

IN THE SUPREME COURT OF NEW ZEALAND

SC CIV 18/2004

BETWEEN

GARRY ALBERT MUIR, ACCENT
MANAGEMENT LTD, BEN NEVIS
FORESTRY VENTURES LTD, BRISTOL
FORESTRY VENTURES LTD, CLIVE
RICHARD BRADBURY, GREENMASS
LTD, GREGORY ALAN PEEBLES,
ESTATE OF THE LATE KENNETH
JOHN LAIRD, LEXINGTON
RESOURCES LTD AND REDCLIFFE
FORESTRY VENTURES LTD
Applicants

AND

COMMISSIONER OF INLAND
REVENUE
Respondent

Court: Elias CJ and Keith J

Counsel: J Miles QC for the Applicants
J H Coleman for the Respondent

Judgment: 15 November 2004

JUDGMENT OF THE COURT

[1] The applicants seek leave to challenge a decision of the Court of Appeal upholding the refusal by the High Court to maintain confidentiality of their names in connection with taxation litigation involving what has become known as the Trinity scheme. The Court has decided that the application can be dealt with on the papers.

[2] The applicants do not relate their submissions to the grounds for the grant of leave to appeal set out in s13 of the Supreme Court Act 2003. Rather, they contend that in certain respects the decision of the Court of Appeal is wrong. Those criticisms are not accurately stated. For instance the first is that “open justice

principles derived from criminal prosecutions ... should apply equally to tax cases in the High Court” – but the Court of Appeal does not state that the principle is derived from criminal cases, nor do we see it that way. It does apply equally to civil matters although, as the Court says, the situations warranting confidentiality are likely to differ between the two categories and, we would add, within them, as legislation often indicates.

[3] Next the applicants say, the Court of Appeal rejects previous High Court practice recognising confidentiality orders as appropriate – but the Court does not reject that practice; it explains some of the cases by reference to the secrecy provisions relating to proceedings before the Taxation Review Authority or the characteristics of certain tax information and then it goes on to mention five considerations “that point the other way” – considerations which it does not say, contrary to another of the applicants’ submissions, are “compelling”.

[4] These matters, like the others raised by the applicants, go to the exercise of a discretion, a discretion exercised in the context of the principle of open justice and which has twice been exercised against the applicants. In the end the appeal would primarily be directed to matters of weight. The requirements of s13 of the Supreme Court Act are not satisfied.

[5] The application for leave to appeal is accordingly refused. The interim stay of the judgment of the Court of Appeal is set aside.

Solicitors:
Wynyard Wood, Auckland for the Applicants
Crown Law Office, Wellington for the Respondent