



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

20 JULY 2016

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

MOBIL OIL NEW ZEALAND LIMITED v DEVELOPMENT AUCKLAND LIMITED (FORMERLY AUCKLAND WATERFRONT DEVELOPMENT AGENCY LIMITED)

(SC 107/2015) [2016] NZSC 89

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.

From the mid-1920s until 2005, properties in Pakenham Street and Beaumont Street, Freemans Bay, Auckland were used for the bulk storage of oil. The land in question had been reclaimed from Waitemata Harbour by the Auckland Harbour Board in the early years of the last century. The initial lessees were Australian oil companies which later became part of the Mobil Australia group. In the 1950s and 1960s the leases were taken over by New Zealand companies that were subsequently amalgamated to form the appellant, Mobil Oil New Zealand Limited (“Mobil”). Mobil succeeded to the liabilities of the New Zealand companies but not those of the Australian companies. The leases were replaced by tenancy agreements in 1975 and 1985 between the Harbour Board and Mobil. Under the 1985 tenancy agreements Mobil was required to keep during the tenancies, and at their termination deliver up, the properties “in good order and clean and tidy” (“the clean and tidy condition”).

The successor to the Harbour Board, and the respondent to these proceedings is Development Auckland Ltd.

During the time that the properties were occupied by Mobil and the earlier lessees, they became heavily contaminated with oil products. The properties were thus heavily contaminated at the time the 1985 tenancy

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agreements came into effect and they were handed back in that condition to Development Auckland at the end of the tenancies (which were finally terminated in 2011). Use of the properties for general commercial and residential purposes requires remediation involving the removal of the soil to a depth of about three and a half metres and its replacement with clean fill.

Development Auckland contends that it is entitled to recover from Mobil the cost of remediating the contamination. There are two bases for this contention: first, that the clean and tidy condition covered the contamination and second, pursuant to what it claims is an implied term requiring Mobil to remediate the consequence of contamination caused by it and its predecessors (including the original Australian lessees).

In the High Court, Katz J found the clean and tidy condition did not reach subsurface contamination and dismissed the implied term argument. The Court of Appeal reversed her judgment, finding the clean and tidy condition did reach subsurface contamination. It entered judgment for Development Auckland for \$10 million, being the agreed cost of remediation.

The Supreme Court has unanimously allowed the appeal, with the result that the judgment of the Court of Appeal is reversed and the judgment of Katz J is restored.

Mobil's argument that the clean and tidy condition did not address subsurface contamination was consistent with the natural and ordinary meaning of the words used and with the overall scheme of the 1985 tenancy agreements. The implied term argument was rejected because the term was not of a kind which the courts could treat as implied as a matter of law but rather only as a matter of interpretation or fact. In determining whether the clean and tidy condition required remediation of the land, the Court took into account the same contextual considerations as were relied on by Development Auckland in support of its implied term argument. For this reason, the conclusion that the clean and tidy condition did not require remediation practically precluded acceptance of the implied term argument. In any event, the proposed term could not be implied on ordinary principles for the additional reasons that the tenancies were effective without the term and the term was neither so obvious as to go without saying nor consistent with the clean and tidy condition as interpreted by the Court.

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