In the High Court of New Zealand
Auckland Registry

CIV 2026-404 1264

I te Kōti Matua o Aotearoa Tamaki Makaurau Rohe

BETWEEN	DIGITAL SIGNS (2017) LIMITED, DIGITAL ADVERTISING (2017) LIMITED, DIGITAL HOLDINGS LIMITED, DAVID JAQUES
	PLAINTIFFS
AND	BDO AUCKLAND (trading as a firm and/or partnership), NICHOLAS ROBERT INNES-JONES, ANDREW JOHN MCKAY
	DEFENDANTS

WITNESS STATEMENT OF DAVID JAQUES

Solicitor of record:
Doug Cowan
Cowan Law
10 Heather Street
Parnell, Auckland
(09) 320 4616
doug.cowan@cowanlaw.co.nz

Counsel instructed:
S A Keall, barrister
FortyEight Shortland Barristers
Level 34, 48 Shortland Street,
Auckland
0223 179 127
stevekeall@stevekeall.com

Introduction

1. My full name is David Arthur Jaques. I live in Auckland. I am a retired lawyer and company director. I was at all material times the sole director of, and the principal person representing, the corporate plaintiffs in their dealings with the defendants and with Bank of New Zealand ("BNZ").

2. I make this statement in support of the plaintiffs' claims against the defendants. Except where I say otherwise, I make this statement from my own knowledge of events in which I personally participated. Where I refer to information I have obtained from documents or from others, I identify the source and I believe that information to be true.

3. In this statement I refer to documents in the plaintiffs' initial disclosure by their document numbers, in the form PLA.0001 to PLA.0206.[1] Where I quote from a document, the quotation is taken from the disclosed copy.

4. In summary, my evidence is that between late 2019 and mid 2020 the firm BDO Auckland ("BDO"), acting through partner Mr Nick Innes-Jones, was our trusted business adviser and company accountant, with detailed inside knowledge of our business, our finances and our funding strategy. Innes-Jones assessed our business as having excellent prospects and wanted to be engaged (which we did) to trade it through to a sale at a high price. In June 2020 (following COVID), at BNZ's request, the same firm, this time acting through partner Mr Andrew McKay, took on the purported role of 'independent reviewer' of the same business, for the same bank, in relation to the same funding relationship. Nobody at BDO ever explained to me what that meant for us, asked for our informed consent, or told us that the price of the second

[1] The plaintiffs' initial disclosure bundle is listed in the schedule to the initial disclosure affidavit of Deena Marie Jaques undated but supplied 17 August 2026. References in this statement in the form PLA.NNNN are to the documents so numbered.

engagement would be the loss of the professional services of Mr Innes-Jones (at a critical time for the company). Without our authority, Mr McKay instructed Mr Innes-Jones to cease providing us services. Mr McKay's report, when it came, was in my view materially inaccurate and unfairly adverse, and it totally ended all of the BNZ's support for the business. The business that then collapsed has since been partially revived in a new family owned entity and its projects have been independently assessed as being worth many millions of dollars.

My background and the business

5. While I was completing my law degree in 1996 I designed a coin operated digital jukebox, even before the MP3 music format existed, and when the latest operating system was only Windows 3.1. I exhibited this product in Earles Court, London, secured multiple international turnkey clients, and took that business ("DDJ") to circa $5m in revenue.

6. That business involved getting electronics to operate in a hot and vibrating environment, and I needed to get Phonographic Performances to create and grant me audio and video music copyright licences (which I did) as none existed at the time.

7. The relevance of this to the current claim is that I have established that I have a skill in being able to overcome significant challenges to progress legal matters in complex commercial environments, and to get electronics to be stable under harsh conditions.

8. While trading DDJ I out-grew the 3 finance companies I had been using for asset finance (they have each provided me references of being a model client[2]) and moved to a single larger financier (C.T.T. One Limited). Because I did not have a Board (and all the impartial perspectives that would have brought) I failed to notice I

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[2] PLA.0184 – 0186

had put 'all my eggs in one basket', so when CTT failed, so did my business.

9. As a result, I now deliberately surround myself with professional advisers, including chartered accountants and an advisory board, to cover the financial and governance disciplines.[3]

10. The group structure at the material times was as follows: Digital Holdings (2017) Limited ("Digital Holdings") was the holding company. Its wholly owned trading subsidiaries were Digital Signs (2017) Limited ("Digital Signs"), which imported, manufactured, installed and sold LED digital display units (electronic hardware), and Digital Advertising (2017) Limited ("Digital Advertising"), which owned and operated digital billboards and sold advertising on them. A third subsidiary, Digital Rentals Limited, was to carry on a short term rental operation. The shares in Digital Holdings were held by my family interests, with a 5% shareholding held by my father.

11. From 2017 my wife Deena and I built the business from a standing start as I noticed a gap in the market for 'full matrix' (pictures) LED product as opposed to just 'words' (Car Park/Café Open). The business model had two limbs. The first limb was hardware: importing and selling LED digital display units and billboards, either to third parties outright (schools and churches), or under joint venture supply arrangements in which the customer funded a billboard and we retained a share of the ongoing advertising revenue. The second limb was advertising: operating digital billboard sites, obtaining resource consents for new sites, and selling advertising slots on those sites.

12. A central feature of the advertising limb was a low-cost, high-volume advertising model which I regarded as genuinely novel in

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[3] See for example PLA.0016 (letter to Mr Innes-Jones, 11 March 2020) and PLA.0012 (email chain with Mr Innes-Jones regarding the Advisory Board, 12 February 2020).

the New Zealand market. Instead of selling billboard advertising through agencies at the traditional weekly rotation rate card prices, we sold individual advertising slots directly to everyone at very low prices (the minimum spend was $1 as opposed to $1,000.00), on the theory that digital billboards allowed the inventory of a single screen to be divided among many small advertisers in the same way internet advertising is sold. We later described this model as 'extending the reach of the internet into the public'. When we sold slots on our Wairau Park site at $30 per week in mid-2020, as I describe below, the response was immediate and strong.[4] Our initial results showed that this sales approach would generate circa 5 times the income of the traditional model, and combined with our 'Client Portal' (that you would call "AI" today) we could reduce OPEX to close to 5%.

13. The '$1/ad' model, and the obtaining of resource consents (that I am about to mention), are 2 of our many proprietary IP that gave us a significant trading advantage (we also had several electronic hardware products that significantly decrease the downtime of billboards).

14. The economics of an operating digital billboard site were, and remain, very attractive. A billboard costing in the order of $300,000 to install could, once consented and operating, generate several hundred thousand dollars of advertising revenue per year at modest occupancy and had an operating life of circa 30 years (with some screen face replacements). The principal barriers to entry were obtaining resource consents, which in Auckland and on motorways was a slow, contested and expensive process, and securing suitable sites on cost-effective leases. Our strategy was to invest heavily in the consenting process so as to build a portfolio

[4] PLA.0138 (email Jaques to Kilmartin and McKay, 6 July 2020), which records the conversion experience at the Wairau Park site.

of consented sites which, once funded and installed, would produce strong recurring revenue.[5]

15. By late 2019 the business had grown rapidly. Group revenue grew from $128,639 in the 2018 financial year to $441,468 in the 2019 financial year to approximately $2.2 million in the 2020 financial year (similar to DDJ).[6] We held a growing pipeline of signed Supply Agreements and Purchase Orders, including the Broadway Newmarket Pedestal agreement of 26 September 2019, the Algorithm Enterprises agreement for 89 Gavin Street (Ellerslie motorway) of 30 October 2019, and the Freedom Ventures agreement (central Pitt Street, Auckland) of 17 December 2019.[7] We had five resource consent applications lodged, with the first, for the Hoyts Wairau Park site, issued and the others in progress.[8]

16. The growth was funded substantially by my family (my wife and our own family trusts). We invested approximately $2.5 million into the business over its life, including capital introduced directly and debt leveraged over our properties.[9] By early 2020 my wife and I had four properties supporting BNZ lending, and all of the group's banking was with BNZ.

17. Like any fast-growing business, we had creditor pressure. In September 2019 our former accountants, Insight CA Limited, served a statutory demand for unpaid fees (through a misunderstanding that we were more liquid than we were, which they later apologised for), which was ultimately dealt with by a High

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[5] See for example PLA.0100 (email A Jamieson, Media5, 5 July 2022), estimating income for our consented Greenlane West site at approximately $1,092,000 per annum, and PLA.0086 and PLA.0198 and PLA.0202 discussed later in this statement.

[6] PLA.0016 (letter to Mr Innes-Jones, 11 March 2020); PLA.0018 (letter to K Leeming, 21 March 2020).

[7] PLA.0002 and PLA.0003 (Broadway Newmarket, 26 September 2019); PLA.0004 and PLA.0005 (89 Gavin Street, 30 October 2019); PLA.0009 and PLA.0010 (Freedom Ventures, 17 December 2019).

[8] PLA.0018 (letter to K Leeming, 21 March 2020), paragraph 12. A photograph of the operating Wairau Park billboard is at PLA.0025.

[9] PLA.0080 (email to Inland Revenue, January 2021); PLA.0072 and PLA.0073 (correspondence with YRW Limited and Polar Capital, November 2020).

Court judgment in February 2020 requiring payment.[10] We also had an arrangement with Inland Revenue under which PAYE arrears were being repaid at $10,000 per month, a matter I disclosed openly to our advisers and to BNZ.[11] None of this was hidden from anyone. It was the ordinary profile of a heavily reinvesting growth business, and it is exactly why the professional support of our accountants and advisers mattered so much to us.

The first retainer: the October and December 2019 engagements

18. In about October 2019 we moved our accounting and advisory work to BDO Auckland. I dealt from the outset with Mr Nick Innes-Jones ("Nick"), a partner in BDO's East Tamaki office in its business advisory services practice. The BNZ had spotted the growth in our business and recommended we find a larger accountant to support that, so I was researching and interviewing prospective people to find a good fit.

19. When I met Nick, I found him to be energetic, optimistic, well-informed and experienced over a range of sectors at growing businesses for later exit via IPO or to private equity. We 'hit it off' well, spoke the same language, and I found him a good fit.

