



Supreme Court of New Zealand

22 September 2010

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

**Greymouth Gas Kaimiro Limited, Greymouth Gas Parahaki Limited,
Greymouth Gas Turangi Limited, Greymouth Petroleum Turangi Limited
and Swift Energy New Zealand Limited v GXL Royalties Limited
(SC 98/2009)
[2010] NZSC 117**

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.

Swift Energy New Zealand Limited (Swift) held an 80 per cent ownership interest in a petroleum exploration permit. GXL Royalties Limited (GXL) has a royalty interest in the permit. Swift wished to assign its interest to the first appellants (collectively called “Greymouth”). This required consent by GXL. Under the royalty deed, GXL may not withhold consent unreasonably where it is established that the purchaser, assignee or transferee has sufficient financial capability to meet the obligations under the Permit and the Deed. Despite GXL withholding consent, Swift and Greymouth implemented the assignment. This resulted in GXL issuing proceedings in the High Court seeking a declaration that the transfer was unlawful.

The question before this Court was whether GXL is required to plead to allegations that it withheld consent for collateral purposes, unrelated to Greymouth's financial capability. The High Court ordered GXL to do so. The Court of Appeal, allowing GXL's appeal, held that the existence or otherwise of a collateral purpose on the part of GXL was irrelevant as GXL had disclaimed entitlement to withhold consent on any basis other than its contention that the financial capability of Greymouth had not been established.

This Court has unanimously dismissed the appeal. Whether sufficient financial capability was established is to be determined by the High Court objectively. The motivations of GXL are irrelevant to that determination.

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