



## Supreme Court of New Zealand

28 November 2012

### **MEDIA RELEASE – FOR IMMEDIATE PUBLICATION**

**MICHAEL PETER STIASSNY AND OTHERS v COMMISSIONER OF  
INLAND REVENUE  
(SC 21/2012) [2012] NZSC 106**

### **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).**

Receivers who effectively controlled the Central North Island Forest Partnership, which was in financial difficulty, sold its forestry assets for USD 621 million plus GST of NZD 127.5 million. The aggregate of the two amounts was not enough to repay the secured creditors of the partnership. Both its partners, Forestry Corporation of New Zealand Limited and CITIC New Zealand Limited, were also insolvent.

The GST owing to the Crown arising from the sale was an unsecured debt. But the receivers were concerned that they might be personally liable for the GST under s 58 of the Goods and Services Tax Act 1985 as specified agents of the partnership. In order to avoid the risk of being subjected to substantial penalties and interest if the GST were not paid on time, they arranged for it to be paid to the Commissioner, notwithstanding protests from the secured creditors.

The issues on this appeal from a decision of the Court of Appeal striking out claims made by the partnership, the secured creditors and the receivers for recovery from the Crown of the GST, were whether the receivers were in fact personally liable and, if not, whether the GST is recoverable.

In agreement with the Court of Appeal, the Supreme Court has unanimously held that it has not been shown at this stage of the case that the receivers were personally liable. On that basis, the Court has proceeded to consider the claim for recovery and found that none of the appellants has an arguable case.

The Court is satisfied that, contrary to the appellants' argument, the GST was paid by the partnership and that it was therefore a debtor-initiated payment for which s 95 of the Personal Property Securities Act 1999 gave the Commissioner the ability to claim priority. The Commissioner was entitled to rely upon that section because it was not arguable that he had knowledge at the time of receipt of the GST that the payment was made in breach of the rights of the secured creditors under their security agreements. Nor had he acted in bad faith. The secured creditors' claim failed for that reason.

The partnership's claim for recovery of the GST as a payment made by mistake or under the compulsion of the penalties and interest under the GST Act also failed. It did owe the GST and the Commissioner therefore gave good consideration in accepting its payment in discharge of that debt. There was no unjust enrichment of the Crown at the expense of the partnership.

The receivers had not personally paid the GST and had no independent claim for its recovery.

The appeal has been dismissed.

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