



Supreme Court of New Zealand

9 November 2012

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

COMMISSIONER OF INLAND REVENUE v REDCLIFFE FORESTRY VENTURE LTD (SC 8/2012) [2012] NZSC 94

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.

On 15 September 2009, Redcliffe Forestry Venture Ltd and others applied to the High Court to set aside a High Court judgment, which had concluded that the Trinity scheme that they were involved in was a tax avoidance arrangement. The judgment had eventually been upheld on appeal by the Supreme Court. Redcliffe alleged that the Commissioner had knowingly and wrongly applied a depreciation allowance to expenditure incurred by the Trinity investors under certain provisions of the Income Tax Act 2004, when others should have been used. Redcliffe asserted that this was fraud, which is an exception to the principle that court judgments are final and conclusive as to what they decide, so that the Commissioner was not able to rely on the Supreme Court's judgment. The Commissioner responded to the 2009 proceeding by filing an objection to the jurisdiction of the High Court under r 5.49 of the High Court Rules and applying for orders to dismiss Redcliffe's proceeding on the ground that the High Court's decision is final and cannot be reopened.

The High Court dismissed Redcliffe's proceeding. The Judge held that only fraud in the strict legal sense came within the fraud exception to the principle of finality. The allegations of fraud in Redcliffe's statement of claim were not of this kind. The High Court was also not able to declare its earlier judgment a nullity.

Redcliffe successfully appealed to the Court of Appeal. The focus in that Court was on a procedural issue of whether the Commissioner was entitled to object to the High Court's jurisdiction under r 5.49. The Court of Appeal accepted Redcliffe's argument that jurisdiction under r 5.49 did not apply. The Commissioner should have brought its objection by applying under a different rule to strike out the proceeding. Redcliffe's appeal was allowed. The Commissioner appealed to the Supreme Court against this judgment.

The Supreme Court has held that the fraud alleged by Redcliffe was in fact a claim of legal error which does not come within the fraud exception. The High Court has no power to recall or set aside judgments on questions of law which have been the subject of appellate decision. For the same reason, the High Court also had no jurisdiction to declare its earlier judgment was a nullity. The Commissioner had properly objected to the proceeding under r 5.49 and the Commissioner's objection to the High Court's jurisdiction under r 5.49 was soundly based and should have been upheld. Accordingly, the High Court's judgment striking out the 2009 proceeding was reinstated.

To protect against abuse of process, fraud claims challenging the conclusiveness of judgments of the High Court in future should undergo pre-trial scrutiny. When a party wishes to reopen a case, on the ground that it was procured by fraud, the claim must be fully and precisely pleaded and particularised, and of sufficient apparent cogency that it should go to trial. If a defendant applies to dismiss the proceeding on the ground that the threshold for fraud is not met, the plaintiff must respond promptly and submit probative affidavit evidence which verifies the critical pleaded facts relied on in the proceeding. Unless these requirements are met, the proceeding seeking to reopen the case should be dismissed.

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