20. There were two initial written engagements. By an engagement letter dated 29 October 2019, Digital Signs engaged BDO to prepare consolidated integrated forecasts to 31 March 2021, including assumptions and a sensitivity analysis. By a further engagement letter dated 5 December 2019, which I signed as director on 5 December 2019, Digital Advertising and Digital Holdings engaged BDO for the same work. The 5 December 2019 letter records that BDO was appointed as business advisor of

[10] PLA.0001 (statutory demand, 12 September 2019); PLA.0013 (Digital Signs Ltd v Insight CA Ltd [2020] NZHC 281, 20 February 2020).

[11] PLA.0018 (letter to K Leeming, 21 March 2020), paragraph 17; PLA.0021 (BNZ statement of position, which answered No to the question whether business tax was up to date).

those companies.[12] Nick just commenced this work without any fuss. There was no hype or excitement, it was just another job he was doing.

21. BDO invoiced Digital Signs on 30 November 2019 in the sum of $7,500 plus GST for the preparation of the integrated forecasts with detailed assumptions.[13]

22. The purpose of the forecasting work was well understood on both sides: the forecasts were to support our funding applications to BNZ. BDO knew we intended to present the forecasts to the Bank, and BDO did in fact deal with the Bank in support of our funding over the following months, as I describe below.

23. On or about 2 December 2019 BDO produced the financial projections for Digital Signs for the years ending 31 March 2020 and 31 March 2021.[14] The projections (importantly) recorded, among other things, projected total income for the 2021 financial year of $2,299,408, projected EBITDA of $419,116, projected net profit after tax of $309,271, and projected net assets of $131,884 as at 31 March 2021.

24. The projections were not a mechanical arithmetic exercise. In preparing them BDO reviewed our business model, our revenue pipeline, our prospective projects, our capital requirements, our governance and our risks, and made its own evaluative adjustments. For example, BDO reduced my estimate of own-use sign revenue by 70 per cent, reduced unsecured project revenue by 50 per cent or 70 per cent depending on the project, and classified projects as secured or unsecured according to the documentation we held. The defendants have admitted in their statement of defence that BDO's work on the projections was not

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[12] PLA.0008 (BDO engagement letter, 5 December 2019, signed). The 29 October 2019 letter is in the disclosure at PLA.0168 (Exhibit Doc 38B to Mr McKay's later response to CAANZ).

[13] PLA.0006 (BDO invoice 307090, 30 November 2019).

[14] PLA.0007 (Digital Signs BDO financial projections FY2020 to FY2021, 2 December 2019).

confined to arithmetical compilation and involved evaluative judgement.[15]

25. Through that work Mr Innes-Jones and BDO acquired a genuinely detailed understanding of our business: its sites, its pipeline, its customers, its costs, its related party funding and its banking arrangements. That knowledge deepened over the following months as the relationship broadened.

26. As Nick came to understand the true depth of our business he started to 'jump around like a little child' (not literally, but this is the best way I can describe his enthusiasm). Yes, he presented his work in a normal and professional manner, but he then sat there at his table fizzing like a child with a secret to tell. Nick then started to slowly release that he thought our business had significant potential and BDO/him really wanted us as a client. He wanted to essentially partner with us to combine his skills with ours to take this business all the way through to completion (realising its full potential via a final sale at a high price).

27. There are 3 central conversations/events that took place in my dealings with BDO, and this is the first of them that I would like to recount in detail. I recount it because it is important, but also because it was so unexpected that it is something that just sticks in your mind, and you cannot forget.

Nick Innes-Jones assessment of enterprise value

28. I was aware of businesses being sold on a multiple of profit (EBITDA). I had some knowledge that a 3-5 multiple was common in 'regular' businesses (i.e., you might earn your purchase price back over the subsequent 3-5 years after purchase). I think I knew that digital billboards might've achieved a 12-14 multiple if they had premium sites (though I'm not sure on this at that time). Out

[15] PLA.0007, notes to the projections; statement of defence dated 14 July 2026 at paragraph 15.

of the blue (unsolicited) Nick said words to the effect: “When you get EBITDA into the $5m to $15m range I can sell your business to a private equity, either in whole or in part, on a 17 multiple”.[16]

29. This statement caught me off guard. It did not take me long to process it though. I understood the $5m - $15m part (as we had already been forecasting that to be coming quite soon). The 17 multiple sounded high, higher than I had been expecting (not that I had turned my mind to this so early on in our development). As I processed it in my mind, it occurred to me that he might’ve said that due to the extremely high barriers to entry (resource consents, capital and scarce premium sites), but also because our $1/ad model and Client Portal was essentially giving passive annual recurring revenue (ARR), which I did know is a very important factor when selling to private equity. So I asked Nick if the 17 multiple was so high due to that? Nick grinned (pleased that I had worked it out) and said, “Yes”.

30. I was 52 years old in 2019 and it was my desire to grow the business and exit in the 5-10 year mark. I told this to Nick and we formed an agreement that he would partner with us and we were going to do this together.

31. I am very clear in my mind that as a result of the December 2019 discussions that took place in Nick’s office at BDO Auckland, East Tamaki branch, BDO were going to handle all of the accounting needs for our business, family Trusts and my wife and I personally, and that Nick and I were going to join up and make a success of the business all the way through until exit (which Nick would also handle). The formal paperwork had not come through, but we immediately started acting as if that was the case already. Nick was our accountant and we were in this together.

[16] This is consistently mentioned in my letters of PLA.0093 (BDO) and PLA.0104 (CAANZ)

32. That conversation is one of the reasons I continued to invest so heavily in the consenting pipeline.

33. In or about December 2019, following the provision of the projections to BNZ, BNZ advanced funding of $200,000 to the business that was in place as a $200,000 overdraft for Digital Signs.[17]

The ongoing advisory relationship in 2020

34. From early 2020 the relationship with BDO broadened well beyond the completed forecasting engagements. On 4 February 2020 I wrote to Nick about reconstituting our Advisory Board and asked whether BDO could supply someone to sit on it, covering among other things dashboards, KPIs, cashflow forecasting and consenting strategy. On 11 February 2020 Nick replied that this was something BDO could, in his words, "absolutely assist with", and that where BDO could really add value was on exit strategies (as he had previously said), supplying governance and overseeing monthly reporting.[18] I had engaged Mr Ken Leeming (ex Icehouse) as our Independent Chair, and Ms Sarah Lochead-MacMillan (ex GM, Geneva Capital, and SH Locks factoring) as an independent, so having Nick as a virtual CFO would leave 3 independents to monitor and guide me as CEO (which in my view is the perfect tethering of the horse).

35. I met with Nick at 2pm on 20 February 2020 and he invited me to the BDO Business Breakfast on 11 March 2020 at the Northern Club (where Bernard Hickey spoke). On that day Nick said to me he was really glad I was one of his clients as he said he did not have many clients of my calibre that he could invite to events like this.

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[17] PLA.0018 (letter to K Leeming, 21 March 2020), paragraphs 8 and 9; PLA.0021 (BNZ statement of position, recording the $200,000 business overdraft).

[18] PLA.0012 (email chain, Advisory Board, 4 to 12 February 2020).

36. On 25 February 2020 Nick sent me a written proposal with fee estimates for four ongoing services: end of year accounts, tax returns and resolutions for Digital Signs and Digital Advertising; monthly review of the financials prepared by our bookkeepers, Accounting Plus Solutions Limited, with monthly dashboards; preparation and review of 90 day cash flows, including, in the words of the proposal, advising Dave on DAL and DSL ability to make creditor payments as they fall due; and attendance at board meetings. The proposal also listed other services BDO could provide, including bank relationship services, described as discussions or meetings with the bank to provide the bank with the necessary confidence, and capital raising, of which Mr Innes-Jones wrote, "We have provided this assistance to you and can again in the future."[19]

37. I accepted that proposal by email on 11 March 2020, writing, "May we please sign up for the monthly review of financials starting 1 April, the 90 day cashflow, board meeting attendance, and end of year accounts for 2021 and beyond for all four companies." I asked what I needed to do to kick this into gear. On 12 March 2020 Mr Innes-Jones replied, "Many thanks for your reply and really look forward to working with you. The next step is for BDO to draft an engagement letter and undertake AML procedures."[20]

38. I regarded BDO, through Mr Innes-Jones, as our accountants and our virtual CFO, and I said so openly and contemporaneously to third parties. My letter of 11 March 2020 to Mr Innes-Jones himself, seeking his help with a capital raise, recorded that BDO have been retained as a virtual CFO, to review monthly reporting and to attend Board Meetings (which Nick never opposed).[21] My letter of

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[19] PLA.0014 (email Innes-Jones to Jaques, Digital Signs Proposal, 25 February 2020).
[20] PLA.0017 (email chain RE Digital Signs Proposal, 25 February to 12 March 2020).
[21] PLA.0016 (letter to Mr Innes-Jones, 11 March 2020).

21 March 2020 to Ken Leeming recorded that the group had moved to BDO and engaged them for monthly reporting and virtual CFO services.[22] Mr Innes-Jones never once corrected that description, although he was copied into correspondence in which I used it.

39. The relationship was not just words. Between March and June 2020 BDO, through Mr Innes-Jones, in fact did the following things for us:

(a) he was copied into, and participated in, our funding correspondence with BNZ from at least late April 2020;[23]

(b) on 7 and 8 May 2020, at my request, BDO transferred the registered office of all four group companies to BDO's East Tamaki office. Nick wrote to me on 7 May 2020, "Yes I will send you out a new engagement letter to cover these entities and cover your entities coming across to our tax agency once your current accountant has completed the returns";[24]

(c) he accepted my cash flow model for review, writing on 2 June 2020 that in the interim your current model will be sufficient and offering to talk me through BDO's own forecasting tools;[25]

(d) he agreed to join our Advisory Board, and attended its meeting on 11 June 2020 as a paid Advisory Board

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[22] PLA.0018 (letter to K Leeming, 21 March 2020), paragraph 5.

[23] PLA.0020 (email chain with BNZ regarding the Government backed scheme application, 24 April to 4 May 2020, on which Mr Innes-Jones is copied).

[24] PLA.0032 (email chain RE BNZ, 7 to 8 May 2020).

