



McDonald
Vague

business recovery partners

MARVEL GRILL NORTH WHARF COMPANY LIMITED (In Liquidation)

McDonald Vague Limited

Level 10, 52 Swanson Street,
Auckland Central

PO Box 6092, Wellesley Street,
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Liquidators' First Report to the directors, shareholders, and known creditors of the company

1 INTRODUCTION AND APPOINTMENT

MARVEL GRILL NORTH WHARF COMPANY LIMITED ("the company") was placed in liquidation by the High Court at Auckland pursuant to Section 241(2)(c) of the Companies Act 1993 ("the Act") on 21 November 2019 at 3:00pm. Boris van Delden and Peri Micaela Finnigan, CAANZ Accredited Insolvency Practitioners, of Auckland, were appointed joint and several liquidators of the company.

2 RESTRICTIONS

In preparing this report and its appendices, we have relied upon information provided to us. We have not independently verified or audited that information. Whilst all care and attention has been taken in compiling this report, we do not accept any liability whatsoever to any party as a result of the circulation, publication, reproduction, or use of this report.

We reserve the right (but are under no obligation) to review and, if we consider necessary, amend this report to take into account any information existing at the date of this report that becomes known to us after this report is published.

3 INDEPENDENCE

A declaration of independence is attached at Appendix 2. As far as we are aware there are no conflicts real, perceived, or risks of independence.

4 ATTACHMENTS

The following documents are attached to this report:

- Appendix 1: Statement of Affairs setting out the company's estimated financial position
- Appendix 2: Declaration of independence / relationships / indemnities and upfront payments
- Appendix 3: Schedule of company creditors' names and addresses
- Appendix 4: Notice of Liquidators' decision to dispense with meeting of creditors
- Appendix 5: Notice to creditors to prove debts or claims
- Appendix 6: Creditors claim form

5 COMPANY STRUCTURE AND BACKGROUND

Date of incorporation:	10 May 2011
Company number:	3381101
Nature of business:	Restaurant
Trading address:	East Tenancy 4, North Wharf, Wynyard Quarter, Auckland
Share capital:	100 Shares
Shareholders:	Alisdair Grant Gribben, Cameron Ross Gribben, Hamish Ross Gribben (98 Shares – 98%) Alisdair Grant Gribben (1 share – 1%) Wendy Sutherland (1 share – 1%)
Related companies:	Marvel Grill Queenstown Limited

The company conducted business as a restaurant on the North Wharf, Wynyard Quarter, Auckland. The company's business was sold in June 2019.

We have taken control of the company's bank account, obtained records from the company's legal advisors and conducted an initial interview with the director. We are in the process of reviewing the information obtained. We have also frozen access to the company's online accounting system and are awaiting access from Xero to examine the accounting records.

The director advised that the company suffered from restricted trading from the time it commenced operating. He advised that 60% of the dining area of the business was outdoors and lacked weatherproof dropdown coverings ("dropdowns") that would have enabled patrons to dine in that space in any type of weather. The director further advised that despite being obliged to do so by the lease and various requests to remedy the position, the landlord failed to provide the dropdowns. The director stated that because the company was not able to use 60% of its dining space all year round, it suffered significant losses, especially during winter, which gradually accumulated debt over the years of trading.

The directors believed that the company could have recovered and paid off its debts had it been able to use the full premises year round. At the date of liquidation mediation proceedings between the company and the landlord were in early stages.

The director also stated that the company had signed a sale and purchase agreement in March 2019 for the amount of \$3,000,000 but the landlord either delayed or hindered an extension of the lease, prompting the purchaser to reduce its offer to \$1,600,000, which the directors were forced to accept due to time and creditor pressure.

The director advised that in June 2019 the company had commenced mediation proceedings with the landlord, from whom the company is claiming \$3,900,000 in damages. He advised that the company's lawyer was awaiting a response from the landlord's lawyers to further particulars provided by the company, however proceedings appear to have stalled whilst the liquidation application was before Court.

The bank statements and settlement statements obtained by the liquidators reflect that funds received were distributed to various creditors, both secured and unsecured.

6 STATEMENT OF AFFAIRS

A Statement of Affairs showing the company's estimated financial position as at the date of our appointment is provided at Appendix 1.

7 ASSETS AND PROPOSALS FOR CONDUCTING THE LIQUIDATION

We will recover and realise all available assets and pursue the company's claims against related and third parties.

We will also scrutinise the sale of the company's assets and subsequent distribution of proceeds in case undue preference has been given to certain creditors. We have already identified various payments that appear on face value to be preferential in nature and therefore subject to clawback.

