In the High Court of New Zealand
Auckland Registry

I Te Kōti Matua O Aotearoa
Tāmaki Makaurau Rohe

CIV 2026-404-1264

Between **Digital Holdings (2017) Limited, Digital Signs (2017) Limited and Digital Advertising (2017) Limited**

Plaintiffs

And **BDO Auckland, Nicholas Robert Innes-Jones and Andrew John McKay**

Defendants

WITNESS STATEMENT OF PAUL JOHN KILMARTIN

Dated 4 November 2026

WITNESS STATEMENT OF PAUL JOHN KILMARTIN

1. My full name is Paul John Kilmartin. I reside in Auckland.

2. I have been served with a subpoena by the defendants, requiring my attendance at court to give evidence in this case.

Qualifications and experience

3. I hold a National Certificate in Business from Manukau Polytechnic which I gained in 1993, and a National Diploma in Accountancy, also from Manukau Polytechnic, which I gained in 1995. I have been employed in the banking industry since 1995. During that time, I have held a number of roles, primarily in the area of credit risk and compliance.

4. I am currently employed by Bank of New Zealand (**BNZ**) in the role of Credit Overview – Lead. This is a compliance and assurance role. The Credit Overview team undertakes hindsight reviews of credit decisions made by lenders to ensure they meet BNZ's lending standards and policies.

5. From November 2004 to April 2011, I was employed by BNZ in the Strategic Business Services (**SBS**) team. The SBS team is a specialist insolvency and turnaround team for non-consumer bank customers. I discuss the role of the SBS team further below.

6. From April 2011 to July 2018, I worked for Kiwibank in a similar role as a Business Risk Manager in their commercial insolvency and turnaround team (Kiwibank's equivalent of BNZ's SBS team).

7. I then returned to BNZ in 2019, taking a manager role within the Asset Quality Assurance team (now Credit Overview team). The focus of this team was to undertake credit quality assessments of lender client portfolios.

8. From around April 2020 to September 2020, I was seconded to the SBS team. I then returned to my current role in the Credit Overview team.

BNZ's Strategic Business Services team

9. As I have mentioned, BNZ's SBS team is a specialist insolvency and recovery or turnaround team for non-consumer bank customers (i.e. business customers). BNZ customers are referred to the SBS team where they are showing signs of financial distress.

10. There are various factors that may lead to a customer being referred to the SBS team. This is often due to concerning account conduct, such as repeated requests for lending, failure to meet repayments, IRD arrears, or

other similar conduct that suggests to BNZ that the customer may be in financial difficulty.

11. Other examples of where a customer may be referred to SBS include if BNZ is aware that there is some factor in particular which is adversely affecting the industry in which the customer operates, or if we learn of something negative about the customer's business through the media.

12. SBS only becomes involved if a customer is showing signs of financial distress. SBS does not deal with routine lending applications where there is no reason for concern about the customer's financial position.

13. The focus of the SBS team is to work with customers to manage the financial difficulties they are facing and to assist the business to recover. The team's aim is to fix things where possible. There are a range of options SBS uses to achieve this, which can include, for example, restructuring the customer's financing to better meet their needs.

14. However, recovery is not possible for all customers. In that case, we may work with the customer to pay down their debt or provide an opportunity to the customer to refinance elsewhere. In some cases, it will be necessary for BNZ to appoint administrators, receivers or liquidators. There are a range of options depending on the circumstances.

Digital Signs Limited and David Jaques

15. From around April 2020, I was seconded to the SBS team at BNZ.

16. One of BNZ's customers, Digital Signs Limited (**Digital Signs**), made a loan application to the bank on 18 May 2020. I understand that it was initially managed by a BNZ employee, Bianca van Graan, who was Digital Signs' usual contact. A related company of Digital Signs was Digital Advertising Limited (**Digital Advertising**).

17. Ms van Graan's manager referred the matter to the SBS Senior Manager, Amanda Warrington, by email on 25 May 2020. This email was then forwarded to me on 27 May 2020 for further review.

18. The email raised concerns regarding Digital Signs' financial position and ongoing viability.

19. Within the email, the manager had identified that the company currently owed approximately $101,000 to the Inland Revenue Department (**IRD**) in unpaid PAYE tax. The company was on a payment plan with the IRD to try to pay down this debt.

20. The manager was also concerned that Digital Signs had a "hard core" overdraft. Typically, an overdraft facility should fluctuate between debit and credit. That is, it swings between a positive and negative balance. However, Digital Signs' overdraft balance had been consistently negative since February 2020. When I say it had a "hard core" overdraft, I mean that there was a core portion of the overdraft which was never being repaid.

21. The email also raised concerns that Digital Signs had made repeated requests for additional lending throughout early 2020. These had largely been declined. Despite that, Digital Signs continued to submit further requests for additional lending from BNZ.