[25] PLA.0032 (7 May 2020, in which I offered my cash flow model for checking); PLA.0119 (email chain, BNZ meeting, 1 to 2 June 2020).

member, alongside Mr Leeming and Ms Lochead-MacMillan;[26]

(e) he advised me on the wage subsidy extension on 12 June 2020, following contact the previous day;[27] and

(f) he coached me in detail for our critical meeting with BNZ on 2 June 2020 and attended that meeting with me, as I describe below.[28]

40. On 20 May 2020 Mr Innes-Jones sent the foreshadowed engagement letter. It described BDO as appointed as the "accountant and advisers" of all four group companies, and covered compilation, taxation and secretarial services. Clause 2 provided that the terms of the letter would apply to all work carried out before the date the letter was signed.[29] I accept that I did not sign and return that letter; events overtook it, in the way I describe below, but the services were already being provided and invoiced.[30] On 29 June 2020 BDO invoiced Digital Signs for business advisory services, including the BNZ meeting of 2 June 2020 and the Advisory Board meeting of 11 June 2020, and we paid that invoice.

41. At the time I did not know there was a separate category of work undertaken by accountants known as "advisory" work. I therefore did not formally request these services of BDO and Nick just supplied them automatically.

42. It is important to me that the BDO Engagement expressly limits itself as only relating to specified matters and Advisory was not

[26] PLA.0099 (email K Leeming, 21 June 2022, confirming the composition of the Advisory Board and that attendees were paid); PLA.0043 (BDO invoice 318864, 29 June 2020, charging for that attendance).

[27] PLA.0038 (email Innes-Jones to Jaques, Wage Subsidy, 12 June 2020).

[28] PLA.0118 (email Innes-Jones to Jaques, Bank Meeting, 1 June 2020); PLA.0119 (email chain, 1 to 2 June 2020).

[29] PLA.0034 (BDO engagement letter, 20 May 2020, unsigned).

[30] PLA.0043 (BDO invoice 318864, 29 June 2020).

listed. It appears clear therefore that all of the work Nick did for us in 2020 (as he did not end up doing any of the specified things) were done without a formal contract between us (which the plaintiffs accept and have paid for).

43. By reason of all of the above, BDO had by late 2019/early 2020 a continuing advisory relationship with us, committed to continue that until sale, and detailed knowledge of our business, finances, prospects, internal information and funding strategy. I trusted Mr Innes-Jones. He was, in substance, our CFO, whatever the state of the engagement paperwork, and BDO was content to be held out in that role.

COVID-19 and the funding applications

44. In March 2020 COVID-19 struck the business at the worst possible moment. On 9 March 2020 John Osborne of Go Rentals, who had committed to a self-funded programme of approximately 20 sites, postponed indefinitely because of the border closure. A confirmed initial order of $1.8 million plus GST was lost with it, along with an expected $453,376 Christchurch sale. Since 16 March 2020 we received only $31,233 of income against an expectation of $885,294.[31]

45. We responded by seeking further funding from BNZ. On 6 April 2020 I applied to BNZ for a $500,000 Government backed COVID-19 loan (from which I understand only about 3% was ever issued nationwide), in a detailed 46 paragraph application with supporting schedules and cash flow scenarios.[32] On 4 May 2020 I pursued the Government backed scheme application with BNZ's Bianca van Graan, answering the bank's questions on OPEX, IRD,

[31] PLA.0024 (application to BNZ, 6 April 2020), paragraphs 2 to 4; PLA.0018 (letter to K Leeming, 21 March 2020), paragraphs 10 and 11.

[32] PLA.0024 (application, 6 April 2020); PLA.0021 (signed BNZ statement of position supporting the application).

debtors and creditors. Messrs Innes-Jones and Leeming were copied throughout.[33]

46. On 7 May 2020 BNZ confirmed a temporary overdraft increase for Digital Signs of $266,000, taking the total facility to $466,000, expiring 5 August 2020.[34] We also applied on 18 May 2020 for $420,000 of plant finance to fund the purchase of the Halo billboard sites described below.[35] By late May 2020 our overall funding request to BNZ was approximately $2 million.

The Halo opportunity

47. In about May 2020 an unusually valuable opportunity arose. Halo Media Limited was in liquidation, and its Liquidator offered Digital Advertising two fully consented, operational digital billboards, one at Highbrook Drive in Auckland and one at Victoria Street in Christchurch opposite the Christchurch Casino, for $301,000 plus GST. The installed replacement cost of those assets was far higher. My understanding was that approximately $1.2 million had been spent installing them. The Liquidator invoiced Digital Advertising on 5 June 2020 in the total sum of $301,000 plus GST, on strict seven day terms, with title retained until payment.[36]

48. On or about 18 May 2020 we obtained an independent valuation of the two Halo billboards from SMetric Consulting Group, which assessed their total depreciated value at $827,955 plus GST on an 18-year economic life. The defendants have admitted that valuation was obtained.[37]

[33] PLA.0020 (email chain, 24 April to 4 May 2020).

[34] PLA.0031 (BNZ confirmation of temporary overdraft, 7 May 2020).

[35] PLA.0036 (email chain, Plant Finance Application, 18 to 28 May 2020).

[36] PLA.0144 (Halo invoice, Insolvency Management Limited, 5 June 2020); PLA.0104 (CAANZ complaint, 15 May 2023), recording the installation cost understanding.

[37] Statement of defence dated 14 July 2026 at paragraph 24 admissions. The SMetric valuation is referred to in the contemporaneous correspondence at PLA.0058 and PLA.0146.

49. The Halo purchase was, to my mind, exactly the kind of opportunity the business existed to capture: two operating, consented, income producing sites at a liquidation price of well under half their independently assessed value. The sites were already producing bookings. By early July 2020 the Christchurch site had 44 advertisements booked and running at approximately $5,200 per month, with a further 100 bookings expected to take it to approximately $18,720 per month.[38] I kept BDO fully informed. On 29 June 2020 I sent the purchase invoice to Mr McKay's manager, Ms Melissa Lee, copied to Mr McKay, writing that the deal is confirmed and we're just in the process of paying for it, as per our cash flow. No-one at BDO objected or warned me at that time.[39]

50. When the Christchurch site achieved the forecast $18,720/month ($224,640/year) it would have added back circa $149,640/year in gross profit (after the $60,000 site lease and circa $15,050.00 of interest on $150,500.00 at an interest rate of 10%). Auckland would have achieved even more (as it was a higher profile site, and there was no ground lease to pay, just a share of advertising space). In my view it was an absolute ‘no brainer’ that the business should borrow $301,000.00 + GST to buy these operational sites.

The move to Mr Kilmartin and the 2 June 2020 meeting

51. On 28 May 2020 Ms van Graan of BNZ told me that she had requested assistance on our file and applications through a colleague, Mr Paul Kilmartin, who would be in touch to discuss our requests. Mr Kilmartin worked in BNZ's Strategic Business Services team, which the defendants contend becomes involved with companies that are distressed, insolvent, or where there are cashflow concerns. I forwarded Ms van Graan's email to Nick the

[38] PLA.0138 (email, 6 July 2020); PLA.0046 (email chain with Mr Kilmartin, 6 July 2020).
[39] PLA.0143 (email Jaques to Lee and McKay, Halo purchase, 29 June 2020).

same day and asked him whether he knew Mr Kilmartin and whether he should come to any meeting with me.[40]

52. It was my understanding that Mr Kilmartin had previously worked with distressed companies at BNZ, before moving to Kiwibank, but that he had since come back to BNZ as something of a 'problem solver' (not just for bad things). In relation to Digital Signs I understood that to mean he was out fishing for high-growth companies to back (for reasons I am about to say). Certainly, there was nothing in the BNZ communication up until that point relating to us being in default. We were high-growth looking to navigate COVID and continue in the growth pattern they had seen in 2019.

53. I now know, from documents disclosed in this proceeding and produced to the Professional Conduct Committee of the New Zealand Institute of Chartered Accountants, that BNZ and BDO were already in direct contact with each other about our file before I was told anything. On 28 May 2020 at 11.59 am Mr Ennis Young, BNZ's Regional Manager Strategic Business Services (SBS), emailed Mr Kilmartin, copied to Mr McKay, saying he had just got off the phone with Mr McKay, who will have a look in the background and come back to you re the customer and engagement.[41] Within 40 minutes, Mr McKay replied to the bank recording that he had just spoken to Mr Innes-Jones, that BDO prepared some forecasts for the client at the end of the previous year, that the proposal that we transfer our accounting work to BDO this as yet has not occurred so we have done a one-off piece of work they are not a client, and that Nick thinks it would be useful for this process to occur.[42]

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[40] PLA.0036 (email chain, 18 to 28 May 2020); statement of defence dated 14 July 2026 at paragraph 27 admissions.

[41] PLA.0129 (email E Young to P Kilmartin and A McKay, 28 May 2020).

[42] PLA.0130 (email A McKay to E Young and P Kilmartin, 28 May 2020).

54. Neither Mr McKay nor Mr Innes-Jones told me about that exchange. Nobody told me that the bank's SBS team had approached my own accounting firm to review my business. Nobody told me that BDO had described us to our own bank as 'not a client'. Nobody asked me whether I consented to the firm that held our confidential financial information, and that was advising us on our funding strategy, taking an engagement to review us for the Bank.

55. It is completely impossible to say we were not BDO clients from all that I have said above.

56. From what I am about to say, I get the clear impression that coming out of the 28 May 2020 phone call between BDO and BNZ I was being characterised as a competent business with potential. This would likely be because Nick held us in high regard and Andy himself knew nothing of us at that point (so would have been consciously or subconsciously passing Nick's assessment on to Paul Kilmartin). The reasons I have formed this view should become apparent in what I am about to recount of my meeting with Paul.

57. On 2 June 2020 a meeting took place at BDO's East Tamaki office. It was attended by Mr Kilmartin for BNZ, by me for the business, and by Mr Innes-Jones for BDO (ie we were all sitting in Nick's office and Paul Kilmartin was grilling me on my business). Mr Innes-Jones had prepared me for that meeting in detail the night before, sending me a long list of key points to be ready to discuss with the bank, covering the Wairau Park site, our pipeline, the billboards in the BDO forecasts, debtors, creditors and IRD arrears, and closing, "Look forward to seeing you tomorrow".[43] It

[43] PLA.0118 (email Innes-Jones to Jaques, Bank Meeting, 1 June 2020); PLA.0119 (email chain, 1 to 2 June 2020).

was helpful and reassured me that we were on the same page (and that I was not wrong).

