



Supreme Court of New Zealand

15 May 2009

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

RODERICK WILLIAM NIELSEN v DYSART TIMBERS LIMITED
(SC 54/2008)
[2009] NZSC 43

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.

The issue in this appeal is whether an offer had lapsed before acceptance. Both the High Court and the Court of Appeal held that there was no lapse and hence the acceptance was valid.

The appellant, Mr Nielsen, offered to settle a dispute he had with the respondent, Dysart Timbers, after he had made an application for leave to appeal to this Court from an adverse decision on that matter in the Court of Appeal. The offer was made on a Thursday and was, on its face, open for acceptance until the following Monday. Later on the Thursday this Court gave Mr Nielsen leave to appeal and, about 40 minutes later, Dysart accepted the settlement offer, which had not in the meantime been withdrawn.

This Court has ruled that an offer automatically lapses only if there is a fundamental change of circumstances before it is accepted. Two members of the Court consider the change in circumstances brought about by the unexpected announcement of this Court's leave decision was not a fundamental change and a third member, concurring with them, considers that the parties did not intend the offer to lapse upon the announcement. Two dissenting members consider that there was a fundamental change in circumstances.

The Court has therefore, by a majority, upheld the decisions below and dismissed the appeal.

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