

IN THE SUPREME COURT OF NEW ZEALAND

**SC 92/2011
[2012] NZSC 86**

BETWEEN	ROBERT MICHAEL SYMONS First Appellant
AND	GREGORY JOHN SYMONS Second Appellant
AND	ROBERT MICHAEL SYMONS AND ANNETTE SYMONS AS TRUSTEES OF THE ST ANTHONY TRUST Third Appellant
AND	GREGORY JOHN SYMONS, CLAIRE ANNE SYMONS AND LORRAINE JEAN SYMONS AS TRUSTEES OF THE DRAKENSBERG TRUST Fourth Appellant
AND	WILTSHIRE INVESTMENTS LIMITED Respondent

Court: Elias CJ, Tipping, McGrath, William Young and Chambers JJ

Counsel: S P Bryers and M A Karam for Appellants
D A Laurenson for Respondent

Judgment: 17 October 2012

JUDGMENT OF THE COURT

This Court's judgment [2012] NZSC 70 is recalled and a substitute judgment is delivered.

REASONS

[1] The parties disagreed as to the nature of the rehearing envisaged by Order B of the judgment released on 9 August 2012¹ and sought clarification which we now provide.

[2] There is no need for the respondent to lodge a new summary judgment application. The appellants are to be treated as if the settlement agreement had been disclosed when summary judgment was first sought. They are thus entitled to resist the application on the basis of arguments arising out of, or associated with, the settlement agreement and to adduce affidavit evidence accordingly. It is unclear whether the appellants intend relying on any other defences - that is defences which could have been but were not raised at the first hearing. If so, they will require the leave of the High Court to do so. They otherwise have such rights as summary judgment defendants have to pursue interlocutory applications.

[3] The Court has accordingly recalled the original judgment and issues a replacement judgment with an expanded Order B.

Solicitors:
Rogers & Rutherford, Auckland for Appellants
Hornabrook Macdonald, Auckland for Respondent

¹ *Symons v Wiltshire Investments Ltd* [2012] NZSC 70.