



Supreme Court of New Zealand

2 August 2007

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

SOUTHBOURNE INVESTMENTS LIMITED v GREENMOUNT MANUFACTURING LIMITED (SC 96/2006) [2007] NZSC 62

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.

Greenmount Manufacturing Ltd leased a warehouse from Southbourne Investments Ltd. The lease contained an option for Greenmount to purchase the property exercisable within the first 18 months of the lease. A few days before the expiry date of the option Greenmount delivered to Southbourne's solicitor a signed agreement and its personal cheque for the 10% deposit.

The Supreme Court has confirmed the view taken in the Court of Appeal that the personal cheque did not constitute a valid payment of the deposit. The Court of Appeal found, however, that because Southbourne failed to object to the use of the cheque for some eight days (during which the option period expired) it could not take the point that the terms of the option had not been complied with. The Court of Appeal therefore entered summary judgment for Greenmount and ordered specific performance.

The Supreme Court has held unanimously that the orders made by the Court of Appeal should be set aside and that the case should go to trial in the High

Court. It said that there is presently not enough evidence to determine when Southbourne's principal came to know about the cheque. It was therefore unsafe to draw the conclusion that Southbourne's conduct must necessarily estop it from denying the sufficiency of the cheque as a payment of the deposit. It could not be said that Southbourne has no arguable defence to Greenmount's claim.

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