



Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

3 MARCH 2022

MEDIA RELEASE

RICHARD CILIANG YAN v MAINZEAL PROPERTY AND CONSTRUCTION LIMITED (IN LIQUIDATION) AND ORS

(SC 48/2021)

PETER GOMM AND ORS v MAINZEAL PROPERTY AND CONSTRUCTION LIMITED (IN LIQUIDATION) AND ORS

(SC 52/2021)

Hearing in the Supreme Court Mon 7 March – Fri 11 March 2022

CASE HISTORY SYNOPSIS

This synopsis is provided to assist in understanding the history of the case and the issues to be heard by the Court. It does not represent the views of the panel that will hear the appeal in the Supreme Court. The synopsis does not comprise part of the reasons for the judgment of the Court of Appeal.

Background

Mainzeal Property & Construction Ltd (in liquidation) (Mainzeal), a well-known New Zealand construction firm, went into receivership in early 2013. The liquidation process left an approximately \$110m shortfall owing to unsecured creditors.

The liquidators brought claims against the directors of Mainzeal alleging (among other things) that they had:

- (a) agreed to the business of the company being carried on in a manner likely to create a substantial risk of serious loss to creditors, in breach of s 135 of the Companies Act 1993 (the Act); and
- (b) agreed to the company incurring obligations to creditors at a time when they did not have reasonable grounds for believing that the company would be able to perform those obligations when required to do so, in breach of s 136 of the Act.



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On appeal from the High Court, the Court of Appeal agreed with the High Court that the directors breached s 135 of the Act, but reversed the High Court's finding that there was no breach of s 136.

The Court of Appeal held that the directors of Mainzeal breached s 135 by no later than 31 January 2011. It held, however, that no compensation is recoverable in respect of that breach because there was no net deterioration in the company's position and the entire deficiency approach is not relevant in this case because the breaches by the directors did not cause the company to become insolvent.

The Court of Appeal held that the directors breached s 136 by entering into certain obligations after January 2011. It found the appropriate measure of compensation to be the amount of the net deficit with regard to those obligations. The matter was referred back to the High Court to determine the appropriate figure and to consider whether the amount should be reduced in exercise of the s 301 discretion under the Act.

Hearing on 7 March 2022

The Supreme Court is now hearing appeals by the directors of Mainzeal against the Court of Appeal's decision challenging the findings of breach of ss 135 and 136 and, if unsuccessful in that argument, challenging the measure of compensation. The Supreme Court is also hearing a cross-appeal by the liquidators of Mainzeal against the Court of Appeal's assessment of compensation under ss 135 and 136. The hearing is scheduled for the whole week beginning 7 March 2022.

Remote viewing of hearing

This hearing can be viewed remotely by a limited number of members of the public. Courtroom restrictions apply to remote viewing. The [Protocol for Remote Viewing of Hearings](#) will apply. No recording is permitted.

If you wish to view this hearing remotely, please email your request with your name and phone number to the Supreme Court Registry, supremecourt@courts.govt.nz, before 1pm Friday 4 March 2022.

Contact person:

Sue Leaupepe, Supreme Court Registrar (04) 9143613

Court of Appeal decision: *Yan v Mainzeal Property and Construction Ltd (In Liq)* [\[2021\] NZCA 99](#).

Supreme Court leave decision: *Yan v Mainzeal Property and Construction Ltd (In Liq)* [\[2021\] NZSC 109](#).