

[1] Damien Grant, as the liquidator for Vijay Holdings Limited (in liquidation) (Vijay) (Liquidator), applies to set aside certain transactions made to Kiwi Hire and Sales Limited (Kiwi Hire). Mr Grant seeks an order for the repayment of the transactions plus interest and costs.

Background

[2] Vijay was a construction company, incorporated on 29 March 2000. Vijay had entered into a fixed price development agreement with Everest Central Investment Limited (Everest) on 31 January 2019 to fund the construction of the Nido store in Henderson, Auckland (Project). Everest was not required to continue funding the Project if costs exceeded the fixed contract price of \$37,800,000. The cost of the Project exceeded \$37,800,000. The fixed price was never adjusted, and Everest ceased funding the Project in August 2020. Vijay was placed into liquidation on 6 November 2020 by shareholder resolution. The Project was Vijay's only ongoing project prior to its liquidation.

[3] Kiwi Hire is a supplier of construction equipment. It was a subcontractor of Vijay for the Project and had previously provided Vijay with services.

Application

[4] On 9 September 2024, the Liquidator issued a notice to Kiwi Hire to set aside as voidable transactions eleven payments totalling \$63,000 which Vijay made to Kiwi Hire in the six months before Vijay was put into liquidation. These were:

Date	Payee Code	Value
15 June 2020	Feb Inv	\$10,000
24 June 2020	March Inv	\$5,000
22 July 2020	Kiwi Hire	\$10,000

13 August 2020	Kiwi Hire	\$5,000
9 September 2020	Kiwi Hire	\$5,000
9 September 2020	Kiwi Hire	\$5,000
10 September 2020	April Inv	\$5,000
18 September 2020	April Inv	\$5,000
27 September 2020	Kiwi Hire	\$5,000
6 October 2020	Kiwi Hire &	\$5,000
15 October 2020	Kiwi Hire &	\$3,000

[5] Kiwi Hire served a notice of objection, claiming that the transactions were not voidable because they were made as part of a continuing supplier relationship that began in October 2015 and continued through to Vijay's liquidation on 6 November 2020. Kiwi Hire attached invoices dated from February 2020 to 24 June 2020 for the hire of equipment to 30 June 2020.

[6] The Liquidator filed an originating application, seeking orders that the payments totalling \$63,000 by Vijay to Kiwi Hire were void and for the repayment of \$63,000 to Vijay (in liq). Kiwi Hire filed a notice of opposition, opposing the orders on the grounds that the insolvent transactions were part of a running account between Vijay and Kiwi Hire pursuant to the continuing supply relationship.

[7] In its submissions filed on 10 February 2025, the Liquidator conceded that the first two payments may have been made as part of a continuing supply arrangement and were not voidable. The Liquidator maintains that the nine payments from Vijay to Kiwi Hire from 22 July 2020 up to 15 October 2020 totalling \$48,000 were not and should be set aside.

[8] Kiwi Hire responds by saying that this concession means that the original notice to set aside was defective because it did not recognise that there was a running account between Vijay and Kiwi Hire during the restricted period. The Liquidator did not identify and give Kiwi Hire notice of the single transaction (the net sum of the running account) that they sought to void. Had the Liquidator issued a correct notice identifying the single transaction, Kiwi Hire would have advanced a defence under s 296(3)(c).

[9] The application raises these issues:

- (a) Were the transactions that occurred after 30 June 2020 part of a running account pursuant to a continuous supply relationship?
- (b) Was the notice to set aside defective?

Statutory framework

Insolvent transactions

[10] Section 292(1) of the Companies Act 1993 (Act) provides that where the following two requirements are met, a transaction is voidable:

- (1) A transaction by a company is voidable by the liquidator if it—
 - (a) is an insolvent transaction; and
 - (b) is entered into within the restricted period.

[11] Section 292(2) defines an insolvent transaction as follows:

- (2) An **insolvent transaction** is a transaction by a company that—
 - (a) is entered into at a time when the company is unable to pay its due debts; and
 - (b) enables another person to receive more towards satisfaction of a debt owed by the company than the person would receive, or would be likely to receive, in the company's liquidation.