We also intend to further investigate the current claim against the landlord, and if appropriate after consultation with the preferential creditors, may continue proceedings.

We will complete a thorough review of the company's books, records and affairs to:

- ensure that all assets have been properly accounted for,
- determine if there are any other avenues of recovery for creditors,
- determine if the company's officers have properly carried out their duties and take appropriate steps where necessary.

If there are funds available for distribution to creditors, we will verify creditors' claims and make a distribution. We will then complete the liquidation and request that the Registrar of Companies remove the company from the register.

8 LIABILITIES AND CREDITOR CLAIMS

A schedule of known creditors and their addresses is provided at Appendix 3, as required by Section 255(2)(c) of the Act.

A notice to creditors to prove debts or claims is provided at Appendix 5. Also provided is a creditor's claim form at Appendix 5 for completion and return to this office by Friday, 6 December 2019.

Creditors that have not made a claim by the date on the notice may be excluded from any distribution made. If you believe that you are a secured creditor, please contact us and the appropriate form will be sent to you.

8.1 Secured Creditors

As at the date of liquidation there are no secured parties that have registered security interests against the company on the Personal Property Securities Register.

Personal Property Securities Act / Reservation of Title

If any creditor believes that they hold a Purchase Money Security Interest entitling them to any goods or proceeds from realisation of goods, they should contact us immediately.

If any creditor believes that they have a Reservation of Title over goods and they have not perfected their interest, they should also contact us immediately.

8.2 Preferential Creditors

We have requested a creditor's claim form from the applicant creditor. The sealed order of Court reflects the applicant creditor will have a preferential claim for \$17,998 in respect of legal costs and disbursements incurred in bringing the application.

The Inland Revenue Department, which filed a notice in support of the liquidation application, has submitted creditor claim totalling \$1,021,388, of which \$700,868 will be classified as preferential, being in respect of outstanding core GST, PAYE and other payroll taxes.

8.3 Unsecured Creditors

Records obtained by to date indicate that unsecured creditor claims (including the non-preferential portion of the IRD's claim) will amount to \$479,191.

CREDITORS' MEETING / LIQUIDATION COMMITTEE

A notice of the Liquidators' decision to dispense with the meeting of creditors is provided at Appendix 4.

Any creditor or shareholder may at any time in the course of the liquidation request that the liquidators call a meeting pursuant to Section 314 of the Companies Act 1993, for the purpose of appointing a liquidation committee. Any request for a meeting must be submitted to the liquidators in writing.

10 FURTHER INFORMATION

If you are aware of any information that would assist the Liquidators, please set the details out in writing, attach any supporting evidence, and send it to us. Please note that it can be difficult for liquidators to act in reliance on information that is not provided in writing.

If any creditor wishes to receive the six monthly reports by email as and when they are published, please ensure that an email address is provided on your creditors' claim form.

This report and all subsequent reports will be available on the Liquidators' website at www.mvp.co.nz

11 ESTIMATED DATE OF COMPLETION

It is impracticable at this stage to estimate a date for completion of the liquidation.

12 CONTACT DETAILS

Enquiries should be directed to Dalwyn Whisken on DDI (09) 969 5336 or by email to dwhisken@mvp.co.nz.

The Liquidators can be contacted at:

McDonald Vague Limited
Level 10, 52 Swanson Street, Auckland 1010
P O Box 6092, Wellesley Street, Auckland 1141


PERI M FINNIGAN
LIQUIDATOR

DATED this 13 day of December 2019

Appendix 1

Marvel Grill North Wharf Company Limited (In Liquidation)

Statement of Affairs

Statement of Affairs for the above named company as at 21 November 2019 (being the date of liquidation) showing assets at estimated realisable values and liabilities expected to rank.

ASSETS SPECIFICALLY PLEDGED	<i>Estimated to Realise</i>	<i>Estimated due to Secured Creditor</i>	<i>Deficiency Ranking as Unsecured</i>	<i>Surplus</i>
2005 Land Rover Discovery - Heartland Marac	15,000	15,000	-	-
<i>Estimated surplus / (deficiency) as regards specifically pledged assets</i>	\$ 15,000	\$ 15,000	\$ -	\$ -
ASSETS AVAILABLE FOR PREFERENTIAL CREDITORS			<i>Book Value</i>	<i>Estimated to Realise</i>
Accounts receivable			unknown	-
Stock			-	-
Total			<hr style="width: 100%;"/>	<hr style="width: 100%;"/>
			-	-
<i>Less preferential creditors</i>				
Inland Revenue Department				700,868
Total				<hr style="width: 100%;"/>
				700,868
<i>Estimated deficiency as regards preferential creditors</i>				
				<hr style="width: 100%;"/>
				(\$700,868)
ASSETS AVAILABLE FOR GENERAL SECURITY AGREEMENT HOLDER/S			<i>Book Value</i>	<i>Estimated to Realise</i>
Mobile phones and IT equipment			unknown	-
Total			<hr style="width: 100%;"/>	<hr style="width: 100%;"/>
			-	-
AVAILABLE FOR UNSECURED CREDITORS				
LESS UNSECURED CREDITORS				
Non preferential - Inland Revenue				320,520
Unsecured Creditors - Other				158,672
<i>Estimated surplus/(deficiency) as regards unsecured creditors</i>				<hr style="width: 100%;"/>
				(\$479,192)

