



**Supreme Court of New Zealand
Te Kōti Mana Nui**

15 December 2014

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

**WEST CITY LIMITED V HENRY DAVID LEVIN AND DAVID STUART
VANCE AS LIQUIDATORS OF ST GEORGE DEVELOPMENTS
LIMITED (IN LIQUIDATION)
(SC 43/2014) [2014] NZSC 183**

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

West City Construction Ltd carried out construction work for St George Developments Ltd (St George) on a subdivision in Albany in 2005 and 2006. The appellant in this appeal is a different but successor company to its identically named predecessor and, for ease of reference, both companies will be referred to as “West City”. West City’s position was that it carried out this work on the basis of an agreement by St George to assign to it a bond held by the North Shore City Council (the Council). The bond was later, in October 2006, formally assigned to West City and the money held under the bond was, in due course, paid out to West City.

St George was placed in liquidation by the High Court as a result of proceedings which were commenced on 22 January 2008. As a consequence, the voidable preference provisions of the Companies Act 1993 were potentially engaged. Under those provisions, the transfer of property or the giving of security by a company in liquidation would be voidable if: it was made when the company was unable to pay its debts and within a specified period starting two years prior to the commencement of the liquidation proceedings; resulted in another person receiving more towards the satisfaction of a debt than would have been received (or likely to have been received) in the liquidation; and did not take place in the ordinary course of business.

St George's liquidators sought to avoid the assignment of the bond and to recover the money paid by the Council to West City. They took the position that there was no assignment prior to October 2006, that the assignment then entered into was a voidable preference as it occurred after the start of the specified period (which was on 22 January 2006) and that the other conditions were satisfied.

West City contended that there had been an agreement to assign the bond entered into in or about November 2005 which effected an equitable assignment and which is not subject to avoidance as a preference because it preceded the start of the specified period.

The High Court found in favour of West City, holding that the bond was assigned in equity by oral agreement prior to 22 January 2006. The Court of Appeal reversed the High Court judgment, holding that there had not been an agreement to assign prior to the formal assignment in October 2006 and concluding that this assignment was a voidable preference. The Court also ordered West City to pay to St George the money which it had received from the Council.

In the Supreme Court, the primary issue was whether the Court of Appeal was correct in its conclusion that an agreement to assign the bond was not entered into in November 2005.

The Supreme Court has unanimously allowed the appeal. It has held that the bond was assigned in equity by oral agreement in November 2005. It has found that the substance of the agreement was that West City had made it clear that it would not do the work unless St George agreed to assign its rights under the bond, St George agreed to do so, and the work was then carried out on the basis of that agreement. The Court has concluded that the lack of detail as to what was agreed and the resulting uncertainties are not of controlling significance given that work which was the subject of the contract was carried out.

The Court has also rejected the argument of the liquidators that even if there had been an agreement to assign the bond, it was not effective until the work was completed, certified for payment by the engineer and accepted by the Council, conditions which were not satisfied until after 22 January 2006. The Court has held that this argument involves bringing back into the November 2005 agreement terms provided for in the deed of assignment executed in October 2006. In any event, prior to the commencement of the specified period on 22 January 2006, West City had done everything which it was required to do to under the contract for the additional works.

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