Paul Kilmartin assessment of enterprise

58. The 2 June 2020 meeting with Paul Kilmartin is the second of the 3 important and memorable events that I will never forget. I wish to also set this out in some detail to cover what actually happened. At this meeting Mr Kilmartin started off “grilling” me. He was being a typical ‘Devil’s advocate’ and asking what would happen if any of these different failure scenarios occurred. He reminded me of a lawyer during cross-examination, the scepticism of an insolvency practitioner, and basically just a banker making sure they were on a solid footing. I did not mind any of these questions and I just answered each one simply.

59. There came a point about 30 minutes into what was meant to be a one-hour meeting when Paul suddenly changed in demeanour. He stopped leaning into me, sat back upright in his chair, and appeared to have made his mind up about something. His tone changed and he went from stress-testing me and the business to now openly expressing how he thought this was a fantastic opportunity! (The entire time Nick was sitting listening. He was not saying anything, but once we got to this point in the meeting he was grinning like a Cheshire cat).

60. I had gone into the meeting seeking a $2m facility (leveraged against our properties). Paul took quite a lot of pleasure at announcing the following statement to me (with all the appropriate pauses for effect), in words to the effect, “We will <u>not</u> be granting you the $2m that you want, but we <u>will</u> be giving you a $10m facility!”.

61. I nearly fell out of my chair. It is not everyday that you hear your Bank Manager tell you they are going to give you MORE than you have asked for (so there is no way I will ever forget that).

62. Similar to when Nick had said he could get a 17 multiple, I processed what Paul had just said and wondered what the justification could be. It then clicked that he was making a move from asset-based lending (against my properties and the billboards themselves) to cashflow lending (based on our strong forecast ARR) so I asked if that was the case. Paul grinned (again pleased I was able to keep up with him) and said, “Yes”.

63. He then volunteered the following additional information on an unsolicited basis, “Most people do not borrow enough from their bank. They only borrow as much as they can afford, or the least amount to save interest, but what if things go wrong? This way by giving you more money the Bank can rest assured that you will definitely succeed, even if things don’t go to plan” (or words to that effect).

64. Paul also said he would invite us ‘into town to meet the other guys’ which I took to mean the BNZ were going to make us their ‘poster child’ (like Kiwibank were doing with the Wellington electric East West Ferries). I remember this well as I was a little worried I was not ‘cool’ enough for this.

65. The next interesting thing that occurred in this meeting was Paul said he respected the opinion of a Mr Andy McKay, BDO and that the Bank would lend me the money if Andy agreed (like I’ve already said, I got the very distinct impression Paul already knew the pathway to approval and that he had this in the bag).

66. The moment I heard Paul wanted another BDO guy to review our business, and that we were sitting in a BDO office at the time, I just laughed and pointed out the obvious (in front of Nick), “But we’re BDO clients!”. By this I meant BDO cannot say we are good client and bad clients all at the same time (one would have to be incompetent and wrong). Paul said words to the effect, “Lucky

you". I thought to myself—good, the bank is not worried; I did not need to worry about it. Nothing else was drawn to my attention.

67. Like I said, at the time I was completely unaware that all 3 gentlemen (Innes-Jones, McKay and Kilmartin) had all discussed this several days prior and they were already deciding what direction they were going to go in with me.

68. Nobody at that meeting, and in particular not Mr Innes-Jones, suggested that there was any difficulty in BDO acting as 'independent reviewer' of a business it was already advising and had done such positive cashflow forecasts for, or explained to me what safeguards would be needed, or told me that the consequence would be that Mr Innes-Jones would have to stop helping me (which I would have remembered as Nick's support and professional skill was critical to us, particularly at that time).[44]

69. This encounter with Paul Kilmartin reconciles with what I now know about the 28 May 2020 phone call as Paul's interrogation was him checking out for himself if what BDO were saying to him was true, and when he became satisfied that it was, he did an abrupt change to 'gushing' in support that you would not really expect of a bank manager simply going to the next level of an application.

70. The morning after the meeting I reported to my Advisory Board that the meeting with Paul Kilmartin from BNZ went well, that he requires BDO to do proper modelling with scenarios then he will form a view, and that if we meet his criteria then the purse will open, and if not he might even look to claw back what has been granted.[45] That was the position as the bank had presented it to me: everything now turned on the BDO review.

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[44] PLA.0204 (chronology). The PCC later found that Mr Innes-Jones attended this meeting and did not raise the potential conflict: PLA.0194 (PCC decision PC-003751, 17 October 2024).

[45] PLA.0121 (email Jaques to Leeming and Lochead-MacMillan, copied to Innes-Jones, 3 June 2020).

The second retainer: the IA engagement letter of 4 June 2020

71. I also now know from the disclosed documents that in the days between the 2 June 2020 meeting and my receipt of the engagement letter, the scope of the so called 'independent review' was being settled directly between Mr McKay and the Bank. On 3 June 2020 Mr Kilmartin and Mr McKay arranged and held a private telephone call.[46] On 4 June 2020 at 1.47 pm Mr Kilmartin told me by email that he had spoken with Andy yesterday and he was to follow up with Nick (clearly still supporting Nick was our CFO and accountant, otherwise there would not have been any need to involve him), and then draft a scope for the engagement.[47] At 2.23 pm the same day Mr McKay sent the draft engagement letter not to me but to Mr Kilmartin, writing, "Please see attached - Nick has been chasing me I will go back to him once we finalise this." At 2.48 pm Mr Kilmartin replied, "At a high level, it covers everything I'm seeking."[48] In other words, the Bank approved the scope of the independent review of my companies before I had even seen it (and Nick is heavily involved).

72. On 5 June 2020 at 1.24 pm Mr McKay emailed me the engagement letter and an information request, and proposed a first meeting at our premises on Monday 8 June 2020. I signed and returned the letter at 1.38 pm, 14 minutes later, and got started on the information request.[49] I signed quickly because the Bank had made the review a precondition of everything, the Halo invoice was on seven day terms, and I had no reason to distrust BDO, which was, after all, our own firm.

73. The engagement letter, dated 4 June 2020, was addressed to the director of Digital Signs and Digital Advertising. It opened:

[46] PLA.0132 (emails arranging phone call, 3 June 2020).

[47] PLA.0120 (email chain Jaques and Kilmartin, copied to Innes-Jones, 4 June 2020).

[48] PLA.0133 (email chain McKay and Kilmartin, 4 June 2020).

[49] PLA.0135 (email chain, 5 June 2020); PLA.0037 (IA engagement letter dated 4 June 2020, signed by me on 5 June 2020).

Following a request from the Companies' bank, Bank of New Zealand Limited, we are writing to confirm the terms of our engagement to carry out an independent financial review and report to you and the Bank. The scope comprised a review of historic financial performance and current financial position focusing on debtors and creditors including IRD, a critical assessment of the reasonableness of the current business plan and underlying forecast assumptions, an analysis of capital structure and capital adequacy, an assessment of ongoing viability and ability to repay the bank and meet commitments to external creditors, and any other matters likely to be relevant to the bank in considering continued financial support. The fee estimate was $16,000 to $25,000 plus disbursements and GST. The letter authorised BDO to disclose any information and provide any opinions to the bank at any time without prior advice or approval.[50]

74. The engagement letter said nothing at all about BDO's existing and continuing relationship with us. Its standard terms included a boilerplate clause 4.1 stating: Unless otherwise notified, we are not presently aware of any conflict of interest, which would affect our ability to provide services to you. We will advise you if we become aware of any potential conflict of interest during the course of our engagement, and we will work with you to find a suitable solution.[51] No notification of any conflict was ever given under that clause, at the outset or at any time during the engagement, even though BDO knew everything: it was BDO's own advisory relationship, BDO's own forecasts, and BDO's own partner sitting on my Advisory Board, that Mr McKay would be reviewing.

75. The second retainer concerned the same business, the same funding relationship with BNZ, and substantially the same subject

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[50] PLA.0037 (IA engagement letter, 4 June 2020).
[51] PLA.0037, Appendix A, clause 4.1.

matter as the first retainer and the ongoing advisory relationship. Mr McKay was a partner in BDO's business recovery and insolvency services practice. I did not appreciate the significance of that at the time: the bank's SBS team had, in substance, engaged an insolvency practitioner from my own firm to review my growth business, with my own adviser standing silently by.

76. What I also did not know at the time, was that BDO was the registered office, accountants, and business advisors to my biggest competitor Lumo Digital[52]. In 2025 BDO went on to assist Lumo in acquiring a national billboard business "Globox" that should have been an opportunity BDO were helping us to get[53].

What I was never told

77. At no time before I signed the IA engagement letter, and at no time afterwards, did anyone at BDO:

    (a) tell me that Mr McKay and Mr Innes-Jones had already discussed the engagement between themselves and with the Bank before I knew of it;[54]

    (b) tell me that BDO had described us to the Bank as 'not a client';[55]

    (c) explain that BDO taking the 'independent review' engagement created a conflict of interest, or a material threat to BDO's independence and objectivity, given its existing advisory relationship with us;

    (d) seek my informed consent, in writing or at all, to BDO acting in both roles;

[52] PLA.0205 – Clearmont Media Ltd merged to become Lumo Digital
[53] PLA.0201 - BDO webpage Lumo acquisition of Globox - 13.05.2025
[54] PLA.0129 to PLA.0133.
[55] PLA.0130.

(e) tell me that, as a consequence of Mr McKay's engagement, Mr Innes-Jones would be placed on hold or would cease providing advisory support to us, precisely when we would need it most; or

(f) tell me that BDO also acted for Lumo Digital Outdoor Limited, a well resourced competitor of ours in the digital billboard industry. The defendants have admitted that BDO Auckland provided accountancy services to Lumo and did not disclose that fact to us.[56]

78. Had I been told that engaging Mr McKay meant losing the support of Mr Innes-Jones, I absolutely would not have agreed to Mr McKay doing the review. I was emphatic about that to the PCC and I remain emphatic about it now. Anyone can review the business, but it will have taken Nick well over 100 hours to get to his current level of understanding on our business, and he possessed the unique skills to be able to translate our significant IP into competitive advantages (and therefore EBITDA) that would be very difficult (and we did not have enough runway in time anyway) to have found another accountancy expert to be able to do this, so it would have definitely been Nick staying and Andy going had I been told. I would have insisted on an unconflicted reviewer from another firm, such as PwC, and on retaining my own adviser's full support throughout the review process. There was no shortage of qualified independent accountants in Auckland.[57]

79. I also now know from the PCC's decisions that on 29 May 2020 Mr McKay telephoned Mr Innes-Jones and they discussed the potential conflict between themselves, agreeing that Mr Innes-Jones would go ‘on hold’ while Mr McKay completed the review.

