

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

**CIV-2015-404-001833
[2015] NZHC 2204**

BETWEEN FINANCIAL MARKETS AUTHORITY
Applicant

AND PTT LIMITED (IN RECEIVERSHIP)
First Respondent

MAXWELL FOSTER LIMITED (IN
RECEIVERSHIP)
Second Respondent

GIBSON MCLEOD LIMITED (IN
RECEIVERSHIP)
Third Respondent

ALBA INTERNATIONAL LIMITED (IN
RECEIVERSHIP)
Fourth Respondent

cont

Hearing: 4 September 2015

Appearances: D R La Hood for Applicant
N S Gedye QC and B A Vautier for Respondents
D R Kalderimis and J W Upson for Receivers and Managers

Judgment: 18 September 2015

JUDGMENT OF HINTON J

*This judgment is delivered by me on 18 September 2015 at 12.30 pm
pursuant to r 11.5 of the High Court Rules.*

.....
Registrar / Deputy Registrar

Solicitors/Counsel:
N S Gedye QC, Barrister, Auckland
Luke Cunningham Clere, Wellington
Glaister Ennor, Auckland
Chapman Tripp, Wellington

STEVEN ROBERTSON (IN
RECEIVERSHIP)
Fifth Respondent

LISA JANE ROBERTSON (IN
RECEIVERSHP)
Sixth Respondent

STEVEN ROBERTSON AND XAVIER
TRUSTEES LIMITED AS TRUSTEES OF
THE STEVEN ROBERTSON FAMILY
TRUST (IN RECEIVERSHIP)
Seventh Respondents

Introduction

[1] The Financial Markets Authority (“FMA”) holds serious concerns that the respondents were running a fraudulent scheme designed to obtain money from members of the public.

[2] Interim preservation, receivership and related orders were made on 13 August 2015 and varied on 20 August 2015.

[3] The respondents do not admit wrongdoing. However they accept that issues concerning the merits of the investigation cannot be reviewed in the present context and they accept that the statutory elements for making of preservation orders have been made out.

[4] The fifth, sixth and seventh respondents, being Mr and Mrs Robertson and their family trust, apply to the Court to vary, modify or remove the interim orders in respect of them. Most of the assets are held by those particular respondents.

Background

[5] On 13 August 2015, the FMA applied for orders on an urgent without notice basis to preserve assets and appoint receivers and managers in respect of the respondents’ property. The application was made under ss 522 and 523 of the Financial Markets Conduct Act 2013 (“FMC Act”). The FMA applied on the grounds that the assets may belong to members of the public who have paid money into a scheme that the first to fifth respondents may be operating fraudulently, whereby those funds are being used without the clients’ knowledge or consent. The orders were sought on an interim basis initially.

[6] The FMA’s concerns arose from a complaint that it received relating to the business activities of the first respondent. It was alleged in the complaint that the fifth respondent was operating a “ponzi scheme” through the first respondent PTT Limited (“PTT”) and/or other entities, managing clients’ funds as an unregistered fund manager and not providing reports or returns to clients. The complaint included a list of approximately 60 names of clients who had invested money through PTT.

[7] FMA investigators spoke with some of the clients of PTT and found a similar pattern in the way those spoken to had been approached by the fifth respondent. A preliminary analysis of the respondents' accounts was undertaken by FMA's forensic accountant. The analysis found a large amount of what appear to be client funds being deposited into the bank accounts of the first, second and fifth respondents. At least one large deposit had been made from the second respondent to the personal account of the sixth respondent. The analysis also showed significant amounts of personal spending from the accounts held by the first and second respondents.

[8] The investigation is still at an early stage and is ongoing. However, the FMA claims to have reasonable grounds to suspect that the respondents have breached provisions of financial markets legislation.

[9] On 13 August 2015, Andrews J granted the interim orders sought, with some minor changes. Those orders were made under s 524 which gives the Court power to make interim orders pending determination of an application. In addition to orders preserving assets and appointing receivers, the 13 August interim orders provided for:

- (a) the receivers to be reimbursed for their reasonable fees and costs out of the respondents' property and to be fully indemnified by and out of the respondents' assets in respect of losses or liabilities;
- (b) delivery to the Court of the fifth and sixth respondents' passports;
- (c) the respondents to receive \$1,000 per week for ordinary living expenses;
- (d) payment of the respondents' reasonable legal expenses related to the orders, provided such expenses were first approved by the Court or consented to by the FMA.