Notes:

1. The above estimates are subject to the costs of the liquidation.
2. Assets held may be subject to Purchase Money Security Interest ("PMSI") or Reservation of Title claims.

Disclaimer of Liability:

The information contained in the Statement of Affairs has been supplied by the company. We have not verified the information supplied. The Statement of Affairs has been prepared for the purpose of the liquidation and we do not accept any including liability in negligence, to any party. responsibility on any grounds whatsoever,

MARVEL GRILL NORTH WHARF COMPANY LIMITED (In Liquidation)
Declaration of Independence / Relationships / Indemnities and
Upfront Payments

A DECLARATION OF INDEPENDENCE

- (i) The appointed and McDonald Vague Limited have undertaken a proper assessment of the risks of independence prior to accepting appointment in accordance with the law code of conduct and applicable professional standards and have concluded that they have no prior business or professional relationship with the insolvent that is a real or potential risk and that they are independent.

B DECLARATION OF RELATIONSHIPS

- (ii) The appointed and McDonald Vague Limited have no prior business or professional or personal relationship with known associates of the insolvent or the major secured creditors that are a real or potential risk.
- (iii) The appointed disclose there are no other relevant relationships to declare.
- (iv) The appointed and McDonald Vague Limited have not provided any prior professional services to the insolvent or known associates of the insolvent in the prior two years.

C DECLARATION OF INDEMNITIES AND UPFRONT PAYMENTS

- (v) There is no indemnity nor upfront payment.



PERI M FINNIGAN - LIQUIDATOR

DATED this 13 day of December 2019

MARVEL GRILL NORTH WHARF COMPANY LIMITED (In Liquidation)

Schedule of Creditors' Names and Addresses

Pursuant to Section 255(2)(c) of the Companies Act 1993

Creditor Names	Address 1	Address 2	Address 3
Inland Revenue Department	PO Box 76 198	Manukau	AUCKLAND 2241
Link Business Broking Limited c/o Morrison Mallet	PO Box 191	Shortland Street	AUCKLAND 1140
Eftpos New Zealand Limited	PO Box 3457	WELLINGTON 6140	

Notice of Liquidators' Decision to Dispense with Meeting of Creditors

After having regard to the assets and liabilities of MARVEL GRILL NORTH WHARF COMPANY LIMITED (In Liquidation) and the likely result of the liquidation, the liquidators propose to dispense with a meeting of creditors pursuant to Section 245 of the Companies Act 1993.

The liquidators do not, however, wish to preclude creditors from expressing their views. Please contact Dalwyn Whisken of this office on DDI (09) 969 5336 if you have any specific enquiries.

If you wish to request that a creditor's meeting be called, notice in writing is required within 10 working days of receiving this notice. Your notice you must also state the reason you require a meeting so that an agenda can be prepared and circulated to creditors and creditors can be given the opportunity to vote on any proposed resolutions by voting letter.


PERI M FINNIGAN
LIQUIDATOR

DATED this 12 day of December 2019

Appendix 5

IN THE MATTER of The Companies Act 1993

and

IN THE MATTER of MARVEL GRILL NORTH WHARF COMPANY LIMITED (In Liquidation)

Notice to Creditors to Prove Debts or Claims

Notice is given that the liquidator of MARVEL GRILL NORTH WHARF COMPANY LIMITED (In Liquidation) ("the company"), fix 21st January 2020, as the day on or before which the company's creditors are to make their claims and establish any priority their claims may have under Section 312 of the Companies Act 1993. Creditors not having made a claim by this date may be excluded from any distribution made.


