

**IN THE SUPREME COURT OF NEW ZEALAND**

**SC 70/2014  
[2014] NZSC 140**

BETWEEN JET TRUSTEES LIMITED  
Applicant

AND ROBERT MARK PATRICK DUNPHY  
First Respondent

GREYMOUTH HOLDINGS LIMITED  
Second Respondent

RICHARD SHANE DUNPHY AND  
WENDY DUNPHY  
Third Respondents

JUGEN KADEL  
Fourth Respondent

TOWER HILL INVESTORS LLP  
Fifth Respondent

GERMANDA HOLDINGS LIMITED  
Sixth Respondent

PETER HANBURY MASFEN AND  
JOANNA ALISON MASFEN  
Seventh Respondents

GREYMOUTH PETROLEUM  
HOLDINGS LIMITED  
Eighth Respondent

JOHN STURGESS AND ASSOCIATES  
LIMITED  
Ninth Respondent

JOHN GILBERT STURGESS  
Tenth Respondent

Court: Elias CJ, Glazebrook and Arnold JJ

Counsel: P G Skelton QC and A Borchardt for Applicant  
J A Farmer QC and M D O'Brien for First, Second, Seventh and  
Eighth Respondents  
J F Anderson for Third, Fourth, Fifth and Sixth Respondents  
F E Geiringer for Tenth Respondent

Judgment: 9 October 2014

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**JUDGMENT OF THE COURT**

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- A**      **The application for leave to appeal is dismissed.**
- B**      **The applicant must pay costs of \$2,500 to the first, second, seventh and eighth respondents collectively, plus reasonable disbursements.**
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**REASONS**

[1] Mark Dunphy, Peter Masfen and John Sturgess established Greymouth Petroleum Holdings Ltd (GPH) as a vehicle for what was effectively a joint venture conducting oil exploration and production activities. Either directly or through related interests, the three held various shareholdings in GPH, as follows:

- (a) Group 1 – Mr Dunphy and his interests – 52.144 per cent.
- (b) Group 2 – Mr Sturgess and the applicant, Jet Trustees Ltd (Jet) – 13.856 per cent, Mr Sturgess as to two per cent and Jet as to 11.856 per cent. (Jet is a corporate trustee for two family trusts associated with Mr Sturgess. Until February 2014 there were two directors of Jet – Mr and Mrs Sturgess. Following Mr Sturgess’ resignation on 7 February, Mrs Sturgess is now Jet’s sole director.)
- (c) Group 3 – Mr Masfen and his interests – 34 per cent.

The majority shareholder in each group has the power to appoint a director of GPH and they appointed the three men. Mr Dunphy was the Executive Chairman and Mr Sturgess was the company’s Chief Operating Officer (COO).

[2] After some years of successful operation, the three fell out, Mr Sturgess being pitted against Messrs Dunphy and Masfen. Mr Dunphy had become concerned

about Mr Sturgess' conduct as COO and suspended him for a period. Following further investigation, Mr Sturgess' management arrangement was suspended indefinitely. By this stage it was becoming clear that the men's relationship had deteriorated to the point that GPH could not continue to operate as it had. But they could not agree on what steps should be taken, in particular, whether the company should be wound up or Mr Sturgess and Jet should sell their interests.

[3] In the High Court, Gilbert J considered that many of the concerns about Mr Sturgess' conduct as COO were justified. Seeing no distinction between the positions of Mr Sturgess and Jet, he ordered that both should sell their shares at fair market value and exit the company, exercising his power under s 174(2) of the Companies Act 1993.<sup>1</sup> This was upheld on appeal.<sup>2</sup> Jet now seeks leave to appeal.

[4] For Jet, Mr Skelton QC advances three grounds going to the exercise of the Court's power under s 174(2):

- (a) It should be exercised for a remedial and not a punitive purpose.
- (b) There must be proportionality between the remedy granted and any wrongdoing established.
- (c) Any remedy should not interfere with the management of the company, or with shareholders' rights, to any greater extent than necessary to address the wrong.

He submits that the Courts below failed to apply these principles, in particular by failing to recognise that Jet (as opposed to Mr Sturgess) had not acted wrongfully or oppressively.

[5] We are not satisfied that it is necessary in the interests of justice that we hear and determine the proposed appeal. The issues are essentially factual rather than legal in nature and raise no issue of general or public importance. Nor do we see

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<sup>1</sup> *Greymouth Holdings Ltd v Jet Trustees Ltd* [2013] NZHC 1013 and *Greymouth Holdings Ltd v Jet Trustees Ltd* [2013] NZHC 2497.

<sup>2</sup> *Sturgess v Dunphy* [2014] NZCA 266 (Randerson, White and Miller JJ).

anything of general commercial significance in the case. Given that factual issues were explored in detail in the courts below, against the background that Mr Sturgess did not give evidence, we see no risk of a substantial miscarriage of justice.

[6] The application for leave to appeal is dismissed. The applicant must pay \$2,500 by way of costs to the first, second, seventh and eighth respondents collectively, together with reasonable disbursements.

Solicitors:

Anderson Creagh Lai Limited, Auckland for Applicant

Bell Gully, Wellington for First, Second, Seventh and Eighth Respondents

Frank Handy, Wellington for Third, Fourth, Fifth and Sixth Respondents