



## Supreme Court of New Zealand

Date 17 December 2013

### **MEDIA RELEASE – FOR IMMEDIATE PUBLICATION**

**PLANET KIDS LIMITED v AUCKLAND COUNCIL (SC 5/2013)  
[2013] NZSC 147**

### **PRESS SUMMARY**

**This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at [www.courtsofnz.govt.nz](http://www.courtsofnz.govt.nz).**

Planet Kids Limited operated a childcare business from premises leased from the Auckland Council. The Council wished to use the land for a roading project and sought to acquire the lease under the Public Works Act 1981. On 3 June 2010, Planet Kids and the Council entered into an agreement said to be in full and final settlement of any claim for compensation under the Public Works Act.

Before the settlement date of the agreement, the premises were destroyed by a deliberately lit fire. Both parties accepted that, under the terms of the lease agreement, this caused the lease to terminate.

The Council's position is that this event brought the settlement agreement to an end through the doctrine of frustration. Planet Kids' position is that the settlement agreement subsists and is enforceable. Planet Kids initiated proceedings seeking a declaration to this effect and judgment for the amount outstanding under the agreement.

The High Court held that the settlement agreement was frustrated. This decision was upheld in the Court of Appeal. Leave was granted in this Court on the question of whether the Courts below were correct to hold that the settlement agreement was discharged by frustration.

This Court has held that what has been called a multi-factorial analysis should be applied to the particular circumstances of the case when considering whether or not contract is frustrated.

In this case, the fire did not render performance of the settlement agreement impossible. The only obligations that could not be performed by Planet Kids were the delivery at settlement of a validly executed surrender of the lease and the transfer of the chattels used in the business. On entering into the settlement agreement, Planet Kids was obliged to surrender the lease and therefore the document surrendering the lease was a technicality. Further, as the Council was not buying Planet Kids' business, it seems unlikely that the chattels were in any way fundamental to the Council.

The main purpose of the settlement agreement was to settle the Public Works Act dispute. This achieved certainty for both parties that Planet Kids' lease would be terminated, identified the timing of that termination and set the amount of compensation payable for the consequential closure of Planet Kids' business. This common purpose was not thwarted by the fire but was, for all practical purposes, fulfilled before the date of the fire.

Other factors weighing against a finding that the settlement agreement is frustrated are the hardship that would be caused to Planet Kids and the lack of hardship to the Council and the fact that, because of the terms of the lease, the termination risk was foreseeable. Further, the Council achieved everything it wished to achieve from the settlement agreement, albeit by termination rather than surrender of the lease.

The Court therefore concluded that the settlement agreement is not frustrated.

Accordingly, the appeal is allowed. A declaration is made that the settlement agreement subsists. The question of whether summary judgment should have been entered is referred back to the High Court.

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