

IN THE SUPREME COURT OF NEW ZEALAND

SC 27/2011  
[2011] NZSC 57

BETWEEN	TECHNIX GROUP LIMITED Applicant
AND	FITZROY ENGINEERING GROUP LIMITED Respondent

Court: Blanchard, McGrath and William Young JJ

Counsel: J B M Smith and J L W Wass for Applicant  
J G Miles QC and P J Wright for Respondent

Judgment: 20 May 2011

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JUDGMENT OF THE COURT

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- A The application for leave to appeal is dismissed.**
- B The applicant is ordered to pay the respondent costs in the sum of \$2500 together with all proper disbursements to be fixed if necessary by the Registrar.**

REASONS

[1] The applicant is lessor and the respondent lessee of manufacturing and boat building premises in New Plymouth. They are in dispute over the relationship and meaning of sub-clauses in a lease which respectively give the lessee an option to purchase land owned by the lessor and rights of pre-emption if the lessor receives an offer to purchase from a third party.

[2] The Court of Appeal,<sup>1</sup> upholding a judgment of Venning J in the High Court,<sup>2</sup> has decided that the provisions are to be reconciled on the basis that once the lessee

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<sup>1</sup> *Technix Group Limited v Fitzroy Engineering Group Limited* [2011] NZCA 17.

<sup>2</sup> *Fitzroy Engineering Group Ltd v Technix Group Limited* HC New Plymouth CIV-2010-443-000102, 20 May 2010.

gives notice of its wish to investigate taking up exercise of the option, if the lessor receives an offer for the land, it cannot call on the lessee to decide on whether it will exercise the right of pre-emption. In seeking leave to appeal against that judgment, the lessor contends the approach of the Court of Appeal to interpretation of the relevant provisions is wrong in principle being contrary to what was decided in this Court's decision in *Vector Gas Ltd v Bay of Plenty Energy Ltd*.<sup>3</sup>

[3] We are satisfied that the proposed appeal would not raise any general issues of principle in relation to contractual interpretation as opposed to questions concerning the application of established principles to interpret the particular sub-clauses in the lease. The Court of Appeal's judgment is largely premised on an internal contextual analysis involving an orthodox approach. Accordingly the lessor's application does not raise a question of general or public importance.

[4] The lessor also points out that the dispute is a substantial one in commercial terms because of the value of the land. This Court has, however, made clear that the ground of "general commercial significance", making it in the interests of justice to hear an appeal, is not satisfied merely because of the actual or potential monetary value of a matter in dispute where resolution of the issue would be of no precedential value.<sup>4</sup>

[5] Nothing else has been raised which would make it necessary in the interests of justice, in terms of s 13 of the Supreme Court Act, for the Court to give leave to hear the appeal. Accordingly the application for leave to appeal is dismissed.

Solicitors:  
Govett Quilliam, New Plymouth for Applicant  
Dennis King Law, New Plymouth for Respondent

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<sup>3</sup> *Vector Gas Ltd v Bay of Plenty Energy Ltd* [2010] NZSC 5, [2010] 2 NZLR 444.

<sup>4</sup> *In Shell (Petroleum Mining) v Todd Petroleum Mining Co Ltd and Ors* [2008] NZSC 26.