

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 29/2020
[2020] NZSC 73

BETWEEN BATHURST RESOURCES LIMITED
 First Applicant

AND BULLER COAL LIMITED
 Second Applicant

AND L&M COAL HOLDINGS LIMITED
 Respondent

Court: Winkelmann CJ, Glazebrook and Ellen France JJ

Counsel: J E Hodder QC and R J Gordon for Applicants
 A R Galbraith QC and D R Kalderimis for Respondent

Judgment: 27 July 2020

JUDGMENT OF THE COURT

- A The application for leave to appeal is granted (*Bathurst Resources Ltd v L&M Coal Holdings Ltd* [2020] NZCA 113).**
- B The approved question is whether the Court of Appeal was correct to dismiss the appeal.**
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REASONS

[1] To assist counsel in preparing for the appeal, the Court notes the following points:

- (a) The principles of contractual interpretation have been set out by this Court in *Firm PI 1 Ltd v Zurich Australian Insurance Ltd (Zurich)*.¹ We will not revisit those principles on this appeal.

¹ *Firm PI 1 Ltd v Zurich Australian Insurance Ltd* [2014] NZSC 147, [2015] 1 NZLR 432 at

- (b) *Zurich* did not deal with the admissibility or otherwise of evidence of prior negotiations or subsequent conduct.² We will hear argument on these issues.

- (c) We will hear argument on the distinction between interpretation and implication and the appropriate test for the latter.

Solicitors:
MinterEllisonRuddWatts, Wellington for Applicants
Chapman Tripp, Wellington for Respondent

[60]–[63], [77]–[79], [84] and [88]–[93] per Arnold J for the majority (Elias CJ and William Young J reserving their positions).

² On subsequent conduct, counsel should also address the comments of Thomas J in *Gibbons Holdings Ltd v Wholesale Distributors Ltd* [2007] NZSC 37, [2008] 1 NZLR 277 at [113].