Review of Digital Signs and Mr Jaques

22. When a client is referred to me, I undertake a close review of their banking history and conduct research to see what else I can find out about them through publicly available sources. This involves looking at both internally available information (lending applications, decision notes, client correspondence, etc.) and external sources (the Insolvency Register, online court decisions and Google searches for any media reports or articles on the client and/or key company and security stakeholders).

23. I undertook this close review of Digital Signs and its director, David Jaques, when Digital Signs was referred to SBS in late May 2020.

24. From this, I identified that prior to January 2020, the companies' sole BNZ facility was a $10,000 overdraft facility. In December 2019, Mr Jaques submitted a lending application seeking to refinance four residential properties held under different trusts and an increase in Digital Signs' overdraft facility to $200,000. The respective trusts held residential properties which would provide supporting security to the Digital Signs' facility via an unlimited interlocking guarantee between all parties. The requested facilities were approved by BNZ in January 2020. At this time, the sum total of the facilities BNZ provided to the trusts was $1,515,500, which was the maximum amount that BNZ was willing to lend against the individual residential properties. The overdraft to Digital Signs was in addition to this, and brought total lending for the group to $1,715,500.

25. The company then made a series of requests for further term lending in early 2020. All were rejected by BNZ.

    a. On 17 March 2020, Mr Jaques emailed Ms van Graan seeking an additional $500,000 to "put into the business", leveraging against the equity in the residential properties held by the trusts and equity in Digital Advertising. Mr Jaques sought $200,000 secured against

the business's 'equity', and $300,000 against the respective equity within the residential properties.

b. On 19 March 2020, Ms van Graan responded asking Mr Jaques, "*what the $2,500 per week IRD payments relate to/if they are arrears and please provide me with the IRD statement.*" Mr Jaques replied:

> "There are 2 x $2,500. One is estimated monthly PAYE (so when we pay tomorrow we only have a small amount each 20th). The other is under a $10k/month arrangement. There was $200k owing. We paid $50,000 in Feb and paying $2,500/week is $10,800/month. There is about $20k of penalties they are willing to remit so it will be about 12 months to clear this. We are coping with this comfortably in our cash flow. Attached is the summary. There is no GST debt as this is paid as we go."

c. This lending application was declined with Ms van Graan responding to Mr Jaques on 19 March 2020 advising that:

> "Upon reviewing your current position with the IRD particularly in the owing arrears of $101,719 relating to payroll this is a significant amount of funds owing for the business. We will require to see this drop to a minimum of $30,000 before the Bank would consider further borrowing along with needing a minimum grace period of 6 months prior to looking to increase your borrowings."

d. On 6 April 2020, Mr Jaques emailed Ms van Graan with a $500,000 lending application. Mr Jaques made the application under the Government-provided Covid-19 Relief Business Finance Scheme. This was declined on 7 April 2020, with Ms van Graan advising:

> "I understand there had been a government relief package granted to assist business currently struggling with meeting commitment while we are on "lockdown". However the fundamental in which we assess the applications still holds a strenuous criteria that is required to be met. At the moment the government package is not put in place to support growth of business but to relief cashflow issues which the business would not have seen if COVID19 was not present.
>
> The Banks position to look at further funding for Digital Signs remain the same and our concerns remain unchanged. This relates to the large amount of arrears outstanding for PAYE and for organic growth to occur within the business for a minimum of six months. Digital Signs also needs to be in a position to collate month by month performance compared to the forecast provided to show these are being met.
>
> Until the business has repaid at least 75% of its IRD arrears the BNZ do not hold the appetite for future funding at this time."

e. On 24 April 2020, Mr Jaques emailed Ms van Graan seeking to re-apply for additional funding ($500,000) by way of a term loan under the Government-backed Covid-19 Relief Business Finance Scheme. On 4 May 2020, Ms van Graan responded advising that she was working through the application and requesting further information. Mr Jaques replied with additional comments on the same day. This application as submitted did not proceed. Based on information provided by Mr Jaques, the funding requirement was determined as being 'short term' pending collection of debtor receipts.

f. Instead, on 7 May 2020, a temporary overdraft extension of $266,000 was approved until 5 August 2020. BNZ expected that the companies would clear this in full from payments from the companies' debtors.

g. On 18 May 2020, Mr Jaques emailed Ms van Graan with a lending application for Digital Advertising. The application sought $420,000 via an asset finance facility to purchase two digital billboard sites. I understand that the billboards were to be purchased from a company called Halo. Mr Jaques said that security would be provided by:

> "PPSR security registration on the 2 screens along with the guarantee of Digital Signs Limited and the proprietors. We do not wish to have a GSA on Digital Advertising Limited as we are working on another larger project and need to keep this available for that."

h. On 22 May 2020, Ms van Graan advised Mr Jaques that the application had been reviewed by a BNZ Asset Finance Specialist, and that due to the nature of the assets and inherent security concerns, an asset finance facility would not be available. Mr Jaques responded to Ms van Graan via email on 25 May 2020 stating:

> "Sure, let's do this deal as GSA and business funding then. The Halo assets are in very hot demand. Sure Go Media could not fund them (as I've previously said) but the moment Lumo or QMS got to hear they were on the market they'd write a cheque out straight away (proof of the value of their security to you)."

