



Supreme Court of New Zealand

10 May 2011

**MEDIA RELEASE – FOR IMMEDIATE PUBLICATION**

***Graeme John Ingram and Elizabeth Knee & Kip Investments Limited v  
Patcroft Properties Limited***  
**(SC 72/2010)**  
**[2011] NZSC 49**

**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](http://www.courtsofnz.govt.nz).**

A lease of commercial premises from the lessor, Patcroft Properties Ltd, to the lessees, Mr Ingram, Ms Knee and Kip Investments Ltd, required payment of rent in advance on the first day of each month but postponed the lessor's right of re-entry for non-payment for 14 days. The lessees failed to pay part of the rent for the month in question. The lessor purported to re-enter on the 13th day and thereafter excluded the lessees from the premises.

That action was a repudiatory breach of contract by the lessor. However, the lessees did not immediately accept the breach and give notice of cancellation. The lease therefore remained on foot when the 14 days expired. But no further rent was paid. In litigation in which each side claimed damages from the other, the lessor contended

that after the 14-day period had elapsed it had cancelled the lease on the ground of the non-payment of rent.

The High Court found in favour of the lessees and awarded them damages for the loss of their businesses. The Court of Appeal, by majority, reversed that decision.

The Supreme Court has now unanimously allowed the lessees' appeal and restored the decision of the High Court. It has found that, in circumstances in which the lessor had unlawfully excluded the lessees from the premises and denied the existence of any continuing lease, the non-payment of the rent was justified and could not be a basis for cancellation by the lessor while that situation existed. The lessor had never validly cancelled the lease. The lessees had done so by the issue of their proceedings and were entitled to damages consequent on the lessor's breach of contract.

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