



**Supreme Court of New Zealand
Te Kōti Mana Nui**

2 June 2016

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

JOHN GILBERT AND QSM TRUSTEES LIMITED (IN RECEIVERSHIP AND IN LIQUIDATION) v BODY CORPORATE 162791

(SC 59/2015) [2016] NZSC 61

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 Judicial Decisions of Public Interest www.courtsofnz.govt.nz

Mr Gilbert is the receiver of QSM Trustees Limited (QSMTL). QSMTL owns units in a unit titled complex. The Unit Titles Act 2010 requires unit owners to pay body corporate levies. QSMTL owes Body Corporate 162791 (the Body Corporate) money for outstanding levies.

As QSMTL is in liquidation and receivership the Body Corporate sought to recover the levies owed by QSMTL by suing Mr Gilbert.

The first main issue in the case is whether, or not, Mr Gilbert is personally liable for body corporate levies. Under s 32(5) of the Receiverships Act 1993 Mr Gilbert is personally liable for the levies if they are due under an agreement that relates to the use, possession or occupation of the units.

The second main issue is whether, or not, Mr Gilbert can rely upon s 32(7) of the Receiverships Act to limit his liability. Section 32(7) gives a court broad discretion to limit the personal liability of a receiver.

Mr Gilbert claims he has no personal liability as the levies are due under statute and not an agreement and they relate to ownership and not “use,

possession or occupation”. In the alternative, he relies upon s 32(7) to limit his liability for the levies on the basis of a dispute between QSMTL and the body corporate.

The case began before Associate Judge Abbott in the High Court. He found that there was no personal liability on Mr Gilbert. The Body Corporate then appealed to the Court of Appeal. The Court found Mr Gilbert was personally liable and did not grant him relief under s 32(7).

Leave was granted to Mr Gilbert to appeal on two questions, whether the Court of Appeal was right:

- (i) to hold that he was personally liable under s 32(5) of the Receiverships Act 1993 to pay body corporate levies to the respondent in relation to the second applicant’s units; and
- (ii) to find that he had no arguable claim for relief from personal liability under s 32(7) of the Act.

Four judges heard this appeal. The result was an even division of the Court. Justices William Young and Glazebrook would have dismissed the appeal while the Chief Justice and O’Regan J would have allowed the appeal. In accordance with s 31(2) of the Supreme Court Act 2003, the Court of Appeal decision is affirmed.

William Young and Glazebrook JJ considered that the levies in question were due under an agreement. They saw the unit title owners as in a form of implicit joint venture agreeing amongst themselves to pay levies and abide both the Unit Titles Act 2010 and the body corporate’s rules. They determined that these levies were in relation to the “use, possession or occupation” of the units. They adopted the Court of Appeal’s determination that the s 32(7) defence was not satisfied on the facts.

The Chief Justice and O’Regan J were of the view that the obligation to pay levies was purely statutory and, therefore, the levies were not due “under an agreement.” They left open whether the levies were in relation to the “use, possession or occupation” of the units. They made no comments regarding the s 32(7) defence as, on their approach, the defence was superfluous.

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