

IN THE SUPREME COURT OF NEW ZEALAND

SC 6/2016
[2016] NZSC 90

BETWEEN GARRY ALBERT MUIR
Applicant

AND THE COMMISSIONER OF INLAND
REVENUE
Respondent

Court: William Young, Arnold and O'Regan JJ

Counsel: Applicant in person
T G H Smith and S J Leslie for Respondent

Judgment: 20 July 2016

JUDGMENT OF THE COURT

- A The application for leave to appeal is granted (*Muir v Commissioner of Inland Revenue* [2015] NZCA 591).**
- B The approved questions are whether the Court of Appeal was right:**
- (i) to find that the appellant could not arguably pursue claims for the 1999 and following tax years in reliance on sub-pt EH of the Income Tax Act 1994; and**
 - (ii) to award costs on an indemnity basis against the appellant.**

REASONS

[1] In relation to the 1997 and 1998 tax years, we agree with the Court of Appeal¹ that the decisions of this Court in *Ben Nevis Forestry Ventures Ltd v Commissioner of Inland Revenue*² and *Commissioner of Inland Revenue v Redcliffe*

¹ *Muir v Commissioner of Inland Revenue* [2015] NZCA 591 (Harrison, Dobson and Gilbert JJ).

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

*Forestry Venture Ltd*³ prevent the applicant, Dr Muir, from claiming deductions under the accrual rules in sub-pt EH of the Income Tax Act 1994, for the reasons the Court gave. The grant of leave accordingly applies only to the 1999 and subsequent tax years and to the indemnity costs point.

[2] On the first point, the grant of leave is in respect of the question whether the doctrines of issue estoppel and/or abuse of process operate to prevent Dr Muir from pursuing the sub-pt EH argument for the 1999 and subsequent tax years. In respect of issue estoppel, we ask that the parties address the general application of the doctrine in the tax context as well as its application in this particular case (assuming its general application).

[3] We will hear the appeal on a date convenient to counsel in the week beginning 22 August 2016. One day should be sufficient. To facilitate a hearing in that week, Dr Muir is to file and serve his submissions by 5 pm on Thursday 4 August 2016 and the respondent is to file and serve her submissions by 5pm on Thursday 18 August 2016.

[4] Dr Muir's application for leave to appeal and submissions in support are not as clear as they might be. For the avoidance of doubt, the leave granted does not extend to any issues other than those we have identified.

Solicitors:
Crown Law Office, Wellington for Respondent

³ *Commissioner of Inland Revenue v Redcliffe Forestry Venture Ltd* [2012] NZSC 94, [2013] 1 NZLR 804