

IN THE SUPREME COURT OF NEW ZEALAND

**SC 121/2013
[2014] NZSC 11**

BETWEEN

**C P ASSET MANAGEMENT LIMITED
First Applicant**

**ASIA PACIFIC HOTEL INVESTMENTS
LIMITED
Second Applicant**

**C P RETAIL HOLDINGS LIMITED
Third Applicant**

**RAISONS PACIFIC INVESTMENTS
LIMITED
Fourth Applicant**

**SOUTH ISLAND HOTEL
INVESTMENTS LIMITED
Fifth Applicant**

**YEIL C & M LIMITED
Sixth Applicant**

AND

**DAMIEN GRANT & STEVEN KHOV
AS LIQUIDATORS OF NZ
PROPERTIES HOLDINGS LIMITED (IN
LIQUIDATION)
First Respondents**

**BRIAN AND BRIDGIT LAWRENCE
Second Respondents**

Court: Elias CJ, McGrath and Glazebrook JJ

Counsel: D L LangSiu for First, Second, Third, Fourth, Fifth and Sixth
Applicants
K P Sullivan for the First Respondents
G A Keene for the Second Respondents

Judgment: 25 February 2014

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B The applicants must pay to the First Respondents costs of \$2,500 plus all reasonable disbursements to be fixed if necessary by the Registrar.**
- C The applicants must pay to the Second Respondents costs of \$2,500 plus all reasonable disbursements to be fixed if necessary by the Registrar.**
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REASONS

Background

[1] NZ Properties Holdings Ltd (NZ Properties) was put into liquidation by the High Court and Messrs Grant and Khov were appointed as liquidators. On 15 August 2012 a creditors' resolution was passed that they be replaced as liquidators by Messrs Heath and Lamacraft. The creditors who voted in favour of the resolution were associated with the Pandey family who controlled NZ Properties.

[2] Messrs Grant and Khov applied to set aside the resolution. This application was made under s 245A of the Companies Act 1993, which applies where the outcome of voting at a meeting of creditors is determined by a related entity.

[3] Venning J in the High Court declined the application.¹ As the original liquidators were court appointed, any new liquidators had to be court appointed. Venning J thus appointed Messrs Heath and Lamacraft as liquidators.

Court of Appeal decision

[4] The Court of Appeal reversed that decision and reinstated Messrs Grant and Khov as liquidators.² This was on the basis that the resolution was contrary to the

¹ *Grant and Khov v CP Asset Management Ltd* [2012] NZHC 3488.

interests of the unsecured creditors and that it was causing prejudice to Mr and Mrs Lawrence, who had obtained judgment against the company for a large sum.

[5] The Court of Appeal's concern was that the creditors may not get an adequate investigation into the affairs of the company if the replacement liquidators remained in office and in particular, that the possibility of recovery from the Pandey family would not be adequately investigated.

[6] Various transfers of assets over the period 2006 to 2011 out of NZ Properties (then called CP Holdings Ltd) were outlined by the Court of Appeal. These had left the company without assets.³ The Court of Appeal noted, that Venning J's attention does not seem to have been drawn to these dispositions.⁴

The application

[7] The applicants seek leave to appeal against the Court of Appeal decision.

[8] The difference between the High Court and the Court of Appeal decisions depends largely on a differing view of the facts. There is thus no point of general, public or commercial significance. Nor is there the possibility of a miscarriage of justice.

Result

[9] The application for leave to appeal is dismissed.

[10] The applicants must pay to the First Respondents costs of \$2,500 plus all reasonable disbursements to be fixed if necessary by the Registrar.

[11] The applicants must pay to the Second Respondents costs of \$2,500 plus all reasonable disbursements to be fixed if necessary by the Registrar.

² *Grant and Khov v CP Asset Management Ltd* [2013] NZCA 452.

³ At [9].

⁴ At [53].

Solicitors:

Hucker & Associates, Auckland for Applicants

Waterstone Insolvency, Auckland for First Respondents

Pidgeon Law, Auckland for Second Respondents