[56] Statement of defence dated 14 July 2026 at paragraph 46 admissions; PLA.0201 (BDO webpage regarding Lumo's acquisition of Globox, 13 May 2025).

[57] My statement to that effect is recorded in the PCC decision at PLA.0194, and in the chronology at PLA.0204.

Nobody told me that. The PCC found that the meaning of ‘on hold’ was never sufficiently clear, that safeguards should have been communicated to me and to BNZ and documented, that Mr McKay's engagement letter was silent on the potential conflict, and that my informed written consent should have been obtained.[58] I will discuss this in more detail now.

80. BDO was consciously aware of the conflict of interest on 29 May 2020, but they certainly never triggered their obligation to advise me and seek my instruction (which would have been for McKay to cease if they could not work it through).

81. I also now know that on 10 June 2020 Mr Innes-Jones and Mr Nigel Milton of BDO Auckland emailed each other about the position. Their exchange records the view that [redacted] That is exactly what then happened: Mr McKay went on to disagree with Mr Innes-Jones and instructed him to cease assisting me, and (importantly) nobody at BDO put that position to me for my consent at any stage.

The loss of Mr Innes-Jones's support

82. Mr Innes-Jones' support did not stop immediately. As I have described, he coached me for and attended the 2 June 2020 bank meeting in person, chased Mr McKay (so I’m unsure why Mr McKay accepted that if they had both agreed Mr Innes-Jones would cease) and Mr Kilmartin for me on 3 and 4 June 2020, attended the inaugural Advisory Board meeting on 11 June 2020 as a paid member, and advised me on the wage subsidy on 12 June 2020.[60] The 11 June 2020 Advisory Board meeting was a

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[58] PLA.0193 (PCC decision PC-003750, McKay, 17 October 2024); PLA.0194 (PCC decision PC-003751, Innes-Jones, 17 October 2024).

[redacted]

[60] PLA.0118; PLA.0119; PLA.0121; PLA.0099; PLA.0038; PLA.0043.

substantive meeting: I presented a detailed overview of the business and its trading performance, and the business and BDO's review were discussed. The defendants' characterisation of it as merely a 'meet and greet' is not accurate, and the PCC found that the meeting had gone beyond being only a meet and greet.[61]

83. The fact the Bank meeting took place in Nick's BDO office, that Nick immediately emailed, "I'll keep chasing Andy"[62], and all of the other emails and attendances Nick did in 2020, it is simply not credible for Nick and/or BDO to say I was not Nick's permanent and ongoing client at all times. I am actually very disappointed BDO would keep attempting to maintain this position when the contemporaneous communication simply does not support it.

84. I now know that on or about 12 June 2020, following a telephone discussion between McKay and Innes-Jones concerning BDO's multiple engagements with us, Mr McKay instructed Mr Innes-Jones to cease providing services to us, and Mr Innes-Jones did so. The defendants have admitted that on or about 12 June 2020 Mr McKay reiterated by telephone that Mr Innes-Jones was to cease his involvement, and that thereafter Mr Innes-Jones did not undertake substantive work for us or instigate contact with us.[63] My informed consent to that withdrawal was never sought or obtained. I was not even told it had happened. Mr McKay simply was never authorised to have instructed Nick to cease providing professional advisory services to us. If Andy had been at an external company (PwC etc) he would not have been in a position to have done this and Nick would have kept on doing his job advocating for our business. The conflicting engagements BDO allowed itself to get into is the only thing that allowed Andy to get

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[61] PLA.0099 (Leeming email, 21 June 2022); PLA.0194 (PCC decision, Innes-Jones).
[62] PLA.0121
[63] Statement of defence dated 14 July 2026 at paragraph 36 admissions.

into such a position of control over our expert (and I certainly never authorised that).

85. What I experienced was that my trusted adviser simply went quiet at the very moment the business's survival was being assessed. After 12 June 2020, Mr Innes-Jones's recorded contributions dwindled to scheduling emails and commiserations. When Mr Leeming proposed an urgent advisory catch up on 6 July 2020, given, in his words, the email traffic flowing between Dave, the BNZ and BDO re all things financial, Mr Innes-Jones was on leave and did not attend.[64] When I told the Advisory Board on 6 July 2020 that we had decided to give up and sell, his reply two days later was two sentences of sympathy, "Obviously disappointed to hear this given your passion and the time you have put into the business, please keep me updated to your next steps".[65]

86. The clearest example came on 28 July 2020, at the height of the crisis. That morning I asked Mr Innes-Jones directly for help, "I'm going to need you to model, from the Saturday XLS, our forward sales and OPEX as I can't do any more than I have". I gave him the trading figures for the Wairau and Victoria Street sites and asked him to see what you can do to get Andy back into his supportive position of our Friday 24 July meeting. At 5.29 pm he declined, writing, "I will be direct with this email. I suggest that we wait until Andy issues a final report before starting this exercise". He added that I should first get the bank's blessing for him to do the work, that he would likely need to restate our 31 March 2020 balance sheet downwards in any event, and that given the company's position, our credit team will likely require some form of upfront payment for us to complete the work.[66]

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[64] PLA.0047 (email chain, Advisory catch up, 6 July 2020).
[65] PLA.0048 (email chain, 6 to 8 July 2020).
[66] PLA.0060 (email chain, Proof, 28 July 2020).

87. I did not know then what I know now from the disclosed internal BDO correspondence of the same day. On 28 July 2020 Mr McKay sent Mr Innes-Jones draft responses to my emails and asked him for the financial model BDO had submitted to the bank at the end of 2019 (which McKay should have already considered if he was truly reviewing our business). Mr Innes-Jones replied to Mr McKay, internally, “Dave states that I am the accountant but I am not” (listing the missing formalities), and then added, “You don't need to state the above in the email though”. He continued, “Dave asked me in an email a couple of hours ago to do this modelling for him. I haven't replied yet, as I don't want to do this until your report has gone to the bank”.[67] So while I was begging my own accountant for help in demonstrating the viability of my business, he was privately coordinating with the partner reviewing us for the Bank, deliberately withholding his reply until the adverse report had gone in, and agreeing with Mr McKay on what I should and should not be told.

88. The consequence of BDO's silent withdrawal was that, in responding to the accounting and business viability issues raised by Mr McKay in the review, I was on my own. I am not an accountant. I said exactly that to Mr Innes-Jones at the time, “I can't do any more with this. I am not an accountant. I do not know how to present the current and forward trading position. I get that you have not been engaged to do this but that you might not have been able to anyway due to Andy also being BDO. None of this helps”.[68] The two mandates had collided exactly as anyone at BDO could have foreseen on 28 May 2020, and it was the client who paid for it.

[67] PLA.0162 (internal BDO email chain, Innes-Jones to McKay, 28 July 2020).

[68] PLA.0058 and PLA.0146 (email chain, 27 to 28 July 2020, in which those interlineated words to Mr Innes-Jones appear).

The review period: June to August 2020

89. Mr McKay and Ms Lee began the review with a meeting at our premises on 8 June 2020. Over the following weeks I gave them full access: our Xero, our management accounts, our forecasts, our pipeline, our aged debtors and creditors, and my own explanations of the business model. On 30 June 2020 I wrote to Ms Lee, copied to Mr McKay, explaining the two limbs of the business and the site level economics, noting that a site costing $300,000 only needed to generate $128,488 per year before adding to gross profit, and closing, "This is a critical assessment you are doing of our business and I would appreciate the opportunity to meet briefly before your report is complete".[69]

90. On Friday 3 July 2020 Mr McKay came to see me and told me that he would not support additional lending. His suggestion, as I recorded it contemporaneously, was to cut costs, return to a minimalistic trading position, and slowly get runs on the board. I set out my response, and the trading data supporting the business plan, in a long email to Mr Kilmartin, copied to Mr McKay, on Monday 6 July 2020.[70] Mr Kilmartin replied the same day declining to advance further funding on the information to hand, noting expressly, "I am yet to see BDO's report, and recommending that I review Andy's suggestion as to a plan consolidating your existing position.[71] The bank was, exactly as it had said on 2 June 2020, waiting on BDO.

Andy McKay's involvement

91. This brings me to the third memorable event of this saga. This is of my interaction with Mr Andrew McKay of BDO Auckland. It is difficult to keep all the evidence in chronological order so I wish to

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[69] PLA.0044 (email Jaques to Lee and McKay, DS overview, 30 June 2020).
[70] PLA.0138 and PLA.0046 (email Jaques to Kilmartin and McKay, 6 July 2020).
[71] PLA.0046 (email Kilmartin to Jaques, 6 July 2020).

recount my experience with Andy all in one place here to give it the proper context and continuity that it requires (which will make Andy's abrupt change in position on Monday 27 July 2020 clearer).

92. When Andy and Melissa came to my office on 8 June they were open and asking questions like someone that does not know anything about the business and wants to know more.

93. Typical of my planning for the future, I expressly emailed[72] asking to speak with them prior to any Report being issued (as I was ensuring nothing had been lost in translation, for either good or bad).

94. This did not happen. Instead, they returned to my office on 3 July, and without any prior warning on what they were about to say, told me I had a good business, but in Andy's opinion I should grow organically (and not on borrowed funds).

95. I do not have the exact dates in my diary, but I had some additional interactions with Andy McKay on or after the initial 8 June meeting as he said 3 very important statements to me:

    a) I told Andy of the circa $600,000 discount I was buying the Halo billboards for and that Nick had told me I could record this as an entry on the Balance Sheet which would strengthen my equity position. I was really surprised at how violently Andy reacted as he threw up his hands and said, "No accountant in their right mind would say that". Not being an accounting expert myself I could not challenge it at the time, but I have since engaged an independent report by Mr Paul Moriarty[73] who said in fact Nick was correct and it was Andy that was wrong (the difference between the reporting standards of privately held companies and public ones).