26. At this time, Ms van Graan's manager referred the file to SBS for review.

27. As part of my initial assessment of the companies in late May 2020, I reviewed both the initial application and subsequent email correspondence between Mr Jaques and Ms van Graan, detailed above, which indicated Digital Signs had an arrangement with the IRD for PAYE arrears. My review identified that the extent of the companies' IRD arrears

(for example, the total amount owing or the expiry date) was not clear to BNZ at the time of the companies' January 2020 lending application. The extent and nature of the arrears was later confirmed in email correspondence relating to Mr Jaques' $500,000 lending application of 17 March 2020, as set out above.

28. This outstanding PAYE tax was a serious concern for me for two reasons:

    a. First, this is a significant debt. In my experience, companies do not run up a $200,000 PAYE tax debt to the IRD overnight. This is typically the result of poor cashflow management over an extended period of time. It suggested to me that Digital Signs could not meet its obligations, and that instead of paying PAYE tax, the company had used that money for something else. A properly managed company, even a start-up company, should not be incurring PAYE arrears debt to the IRD.

    b. Second, I thought it unlikely that the January 2020 application would have proceeded had the full extent of the arrears been realised by BNZ at the time.

29. At paragraph [17] of his witness statement, Mr Jaques outlines certain financial issues facing Digital Signs, including a statutory demand that was issued to it, and the outstanding PAYE tax. Mr Jaques says that "It was the ordinary profile of a heavily reinvesting growth business". I do not agree with that comment.

30. Both a statutory demand and significant tax arrears are of material concern to a lender as they are indicators of potentially poor management decisions being made, particularly in relation to cashflow management.

31. As part of my initial review, an online court decisions search identified a High Court decision dated 20 February 2020 relating to Digital Signs. From reviewing this decision I learned that Digital Signs' former accountant, Insight CA Limited, had served a statutory demand on Digital Signs for unpaid accounting fees. The judgment ordered Digital Signs to pay Insight CA $13,225 by 12 March 2020, otherwise Insight CA could begin liquidation proceedings **[[PLA.0013]]**.

32. My research also included looking into Mr Jaques' background. I reviewed the Insolvency Register and identified that he had been adjudicated bankrupt in 2006. My review also identified that Mr Jaques had a history of being involved in legal disputes.

33. From my review, I held concerns about the financial position of Digital Signs. The banking history, including the overdraft conduct (in particular

that the overdraft was deteriorating and "hard core") and the repeated lending requests, indicated that the company's finances were not being well managed. The extent of PAYE tax debt was also a concern. The further information I found about Mr Jaques also caused me to question whether BNZ could meet his banking needs. Although the bank had repeatedly declined his lending requests and provided clear reasons for doing so, he continued to submit further applications on similar bases to those which had been declined by BNZ already. I had concerns regarding the company's financial position and cashflow management, particularly in light of Mr Jaques' proposed accelerated growth of the companies.

Recommendation to conduct independent business review

34. After reviewing this information, my view was that BNZ should require that Digital Signs appoint an investigative accountant to review Digital Signs' financial position. The purpose of this was to understand the company's true financial position. This would enable me to assess exactly what I was dealing with, and what the appropriate steps would be to manage the customer's banking.

35. Where BNZ has concerns about a customer's operations, including its financial position, SBS may require that customers appoint investigative accountants to review the company's financial position. Investigative accountants have the specialist skills and experience required to examine a company's financial position in detail and test relevant matters, including management/company performance and the underlying assumptions being used to support the financial data provided. This process is referred to as an Independent Business Review, or **IBR**. I would require a customer to commission an IBR only where I had significant concerns about a customer's financial position; it is not a step I would take as a matter of course for all customers. Once completed, the observations and recommendations in the IBR are taken into account by BNZ when determining which options may be available or appropriate in light of the customer's particular circumstances.

36. I spoke with the Director of the SBS Northern team, Ennis Young, to advise him of my view that an IBR was required to review Digital Signs' position. Mr Young agreed and recommended that BNZ appoint Andrew McKay from BDO Auckland to undertake the IBR. Both Mr Young and I had worked with Mr McKay previously. I knew he had undertaken a number of IBRs and he was well qualified to complete this one. We discussed that Mr Young would contact Mr McKay to see if he was available to assist.

37. I recall that I mentioned to Mr Young that I thought BDO Auckland had done some work for Digital Signs. BNZ's process is to require the

independent accountants engaged by its customers to complete conflict checks before the engagement is confirmed. This is a usual part of the process. I expected that Mr McKay would come back to us confirming whether or not his firm was conflicted and could assist us with this matter.

