

Fill in this information to identify the case:

United States Bankruptcy Court for the:

Eastern District of Kentucky



Case number (if known): _____ Chapter 15

☐ Check if this is an amended filing

Official Form 401

Chapter 15 Petition for Recognition of a Foreign Proceeding

12/15

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write debtor's name and case number (if known).

1. Debtor's name Wikeley Family Trustee Limited (In Liquidation)

2. Debtor's unique identifier

For non-individual debtors:

☐ Federal Employer Identification Number (EIN) _____

☒ Other 8212183. Describe identifier NZBN: 9429049504743.

For individual debtors:

☐ Social Security number: xxx - xx- _____

☐ Individual Taxpayer Identification number (ITIN): 9 xx - xx - _____

☐ Other _____. Describe identifier _____.

3. Name of foreign representative(s) Brendon James Gibson and Natalie Gytha Burrett, as interim liquidators

4. Foreign proceeding in which appointment of the foreign representative(s) occurred Insolvency proceeding in accordance with 241(2)(c) of the Companies Act 1993.

5. Nature of the foreign proceeding

Check one:

- ☒ Foreign main proceeding
☐ Foreign nonmain proceeding
☐ Foreign main proceeding, or in the alternative foreign nonmain proceeding

6. Evidence of the foreign proceeding

- ☐ A certified copy, translated into English, of the decision commencing the foreign proceeding and appointing the foreign representative is attached.
- ☐ A certificate, translated into English, from the foreign court, affirming the existence of the foreign proceeding and of the appointment of the foreign representative, is attached.
- ☒ Other evidence of the existence of the foreign proceeding and of the appointment of the foreign representative is described below, and relevant documentation, translated into English, is attached.
See Exhibits 1-3; see also publication <https://gazette.govt.nz/notice/id/202>
<https://companies-register.companiesoffice.govt.nz/>

7. Is this the only foreign proceeding with respect to the debtor known to the foreign representative(s)?

- ☐ No. (Attach a statement identifying each country in which a foreign proceeding by, regarding, or against the debtor is pending.)
- ☒ Yes

Debtor Wikeley Family Trustee Limited (In Liquidation) Case number (if known) _____
Name

8. Others entitled to notice

Attach a list containing the names and addresses of: See Exhibit 4

- (i) all persons or bodies authorized to administer foreign proceedings of the debtor,
- (ii) all parties to litigation pending in the United States in which the debtor is a party at the time of filing of this petition, and
- (iii) all entities against whom provisional relief is being sought under § 1519 of the Bankruptcy Code.

9. Addresses

Country where the debtor has the center of its main interests:

New Zealand

Debtor's registered office:

12b Gumdiggers Lane

Number Street

P.O. Box

Riverhead

City State/Province/Region ZIP/Postal Code

New Zealand

Country

Individual debtor's habitual residence:

Address of foreign representative(s):

88 Shortland Street

Number Street

PO Box 982

P.O. Box

Auckland

City State/Province/Region ZIP/Postal Code

New Zealand

Country

Number Street

P.O. Box

City State/Province/Region ZIP/Postal Code

Country

10. Debtor's website (URL)

n/a

11. Type of debtor

Check one:

☒ Non-individual (check one):

☐ Corporation. Attach a corporate ownership statement containing the information described in Fed. R. Bankr. P. 7007.1.

☐ Partnership

☒ Other. Specify: incorporated under Companies Act 1993

☐ Individual

Debtor Wikeley Family Trustee Limited (In Liquidation)
Name

Case number (if known) _____

12. Why is venue proper in this district?

Check one:

- ☐ Debtor's principal place of business or principal assets in the United States are in this district.
- ☒ Debtor does not have a place of business or assets in the United States, but the following action or proceeding in a federal or state court is pending against the debtor in this district:
Fayette Circuit Court, Case Number 21-CI-02508
- ☐ If neither box is checked, venue is consistent with the interests of justice and the convenience of the parties, having regard to the relief sought by the foreign representative, because:

13. Signature of foreign representative(s)

I request relief in accordance with chapter 15 of title 11, United States Code.

I am the foreign representative of a debtor in a foreign proceeding, the debtor is eligible for the relief sought in this petition, and I am authorized to file this petition.

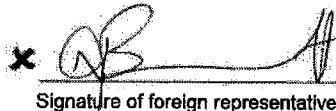
I have examined the information in this petition and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.