PERI M FINNIGAN
LIQUIDATOR

DATED this 13 day of December 2019

ADDRESS OF LIQUIDATOR

McDonald Vague Limited
Level 10, 52 Swanson Street
AUCKLAND 1010

PO Box 6092
Wellesley Street
AUCKLAND 1141

Telephone: (09) 303 0506
Facsimile: (09) 303 0508
Website: www.mvp.co.nz

DATE OF LIQUIDATION: 21st November 2019



McDonald
Vague

McDONALD VAGUE LIMITED

PO Box 6092, Wellesley St, Auckland 1141, New Zealand.
Telephone 0-9-303 0506, Facsimile 0-9-303 0508

Unsecured Creditor's Claim

(Also for use by Preferential Creditors)

SECTION 304(1) COMPANIES ACT 1993
(For help see www.mvp.co.nz or email
claims@mvp.co.nz)

NAME AND POSTAL ADDRESS OF CREDITOR IN FULL

* Any personal information collected is for the purpose of administering the liquidation in accordance with the Companies Act 1993.

The information will be used and retained by the liquidators and McDonald Vague and will be released to other parties only with your authorisation or in compliance with the Privacy Act 1993.

Under Section 304(1) of the Companies Act 1993 any claim by an unsecured creditor against a company in liquidation must be in this prescribed form and must –
(a) Contain full particulars of the claim; and
(b) Identify any documents that evidence or substantiate the claim.

You may have access to and request correction of any personal information.

(*Not applicable, if creditor is not an individual within the meaning of the Privacy Act 1993.)

Telephone Numbers: ()
()

E-Mail

My Reference is:
(if applicable)

NAME OF COMPANY IN LIQUIDATION:

(IN LIQUIDATION)

(If claim is made on behalf of creditor, specify relationship to creditor and authority)

claim that the company was at the date it was put into liquidation indebted to the abovenamed creditor for the sum of (Amount in words):

STATUS OF CLAIM:

1. I am an unsecured creditor for
(Also applicable to secured creditors who hereby surrender their security)

\$

2. I am a preferential creditor for
(Refer details on reverse)

\$

3. My total claim is for
(State currency if other than \$NZ)

Other
Currency

NZ \$

4. I have claimed retention/reservation of title rights pursuant to rights held by me

Note: If you are a secured creditor contact this office and a Secured Creditors Claim Form will be sent to you.

Tick if Applicable
(Refer details on reverse)

Full particulars of the claim are set out, and any supporting documents that substantiate the claim, are identified on the reverse of this form.

(The liquidator may require the production of a document under Section 304(2) of the Companies Act 1993. You are **not required to attach any supporting documents** at this stage, but you may attach them now, if you think it would expedite the processing of the claim.)

SIGNED:

Date: / /

WARNING —

It is an offence under Section 304(6) of the Companies Act 1993 to –

Make or authorise the making of, a claim that is false or misleading in a material particular knowing it to be false or misleading; or

Omit, or authorise the omission from a claim of any matter knowing that the omission makes the claim false or misleading in a material particular.

Received
(Date Stamp)

RESERVED FOR OFFICE USE:

Claim admitted/rejected
for voting purposes:
(Delete one)

Signed:

Date: / /

Preferential Claim for:

Ordinary Claim for:

CLAIM REJECTED
FOR PAYMENT:

\$

\$

or
CLAIM ADMITTED
FOR PAYMENT:

Preferential Claim for:

Ordinary Claim for:

\$

\$

Signed
Liquidator:

Date: / /



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Note: If the decision to admit or reject a claim is amended, regulation 8 of the Companies Act 1993 Liquidation Regulations 1994 requires that it be recorded in writing.



McDONALD VAGUE LIMITED
PO Box 6092, Wellesley St, Auckland 1141, New Zealand.
Telephone 0-9-303 0506, Facsimile 0-9-303 0508

If the creditor owes money to the company, please give full details.

Date	Details of Claim and Identification of Documents that Evidence or Substantiate the Claim	Amount \$

CLAIMS AGAINST INVENTORY (Romalpa Claims)(Consignment Goods) (Retention of Title) etc.

Please provide details of the basis of the retention of title claim filed by you and/or details of entry on the Personal Property Securities Register.

PREFERENTIAL CLAIMANTS ONLY

Guideline

The Seventh Schedule of the Companies Act 1993 sets out those claims which are regarded as preferential and shows their extent and order of priority. For example, wages and salary of any employee in respect of services rendered to the company during the four months preceding the commencement of liquidation are preferential AND the total sum to which priority is to be given in the case of any one employee for wages, holiday pay, deductions, redundancy and child support must not exceed such greater amount as is prescribed at the commencement of the liquidation.

823,960.

1. Why do you believe you are a preferential creditor?
(eg. employee, GST, etc) _____
2. Details of your claim: _____

If applicable please record here your GST Registration number: _____
and total GST included in your tax invoice: \$ _____