38. On 28 May 2020, Mr Young emailed me, copying Mr McKay, to say that he had just spoken to Mr McKay who would look into the background and get in touch with me **[[BDO.01.00325]]**.

39. Later that day, Mr McKay emailed Mr Young and me. Mr McKay said that he had spoken to Nick Innes-Jones who worked in BDO Auckland's East Tāmaki office. Mr McKay advised that BDO Auckland had prepared some forecasts for Digital Signs previously. He also said that there was a proposal that the company would transfer its accounting work to BDO, but this had not happened yet, and Digital Signs therefore was not a client of BDO **[[BDO.01.00326]]**. I was comfortable with Mr McKay's response and with engaging BDO Auckland for this task.

40. Following this, on the afternoon of 28 May 2020, Ms van Graan sent an email to Mr Jaques, copying me in. The email told Mr Jaques that Ms van Graan had requested my assistance with his lending application and that I would be in touch to discuss that with him. Mr Jaques responded requesting a meeting **[[BDO.01.00328]]**. We then arranged a meeting on 2 June 2020 between me, Mr Jaques, and Mr Innes-Jones.

2 June 2020 meeting

Steps prior to the meeting

41. From my perspective, the purpose of the meeting scheduled for 2 June 2020 was to meet Mr Jaques and to get a further understanding of Digital Signs and the person behind it. I had already formed the view that an IBR was required. I intended to explain this to Mr Jaques.

42. I recall that prior to this meeting, I also spoke with Ms van Graan to see what further information she could provide. She sent me some correspondence she had with Mr Jaques. We also discussed her view of the business. Her feedback was that she held concerns about the solvency of the company, as reflected in the referral to SBS.

The meeting

43. The meeting took place at BDO Auckland's office in East Tāmaki on 2 June 2020. The attendees were myself, Mr Jaques, and Mr Innes-Jones.

44. I had made some rough handwritten notes ahead of the meeting with a list of topics I wanted to cover off with Mr Jaques. I worked through these topics during the meeting.

45. Most of my questions to Mr Jaques aimed to understand his business and his plans going forward. One of the key things I wanted to understand was what Mr Jaques' business strategy was and how he planned to use the money he was requesting from BNZ. From what I had seen, Mr Jaques was not using money effectively and he was pursuing a very aggressive growth strategy for his business.

46. Mr Jaques told me that he had identified a number of opportunities and he wanted to pursue them quickly. He wanted to use the money to pursue the opportunities he had identified and rapidly grow the business. This included buying the two billboards I have mentioned above.

47. I was concerned Mr Jaques was trying to grow the business too quickly, largely supported by lending rather than equity. Given this, I discussed the risk in pursuing aggressive business growth with Mr Jaques. I explained that an aggressive growth strategy is a common reason for the failure of businesses if the growth is not managed sustainably.

48. In the meeting, I explained to Mr Jaques that Digital Signs needed to engage an investigative accountant to complete an independent business review of Digital Signs. I said that we proposed Mr McKay be appointed to do this.

49. Mr Jaques was initially resistant to this idea. He said that he and Mr Innes-Jones would be able to provide all the information BNZ needed to support the loan application. I explained that in these circumstances, BNZ needed someone independent with investigative accounting expertise to look at the company and give us a clear understanding of its financial position. After some discussion, Mr Jaques agreed to this.

50. Mr Innes-Jones did not say much during the meeting. I recall that he was supportive of the IBR as this was a step BNZ required before it could consider what to do next.

51. My discussion with Mr Jaques in this meeting did not resolve any of the concerns I had about Digital Signs' financial position. I remained of the view that an IBR was necessary to understand the company's true financial position. I was concerned about the position the company was in, and the aggressive growth strategy Mr Jaques was adopting. I had concerns with the company's financial position and cashflow management at the time, as well as the proposed accelerated growth. In other words, I wanted to understand whether Mr Jaques' forecasts were realistic in what was, and would be, a challenging economy.

52. We ended the meeting with an agreement on the way forward. That was that Mr McKay would complete his IBR, and that Digital Signs' debt would be capped at its current level pending the outcome of the IBR.

53. At no stage before or during the meeting was I prepared to offer that BNZ provide further lending to Digital Signs. I needed more information to consider the best approach going forward. That is why the IBR was necessary. I was not prepared to consider providing further lending until the IBR was complete.

Response to Mr Jaques' comments regarding the 2 June 2020 meeting

54. I have reviewed Mr Jaques' witness statement dated 1 September 2026, where he makes a number of comments regarding the 2 June 2020 meeting. There are parts of Mr Jaques' account of the meeting which I do not consider are accurate. I will address some key points below in turn. Where I do not address something specifically, I should not be taken to agree with it.

