

IN THE SUPREME COURT OF NEW ZEALAND

SC 49/2017
[2017] NZSC 91

BETWEEN ACTIVEDOCS LIMITED
 Applicant

AND CADRE INVESTMENTS LIMITED,
 MICHAEL WILLIAM SCOTT
 STANBRIDGE AND TREASURY
 MERCHANT FINANCE LIMITED
 Respondents

Court: William Young, O'Regan and Ellen France JJ

Counsel: G J Judd QC for Applicant
 A R B Barker for Respondents

Judgment: 20 June 2017

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B The applicant must pay costs to the respondents of \$2,500.**
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REASONS

[1] In 2002, the applicant, a software development company, raised capital via an offering of preference shares to existing shareholders which were to convert to ordinary shares. The shares were to carry preferential dividends of 15 per cent per annum and these were to be paid at the time of conversion. It was envisaged that conversion would occur two years after the issue of the preference shares but this was subject to provisions providing for acceleration and, more relevantly, postponement, which was to occur if the applicant was not able to pay the preferential dividends at that time, that is two years after the issue of the preference shares.

[2] As it turned out, the applicant was not able to pay the preferential dividends at the proposed conversion date. In 2013, it purported to convert the preference shares but on the basis that it was liable to pay preference dividends for two years only, that is that the applicant's maximum liability for preferential dividends was 30 per cent of the face value of the shares.

[3] In question is whether the preferential dividends continued to accrue until conversion. This question was answered in the affirmative in the High Court by Courtney J¹ and her decision was upheld in the Court of Appeal.²

[4] The case turns on the interpretation of a resolution of the shareholders of 2 September 2002 and a Short Form prospectus. While it is the case that in the High Court, Courtney J referred to a general presumption that preference share dividends accrue cumulatively,³ this consideration did not feature in the reasoning of the Court of Appeal. The issue involved is thus very particular and, contrary to the submissions of counsel for the applicant, there is no question of public or general importance or commercial significance involved. It was not contended that the miscarriage of justice ground is engaged and in any event we see no appearance of an error of the kind which might warrant the grant of leave on this ground.

[5] The application for leave is therefore dismissed.

Solicitors:
Wells & Co, Auckland for Applicant
Wackrow Williams & Davies, Auckland for Respondents

¹ *Cadre Investments Ltd v ActiveDocs Ltd* [2016] NZHC 1489, (2016) 11 NZCLC 98-049.

² *ActiveDocs Ltd v Cadre Investments Ltd* [2017] NZCA 121 (Randerson, Winkelmann and Asher JJ)

³ As to the presumption generally see at [26]–[33] but see also her application at [34]–[63].