[10] The proceeding was listed for mention on 20 August 2015 and the following additional orders were made on the respondents' application, without opposition from the FMA, with the exception of (b):

- (a) The receivers are to allow for fortnightly mortgage payments to be debited until further order of the Court;
- (b) The sixth respondent's wedding ring to be released to the sixth respondent;
- (c) The release of the sixth respondent's cellphone to her by 21 August 2015 after it is analysed by the receivers;
- (d) The receivers are to produce a report by 2 September 2015;
- (e) The receivers are not to take any costs out of the estate until the matter of costs is revisited on 4 September 2015; and
- (f) The respondents have leave to apply for further orders if necessary.

[11] As directed, the receivers filed their report on 2 September 2015.

[12] The receivers' recommendations are that:

- (a) no other person should be made subject to the receivership;
- (b) the receivership should, with respect to the four corporate respondents, be replaced by a liquidation. The receivers accordingly propose expedited timetable directions for a liquidation application, pending which the four corporate receiverships should remain in place; and
- (c) the asset preservation and receivership orders should remain with respect to the remaining respondents, including the sixth and seventh respondents, which hold the majority of the remaining assets.

[13] The receivers' recommendations are made in the following context, largely taken from the receivers' report:

- (a) Mr Robertson, the fifth respondent, is the moving force behind the business activities at issue. These were conducted through the first to fourth respondents ("the PTT Group") and principally involved the provision of trading signals to clients. Mr Robertson provided the signals personally, apparently without any formal qualifications or relevant experience. Mr Roberson was, on examination, unable to verify the accuracy of promotional figures advertising returns, and confirmed they were not based on his own trading results.
- (b) Between 2013 and August 2015 the PTT Group generated \$4.44m in deposits from third parties. The receivers estimate those deposits comprised product sales of around \$1.87m, but also \$2.57m from other sources. Those other sources included: (a) loans from clients; (b) the sale to clients of shares in PTT Group entities; and (c) money accepted from clients for investment.¹ The business purpose for the loans and share purchases remains opaque.² The PTT Group made no actual investments on clients' behalf.
- (c) There are real concerns the first to fifth respondents may have engaged in misleading and deceptive conduct, and misapplied funds accepted for managing on clients' behalf. Civil claims by the companies, investors and/or creditors (and possibly criminal charges) may well follow.
- (d) PTT Group's cash assets are \$51,000 as at 31 August 2015. The most significant remaining assets are the house (equity approximately \$1.25m), owned by the seventh respondent trust, of which

¹ Mr Robertson claims any investments were accepted in error, which he was seeking to correct at the time of the Orders.

² Where share purchases were made, these were not recorded on the Companies Register. Mr Fisk's second affidavit annexes a letter, received at 5.04pm on 2 September 2015, on behalf of a purchaser of shares in PTT, who never received any shares or information concerning "*this investment or advance*".

Mr Robertson is now sole trustee, and \$111,000 in a bank account of the sixth respondent. There are also four cars, (total net value about \$125,000) and jewellery (valued at about \$66,000), watches and household effects. The only other presently known asset is a bank account in Australia, balance unknown. The total net assets as currently known, appear to be worth about \$1.6m.

- (e) The assets of the sixth and seventh respondents appear to have been funded at least in part from, and now represent the most substantial assets of the PTT Group. The prospect of civil claims against the assets of the sixth and seventh respondents remains alive.

[14] Given the respondent companies received deposits between 2013 and 2015 alone of over \$4.4m, the net worth of all respondents of approximately \$1.6m appears very low and falls below the sum of \$2.57m identified as having been received in the form of third party deposits, excluding revenue from product sales.

The current application to vary, modify or remove interim orders

[15] The fifth, sixth and seventh respondents apply to the Court for orders:

- (a) To increase the ordinary living expenses up to \$5,000 per week (inclusive of the mortgage payments);
- (b) To release the sum of \$57,000 plus GST on account of the respondents' legal expenses relating to this proceeding and the investigation;
- (c) That the receivers and managers' fees be met by the FMA and not be reimbursed out of or indemnified by the respondents' property;
- (d) That the sixth and seventh respondents be released from the interim preservation orders;

- (e) That the receivers and managers' appointment be terminated from a date to be determined by the Court;
- (f) That the orders requiring surrender of passports of the fifth and sixth respondents be cancelled and the passports returned; and
- (g) On an informal basis, for release of household chattels, certain items of jewellery and two watches.

