Supreme Court of New Zealand

Date 11 August 2014

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

(SC 50/2013)
[2014] NZSC 108

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.

Worldwide NZ LLC (Worldwide) and NZ Venue and Event Management Ltd (Venue Management) were parties to a joint venture to construct and operate Vector Arena. The joint venture was formed under a deed of trust, with Quay Park Arena Management Ltd (QPAM Ltd) as corporate trustee. Worldwide held a 25 percent interest (holding "B" units and shares) in the joint venture and QPAM Ltd. Venue Management and an associated company held a 75 percent interest (holding "A" units and shares).

On 18 January 2006, a receiver was appointed to the parent company of Worldwide, triggering a pre-emptive right of purchase of its "B" units and shares. This was exercised by Venue Management by letter of 26 April 2006. The trust deed did not set a mechanism of fixing the price of the "B" units and shares, and as a result, legal proceedings ensued. In 2008 the Court of Appeal construed the trust deed as requiring the transaction to occur at a "fair market value".

The fair market value was fixed by the High Court in a judgment of 24 November 2011. Potter J ordered payment to made within 28 days and also held that interest under s 87(1)

PO Box 61, Wellington, New Zealand
Telephone 64 4 918 8222 • Facsimile 64 4 914 3560

of the Judicature Act 1908 was payable from 26 April 2006 up to the date of payment on the fair market value that had been determined by the Court.

On appeal, the Court of Appeal held that s 87(1) of the Judicature Act did not apply and no interest was payable. The Court of Appeal came to that conclusion for three reasons: first, the Court of Appeal held that a "debt" under s 87(1) had to be an ascertained or readily ascertainable sum and the market value of the "B" shares and units was neither; secondly, the Court of Appeal held that no cause of action arose on the date when the pre-emptive rights were exercised by Venue Management; thirdly, the Court of Appeal held that Worldwide's proceeding was not one "for the recovery of debt or damages" and was merely a proceeding for a declaratory judgment.

The Supreme Court has unanimously held that Potter J was entitled to award interest on the value fixed in respect of the "B" units and shares.

First, the Court has held that the legislative history, policy rationale, caselaw and wording of s 87(1) lead to the conclusion that the phrase "debt or damages" should be seen as a composite expression covering all proceedings where a claim for money is made and is not limited to ascertained or readily ascertainable sums.

Secondly, the Court has held that, from the date when the pre-emptive right was exercised, Venue Management was under an obligation to pay the market value of the units and shares to Worldwide. The cause of action therefore arose at that point.

Thirdly, the Court has held that Worldwide's proceeding was one for the "recovery of debt or damages". Worldwide sought not only ascertainment of the fair market value of the shares, but also payment for them, as well as interest from the date the pre-emptive right was exercised. Worldwide was thus seeking a judgment for the recovery of that sum.

Finally, the Court has rejected Venue Management's submission that Potter J should not have exercised her discretion under s 87(1) to award interest as compensation for Worldwide being kept out of its money.

Accordingly, the appeal is allowed and the order of the High Court relating to interest is re-instated.

Contact person: Gordon Thatcher, Supreme Court Registrar (04) 471 6921