[12] Section 292(3) sets out the meaning of the word “transaction”. Section 292(4C) sets out that “restricted period” means:

- (b) the period of 6 months before the date of commencement of the liquidation together with the period commencing on that date and ending at the time at which the liquidator is appointed; and
- (c) in the case of a company that was put into liquidation by the court, the period of 6 months before the making of the application to the court together with the period commencing on the date of the making of that application and ending on the date on which, and at the time at which, the order of the court was made; and
- (d) if—
 - (i) an application was made to the court to put a company into liquidation; and
 - (ii) after the making of the application to the court a liquidator was appointed under section 241(2)(a) or (b)—

the period of 6 months before the making of the application to the court together with the period commencing on the date of the making of that application and ending on the date and at the time of the commencement of the liquidation.

Procedure for setting aside an insolvent transaction

[13] The procedure for setting aside a transaction is dealt with in s 294. The liquidator must file a notice that meets certain specified requirements and serve it on the party from whom recovery is sought.¹ The transaction will be automatically set aside as against the recipient of the notice if the recipient does not send the liquidator a written notice of objection within 20 working days.² That notice must give particulars of the reason(s) for the objection and identify any relevant documents that substantiate the objection.³

[14] Where such notice is given, the liquidator may apply to the High Court for a determination that the transaction be set aside. Section 295 identifies the range of orders that the Court may make where a transaction is set aside under s 294.

¹ Companies Act 1993, ss 294(1) and (2).

² Section 294(3).

³ Section 292(4).

Running account principle

[15] Section 292(4B) deals with transactions which are part of a continuing business relationship. Under that provision, a series of transactions will be treated as a single transaction where the individual transactions are an integral part of a continuing business relationship between the parties (as where the parties operate a running account) and the level of the debtor company's indebtedness fluctuates over time as a result of the various individual transactions.⁴ Under this approach, a liquidator will be entitled to claim the net difference of payments made, and goods and services received, from a creditor which has an ongoing business relationship with the debtor company.

[16] As referred to by the Supreme Court,⁵ David Purcell illustrated the running account principle in the following way:

[T]ake a supplier of goods who supplies goods to his [or her] customer on credit terms where the price of goods supplied and payments received are recorded on a running account statement or monthly invoice. For example, assume that a supplier is owed \$100,000 and in the three months prior to the winding up of its customer goods to the value of a further \$200,000 are supplied. In that same period the customer makes payments of \$220,000 to the supplier which have the effect of reducing the supplier's overall debt from \$100,000 to \$80,000. In this situation the supplier's advantage is a net improvement of \$20,000.

Section 296(3) defence

[17] Section 296(3) provides the following defence:

- (1) A court must not order the recovery of property of a company (or its equivalent value) by a liquidator, whether under this Act, any other enactment, or in law or in equity, if the person from whom recovery is sought (A) proves that when A received the property—
 - (a) A acted in good faith; and
 - (b) a reasonable person in A's position would not have suspected, and A did not have reasonable grounds for suspecting, that the company was, or would become, insolvent; and
 - (c) A gave value for the property or altered A's position in the reasonably held belief that the transfer of the property to A was valid and would not be set aside.

⁴ *Allied Concrete Ltd v Meltzer* [2015] NZSC 7 at [21].

⁵ At [21].

Undisputed matters

Transactions occurred within restricted period when Vijay was unable to pay its debts

[18] If a transaction is entered into within the restricted period it is presumed, unless proven otherwise, to be entered into at a time when the company is unable to pay its debts.⁶ Vijay was placed into liquidation on 6 November 2020. The restricted period therefore began on 5 May 2020. Given that, the presumption is that Vijay was unable to pay its due debts during that period.

[19] The Liquidator submits that this presumption is supported by the following:

- (a) the proof of debts received in Vijay's liquidation show unpaid debts to creditors outstanding from as early as June 2019, demonstrating a long period of cash flow issues and a failure to pay its debts as they came due in the course of normal business;
- (b) Vijay's liabilities were greater than its assets up to two years prior to its liquidation, per its 2019 and 2020 financial statements; and
- (c) prior to the start of the restricted period, it was also known that the additional cost increases meant that Vijay did not have sufficient funds to complete the Project.