[16] The grounds on which the orders are sought are:

- (a) The orders were made ex parte;
- (b) The fifth and sixth respondents require access to funds to meet their family's current and ongoing living expenses;
- (c) The respondents require the release of funds to meet current and ongoing legal expenses relating to this proceeding and the investigation;
- (d) The requirement to pay the costs of the receivers is oppressive, the costs are disproportionate to the value of the available property and there are insufficient assets in the estates of the respondents to pay the receivers' costs;
- (e) It is not necessary for the receivers and managers to continue in office in order to meet the legislative purpose;
- (f) The sixth respondent is not and has not been a participant in the business activities of the first to fifth respondents;
- (g) The seventh respondent is the owner of a property purchased pre-incorporation of the first to fourth respondents and is not and has not been a participant in the fifth respondent's activities or business;

- (h) It is not necessary for the sixth and seventh respondents to remain subject to the orders to meet the legislative purpose; and
- (i) It is not necessary or desirable to require the fifth and/or sixth respondents to be deprived of their passports.

Relevant law

[17] The legal basis for the orders already made and further orders sought is the FMC Act which relevantly provides:

522 When court may make order to protect interests of aggrieved persons

(1) This section applies if—

(a) an investigation is being carried out under the Financial Markets Authority Act 2011 in relation to an act or omission by a person that—

(i) constitutes or may constitute a contravention, or involvement in a contravention, of any Act specified in Part 1 of Schedule 1 of the Financial Markets Authority Act 2011; or

(ii) constitutes or may constitute a contravention, or involvement in a contravention, of any Act specified in Part 2 of Schedule 1 of the Financial Markets Authority Act 2011 (where the person is, or has been, a financial markets participant); or

(iii) may result in a prosecution or civil proceedings of the kind referred to in any of paragraphs (b) to (d) being begun against the person; or

...

(2) The court may, on application by the FMA or by an aggrieved person, make 1 or more of the orders listed in section 523 if the court considers it necessary or desirable to do so for the purpose of protecting the interests of an aggrieved person.

(3) In this section, a reference to any Act referred to in Schedule 1 of the Financial Markets Authority Act 2011 includes a reference to any regulations made under any of those Acts.

(4) In this section and section 523,—

aggrieved person means any person to whom a relevant person is liable

associate means an associated person of the relevant person

civil proceedings means proceedings in a court (other than criminal proceedings)

liable means liable, or may be or become liable, to pay money (whether in respect of a debt, by way of damages or compensation, or otherwise) or to account for financial products or other property

relevant person means a person referred to in subsection (1).

[18] Section 523 then provides for a broad range of asset preservation orders and orders appointing receivers and managers that may be made by the Court.

[19] Section 524 gives the Court power to make interim orders.

[20] Sections 522 and 523 of the FMC Act have replaced and are almost identical to ss 60G and 60H of the Securities Act 1978. Relevant commentary provided under those sections is applicable here.

[21] In *Financial Markets Authority v Hotchin*, Winkelmann J listed relevant principles relating to asset preservation orders in the context of ss 60G, 60H and 60I:³

- (a) The purpose is to ensure that the rights of aggrieved persons to damages, compensation or restitution are not frustrated through the assets of a liable person being dealt with in a way that renders them unavailable to meet those claims.
- (b) The provisions enable the assets of the relevant person to be preserved pending the outcome of the investigation. As such investigations are usually complex and take time, assets may dissipate if not preserved.
- (c) The remedies available are drastic and the Court should exercise care, however, the legislature clearly intended that drastic remedies be available to protect the interests of persons who might have a claim.

³ *Financial Markets Authority v Hotchin* [2011] 3 NZLR 469 (HC) at [47]-[57]; affirmed by *Hotchin v The Financial Markets Authority* [2012] NZCA 155.

