

IN THE SUPREME COURT OF NEW ZEALAND

SC 44/2007
[2013] NZSC 128

BETWEEN REDCLIFFE FORESTRY VENTURE
LIMITED
Applicant

AND THE COMMISSIONER OF INLAND
REVENUE
Respondent

Court: Elias CJ, McGrath and Arnold JJ

Counsel: M S Hinde for Applicant

Judgment: 20 November 2013

JUDGMENT OF THE COURT

The application for recall is dismissed.

REASONS

[1] Redcliffe Forestry Venture Limited was a party to an appeal to this Court which was determined by a judgment delivered on 19 December 2008.¹ Redcliffe has applied for recall and substitution of a passage in that judgment which appears in a section dealing with tax penalties. The passage reads:²

[218] ... Redcliffe's return involved taking a tax position in relation to the Trinity scheme which *resulted in too little tax being paid by Redcliffe's shareholders*. That was a tax shortfall which resulted in Redcliffe being correctly held liable to a shortfall penalty.

¹ *Ben Nevis Forestry Ventures Ltd v Commissioner of Inland Revenue* [2008] NZSC 115, [2009] 2 NZLR 289.

² (emphasis added).

[2] Counsel for Redcliffe, Ms Hinde, has advised the Court that Redcliffe's shareholders, who were not parties to the Supreme Court proceeding and judgment, are seeking in separate proceedings to claim different tax deductions from those originally claimed by Redcliffe. Counsel says they are impeded in doing so by the emphasised words in the above passage in the judgment. She submits that confusion arises because that passage is inconsistent with the Court's statement earlier in the judgment that:

[214] ... the language of the definition of "tax shortfall" covered the position of each LAQC whose tax position resulted in a relevant tax shortfall associated with the tax payable by their shareholders.

To overcome this perceived impediment Redcliffe seeks to have the words we have emphasised in the extract from [218] of the judgment altered so that they read:

... could result in too little tax being paid by Redcliffe's shareholders.

[3] It is not apparent that there is inconsistency between the passages in [214] and [218] of the Court's judgment as the statement in [218] is the application or result of the principle decided in [214]. But even if there were inconsistency a judgment of this Court is, in general, final and conclusive as to the legal consequences of what it decides. There are recognised exceptions to the general rule but we are satisfied this case does not fall within them.

[4] There can of course be argument in different proceedings about what a judgment of this Court has decided, and what the legal consequences of that judgment are for those later proceedings. Argument over legal consequences may include whether an issue is *res judicata* in relation to the parties to those proceedings. But the exceptions to the general rule of finality and conclusiveness of judgments do not allow for parties to seek clarification of precise meaning of what is said whether for application in subsequent proceedings or for some other purposes. That is what Redcliffe seeks.

[5] For these reasons Redcliffe's application for recall is dismissed.

Solicitors:
Wynyard Wood for Applicant