Signature of foreign representative

Brendan Gibson
Printed name

Executed on 4 20 2023
MM / DD / YYYY


Signature of foreign representative

Natalie Burrett
Printed name

Executed on 4 20 2023
MM / DD / YYYY

14. Signature of attorney


Signature of Attorney for foreign representative

Date 4/20/23
MM / DD / YYYY

April A. Wimberg
Printed name

Dentons Bingham Greenebaum LLP
Firm name

101 S. 5th St., 3500 Suite
Number Street

Louisville
City

KY 40202
State ZIP Code

502-587-3719
Contact phone

april.wimberg@dentons.com
Email address

95741
Bar number

KY
State

Exhibit 1

In the High Court of New Zealand
Auckland Registry

I Te Kōti Matua O Aotearoa
Tāmaki Makaurau Rohe

CIV-2022-404-2086

Between **Kea Investments Ltd**, a company
duly incorporated in the British Virgin
Islands, having its registered office at
Tortola Pier Park, Building 1, Second
Floor, Wickhams Cay 1, P.O. Box 873,
Road Town, Tortola, VG1110, British
Virgin Islands and carrying on
business as an investment company
Plaintiff

And **Wikeley Family Trustee Limited**, a
duly incorporated company having its
registered office at 12b Gumdiggers
Lane, Riverhead, and carrying on
business as a trustee company
First defendant

And **Kenneth David Wikeley** of
Queensland, Australia, businessman
Second defendant

And **Eric John Watson** place of residence
unknown, businessman
Third defendant

continued over

INTERLOCUTORY ORDERS

Dated 6 April 2023

**GILBERT
WALKER**

PO Box 1595
Shortland Street
Auckland 1140
New Zealand
P +64 9 374 1100
E service@gilbertwalker.com

Solicitor acting: M C Harris

Counsel acting:
J B M Smith KC
J L W Wass
Stout Street Chambers
P +64 21 332 512 (Smith)
P +64 21 034 2262 (Wass)
E justin.smith@stoutstreet.co.nz
E jack.wass@stoutstreet.co.nz

continued from previous

And Wikeley Inc., a company incorporated under the laws of the Commonwealth of Kentucky, having its registered office at 421 W Main Street, Frankfort, KY 40601, United States of America

Fourth defendant

CIV-2022-404-626

Under the Companies Act 1993, s 241(2)(c)

Between Kea Investments Ltd, a company duly incorporated in the British Virgin Islands, having its registered office at Tortola Pier Park, Building 1, Second Floor, Wickhams Cay 1, P.O. Box 873, Road Town, Tortola, VG1110, British Virgin Islands and carrying on business as an investment company

Plaintiff

And Wikeley Family Trustee Limited, a duly incorporated company having its registered office at 12b Gumdiggers Lane, Riverhead, and carrying on business as a trustee company

Defendant

INTERLOCUTORY ORDERS

To Wikeley Family Trustee Limited
Kenneth David Wikeley
Eric John Watson
Wikeley Inc.

1. The interlocutory applications made by Kea Investments Ltd (**Kea**) on 6 April 2023 were determined by the Honourable Justice Gault on 6 April 2023.
2. The determination was made following a telephone conference on 6 April 2023. J B M Smith KC, M C Harris, J L W Wass and S T Coupe appeared for Kea.
3. The following orders were made pending an on notice hearing on **Monday 17 April 2023 at 9:00 am (return date)**:

Interim orders in proceeding -2086

- a. Kea is granted leave to add Wikeley Inc. as a defendant;
- b. Wikeley Family Trustee Limited (**WFTL**) and Kenneth David Wikeley (**Mr Wikeley**) shall not take any steps, and shall not cause or permit any other person, including Wikeley Inc., to bring or pursue any litigation, or take any other steps to enforce or otherwise act on:
 - i. The purported Deed of Assignment of Contract between WFTL and Wikeley Inc. dated 30 March 2023 (**Assignment of Coal Agreement**) under which WFTL purported to:
 1. Advance all assets belonging to WFTL as trustee of the Wikeley Family Trust to Wikeley Inc.; and
 2. Assign to Wikeley Inc. the "full benefit of" the purported Coal Funding and JV Investment Agreement dated 23 October 2012 between Kea and Mr Wikeley (**Coal Agreement**);
 - ii. The purported Assignment of Judgment (**Assignment of Judgment**) between WFTL and Wikeley Inc. dated 30 March 2023 under which WFTL purported to assign to Wikeley Inc. the Order for Default Judgment (**Default Judgment**) dated on or about 31 January 2022 in

proceedings *Wikeley Family Trustee Ltd v Kea Investments Ltd* (Commonwealth of Kentucky, Fayette Circuit Court, 9th Division (**Kentucky Court**), Civil Action No. 21-CI-02508 (**Kentucky Proceedings**);

- iii. The Motion for Substitution and Notice of Hearing on April 14, 2023 (**Motion for Substitution**) under which application has been made to the Kentucky Court for orders that Wikeley Inc. be substituted for WFTL as the plaintiff in the Kentucky Proceedings, purportedly in reliance on the Assignment of Coal Agreement and the Assignment of Judgment.
- iv. The Motion to Compel Discovery and the Motion for Injunction annexed to WFTL's Motion for Substitution;
- v. Any notices of the Assignment of Coal Agreement and Assignment of Judgment to Kea or any other person anywhere in the world;
- c. Mr Wikeley shall cause Wikeley Inc to withdraw, adjourn or seek a continuance of the Motion for Substitution, the Motion to Compel Discovery and the Motion for Injunction;
- d. WFTL shall consent to the withdrawal, adjournment or continuance of the Motion for Substitution.

