



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

22 AUGUST 2018

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

**CHRISTOPHER DUNCAN BAKER AND KATHRYN ANN BAKER v
WALLACE DOUGLAS HODDER AND ANN ADELE HODDER AND
KADD FARM LIMITED**

(SC 94/2017) [2018] NZSC 78

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 Judicial Decisions of Public Interest www.courtsofnz.govt.nz

Wallace and Ann Hodder and their daughter Kathryn Baker and her husband Duncan were shareholders and directors of a family-owned company, Kadd Farm Limited (the company). The Bakers, the appellants in this case, held 30 per cent of the shares in the company and the Hodders, the first respondents, held 70 per cent. The company was incorporated in 2008 with the intention that the Bakers would establish and operate a farm on the property known as Heron Creek, which the company acquired shortly after its incorporation. The farming business did not succeed and the company became insolvent.

The parties agreed that the company should sell the farm but could not agree on the terms of sale. The Hodders arranged for the company to enter into an agreement to sell the farm on terms acceptable to them. This agreement was conditional upon the shareholders of the company passing a special resolution of the shareholders under s 129 of the Companies Act 1993. This was required because the sale of the farm was a “major transaction” for the company. Such a resolution could not be passed unless the Bakers voted in favour or signed a written resolution. The Bakers refused to sign the necessary resolution without a shareholders’ meeting, and the Hodders refused to call a meeting.

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In September 2016 the Hodders commenced proceedings in the High Court under s 174 of the Companies Act. That section provides that a shareholder may apply for relief where the affairs of a company are being conducted in a way that is oppressive, unfairly discriminatory or unfairly prejudicial to the applicant. Ellis J granted the Hodders relief under s 174, holding that the Bakers' refusal to sign a special resolution authorising the sale was unfairly prejudicial in the context of the company being insolvent and continuing to accrue debt. She ordered the Bakers to sign a special resolution authorising the sale of Heron Creek forthwith.

Ellis J had agreed to a substantially truncated timetable in response to the Hodders' request for urgency, which was based on the fact that the last extension of a contract with the potential purchaser of the farm was until 7 October 2016. She issued her judgment on 6 October 2016 and refused to stay her decision to allow the Bakers to appeal to the Court of Appeal. The Bakers complied with the order on 7 October 2016 and the sale of the farm became unconditional on that day.

The Bakers appealed to the Court of Appeal. The Court of Appeal decided the case was moot on the basis that the property had already been sold. It declined to exercise its discretion to hear the appeal.

The Supreme Court granted leave on the question of whether the Court of Appeal should have heard and determined the appeal and also sought submissions on the substantive issue as to whether the s 174 order should have been made by the High Court.

The Court has unanimously decided that the Court of Appeal should have heard and determined the Bakers' appeal to that Court. Although the appeal was moot, in that the sale of Heron Creek had been settled, the Court found the case raised issues of sufficient importance as to justify the Court of Appeal exercising its discretion to hear the appeal. There were issues of fairness arising from the procedure adopted in the High Court, there was a proper basis for concern that the decision could affect the ability of the Bakers to pursue a claim against the Hodders and there remained a real dispute about costs. There were also important company law issues at stake about the interaction between ss 129 and 174 of the Companies Act.

In relation to the High Court decision, the Supreme Court has held that even if there was a power to make an order under s 174 and an order was justified in this case, the form of the order made, requiring the Bakers to sign a special resolution approving the sale of Heron Creek, was inappropriate. The truncated process meant that the Judge was not in a position to determine a number of factual disputes. In those circumstances, the Judge should not have made final orders requiring the Bakers to approve the sale. The Court quashed the order, but recorded that the Bakers did not seek to invalidate the sale of Heron Creek.

The Court awarded costs to the Bakers and directed that costs awards in the High Court and Court of Appeal be redetermined.

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