[72] PLA.0044

[73] PLA.0182

b) Andy also told me that he did not really understand the Advertising industry. This struck me as strange (as I thought it was obvious people invested to buy more customers) due to him being in the position of reviewing something he did not understand. I then spent quite a bit of time explaining the Nike brand building model to him.

c) Lastly Andy said he was very worried about putting BDO's name to emerging technology that was not as proven as he would like to see it be. But he was not being asked to give a cast-iron guarantee of business success (as no such thing exists). BDO should not accept review work if they do not have the confidence to impartially report what they see. This is exactly the type of risk-adverse comment I would expect to see from an insolvency professional (and you would never hear a M&A or growth advisory partner speaking like this).

96. A couple of things struck me straight away in the 3 July meeting, a) he was not being asked on how he would trade my business (he might be risk adverse and want to go organic), he was being asked to report on whether the business had the reported potential, and was properly run etc. Secondly, b) he had arrived with a decided mind and not given me the opportunity to know his thinking and test his assumptions (that I had expressly asked for).

97. Faced with that, on 6 July 2020 I told the Advisory Board we had decided to sell, and on 8 July 2020 I signed an authority to act with LINK Business Brokers listing the business for sale. The LINK listing authority records BDO, Nick Innes-Jones, as the business's accountant.[74] On 9 July 2020, in a bitter piece of timing, the independent hearing commissioners granted our hard fought resource consent for the Wash Depot site at 127 Green Lane East, a consent we had pursued since July 2019 against opposition, for

[74] PLA.0048 (email chain, 6 to 8 July 2020); PLA.0049 (LINK authority to act, 8 July 2020).

a site we forecast would generate over $1 million per year.[75] This was a particularly important consent to get it was the first head-on challenge we had taken through to a hearing with NZTA and we won it with the Commissioners finding we had proven a 0.04% driver distraction rate (evidence of our resource consent IP).

98. Through late July 2020 I continued to press Mr McKay with the actual trading data. Out of sheer frustration on 22 July 2020 I sent Andy an email[76] where I said, “You strike me as a no bullshit, straight up type of guy who is open to being shown to be wrong (if you are). I am very disappointed with your assessment of my business and with all due respect I consider you to be wrong.” Unlike the discourtesy he had shown me by turning up at my office without any advance warning, I wrote to him setting out all of the relevant business metrics in detail so he could prepare for our meeting.[77] His interlineated responses of 23 July 2020 disclaimed any decision-making role: We do not make the lending decisions that is for the Bank. In the same email he told me: The reality is at the time of the review DA and DS are insolvent and I would suspect remain so, and that a report had already been drafted.[78] I responded that he was not the decision maker, but Paul has delegated the due diligence to you and is very likely to just follow your recommendation.[79]

99. On Friday 24 July 2020 I met Mr McKay and Ms Lee at BDO's Auckland CBD office at 4 Graham Street. That meeting went well. Part way through it Mr McKay put both hands up and said words to the effect: OK, I will support a limited support position. The consensus reached, as I understood it, was that the bank should

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[75] PLA.0051 (Auckland Council decision, resource consent granted); PLA.0100 (Jamieson email, 5 July 2022, estimating $1,092,000 per annum for the Greenlane site).

[76] PLA.0107

[77] PLA.0056.

[78] PLA.0056 (email chain, Digital Signs review, 22 to 23 July 2020).

[79] PLA.0056.

fund the Halo purchase and the installation of the consented Wash Depot site, and possibly some working capital.

100. I left that meeting genuinely believing we had turned the corner, and I said so the same evening in writing to the Halo Liquidator, "That meeting went VERY well. Now that he has got to the finer details he understands it much better and strongly indicated he is willing to support what I am doing."[80]

101. On Monday 27 July 2020 everything reversed (even though not one single thing had changed over the weekend). The Halo Liquidator required same day confirmation that the transaction would complete. I forwarded the exchange to Mr McKay at 2.42 pm, writing, "This is starting to unravel. Did you have a chance to speak with Paul at all?" Instead of replying to me, at 3.37 pm Mr McKay forwarded my private correspondence with the Liquidator to Mr Kilmartin at the Bank, writing, "I just got this I am concerned and not sure that we committed to anything like what is being represented here. Can we discuss."[81] At 9.20 pm that night Mr McKay wrote to me that the analysis was unfinished, that I should cease making commitments, and that, "You have almost locked yourself into this Halo deal with currently no ability to pay for it." He also told me that he had briefly talked to Nick on Friday (wonder why if McKay thought Innes-Jones was not our accountant), and that Mr Innes-Jones would not be revaluing the Halo assets to $800k purely by a valuation (here we go), and that the SMetric valuation does not make sense (evidence of the hostility I consider Mr McKay has against Mr Russell from SMetric).[82]

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[80] PLA.0142 (email Jaques to Nellies, 24 July 2020, forwarded by Mr McKay to the bank on 27 July 2020). My later complaint documents (PLA.0093; PLA.0103) refer to this meeting as 23 July 2020; having reviewed the contemporaneous emails (PLA.0056, in which Mr McKay proposed meeting on the Friday, and PLA.0142) I am satisfied the meeting took place on Friday 24 July 2020.

[81] PLA.0142 (email McKay to Kilmartin, 27 July 2020).

[82] PLA.0058 and PLA.0146 (email chain, 27 July 2020).

102. That last point mattered enormously and illustrates the impossible position the conflict had put me in. Mr Innes-Jones had advised me that the Halo billboards, bought at a liquidation discount, could be revalued to their independent market valuation with the uplift credited appropriately. Mr McKay said that was wrong. When I asked Mr Innes-Jones to engage with Mr McKay on the point, he refused, citing conflict of interest, telling me BDO did not want to be seen influencing their own report. I was left, as I wrote at the time, “Caught up in a difference of opinion between you, Nick and Warwick Russell, with no accountant able or willing to resolve it on my behalf”.[83]

103. At 9.56 pm on 27 July 2020 I wrote to Mr McKay, “Suit yourself Andy. I am out of time to do any more on this. I thought we had made good progress last Friday and that you could see a viability in this business. Obviously I was wrong.” At 10.03 pm Mr McKay forwarded that email also to Mr Kilmartin, noting he would be speaking to my board.[84] The next morning, 28 July 2020, I asked Mr McKay directly, “What made you go from being willing to support Halo, Wash Depot and (say) $200k of working capital Friday to last night's email? And whatever it was why did you not do me the courtesy of ringing me to discuss it?” I protested that the flip-flop between support and not is entirely unacceptable, and that BDO (Nick) are my accountants and that side of the business is supposed to be going to bat for me.[85] Mr McKay's draft responses, settled internally with Mr Innes-Jones, included the statements, “There is no flip flop, and BDO East Tamaki are not engaged as your accountants at this point in time.”[86] This response by BDO and Andy McKay (with Innes-Jones shadowing them in the background) is completely unacceptable. They are just surface

[83] PLA.0058 (27 July 2020, interlineated responses); PLA.0093 (complaint letter, 21 March 2022); PLA.0104 (CAANZ complaint, 15 May 2023).

[84] PLA.0145 (email McKay to Kilmartin, 27 July 2020, forwarding my email of 9.56 pm).

[85] PLA.0059 (email Jaques to McKay, copied to Innes-Jones, 28 July 2020).

[86] PLA.0162 (internal BDO email, 28 July 2020).

level 'spin' while in the background Andy has got his back up (from being challenged, unfamiliar with our business model and industry, or just because he has an unconscious bias from his extended time in insolvency) and now BDO will stop short at nothing other than completely writing me off the face of this earth.

104. At 7.09 pm on 28 July 2020, in frustration and despair, I terminated the engagement: Please do not do any more work on this matter and invoice me for what you have done. Within seven minutes Mr McKay had forwarded my termination email to Mr Kilmartin at the bank, marked: To discuss in morning.[87]

105. On 10 August 2020, after a meeting that day with Mr McKay and Mr Kilmartin, I resumed the engagement on a defined and scaled back basis. I asked Mr McKay to continue his engagement to advise whether he would recommend to BNZ: first, an additional $200,000 of working capital for Digital Signs; secondly, a 36 month term loan of $350,000 to Digital Advertising to purchase the two operational Halo billboard sites; and thirdly, a 36 month term loan of $402,500 to Digital Advertising to install the consented Wash Depot billboards. I set out the retrenchment steps we had already taken, and closed: please Andy give this a fair crack. Both of my independent Advisory Board members wrote in support the same evening, copied to Mr McKay and Mr Kilmartin. Mr Leeming wrote that the logic being promoted by Dave for further growth expectations looks reasonable and sustainable.[88]

The report

106. On 26 August 2020 Mr Kilmartin emailed Mr McKay chasing for the report on my behalf. Mr McKay's reply to the bank, at 10.16 am, was, "We have draft ready to go to him today. 'It is not

[87] PLA.0146 (email chain, 27 to 28 July 2020).
[88] PLA.0062 (email chain, Digital Signs engagement, 10 August 2020).

viable'."[89] So the bank was told the conclusion, in four words, before I had seen a single page of the report.

107. On 27 August 2020 at 10.24 am Ms Lee emailed me the report, described as the final draft, asking me to review it for factual accuracy and telling me, "We are of the view that you will not agree with our assessment, however, you are welcome to make a submission directly to the BNZ. This report will be forwarded to Paul at BNZ once you have reviewed."[90] I replied at 11.17 am recording my fundamental disagreement with the report's approach and conclusions (which I have consistently maintained until today). At 12.00 pm, less than two hours after I had first received it, Mr McKay sent the report to Mr Kilmartin at BNZ, together with my dissenting response, copied to Mr Innes-Jones (not sure why if he was never our accountant?). Mr McKay's covering email told the bank, among other things, that he expects BNZ to fund that maybe position that is an equity play not debt, and that further lending still requires BNZ putting in up to $1.4million on uncertain cash flow no track record - with no real security.[91] This is a ridiculous statement as we had nearly that much security in just our properties alone let alone in the Halo and Wash Depot billboards.

108. The report is a 32 page document dated August 2020, under cover of a letter dated 26 August 2020 signed by Mr McKay, addressed to the director of Digital Advertising and Digital Signs and copied to Mr Kilmartin at BNZ. Every page of it carries a Draft watermark, yet it was treated by BDO, by BNZ and by everyone else as the

[89] PLA.0151 (email exchange Kilmartin and McKay, 26 August 2020).

[90] PLA.0065 (email chain, 27 August 2020).

