



Supreme Court of New Zealand

7 May 2014

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

DOUGLAS ARTHUR MONTROSE GRAHAM, MICHAEL HOWARD REEVES, WILLIAM PATRICK JEFFRIES AND LAWRENCE ROLAND VALPY BRYANT v THE QUEEN
(SC 59–62/2013)
[2014] NZSC 55

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.

The appellants were directors of Lombard Finance & Investments Ltd. Lombard was a finance company that raised money from the public pursuant to prospectuses which were registered under the Securities Act 1978. The appellants were found guilty on four counts laid under s 58 of the Securities Act, relating to untrue statements contained in a prospectus issued on 24 December 2007 and in advertisements distributed by Lombard.

The appellants were sentenced by Dobson J in the High Court to community work and, in the case of Sir Douglas Graham and Mr Lawrence Bryant, ordered to pay reparations of \$100,000. The appellants appealed against their convictions and the Solicitor-General sought leave to appeal against the sentences which were imposed.

The Court of Appeal dismissed the conviction appeals but granted leave to the Solicitor-General to appeal against sentence. The Court of Appeal allowed the appeal and considered that a starting point of imprisonment should have been adopted in the case of each of the directors. Sentences of home detention were ultimately imposed on the appellants.

The Supreme Court granted leave to appeal against the sentences imposed in the Court of Appeal.

The key issue on appeal was whether the offending warranted sentences of imprisonment. It is only if sentences of imprisonment were otherwise appropriate that sentences of home detention could be imposed.

The Supreme Court has concluded that the appellants' conduct did not warrant sentences of imprisonment and has unanimously allowed the appeal.

The Supreme Court has held that the reasons given by the Court of Appeal did not warrant their conclusion that sentences of imprisonment were appropriate for the offending of the appellants. On the findings of fact made by Dobson J the appellants were honest men who took their responsibilities seriously but nonetheless, by reason of misjudgements made in circumstances of pressure, were responsible for the issuing of a prospectus which was untrue as to liquidity. These findings of fact were not disturbed by the Court of Appeal. On this basis, the sentencing purposes of accountability, denunciation and deterrence had limited application. The considerable losses suffered by investors were less than those in other comparable cases and the principle of consistency supports the approach taken by Dobson J.

Accordingly, the sentences imposed by the Court of Appeal are set aside and the sentences imposed by Dobson J are restored.

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