

IN THE SUPREME COURT OF NEW ZEALAND

**SC 98/2009
[2010] NZSC 30**

BETWEEN GREYMOUTH GAS KAIMIRO
 LIMITED, GREYMOUTH GAS
 PARAHAKI LIMITED, GREYMOUTH
 GAS TURANGI LIMITED AND
 GREYMOUTH PETROLEUM TURANGI
 LIMITED
 First Appellants

AND SWIFT ENERGY NEW ZEALAND
 LIMITED
 Second Appellants

AND GXL ROYALTIES LIMITED
 Respondent

Hearing: 24 March 2010

Court: Blanchard, McGrath and Wilson JJ

Counsel: M D O'Brien and B S Clarke for First Appellants
 G M G Joe for Second Appellants
 J S Kós QC and S Jerebine for Respondent

Judgment: 30 March 2010

JUDGMENT OF THE COURT

- A Leave to appeal is granted**
- B The approved ground is whether GXL is required to plead to an allegation that it refused consent to the transfer of Swift's interest in the petroleum permit to Greymouth for collateral reasons unrelated to Greymouth's financial capability to meet obligations under the permit and the deed reserving to GXL a royalty interest.**

REASONS

[1] It is not the Court's usual practice to give reasons when granting leave to appeal unless, which is not the case here, the leave precludes the advancing of one or more proposed grounds. However, it is necessary that we should say why we are of the view that the so called concession by GXL, which Greymouth accepted, does not determine the pleading issue between the parties in GXL's favour.

[2] GXL and Greymouth were agreed, in their written submissions to the Court of Appeal, that cl 7.2(a) of the Royalty Deed did not allow GXL to decline consent for any reason other than Greymouth's financial capability. In other words, it did not allow GXL to refuse consent, in circumstances where it was established that Greymouth had sufficient financial capability, on other unrelated and/or subjective grounds.

[3] Greymouth has pleaded that GXL refused consent for collateral purposes unrelated to Greymouth's financial capability. In our view the agreement between the parties does not preclude an inquiry into that factual matter. Indeed, Greymouth said as much in accepting the concession.

[4] The question on which leave is granted necessarily assumes that Greymouth may establish the existence of a collateral purpose on the part of GXL. In that circumstance, if it were also to be established that Greymouth did not in fact have the necessary financial capability, would GXL be prevented by the existence of the collateral purpose from withholding its consent?

[5] That question does not arise unless two factual matters are established, namely the existence of an improper purpose on the part of GXL and a financial incapacity of Greymouth. Normally on an interlocutory appeal the existence of such contingencies would lead the Court to decline leave.

[6] However, because the parties are at loggerheads about whether GXL must respond to Greymouth's pleading of collateral purpose and GXL was successful in the Court of Appeal, it is necessary to grant leave. We do nevertheless urge the

parties to consider whether it would not be preferable for them to resolve the pleading point as the issue of collateral purpose may be inescapable.

Solicitors:

Bell Gully, Wellington for First Appellants

Simpson Grierson, Wellington for Second Appellants

Russell McVeagh, Wellington for Respondent