55. At paragraph [52] of his witness statement, Mr Jaques says that I had joined BNZ as "something of a 'problem solver' (not just for bad things)". He also says, "In relation to Digital Signs I understood that to mean he was out fishing for high-growth companies to back".

56. I am unclear as to why Mr Jaques would have had this view. I never described myself along the lines that I was "out fishing for high-growth companies to back". It does not reflect my role at the time as part of BNZ's SBS team which, as I have said, focuses on assisting companies in financial distress.

57. At paragraph [58], Mr Jaques says that in the meeting, I started off by "grilling" him. He also says I was "being a typical 'Devil's advocate'". While I was asking Mr Jaques the questions I considered necessary to enable me to further understand the business and the lending request, I do not necessarily agree with those descriptions.

58. Mr Jaques then says at paragraph [59] that after about 30 minutes my demeanour "suddenly changed". I do not believe that happened. In the same paragraph, Mr Jaques then says that my tone changed and I started "openly expressing how [I] thought this was a fantastic opportunity". I never said this. As I have said, I held concerns about the company's financial position. I did not come to the view in the meeting that the business was a "fantastic opportunity". I recall saying words to the effect that it was great that Mr Jaques was so passionate about his business, but that did not mean I thought it was a good opportunity. I also do not recall Mr Innes-Jones "grinning like a Cheshire cat" as Mr Jaques says.

59. At paragraph [60] of his witness statement, Mr Jaques states that I said, "We will not be granting you the $2m that you want, but we will be giving you a $10m facility!". That is not correct. Mr Jaques has misquoted me.

60. I recall that I asked Mr Jaques how much money he wanted to borrow, and he said $2 million. I responded by saying that he may need $2 million, or he may need $10 million, but I did not know. I explained that BNZ needed to complete the IBR to see what the true position was so that the bank could tailor a solution to meet the company's needs. However, I never made any offer to lend any money to Digital Signs. I did not offer that BNZ would lend $2 million, let alone $10 million. I would never have made an offer of that sort given the concerns I held about the company's financial position, which I have explained. Providing further lending to a company that is in financial difficulty risks making the problem worse, not better, so I required the IBR to be completed before considering if any lending should be provided at all.

61. At paragraph [62] of his witness statement, Mr Jaques says that I confirmed that I was "making a move from asset-based lending (against my properties and the billboards themselves) to cashflow lending (based on our strong forecast ARR)". This is also not an accurate description of the conversation.

62. During the meeting, Mr Jaques stated that he believed that he had equity in the business and his family's properties which was sufficient to secure the lending he was seeking. I explained that it was not just about security, but also about the company's ability to service any lending. I explained that the company needed to have sufficient cashflow to service debt, and that this was one of the things the IBR would look into. I did not know if Mr Jaques' cashflow projections were accurate or not. I therefore needed the IBR to assess the company's financial position to determine what options may be available for BNZ to consider in providing facilities to the company. I was not making a shift from one form of lending to another as Mr Jaques suggests; instead, I was explaining the relevance of cashflow to BNZ's decision making.

63. Mr Jaques then says at paragraph [63] that I said:

> "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. Mr Jaques has misquoted me again. A common request I would make of clients was that they be open and co-operative in providing full details of

their current financial position, including ongoing requirements. There would be little point in a client asking to borrow a specific amount, me determining an appropriate debt structure based on that, and the client then returning a month later seeking further facilities. Do it once, do it right. I never said that people do not borrow enough, nor did I ever commit to lending Mr Jaques more than he was asking to borrow.

65. At paragraph [64] of his statement, Mr Jaques says that I invited him into town to "meet the other guys". I never made any invitation to him to meet with anyone else.

66. Mr Jaques then says that he took this to mean "BNZ were going to make us their 'poster child'". I do not know where Mr Jaques could have got that impression from. I made no suggestion to that effect. I do not have any involvement in BNZ's marketing strategy.

67. Mr Jaques says at paragraph [65] that I respected the opinion of Mr McKay and that "the Bank would lend me the money if Andy agreed". I may have said I respected the opinion of Mr McKay when I was explaining the need for an IBR. I did not say that BNZ would lend Digital Signs money if Mr McKay agreed. I explained that BNZ required Mr McKay to complete the IBR before any additional lending could be considered, but I did not commit to providing any lending if Mr McKay agreed.

68. Mr Jaques then says that he had the "very distinct impression Paul already knew the pathway to approval and that he had this in the bag". I do not know what would have given him that impression, given I made no commitment that BNZ would provide lending, nor did I make any indication it was likely that BNZ would do so.

Engagement of BDO Auckland for the Independent Business Review

69. Mr Jaques emailed me a few days later on 4 June 2020 to ask how things were progressing with BDO. I replied that I had spoken with Mr McKay the day before, and a draft engagement letter was being prepared **[[BDO.01.00378]]**. I do not recall any specifics of the phone call with Mr McKay that I mentioned.