- (d) The issue for the court is whether it is “necessary or desirable” to make the orders for the purpose of protecting the interests of an aggrieved person. The focus at this point of the analysis is upon the interests of the aggrieved person.
- (e) The circumstances in which the court may make orders are wide, as indicated by the words “necessary or desirable”. Thresholds and principles should not be developed that fetter that discretion in any way. The interests of the liable person may be relevant in exercising the discretion to grant the orders.
- (f) In determining whether it is necessary or desirable to make the orders sought, the court must undertake an evaluative exercise. It is left to the court to determine what matters to take into account but it is clear that there is an element of risk management or risk assessment involved in determining whether it is necessary or desirable that orders be made.
- (g) The FMA must at least show that good grounds exist for the investigation, and its continuation.
- (h) There is no requirement that the FMA show that the person’s assets are about to be dissipated. It is sufficient if there is the potential for dissipation of the assets.
- (i) Also relevant is the nature and seriousness of the breach, the number of aggrieved persons and the quantum of the potential liability.
- (j) The jurisdiction is not to be exercised for a disciplinary purpose. Any orders made must be made for the purpose of preserving assets that could be available to meet any judgment ultimately entered against the liable person. For this reason, if orders are made, the court must

ensure that the orders are no more intrusive than required to preserve the assets.⁴

[22] I would add to (i) above that the extent and value of the assets available (once known) is relevant.

[23] Lastly, the Court of Appeal in *Hotchin* noted that the FMA rightly emphasised the importance of the High Court's supervisory jurisdiction of preservation orders, citing s 65E(2) of the Securities Act.⁵ There is an identical section in the FMC Act which provides as follows:

540 General provisions as to court's orders

(1) A court order under this Act may be made on the terms and conditions the court thinks fit.

(2) The court may revoke, vary, or suspend an order made under this Act on the terms and conditions the court thinks fit.

[24] Under the court's supervisory role, a broad range of ancillary orders can be made.

[25] Any orders are to be guided by the provisions of the FMC Act and the principles set out in *Hotchin*.

[26] Although it is obviously reasonable for the respondents' living expenses to be paid, given the assets are prime facie theirs and given the pre-emptive nature of the FMA's powers, the jurisdictional basis on which the Court makes such an order and the measure used is not clear, particularly in circumstances such as this where there is a limited pool of assets and the making of extensive payments is contrary to the purpose of preservation.

[27] In *Hotchin* the Court proceeded on the basis of "ordinary" living expenses which in that case were set at \$1,000 per week but that was in a context where the respondent had access to an Australian bank account and withdrew an application to increase the weekly payment, due to adverse publicity.

⁴ This point was endorsed by the Court of Appeal in *Hotchin* at [34].

⁵ *Hotchin*, above n 3, at [45].

[28] In this case, both counsel have referred to “reasonable” living expenses being payable and for the moment I am proceeding on that basis. I am concerned however about the level of expenditure and the assets from which payments should be sourced.

Discussion

[29] The respondents accept that the statutory elements for making of preservation orders have been made out and seek to vary those orders.

[30] I deal with each of the variations sought.

Living expenses

[31] The current orders make allowance for ordinary living expenses up to a maximum amount of \$1,000 per week and for fortnightly mortgage payments to be debited until further order of the Court. The fifth and sixth respondents have sworn an affidavit setting out weekly expenditure of \$4,965.41, inclusive of \$1,765.42 for mortgage payments. They had omitted and seek an extra \$85 per week for rates. The order now sought involves total payments of just over \$5,000 per week, an increase of about \$2,300 per week over the previous orders for living expenses and mortgage payments combined.

[32] As well as the weekly mortgage payments of \$1,765, there are what I would describe as extraordinary rather than ordinary living costs, being \$320 per week for a finance payment on the Audi vehicle alone, private school fees of \$700 per week and a “tax arrangement” payment to the Inland Revenue of \$375 per week.

[33] The fifth respondent in his affidavit proposes sale of the 2014 Mercedes Benz CLS 350 and 2005 Bentley Continental to avoid ongoing finance costs. This is a clearly appropriate course of action but, as I understand it, would not reduce the amount required each week for living expenses, as those finance costs have not been included. The Mercedes has an estimated value of \$85,000 and finance of \$58,600.

The Bentley has an estimated value of \$85,000 also and finance of \$33,000. Sale of the two cars will hopefully generate about \$70,000 cash.

