

IN THE SUPREME COURT OF NEW ZEALAND

**SC 39/2009
[2009] NZSC 70**

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| BETWEEN | TASMAN ORIENT LINE CV Appellant |
| AND | NEW ZEALAND CHINA CLAYS LIMITED AND OTHERS Respondents |

Court: Elias CJ, Blanchard and Wilson JJ

Counsel: B D Gray QC for Appellant
P R Rzepecky and M A Flynn for Respondents

Judgment: 1 July 2009

JUDGMENT OF THE COURT

- A. Leave to appeal is granted.**
- B. The approved grounds are:**
- (a) As the appellant's ground, did the conduct of the Master following the grounding disentitle the appellant to the protection of Article IV, Rule 2(a) of the Hague Visby Rules?**
 - (b) As the respondents' additional grounds in support of the judgment of the Court of Appeal:**
 - (i) Were the decisions of the Master following the grounding made *bona fide* for the safety of the ship, the crew and the cargo?**
 - (ii) Did the conduct of the Master amount to barratry?**

- (iii) Did the appellant fail to discharge the onus of proving where the damage occurred and what caused it?**
- (iv) Did the appellant fail to establish that it was not at fault?**

Solicitors:
DLA Phillips Fox, Auckland for Appellant
McElroys, Auckland for Respondents