70. Mr McKay sent me a draft engagement letter later that day **[[BDO.01.00375]]**.

Correspondence with Mr Jaques and Mr McKay in June 2020

71. On 8 June 2020, I sent Mr Jaques an email saying that it had been good to meet with him the previous week and to hear about his business. I said that I looked forward to reviewing the outcome of BDO's report and developing a plan with him **[[BDO.01.00393]]**. This email was an

acknowledgment of our meeting, and that BDO's report was needed before I could consider next steps.

72. On 15 June 2020, Mr Jaques emailed me, copying Mr McKay. In his email, Mr Jaques advised that the companies had recently had a board meeting and identified a need for "a working capital facility to Digital Signs of $2m" and "a 50% Plant Finance facility to Digital Billboards". Mr Jaques requested that, given the need for finance to purchase the Halo billboards, BNZ consider providing plant finance funding only whilst Mr McKay completed his review **[[BDO.01.00492]]**.

73. I do not believe that I responded to this email in writing. Instead, I believe that I would have had a telephone conversation with Mr Jaques in which I would have reiterated that BNZ would not consider any further lending until the IBR had been completed, as I had said previously.

74. I also note that in this email, Mr Jaques referred to the previous overdraft increase to $470,000 that BNZ had provided. To be clear, this was a temporary increase to be repaid from debtor collections by Digital Signs. It was not a permanent overdraft increase. Any additional term lending would be subject to my review of the IBR outcomes and what BNZ may have been comfortable with.

Correspondence with Mr Jaques and Mr McKay in July 2020

75. On 6 July 2020, Mr Jaques sent me a lengthy email, explaining that he had met with Mr McKay and that Mr McKay would "not support additional lending". Mr Jaques stated that he was looking at bringing in a joint venture partner, but if that did not work, he would look at selling the business. This was the first I learned that Mr Jaques was planning to sell the business. Mr Jaques said that Mr McKay had suggested that he reduce the business's operations to a "minimalistic trading position", but he said that he was not prepared to do this. He asked me if I could tell him if I saw a "path through" despite Mr McKay's assessment **[[BDO.01.00588]]**.

76. I replied on 6 July 2020 saying that I could consider a restructure of the existing facilities, but that as I did not yet have Mr McKay's IBR report, I did not "have sufficient comfort to advance further funding to the respective businesses beyond that already advanced". I then said **[[BDO.01.00588]]**:

> At this point your business model remains unproven and more evidence supporting it, in terms of demonstrated and sustained tangible results, would be required to warrant the additional of c$2.00m in working capital sought. I would recommend that you review Andy's suggestion as to a plan consolidating your existing position until such time as trading results warrant increased funding to support controlled growth. With regard to a possible sale of the business, I

> would suggest you seek independent financial and legal advice to assist with this, should you decide to pursue this as an option.

77. In his email, Mr Jaques also said he had purchased a home that was due to settle on 14 July 2020. He also said Ms van Graan said she would support his application for a home loan but it "cannot be processed while this inquiry is going on (even though I am earning over $100k outside in my law job)." In my reply, I noted that I had spoken with Ms van Graan and there had not been any commitment by the bank to fund this. I also said that I was "concerned with the impact of such a purchase now on your servicing position" and that "The Bank is not able to assist funding towards this settlement" **[[BDO.01.00588]]**.

78. Mr Jaques emailed me again on 15 July 2020. He asked if I was still his point of contact, advised that he had listed the business for sale, and provided some other updates on the business and his house purchase (which he said had been cancelled). He said, "If it all goes bad then we can meet at the end of the month to manage defaults" **[[BDO.01.00588]]**.

79. I replied saying that I would remain his point of contact. I said that a business sale may take some time so we should plan ahead rather than wait for default to occur. I suggested some matters he should consider ahead of a more detailed discussion. Mr Jaques replied, providing a written response to the points I had raised **[[BDO.01.00588]]-[[BDO.01.00590]]**.

80. Mr Jaques' conduct over this period concerned me. It appeared to me Mr Jaques was unwilling to listen to other viewpoints, such as Mr McKay's suggestion of reducing the size of the companies' operations. Mr Jaques had also taken some serious risks. I understood Mr Jaques had committed to buy the two Halo billboards when the companies did not have funds available to complete that purchase. Similarly, Mr Jaques had committed to buy a house without securing lending to do so, and at a time when his companies faced financial difficulties. Mr Jaques' decision to then list the business for sale rather than explore Mr McKay's recommendations did not provide me with confidence that a turnaround solution was likely.

