

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 99/2024
[2024] NZSC 166

BETWEEN

ARENA ALCEON NZ CREDIT
PARTNERS, LLC
First Applicant

QUAESTOR ADVISORS, LLC
Second Applicant

AND

DAMIEN MITCHELL GRANT AND
ADAM STEVENSON BOTTERILL AS
LIQUIDATORS OF ORMISTON RISE
LIMITED (IN RECEIVERSHIP AND
LIQUIDATION)
First Respondents

DAMIEN MITCHELL GRANT AND
ADAM STEVENSON BOTTERILL AS
LIQUIDATORS OF ORMISTON RISE
DEVELOPMENT LIMITED (IN
RECEIVERSHIP AND LIQUIDATION)
Second Respondents

Court: Glazebrook, Ellen France and Miller JJ

Counsel: J C Caird for Applicants
J W A Johnson, K C Francis and F S Tuteja for Respondents

Judgment: 5 December 2024

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B The applicants must pay the respondents one set of costs of \$2,500.**
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REASONS

[1] The respondents are liquidators of two New Zealand companies, Ormiston Rise Ltd and Ormiston Rise Development Ltd (together, Ormiston), which were in the business of property development. The applicants are limited liability companies incorporated in the United States of America. Arena Alceon NZ Credit Partners LLC is a shareholder in Ormiston Rise Ltd and it financed the purchase and development of a property at Flat Bush, Auckland. Quaestor Advisors LLC acted as a security trustee for Arena, holding a general security agreement and a mortgage.

[2] The liquidators sought information from Arena and Quaestor. They issued notices under ss 239AG and 261 of the Companies Act 1993 and, by leave of the High Court,¹ served those notices in the United States. Arena and Quaestor entered protests to jurisdiction on the grounds that the liquidators' statutory powers do not have extraterritorial effect, and further, that they have not submitted to the jurisdiction. The High Court dismissed the liquidators' application to set aside the protest to jurisdiction.² The Court of Appeal allowed the liquidators' appeal.³

[3] Section 261 applies to directors, shareholders and other persons having records of the company or information about its activities. It is settled law that s 261 has extraterritorial effect for directors or former directors, in part because they voluntarily assumed duties under the Act.⁴ The question is whether s 261 also has extraterritorial effect for shareholders, creditors and any other persons.

[4] The Court of Appeal recognised the principle that statutes have extraterritorial effect only if they so provide expressly or by necessary implication.⁵ It held that extraterritorial effect was necessary for s 261 to be effective.⁶ If it were otherwise, a

¹ *Grant v Arena Alceon NZ Credit Partners LLC* HC Auckland CIV-2022-404-874, 4 August 2022 (Minute of Associate Judge Taylor).

² *Grant (as liquidators of Ormiston Rise Ltd (in liq)) v Arena Alceon NZ Credit Partners LLC* [2023] NZHC 3048, [2023] NZCCLR 16 (Associate Judge Gardiner).

³ *Grant v Arena Alceon NZ Credit Partners, LLC* [2024] NZCA 366 (Cooke, Venning and van Bohemen JJ) [CA judgment].

⁴ *Re International Direct Ltd (in liq)* HC Wellington CIV-2006-485-2020, 17 November 2006 at [26]; and *Grant v Pandey* [2013] NZHC 2844 at [19] and [26]–[27].

⁵ CA judgment, above n 3, at [20] citing *Poynter v Commerce Commission* [2010] NZSC 38, [2010] 3 NZLR 300 at [15] per Elias CJ and [36] per Blanchard, Tipping, McGrath and Wilson JJ.

⁶ CA judgment, above n 3, at [21].

director, shareholder or other person could evade their obligations under s 261 simply by leaving the jurisdiction. The Court found it unlikely that s 261 would have extraterritorial effect for directors but not other persons.⁷

[5] On the facts, the Court found that Arena and Quaestor had submitted to jurisdiction through their substantial connection to the activities of Ormiston in New Zealand.⁸ Arena and Quaestor not only financed the development but also appointed receivers, who sold the development property to a company related to Arena. Advances were made to third parties to preserve the value of the secured property. The liquidators want to explore these activities.

[6] The extraterritorial application of a liquidators' powers under the Act may be a matter of general or public importance.⁹ But we do not consider that the proposed appeal has sufficient prospects of success to justify leave given the applicants' close connection to the activities of Ormiston in New Zealand.¹⁰

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

[8] The applicants must pay the respondents one set of costs of \$2,500.

Solicitors:
Simpson Grierson, Auckland for Applicants
Lindsay Francis & Mangan, Auckland for Respondents

⁷ At [29].

⁸ At [35]–[37].

⁹ Senior Courts Act 2016, s 74(2)(a).

¹⁰ Section 74(1).