Appointment of interim liquidator to Wikeley Family Trustee Limited

- e. The court appoints Brendan James Gibson and Natalie Gytha Burrett, insolvency practitioners of Auckland, be appointed joint and several interim liquidators (**interim liquidators**) of WFTL;
- f. For the avoidance of doubt, the interim liquidators are authorised to instruct lawyers outside New Zealand and to appear in foreign courts, as they may consider necessary and appropriate;
- g. For the avoidance of doubt, with effect from the commencement of the interim liquidation, Mr Wikeley shall cease to have any powers, functions or duties as director of WFTL other than those required or permitted to be exercised by Part 16 of the Companies Act 1993;
- h. The orders made at paragraphs 3.e-3.g are of immediate effect but Kea shall file an undertaking as to damages within 3 working

days after the date of these orders, failing which WFTL or Mr Wikeley may apply for the liquidation to be terminated;

- i. Upon the commencement of the interim liquidation of WFTL, Kea shall have leave to continue its proceeding against WFTL under file number CIV-2022-404-2086;
- j. In making the order at 3.e the Court read the following documents:
 - i. Without notice application for appointment of interim liquidators;
 - ii. Statement of claim;
 - iii. Affidavit of James Long dated 5 April 2023;
 - iv. Memorandum of counsel dated 6 April 2023;

Leave to apply

- k. The parties shall have leave to apply for further orders or discharge or variations of the above orders on short notice.

Dated this 6th day of April 2023

(Deputy) Registrar

Exhibit 2

WIKLEY FAMILY TRUSTEE LIMITED (in liquidation)

Notice of Appointment of Liquidators and Notice to Creditors to Claim

Notice is hereby given that the liquidation of the above-named company commenced on 6 April 2023 at 4.55pm when the High Court at Auckland, on the application of Kea Investments Ltd appointed Brendon James Gibson and Natalie Gytha Burrett, Licensed Insolvency Practitioners of Auckland, joint and several interim liquidators in accordance with section 241(2)(c) of the Companies Act 1993.

The undersigned does hereby fix 4 May 2023 as the date on or before which creditors of the company are to make their claims and to establish any priority their claims may have, under section 312 of the Companies Act 1993, or to be excluded from the benefit of any distribution made before the debts are proved or, as the case may be, from objecting to the distribution.

BRENDON GIBSON and NATALIE BURRETT, Joint and Several Liquidators.

Any Enquiries in This Matter Should be Addressed to the Liquidators at the Offices of: Calibre Partners, Level 21, 88 Shortland Street (PO Box 982), Auckland. Telephone: (09) 307 7865. Email: contact@calibrepartners.co.nz. Enquiries to: Naina Narula.

Note: If any creditor claims a security interest over any assets of the above company, please provide details to the liquidators forthwith.

2023-al1547

17-04-2023 16:07

Exhibit 3

WIKLEY FAMILY TRUSTEE LIMITED (8212183) In Liquidation

To maintain this company [log on here](#)

Last updated on 11 Apr 2023

Company Summary Addresses Directors (1) Shareholdings (1) Documents (9) PPSR Search
NZBN

This Company currently has Liquidators, Receivers or Voluntary Administrators appointed

Company number: 8212183

NZBN: 9429049504743

Incorporation Date: 23 Jul 2021

Company Status: In Liquidation

[View Previous Status](#)

[Liquidation](#) from 06 Apr 2023

Entity type: NZ Limited Company

Constitution filed: [Yes](#)

AR filing month: November , last filed on [21 Dec 2022](#)

FRA Reporting Month: March

[Ultimate holding company](#) No

[Company addresses:](#) **Registered Office**
Level 21, 88 Shortland Street,
Auckland Central, Auckland, 1010 ,
New Zealand

Address for service
Level 21, 88 Shortland Street,
Auckland Central, Auckland, 1010 ,
New Zealand

[View all addresses](#)

[Directors](#) Showing 1 of 1 directors

Kenneth David WIKLEY
22 Bora Place, Ningi, Queensland,
4511 , Australia

Company record link: <https://app.companiesoffice.govt.nz/co/8212183>

[Additional NZBN Information](#)

Trading Name(s): No trading name

Phone Number(s):

Email Address(es):

Website(s): No website

Industry Classification(s): K624010 Financial asset investing

[View all NZBN details](#)

Generated on Thursday, 20 April 2023 13:13:39 NZST

Exhibit 4

EXHIBIT 4

8(i) all persons or bodies authorized to administer foreign proceedings of the debtor:

Calibre Partners
Att: Brendon James Gibson and/or Natalie Gytha Burrett
Level 21, 88 Shortland Street,
Auckland, 1010, New Zealand

8(ii) all parties to litigation in the United States in which the debtor is a party at the time of filing of this petition:

Wikeley Inc.
710 East Main Street
Lexington, Kentucky 40502

USA Assets Holdings Inc.
212 North 2nd Street, Suite 100
Richmond, Kentucky 40475

Kea Investments Limited
c/o Sarah Jackson Bishop
Stoll Keenon Ogden PLLC
201 W. Main St., Suite A
Frankfort, KY 40601

8(iii) all entities against whom provisional relief is being sought under § 1519 of the Bankruptcy Code:

Same as the entities listed in 8(ii) above, including:

Kenneth Wiekely
22 Bora Place, Ningi
Queensland, 4511, Australia