[20] Kiwi Hire has not presented any evidence to displace this presumption.

Kiwi Hire received more towards satisfaction of its debt than it would have been likely to receive in the liquidation

[21] Kiwi Hire has submitted a claim in the liquidation for \$31,455.75. The Liquidator has received 55 claims from unsecured creditors in the liquidation of Vijay, totalling \$1,888,972.77. The Liquidator's view is that, based on the current realisations, there will be no distributions made to any class of creditor. Therefore, Kiwi Hire has received more towards the satisfaction of its debt owed by Vijay than it

⁶ Companies Act, s 292(4A).

would likely receive in Vijay's liquidation, as the sum of the transactions would be divided up between 55 unsecured creditors on a pro-rated basis.

Were the transactions part of a running account under a continuing supply relationship?

[22] Kiwi Hire's position is that the 11 payments are not voidable because they form part of the continuing business relationship between the companies that began in October 2015.

[23] Kiwi Hire's director, James Worker, has sworn an affidavit deposing that Kiwi Hire had a commercial relationship with Vijay since October 2015, prior to the Project. Construction equipment was hired to Vijay for the Project until the end of June 2020. Vijay's equipment needs fluctuated depending on the building phase. As part of this cycle, Kiwi Hire temporarily removed equipment from the Project site. During this time, no hire charges were billed to Vijay. Hire rates were based on a monthly rate with an hourly minimum of the machine usage. Mr Worker deposes that at the end of June 2020, Kiwi Hire temporarily removed its equipment from the Nido site. Kiwi Hire expected to return, until Vijay was placed into liquidation.

[24] Consequently, Kiwi Hire submits that the payments from Vijay within the restricted period were made as part of the continuing supply relationship, in the expectation of the future supply of machinery for the next phase of the project. The 11 payments are treated as a single transaction.

[25] Mr Worker attaches a print-out from Xero which suggests that Kiwi Hire issued invoices to Vijay between 31 May 2020 and 24 June 2020 amounting to \$33,632.89. Kiwi Hire submits that, the most that can be recovered from Kiwi Hire as a preference payment within the restricted period is \$29,367.11. This is the difference between the \$63,000 paid by Vijay less the \$33,632.89 invoiced by Kiwi Hire as part of a single transaction. Mr Nair in Court submitted that this single transaction should be set off against the account balance at the beginning of the restricted period. Because that balance is not available to him or the Court, he says that it cannot be assessed whether preferential treatment has occurred.

[26] The Liquidator rejects that payments made by Vijay after 30 June 2020 were part of continuing supply. He accepts that, because supply continued from 5 May to 30 June 2020, there may have been a running account and the two payments on 15 June (\$10,000) and 24 June (\$5,000) can be linked to ongoing supply by Vijay to Kiwi Hire.

[27] Because the payments made by Vijay during this period (\$15,000) totalled less than the value of the supply received (either \$19,630 according to the invoices attached the notice of objection or \$33,632 according to Mr Worker's affidavit), Kiwi Hire received less than the value of what is supplied and therefore did not receive a preference from Vijay in its repayment of its debt to Kiwi Hire.

[28] However, the Liquidator's position is that payments made by Vijay to Kiwi Hire after 30 June 2020 when the equipment was removed from the site cannot be subject to a running account defence as they cannot be linked to further supply. The Liquidator submits that it is irrelevant that Mr Worker may have expected to make further supply. No further supply eventuated. The commercial reality of the nine payments from 22 July 2020 totalling \$48,000 is that they reduced the historic debt between Vijay and Kiwi Hire, meaning that Kiwi Hire received preferential treatment over other creditors.

[29] I agree with the Liquidator's submission. When assessing the existence of a running account, the courts are concerned with the "business purpose", the "business character" and the "ultimate effect" of the payments made in an objective sense,⁷ not the intent or state of mind of the debtor.⁸

[30] The reality of the payments following 30 June is that Kiwi Hire received additional payments once it had stopped supplying Vijay that resulted in Vijay's indebtedness to Kiwi Hire being reduced by the amount of the payments, when Vijay was insolvent. This is preferential treatment over other creditors. In the absence of another defence, to allow Kiwi Hire to retain this would be at the expense of other creditors who are equally entitled to have their debts repaid.