[34] In my view the Audi Q7 should also be sold. The estimated value is \$40,000 and finance is \$15,390 (apparently adding \$320 per week to the budget). If it is sold and the debt cleared, there will be more than sufficient to buy a replacement car.

[35] In terms of the house, I note that although the family trust is the owner, the respondents' proposal is that funds held in the name of the sixth respondent meet all of the costs, notably \$1,765 per week on the mortgage. I note that the FMA has not at this stage suggested that the Trust be liable, at least ultimately, for these payments.

[36] Again, it seems to be to be a matter where early consideration should be given to a sale. The mortgage of \$1.2m could be repaid and the respondents could rent, or a replacement property be purchased with the net proceeds.

[37] The private school fees of \$700 per week have to continue until the end of the year. It would be unfair to the children to do otherwise, but barring some unforeseen development, they are unlikely to continue beyond that time.

[38] I allow an increase for living expenses from \$1,000 to \$3,000 per week plus continuation of the mortgage payments, because I consider there is little choice in the circumstances, but only until 11 December 2015. I expect suitable restructuring of the respondents' financial arrangements should have been put in place by then. The FMA should also give consideration to where payments should be coming from, including general living expenses.

Respondents' legal expenses

[39] The FMA accepts that reasonable legal costs of the respondent could be paid, but points out that no detail at all has been provided by the respondents in support. There is a letter from Glaister Ennor exhibited to the fifth respondent's affidavit advising as to the amount of \$57,000 plus GST.

[40] I am going to release \$30,000 plus GST on account of the respondents' legal expenses relating to this proceeding. The respondents will need to provide proper detail to substantiate any further payment. It will be apparent that I am concerned as to the level of expenses generally given the size of the fund available to potential aggrieved parties.

Receivers and managers' fees

[41] The fifth respondent deposes that he is concerned about the likely substantial cost of the receivers. He takes the view that the scale of the receivers' operation and the resources deployed appear to be at a level normally seen in large commercial receiverships. He says he is prepared to provide the FMA directly with any necessary information about the respondents' assets and any other matter concerning the operation and scope of the preservation orders. He believes that the FMA could effectively maintain the preservation orders without having receivers in place. He believes that the receivers' costs will severely deplete what is a limited and relatively modest pool of assets that could, if required, go to "aggrieved persons".

[42] To the date of the receivers' report, their fees (including significant legal disbursements) had come to \$99,243 plus GST, a total of \$115,000 approximately. A breakdown of the costs is set out at page 18 of the receivers' report.

[43] There appears to be only one case that has involved the appointment of receivers under s 523 of the FMC Act prior to this one. In *Financial Markets Authority v Arena Capital Ltd*, Gendall J made orders appointing receivers and managers.⁶ A similar order was made to that made by Andrews J here (which her Honour then put on hold), as to reimbursement of costs and an indemnity out of the assets of the liable person. It seems to me to be premature for the receivers fees to be ordered as payable or to be paid out of the asset pool at this relatively early stage of the investigation. The matter can be reviewed at a later date. The FMA and receivers accepted that was appropriate. The respondents pressed for me to reverse the order of Andrews J which I decline to do for the same reason.

⁶ *Financial Markets Authority v Arena Capital Ltd* [2015] NZHC 1156.

Release from interim preservation orders

[44] The sixth respondent deposes that she married the fifth respondent in 2009. From 2009 to early 2013, she carried out general office work for the fifth respondent. She says she was never engaged in sales or marketing or the operations of the first to fourth respondents. She says that the fifth respondent provided her with housekeeping money on a regular basis which usually came from either the first or second respondent. However, she understood that those withdrawals were balanced in the end of year accounts. She deposes that at no time was she aware that the funds paid to her were other than from the fifth respondent's entitlements.

[45] However, the FMA takes the view that it is possible that the sixth respondent may have been involved in the contraventions of the relevant Acts, either as a primary or secondary party, as she may hold money or has received the benefit of money belonging to clients.

[46] The receivers conclude in their report that the sixth respondent holds the largest amount of cash assets of all respondents being \$111,000. The receivers have not yet been able to ascertain the basis of payments made to the sixth respondent and therefore in the circumstances, the prospect of claims against those funds remains live. There seems to be a real question mark over these funds. In my view that is correct, particularly in circumstances where the fifth respondent was the driver of the companies, yet has no funds, and the sixth respondent says she was not engaged in the companies, yet holds a substantial sum.