81. I then emailed Mr McKay on 27 July 2020 and asked to have a telephone call with him **[[BDO.01.00652]]**.

82. On the same day, Mr McKay forwarded me an email he had received from Mr Jaques titled "BDO" **[[BDO.01.00655]]**. The initial email in the chain was an email from Mr Jaques to Iain Nellies, who I learned was the liquidator of Halo, from which Mr Jaques was looking to purchase two billboards. In Mr Jaques' email to Mr Nellies, he wrote "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." From the context of this email, I understood this to be a statement that Mr McKay supported Mr Jaques' business and lending requests. Mr McKay forwarded this email chain to me and wrote:

[redacted]

83. I was surprised to read Mr Jaques' email because it had previously been made clear to him that, pending the outcome of the IBR and a full review of all options being undertaken, the bank had no appetite to advance further funds beyond that already provided.

84. I replied to Mr McKay, saying:

[redacted]

85. Then on 28 July 2020, Mr McKay forwarded me an email from Mr Jaques instructing him to cease work on the IBR **[[BDO.01.00682]]**. Mr McKay suggested that we discuss this the next day.

86. I do not recall those phone calls specifically, but I do recall that around this time Mr McKay had raised concerns with me about Mr Jaques' approach to the IBR. Mr McKay had told me that Mr Jaques was not prepared to listen to his concerns and suggestions. This was in line with my email exchange with Mr Jaques on 6 July 2020 that I mentioned above. Mr McKay told me that one suggestion he had made to Mr Jaques was that he slow down his business growth, consolidate the opportunities he had, and then look at a managed growth plan once the business had a more stable financial base. Mr McKay told me that Mr Jaques was not interested in that.

87. Subject to the agreed scope, IBR reports will normally provide a snapshot of the business's current operations, and then outline various options or scenarios and likely consequences. This helps inform BNZ of what options may be appropriate given the customer's particular circumstances and what would be acceptable to the bank in terms of meeting standard lending criteria. Mr McKay's suggestion that Digital Signs slow down its plans and first establish a sounder financial base was

in line with the sort of considered recommendation I would expect to receive from BDO. It was an option BNZ would consider in determining the best way forward for the customer, once we had received the final IBR report.

Meeting on 10 August 2020

88. There had been a number of developments in July 2020, including Mr Jaques listing the company for sale, seeking a capital raise and requesting that BDO Auckland cease further IBR work. I also understood that Mr Jaques was seeking refinance of group debt elsewhere and that Digital Signs had received a 'Notice of Cancellation of Lease'.

89. Digital Signs' temporary overdraft extension had also expired without repayment. It was unclear what happened to the debtor receipts, but these had not been used by Mr Jaques to repay the overdraft as had been intended. This required BNZ to temporarily reinstate the overdraft while a solution was determined.

90. I called a meeting with Mr Jaques and Mr McKay to discuss options. If BDO Auckland were unable to complete the IBR, I would not have an accurate understanding of the group's position. Completion of the IBR did not mean that I would be advancing further funds, but it would assist in determining what may be possible with the existing group facilities dependent upon what plans Mr Jaques was now intending to pursue. The meeting was arranged for 10 August 2020. I made some rough handwritten notes of the meeting.

91. In the meeting, I noted my concerns about the group's financial position and about Mr McKay not being permitted to complete the IBR.

92. Mr Jaques advised that he was seeking additional borrowing of approximately $1,000,000 to fund the purchase of assets, in particular the Halo billboards and another billboard referred to as the "Wash Depot" billboard. Mr Jaques was seeking between $700,000 and $800,000 for this. He was also seeking additional working capital of $300,000 as he believed that cashflow generated from these sites would turn the companies' financial position around.

93. Mr Jaques also confirmed that he was exploring a sale of the business and/or a capital raise. He queried whether the bank would continue to support him pending either of these being achieved.

94. I also recall that Mr Jaques said words to the effect that he may have "misunderstood the situation" with Mr McKay's recommendation to scale back operations.

95. In the meeting, Mr McKay advised that the companies' existing model did not appear sustainable as it was. He was concerned the companies were seeking to grow too fast without a solid financial foundation, particularly in what was a challenging economic environment. Mr McKay said that he had a discussion with Sarah Lochead-Macmillan, a Digital Signs board member, and she had indicated she had similar concerns about the companies' growth rate.

96. There was then some discussion around financial modelling, with Mr McKay seeking further clarity regarding project sites, whether leases and/or security charges may be in place and what receivables were collectable. There was then a discussion of the possibility of staging Mr Jaques' purchases of the Halo and Wash Depot billboards.

97. When Mr McKay suggested that Mr Jaques could scale back operations, Mr Jaques said he would rather shut the company down than reduce staff numbers.

98. Mr McKay left the meeting and I then reiterated to Mr Jaques the bank's position. This was that robust financial forecasts and tested assumptions were needed before any additional lending or a restructure of existing debt could be considered. In other words, the IBR needed to be completed before I could consider these options. If the IBR was unable to be completed, or if, once completed, it did not support ongoing viability, then the alternative was to seek refinance elsewhere.