⁷ *Timberworld Ltd v Levin* [2015] NZCA 111, [2015] 3 NZLR 365 at [34(e)].

⁸ Richard Gordon and others *Morison's Company Law* (online ed, LexisNexis) at [63.3.6], citing *S Richards & Co Ltd v Lloyd* (1993) 49 CLR 49 at [62].

Was the notice to set aside the transactions defective?

[31] Kiwi Hire submits that, given the Liquidator's acceptance that there was a continuing supply relationship until 30 June 2020, the notice to set aside was defective and this is fatal to the Liquidator's claim.

[32] Kiwi Hire submits that the Liquidator's notice did not properly identify the opening balance at the beginning of the restricted period or the "single transaction" (the net sum of the running account) it sought to void. On accepting Kiwi Hire's objection in part, the Liquidator should have withdrawn its previous notice and issued a new notice. This defect is a substantive error: notices need to adequately identify the transactions that are sought to be set aside.⁹ Kiwi Hire relies on *Levin v Rastkar* and *Reynolds v Lai*.¹⁰

[33] Kiwi Hire says that had a correct notice been issued, it would have advanced a defence under s 296(3)(c) of the Act. Kiwi Hire was providing services to Vijay in the reasonably held belief that it would be paid, and its account with Vijay would be reduced. Because Kiwi Hire has not issued a corrected notice, Kiwi Hire has not had a proper procedural opportunity to answer the claim against it. Further, the improper filing has resulted in unnecessary legal costs.

[34] I do not agree with Kiwi Hire's submission. The two cases referred to involve significantly more prejudicial defects; and, regardless, Kiwi Hire still had the opportunity to make out a s 296(3)(c) defence.

[35] In *Levin v Rastkar*, the liquidator issued a notice which, inter alia, sought the repayment of the difference between accounting entries that showed a reduction in the amount owed by the company to the creditor over the specified period.¹¹ No particular transaction was specified. The Court stated that the voidable transactions provision was "concerned with transactions, not accounting entries".¹² Because of this, there was not sufficient evidence on which a voidable transaction could be found.¹³

⁹ Companies Act, s 294(2).

¹⁰ *Levin v Rastkar* [2011] NZCA 210; *Reynolds v Lal* [2025] NZHC 2640.

¹¹ *Levin v Rastkar*; above n 10, at [7].

¹² At [7].

¹³ At [38].

[36] In *Reynolds v Lal*, the liquidator issued a notice on the respondent that specified a transaction between the company and a third party.¹⁴ The company in liquidation had made a payment in May 2023 to the third party; and in July 2023 the respondent had been debited by the third party the same amount against his bank account. The notice specified the May 2023 transaction and not the transaction involving the respondent. It was therefore not considered to have adequately specified the transaction to be set aside, and this was considered to have prejudiced the respondent's approach to the application.¹⁵

[37] In this instance, notice was issued on Kiwi Hire and the Liquidator essentially made concessions in regard to the two early payments in its submissions. It was not a substantially different transaction. Kiwi Hire still had the opportunity of raising the s 296(3)(c) defence in addition to the running account defence.

[38] In any event, evidence is before the Court indicating that Kiwi Hire would not be able to establish that a reasonable person in its position would not have suspected, and would not have reasonable grounds for suspecting, that Vijay was, or would become, insolvent. This evidence is:

- (a) the transactions from 30 June do not appear to be directly linked to any specific invoice; and
- (b) correspondence before the Court dated May and August 2020 shows that Vijay informed Kiwi Hire that it was experiencing cashflow issues and sought to defer as many payments as possible until the store opened.

Result

[39] For these reasons, I order that the nine payments from 22 July onwards are voidable transactions and, as such, Kiwi Hire must pay the sum of \$48,000 to the Liquidator, with interests and costs.

¹⁴ *Reynolds v Lal*, above n 10.

¹⁵ At [42].

[40] My preliminary view is that costs should be on a scale 2B basis. If the parties are unable to agree on a costs order they may file submissions of not more than four pages within 10 working days.

Gardiner J