[91] PLA.0152 (email McKay to Kilmartin, 27 August 2020); PLA.0154 (Kilmartin acknowledgment, 27 August 2020).

operative document for the funding decision. No further or final version was ever issued.[92]

109. The report's conclusions included, among other things, the following:

(a) that no or no material value should be attributed to assets we held: the Wash Depot billboard, recognised in Digital Advertising's balance sheet at $408,000, was described in the words: that asset does not exist, and again: The reality is this asset does not exist;

(b) that there was a serious question as to whether Digital Signs' debtors of approximately $1.2 million from 31 March 2020 were collectable;

(c) that revenue recognised at year end March 2020 remained partially uncollected, indicating that sales and assets have been overstated during the period;

(d) that all of the forecasts we had provided were in BDO's view overly optimistic, and that BDO was not able to establish and assess the reasonableness of the FY21 forecast;

(e) that both companies were undercapitalised, that the group could not sustain debt of approximately $1 million, and that in BDO's view there is serious risk as to whether there is substance to the Balance Sheets of both companies;

(f) that the commitment to buy the Halo billboards was bordering on reckless; and

[92] PLA.0063 (BDO Independent Accountants Report, August 2020). A separate copy showing the draft watermark is at PLA.0064, and the version sent to BNZ is at PLA.0153.

(g) that the companies had failed both limbs of the solvency test, with the express suggestion: We suggest the directors to seek legal advice regarding this position.[93]

110. I do not accept those conclusions, and said so at the time in writing. Without trespassing on matters for expert evidence, I make the following factual points from my own knowledge:

(a) the Wash Depot asset was not fictitious. We had paid a cash deposit for it. So, while it might be correct that the Management Accounts should not have recorded an actual billboard as an asset, they should have had the same dollar value asset recorded as a "deposit towards a billboard". To have simply stated 'there was no billboard' would cause the reader to think there was a fraud going on, or at the least incompetent accounting (of which there was neither). The site was leased on a 30 year arrangement, and on 9 July 2020, seven weeks before the report, the site's resource consent had been granted after a contested hearing. What the site lacked was installation funding, which was exactly what we were asking the Bank to provide.[94] I have since gone on and had a formal assessment of the expected income that I forecast at $1m/year and that has come back at $1.092m/year nett of agency commissions[95]. Since the site was company owned (by us), and only had a $70,000/year lease, funding this site would have generated circa $1.022m in gross profit to the business. That alone was more than enough to cover all OPEX and debt servicing; and

[93] PLA.0063, executive summary, key findings and balance sheet sections.

[94] PLA.0051 (consent decision); PLA.0073 (letter to Polar Capital, 26 November 2020, recording the installation cost and the landowner's interest).

[95] PLA.0187

(b) the two Halo billboards were operational, consented, income producing assets purchased at a liquidation price of $301,000 plus GST against an independent valuation of $827,955 plus GST, and their acquisition had been notified to BDO's review team on 29 June 2020 without objection.[96] Based on what I have already said about these sites it appears clear that Mr McKay has limited himself to an accounting evaluation only and not a business viability one; and

(c) the debtors said to be doubtful were substantially JV billboard sales awaiting resource consents, a timing feature inherent in the business model that BDO itself had modelled in the December 2019 projections; and

(d) I do not wish to stray into legal submission, but I do not think Mr McKay’s report properly categorises our business for solvency purposes. In lay terms I regard that if a business invests heavily in something clever (say a cure for cancer) but is Balance Sheet insolvent (from putting all the money in as loans instead of paid up capital), and has no sales, does not mean they are not viable. I consider the BNZ was asking BDO if we were viable, not technically insolvent; and

(e) The report does not mention our competitive IP (consents and 5 x revenue) or the positive cashflow forecasting done by BDO in 2019 (and why this was not still correct); and

(f) On 26 June 2026 BDO’s lawyers wrote an open letter saying McKay had not considered the 2019 Cashflow Forecasts done by Innes-Jones in the course of his review[97]. I cannot see how McKay could have conducted a review of the

[96] PLA.0143; PLA.0144; and the SMetric valuation referred to at PLA.0058 and PLA.0146.

[97] PLA.0206 - Letter Gilbert Walker to Cowan - 26.06.2026, para 2(a)

viability of our business without looking at prior forecasts that showed future profits coming; and

(g) the report nowhere disclosed BDO's own prior and continuing relationship with the group, nowhere stated the safeguards applied to manage the obvious conflict, and nowhere acknowledged that the forecasting history it criticised included BDO's own work.[98]

111. The report also contained statements that were, in my view, unnecessarily damaging beyond any legitimate scope: in particular the advice that the directors should seek legal advice regarding the solvency position, which carried the plain implication that I had been trading recklessly and in breach of my duties as a director, and the description of the Halo purchase as bordering on reckless. Those words, in a document going straight to my Bank of many years, were devastating.

BNZ's withdrawal of support

112. After the report, BNZ never provided any of the growth funding we had sought and actually wrote to me, refusing to open any new accounts for me, and asking me to move to another bank[99]. On 7 September 2020 Mr Kilmartin wrote that he could look to maintain the existing temporary overdraft for another 30 days, but I'm not able to support extending additional funds above that level, on the information currently to hand. When I responded that I had listed three rental properties for sale, which would clear all mortgages and the $470,000 overdraft (proof of the equity we had), he proposed a 90 day extension of the temporary limit to enable the properties to be prepared and marketed.[100] On 16 October 2020 BNZ issued a facility document for a reducing overdraft of

[98] PLA.0063.

[99] PLA.0083

[100] PLA.0067 (email chain, 7 September 2020).

$500,000, stepping down to $200,000 from 8 December 2020, repayable on demand.[101]

113. In substance, from the delivery of the report, the Bank's posture changed from considering growth funding to managing its exit. Even our authorised facilities were cancelled on the spot and put into penalty interest rates. The facilities were continued only on a temporary, reducing basis tied to the sale of our Trust properties. The funding we had actually sought, the $200,000 of working capital, the $350,000 Halo term loan and the $402,500 Wash Depot term loan, was never provided. The larger facility Mr Kilmartin had spoken of on 2 June 2020 was never mentioned again.

114. The consequences flowed exactly as anyone would predict. The Halo purchase could not be completed as structured. The Wash Depot site, consented and forecast to generate over $1 million per year, could not be installed for want of approximately $400,000. The business could not fund its pipeline. We sold our family's rental properties and BNZ took the proceeds. And through late 2020 the business ground down, in my words to Inland Revenue at the time, 'further and further'.[102]

Attempts to obtain funding elsewhere

115. The plaintiffs did everything reasonably possible to replace BNZ (and mitigate loss). Between April and November 2020 I approached, among others: GET Capital, which declined in April 2020 for want of free property equity[103]; Real Asset, a finance broker, which submitted an invoice finance application to Flexi in June 2020; Kiwibank, to which I presented a summary of position on 21 July 2020 and which declined on 29 July 2020 on the basis

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[101] PLA.0069 (BNZ facility document, 16 October 2020).
[102] PLA.0067; PLA.0073; PLA.0080.
[103] PLA.0019 (GET Capital email, 20 April 2020).

that it would want to see an improved capital base and an existing strong profitable trading history; TBK Capital, to which I presented a $2 million capital raise on 20 July 2020, and whose introduced investors ultimately declined on 15 October 2020; and Polar Capital, to which I made a joint venture offer on 26 November 2020 after a referral inquiry through YRW Limited.[104]

116. None of those approaches succeeded. Two features of that history bear emphasis. First, the failure of the approaches that predated Mr McKay's involvement, such as GET Capital in April 2020, reflected only the fact that our property security was fully committed to BNZ; that is why BNZ's own support was critical. Secondly, the approaches made while the review was on foot and afterwards were made by a business publicly listed for sale, visibly starved of working capital, whose main bank was declining to lend, a position itself created by the course of the review. A business whose own bank will not support it, on the strength of a report by the business's own accounting firm, is not an attractive proposition to any other financier.

117. By early July 2020, when Mr McKay's oral position had closed the Bank's purse, we had also been forced to put the entire business on the market through LINK. LINK marketed the business from 8 July 2020. The marketing produced 33 expressions of interest, of which approximately five progressed to due diligence, but despite the listing being open to offers, no offers were received.[105]

The collapse of the business

118. The end came by degrees over the following year, and it was miserable. In October 2020 I instructed our bookkeepers to finish all staff (except 1 who was on a visa and I did not have the heart

[104] PLA.0019 (GET Capital, 20 April 2020); PLA.0042 (Real Asset, 20 June 2020); PLA.0054 and PLA.0061 (Kiwibank, 21 and 29 July 2020); PLA.0052 and PLA.0068 (TBK Capital, 20 July and 15 October 2020); PLA.0072 and PLA.0073 (YRW and Polar Capital, 23 and 26 November 2020).

[105] PLA.0049 (LINK authority to act, 8 July 2020); PLA.0091 (LINK letter, 13 July 2021).

to end him as it would have involved him having to leave the country. I ended up personally paying his wages for near-on 2 years until he was able to get residency). From October 2020 until January 2021 I drove a truck on contract to pay my family's cost of living and the wages of our one remaining technical employee. We vacated our premises and cut every outgoing we could.[106]

119. Inland Revenue, whose arrears we had been servicing at $10,000 per month under an arrangement disclosed to everyone from the outset, escalated. On 20 January 2021 it issued a final warning demanding $291,048.90 by 3 February 2021 and referring the file for prosecution consideration.[107] I responded setting out the sale efforts and the position frankly, writing at one point, "Despite me not wanting it I would prefer you simply liquidate the company and I can stop trying".[108] In May 2021 the Commissioner issued liquidation proceedings claiming $325,953.53 (which for various reasons did not proceed).[109]

120. In May 2021, for the purposes of sale, we obtained an independent valuation of the Digital Signs business from Bizval Limited. Because the business's future maintainable earnings were by then negative, Bizval could value it only on a net asset backing basis. The valuation, dated 20 May 2021, was $100,000 including stock.[110] A business into which my wife and I had put approximately $2.5 million, which had been independently discussed in 2019 in enterprise value terms of many tens of millions of dollars, and which held a consented pipeline of extraordinary value, was reduced to the value of its plant and stock.

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[106] PLA.0080 (email to Inland Revenue, January 2021).

[107] PLA.0078 (IRD final warning, 20 January 2021).