99. In the meeting, Mr Jaques said he believed he had available equity in the business and supporting residential property and wanted to leverage against it. I did not agree with this and I advised Mr Jaques that there effectively was not any equity in the properties and business. The business operation as it stood did not appear to have any. The residential property securities were already at the maximum the bank would extend against them in the circumstances. I had already told him that the major issue was not whether there was adequate security, but whether the companies could demonstrate that they had sufficient cashflow so that debt could be serviced. This was what Mr McKay had been engaged to investigate.

100. I recall that I asked Mr Jaques whether there were any pressing creditors. His response was along the lines that, while none had commenced proceedings, there were a small number overdue.

101. At the conclusion of the meeting, Mr Jaques agreed to re-engage BDO Auckland to model operations "as is" and on the basis that funding was sought for the purchase of the Halo billboards, plus working capital. I

advised that Mr Jaques needed to ensure that Mr McKay was made aware of all outstanding creditors. I advised Mr Jaques that I had extended the temporary overdraft ($266,000) for one month, by which time I would need the completed IBR to determine the next steps.

Independent Business Review report and steps following

102. Later in August 2020, Mr Jaques was chasing me for the IBR report and BNZ's decisions about lending to Digital Signs. On 26 August 2020, I emailed Mr McKay asking when his IBR report would be completed. Mr McKay replied advising that a draft was ready. He also said, [redacted], by which I understood that Mr McKay meant that the business was not able to demonstrate that it could service debt— neither existing nor the proposed additional lending sought **[[BDO.01.00729]]**.

103. On 27 August 2020, Mr McKay emailed me a final draft copy of BDO's IBR report. Mr McKay's email and the report raised serious concerns about the financial position of Digital Signs and the integrity of its financial records **[[BDO.01.00739]]**, **[[BDO.01.00740]]**.

104. Mr McKay's email to me included an email from BDO Auckland to Mr Jaques earlier that day outlining the findings in the report, as well as Mr Jaques' response to it **[[BDO.01.00739]]**.

105. One of the statements that Mr McKay made in his covering email to me was that one of the issues was that the company had "no real security 'billboards'". I have read Mr Jaques' witness statement where he says at paragraph [107] that this statement was "ridiculous".

106. I do not agree with Mr Jaques' statement. As I had explained to Mr Jaques during the meeting of 10 August 2020, security was not the key issue; rather, the focus was on being able to generate sufficient income to service debt.

107. However, in relation to security, at that time Mr Jaques' interests were already substantially exposed. Group lending, including lending against residential property and lending to Digital Signs, totalled approximately $1,964,000. The residential facilities provided in January 2020 totalled $1,515,000, matching the maximum amount that would have been able to be extended against these properties under the bank's standard lending criteria at that time. In the absence of updated valuations, this loanable amount remained unchanged.

108. Also, it would not have been realistically possible to attribute any equity to the business operation given its poor financial performance to date, and the existing lending.

109. Finally, the tangible security of the Halo and Wash Depot billboards posed some difficulties, as this required obtaining specific security agreements, which would have involved obtaining waivers from the landlords of the properties where the billboards were erected. Even if this could have been arranged, the value of the billboards would not have warranted the bank providing the additional lending the companies required as cashflow from these billboards had yet to be sufficiently demonstrated via a model.

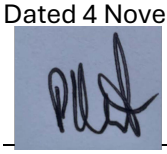
110. I have also read paragraph [111] of Mr Jaques' witness statement where he says that "The report also contained statements that were, in my view, unnecessarily damaging beyond any legitimate scope".

111. The IBR engagement had a wide scope to critically assess the business's historic financial performance and current financial position, to test the reasonableness of its current business plan and the assumptions used in developing forecasts, and to consider any other matter that the bank may need to take into consideration. A wide scope is necessary to ensure the IBR provides sufficient information to the bank to make an informed decision about any further lending or restructures. From my perspective, the matters addressed in BDO Auckland's IBR report were within the scope I expected and required. It reflected what I expected to see in an IBR report.

112. Following the release of the IBR report, Mr Jaques advised me that he was seeking investors, but was concerned about running out of money before a deal could be achieved. On 7 September 2020, I confirmed to Mr Jaques via email that I would support a continuation of the existing temporary overdraft for a further 30-day period while he continued discussions with potential investors. In the event an investor or a sale of the business did not appear likely, I noted other options would need to be reviewed. Mr Jaques responded on the same day, advising that he had listed three rental properties for sale which would clear bank debt. I replied advising that, in that case, I would arrange for overdraft documentation extending the temporary limit for 90 days, providing him with time to prepare and market the properties.

113. Mr Jaques states at paragraph [113] of his witness statement that "The larger facility Mr Kilmartin had spoken of on 2 June 2020 was never mentioned again". I reiterate that I made no lending commitment to Mr Jaques on 2 June 2020. Instead, I requested an IBR to determine the level of borrowing that the company may have actually needed, and what the bank may be comfortable in providing in line with standard bank lending criteria.

Dated 4 November 2026



Paul John Kilmartin