[47] The seventh respondents are Mr Robertson and Xavier Trustees Limited as trustees of the Steven Robertson Family Trust. At the date of the hearing, Xavier Trustees Ltd had resigned and I was advised that Mr Robertson was the sole trustee. The Trust owns the family home, which is the most valuable asset of the respondents. As mortgage payments have been partly funded by withdrawals from the respondent corporate entities, the receivers take the view that the prospect of claims against the Trust property also remains live.

[48] Based on the conclusions of the receivers' report, I consider that the sixth and seventh respondents should not be released from the preservation orders.

Termination of receivers and managers' appointment

[49] This application is made by the fifth to seventh respondents but Mr Gedye QC seemed to advance an argument that the receivers' appointment be terminated vis-a-vis all respondents.

[50] The receivers have recommended liquidation of the four corporate respondents so their receivership will become moot.

[51] In the receivers' report, it is recommended that the receivership continues with respect to the assets of the fifth and sixth respondents until it can be determined whether any claims may be made against such assets.

[52] I agree that it would be inappropriate to terminate the receivership so early in the investigation.

[53] However, I think there is force in Mr Gedye's submission that, at least shortly, receivership with regard to the assets of the fifth and sixth respondents could be superfluous. The preservation orders would still apply. The FMA can take such steps as are required with these assets. I express the tentative view that while receivership may well have been appropriate in the first instance, it would not seem appropriate where there is no trading activity or real management role involved. I am concerned that there may be an unnecessary duplication of costs, certainly in terms of Court proceedings.

[54] This matter will have to be reviewed along with some of the other ongoing issues referred to in this judgment.

Release of passports

[55] The purpose of s 522 is to preserve assets, not to punish the "relevant persons". The removal of passports cannot therefore be arbitrarily made or made to

address creditor grievances. However, I am satisfied that it is necessary and/or desirable for the passports to continue to be held. Mr Gedye said I could be sure no money would be spent on travel as the budget allowed for none. However, the respondents are receiving what many would consider to be a substantial after-tax sum each week and I consider it fair to ensure that none of it is spent on travel. The fifth and sixth respondents can apply to the Court for permission to travel in exceptional circumstances.

Household and personal items

[56] No order relating to the release of household and personal items was sought in the respondents' application. However, the sixth respondent, in her affidavit, has sought that specific items be returned. She deposes that she understands that all the household items and personal effects are subject to the preservation orders but sees no reason why some of the items should not be returned for the family to maintain normal living conditions.

[57] The items sought include pieces of furniture, artwork, a camera, several further items of jewellery and two watches. Andrews J has already ordered the release of the sixth respondent's wedding ring on the basis that it is subject to the Court preservation order and that the sixth respondent will be reminded that it is subject to the order. I see no reason why the additional household and personal items should not also be released on this basis. I should add that as I understand it, none of these items are of significant value.

Result

[58] I therefore order that:

- (a) the mortgage payments of \$1,765 continue to be made by the receivers until 11 December 2015;

- (b) the ordinary living expenses be increased to \$3,000 per week until 11 December 2015, to be reduced by any amount that ceases to be payable in the interim;
- (c) the release of \$30,000 plus GST for the respondents' legal expenses;
- (d) that the sixth and seventh respondents are not released from the orders;
- (e) that the receivers and managers' appointments not be terminated;
- (f) the passports of the fifth and sixth respondents continue to be held;
- (g) the release to the fifth and sixth respondents of the specific household and personal effects sought;
- (h) except as expressly varied, all previous orders remain in place, until further order of this Court;
- (i) all parties have leave to apply for any further orders if necessary.

[59] I reserve the question of whether and when the receivers and managers' fees should be met out of the respondents' property.

Confidentiality

[60] In regard to confidentiality, Andrews J ordered that all documents filed in this proceeding not be disclosed to any party without the leave of the Court, after notice of any application to search the Court's file has been given to the applicant and the respondents.

[61] At the hearing before me on 4 September 2015, I ordered:

- (a) that the existing order remain in place, and that it apply also to financial and personal details of the Robertsons, excluding those

details that are already in the public domain, and that it apply to the receivers' report, until further order; and

- (b) I will be reviewing the position as part of my judgment in this matter.

Hinton J