[108] PLA.0080.

[109] PLA.0084 (IRD statement of claim, CIV-2021-404-916); PLA.0085 (IRD statement of account, 5 May 2021); PLA.0087 and PLA.0088 (notice of proceeding and notice of discontinuance).

[110] PLA.0086 (Bizval valuation, 20 May 2021).

121. On 30 June 2021 the business was sold for that figure: $100,000 in total, comprising tangible assets, stock and intangibles, under an agreement for sale and purchase of the business as a going concern into a NewCo also owned by my family (as I could not sell it to a third party).[111] The NewCo was also called Digital Signs Limited, incorporated on 27 April 2021. The original trading company was renamed Corporate Restructure 2,321 Limited (since changed to Digital Signs (2017) Limited).[112]

122. Another fallout as a result of the inaccurate BDO report leading to the bank's withdrawal of support was that my father (a 5% shareholder in Digital Holdings (2017) Limited) lost confidence in my ability to run the business properly and placed a caveat on my last remaining property (preventing me from leveraging it to trade out of this situation). I could not risk a minority shareholder complaint, and I could not get his support to borrow further, so this factor also necessitated me having to have the business activity valued and sold into a NewCo.

The complaint history

123. I record the complaint history briefly and factually. On 21 March 2022 I wrote a detailed letter of complaint to BDO, addressed to Mr McKay and Mr Innes-Jones.[113] BDO responded on 29 April 2022, signed by both Mr McKay and Mr Innes-Jones, standing by the report and their conduct, and asserting among other things that Mr Innes-Jones did not have any formal role for the companies pending the completion of Mr McKay's report.[114]

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[111] PLA.0090 (agreement for sale and purchase, 30 June 2021); PLA.0091 (LINK letter, 13 July 2021, confirming the marketing history).

[112] PLA.0082 (certificate of incorporation); PLA.0089 (IRD statutory demand addressed to Corporate Restructure 2321); PLA.0090.

[113] PLA.0093 (letter of complaint, 21 March 2022, and its attachments at PLA.0094 to PLA.0097). The letter is misdated on its face.

[114] PLA.0098 (BDO response, 29 April 2022).

124. In 2023 I commissioned an independent review from Bellingham Wallace Limited, a substantial Auckland accounting firm, on how it would have approached the same situation. Bellingham Wallace's conclusion, given by its director Matt Bellingham FCA on 3 May 2023, was that Bellingham Wallace would have declined to act in this instance, because, in the firm's words, we could not reasonably be determined to be independent whilst reviewing our own work.[115]

125. On 15 May 2023 I complained to Chartered Accountants Australia and New Zealand ("CAANZ") about Mr Innes-Jones, Mr McKay and BDO.[116] Both members responded through the CAANZ process, and I replied.[117]

126. On 17 October 2024 the Professional Conduct Committee ("PCC") of the New Zealand Institute of Chartered Accountants issued its decisions. In respect of Mr McKay, the PCC found that while it was satisfied he had conducted his review with an independent mind, the requirements of independence in appearance had not been met: there had been no formal conflict check, the on hold arrangement was unclear, safeguards were neither communicated to me and the bank nor documented, the engagement letter was silent on the potential conflict, and my informed written consent should have been obtained. The PCC considered the matter serious enough to warrant referral to the Disciplinary Tribunal, but resolved it by consent order under which Mr McKay was reprimanded and ordered to pay costs.[118] In respect of Mr Innes-Jones, the PCC found that his conduct involved a conflict of interest that could undermine the perception of Mr McKay's

[115] PLA.0103 (Bellingham Wallace independent review report, 3 May 2023).

[116] PLA.0104 and PLA.0105 (CAANZ complaint, 15 May 2023, with enclosures at PLA.0106 to PLA.0126).

[117] PLA.0127 and PLA.0128 (responses of Mr Innes-Jones and Mr McKay, 31 July 2023, with Mr McKay's exhibits at PLA.0129 to PLA.0180); PLA.0183 (my reply, 14 December 2023); PLA.0189 and PLA.0190 (further responses, March 2024).

[118] PLA.0193 (PCC decision PC-003750, 17 October 2024).

independence, that he had exercised poor professional judgment, that he should have ceased his involvement in early June 2020, and that he was the more culpable of the two. It likewise considered the matter serious enough for referral to the Disciplinary Tribunal, resolved by consent order under which Mr Innes-Jones was severely reprimanded and ordered to pay costs.[119]

What the opportunity was worth

127. The sequel demonstrates what was lost. The business did not die because the model was bad, it died because it was starved of funding at the critical moment. Rebuilt slowly within my family's new entities from 2021, with no bank support, the same model and substantially the same pipeline have since produced results that speak for themselves.

128. On 30 September 2024 Auckland Council granted resource consent for two large format digital billboards at 89 Gavin Street, Ellerslie, facing State Highway 1, each with a display area of 72 square metres, following a favourable notification decision. This was the same ‘Gavin Street’ site that had been in our pipeline, under a signed supply agreement, since October 2019.[120]

129. On 25 March 2025 Sapere Valuation, through its director Marnus Beylefeld CFA CA, provided an indicative valuation of Digital Signs Limited's interests in the Gavin Street joint venture project alone at between approximately \$5.9 million and \$7.5 million, with a midpoint of \$6.4 million.[121]

[119] PLA.0194 (PCC decision PC-003751, 17 October 2024); PLA.0195 (CAANZ email with corrected minutes, 15 November 2024).

[120] PLA.0191 (notification decision) and PLA.0192 (resource consent, 30 September 2024); PLA.0004 and PLA.0005 (Algorithm Enterprises agreement and purchase order for 89 Gavin Street, 30 October 2019).

[121] PLA.0198 (Sapere indicative valuation, 89 Gavin Street JV, 25 March 2025).

130. In 2025 a wider portfolio of projects was assembled into another family owned company (DBA.kiwi Limited), supported by a prospective financial report compiled by Biz Solutions Limited, chartered accountants, dated 9 May 2025, modelling fifteen initial motorway sites.[122] On 26 May 2025 Sapere Valuation provided an indicative valuation of DBA.kiwi Limited's interests in those fifteen projects, on an ungeared basis, at between approximately $44.6 million and $54.3 million, with a midpoint of $49.4 million, conditional on shareholder funding of approximately $8.1 million.[123] DBA in fact has access to more like 40 premium motorway sites (not just 15), and ‘motorways’ accounts for about 50% of the available market (with suburban and regional accounting for the rest).

131. I am well aware that these are indicative valuations of today's projects under today's conditions, and that the quantification of the plaintiffs' loss is a matter for expert evidence. The factual point I make is a simple one: the billboard model I put to BNZ and to BDO in 2020, low cost consented sites, joint venture funding, unbundled low price advertising sales, was sound. It is the same model that credible independent professionals now assess in the tens of millions of dollars. What the business needed in mid-2020 was the funding package we had asked for, in the order of $950,000 across working capital, the Halo purchase and the Wash Depot installation, against which the bank held our family's property security and the group's assets.

132. In that regard I also note the forensic accounting report of Mr Paul Moriarty CA of Moriarty Associates Limited dated 5 September 2023, commissioned to restate the March and July 2020 financial information in accordance with generally accepted accounting practice (“GAAP”) and to model the business from July 2020 on

[122] PLA.0200 (DBA.kiwi prospective financial report FY2026 to FY2030, 9 May 2025).
[123] PLA.0202 (Sapere indicative valuation, DBA.kiwi, 26 May 2025).

what was then known. Among his conclusions were that the Halo and Wash Depot projects were critical to complete, both were economically attractive, had short payback periods, and provided critical cash flow; that these could have been completed within a debt facility of $2.0m; that the business would have become cash flow positive towards the end of FY21 and generated EBITDA of approximately $1.0 million in FY22 on his base case; and that a properly presented funding request would have had a reasonable chance of success.[124] The substance of that analysis is for expert evidence; I refer to it only as part of the factual record of the steps I took.

The effect on the plaintiffs and on me

133. The consequences of the events I have described were, for the corporate plaintiffs, the loss of the chance to obtain the BNZ funding, the loss of the Halo and Wash Depot opportunities as then structured, the forced sale of the business for only $100,000, and the loss of the profits, business value and commercial opportunities that would or might have followed. Those losses are pleaded in the statement of claim and will be quantified by expert evidence.

134. For my family and me personally, the consequences included the sale of our rental properties with the proceeds taken by the Bank, the loss of the approximately $2.5 million our family had invested, the compromise of my father's position (he has not spoken with me since 2020), and the personal toll of watching a business in which the work and investment of some 12 people were at stake, built over years, destroyed over a few months. I went from running a growing group to driving trucks at night to pay one employee's wages. My involvement with BDO was one of the factors that also lead me to become involved in the Suicide Reduction Trust in

[124] PLA.0182 (Moriarty Associates forensic accounting report, 5 September 2023, and the copy at PLA.0188).

2024. I record these matters as fact; the legal characterisation of the recoverable loss is for counsel and the Court.

Concluding statement

135. BDO was our firm. It prepared our forecasts, proposed itself as our virtual CFO, took our registered offices, sat on our Advisory Board, invoiced us for advisory services, and held itself out to us as our accountant and advisers. When our Bank asked that same firm to sit in judgment on us, nobody at BDO paused to ask whether it could properly do both things at once (which of course in a professional accountancy capacity it could not), and nobody asked us for consent (particularly when Messrs McKay and Innes-Jones got into an argument over the GAAP reporting of our business). The two mandates were run side by side, in private coordination between the two partners and the Bank, until the advisory support we depended on had been silently withdrawn and the independent report had condemned the business to its own Banker in four words, “It is not viable”. I do not believe a fair, balanced and genuinely independent review of our business, conducted with our own advisers free to assist us, would have reached that conclusion, and everything that has happened since fortifies me in that belief.

136. Mr Innes-Jones asked his own questions and arrived at the opinion our business had excellent merit. Mr Kilmartin also asked his own questions and formed such a view of the opportunity that he offered us a $10m facility when we were only asking for $2m. Mr McKay directly stated he did not understand our industry, was overly protective of the BDO brand, and was unfamiliar with the difference in reporting standards between private and public companies. He then completely sunk the business without proper cause.

137. I confirm that the contents of this statement are true to the best of my knowledge and belief.

DATED 1 September 2026

David Arthur Jaques