



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

**6 OCTOBER 2017**

**MEDIA RELEASE – FOR IMMEDIATE PUBLICATION**

**PRICEWATERHOUSECOOPERS v ROBERT BRUCE WALKER  
AND OTHERS**

**(SC 89/2016) [2017] NZSC 151**

**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](http://www.courtsofnz.govt.nz)**

This appeal raised issues about the lawfulness of the provision of funding by a commercial third party to fund the conduct of a claim in tort and contract.

The claim was brought by the liquidators of Property Ventures Limited (in liquidation) (PVL) and its subsidiaries against the auditor of PVL, PricewaterhouseCoopers (PwC) as well as against former directors of PVL. The liquidators alleged that PwC was in breach of contract and negligent in carrying out its functions as auditor of PVL and its subsidiaries.

The liquidators of PVL obtained funding for the conduct of the proceeding from a third party litigation funder, SPF No. 10 Limited (SPF). SPF entered into a funding agreement with the liquidators of PVL under which SPF agreed to cover the costs of the proceeding in return for a share of the proceeds (Funding Agreement).

The Funding Agreement was conditional on SPF acquiring a general security agreement (GSA) that had been granted by PVL some years earlier, securing a substantial indebtedness of PVL and its subsidiaries.

SPF acquired the GSA from a secured creditor of PVL, Allied Farmers Investments Limited, in a transaction we refer to as the Allied Assignment. Under the GSA, PVL had granted a security interest in all its property to the holder of the GSA. That included all of PVL's rights of action, including its claims against PwC and other defendants. In addition, the GSA-holder has certain powers under the GSA to bring, defend or settle any claim in PVL's name. The GSA gave SPF a first ranking security interest in all or substantially all of the proceeds of the claim, meaning it would receive those proceeds in its capacity as secured creditor if the claim succeeded.

PwC applied to the High Court for a stay of proceedings. PwC claimed that the combined effect of the Funding Agreement and Allied Assignment was that SPF had effectively taken assignment of PVL's causes of action against PwC and other defendants, which amounted to an abuse of process.

The liquidators' position was that there had been no assignment of PVL's causes of action. They submitted that the Funding Agreement was a market-standard agreement and that the Allied Assignment was a straightforward transfer of a debt. On the liquidators' view, they were two unobjectionable transactions that occurred in parallel.

The High Court and Court of Appeal declined to stay the proceeding. In the High Court, Brown J held that there was nothing objectionable about the Allied Assignment because it was a bona fide assignment of a debt. Further, the aggregation of SPF's interests under the Funding Agreement and GSA could not be said to be greater than the sum of its parts. The Court of Appeal upheld Brown J's decision, finding that the arrangement was not in substance a bare assignment of a claim in tort or a personal claim.

The Supreme Court granted leave to appeal, the approved question being: Did the Court of Appeal err in upholding the High Court's refusal to stay the proceeding?

Since the hearing of the appeal, PwC and the respondents have settled the dispute between them. As a result, the Supreme Court has formally dismissed the appeal.

After seeking submissions from the parties, a majority comprising Glazebrook, Arnold, O'Regan and Ellen France JJ have decided to deliver judgment. This is because the appeal involves issues of importance which were fully argued before this Court. The proceeding which is the subject of PwC's application for stay remains on foot (in relation to claims against defendants other than PwC) and delivery of the judgment will cause no detriment to the respondents.

The majority would have dismissed the appeal. However, that decision would have been based largely on undertakings which SPF made for the first time in this Court. These undertakings were to the effect that: (a) SPF would not seek to exercise its powers of enforcement under the

Allied GSA to take control of the proceeding; and (b) that in the event of a successful outcome SPF would provide some level of return for unsecured creditors of PVL and its subsidiaries.

The majority considered that, in the absence of the undertakings, it was arguable that the Funding Agreement and Allied Assignment together amounted to an impermissible assignment of PVL's causes of action. There were a number of unusual features that made it appropriate to consider the Allied Assignment alongside the Funding Agreement. These included: (a) the fact that the Funding Agreement was explicitly conditional on SPF acquiring the Allied GSA; and (b) the timing of the Assignment, which did not occur until after all of PVL's realisable assets had been sold and the proceedings were already on foot.

It was arguable that the combined effect of the Funding Agreement and Allied GSA was that SPF's level of control and profit share was such that the arrangement amounted in substance to an impermissible assignment of PVL's causes of action. However, SPF's undertakings reduced its level of control and profit share to the extent that these concerns were removed. Had the parties not settled, the majority would have required SPF to formalise its undertakings.

Elias CJ would have declined to issue judgment. She considered that it resolves a one-off dispute concerning particular agreements between the parties, unlikely to present in similar circumstances again. She was concerned also that the scope of the argument on appeal had been constrained by an apparent concession that the Funding Agreement was in itself unobjectionable, a view she thought there was reason to doubt. Had settlement not been reached she would have required the parties to address the Court further on whether the Funding Agreement itself is contrary to law and, if so, whether the proceedings should therefore be stayed.

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