

IN THE SUPREME COURT OF NEW ZEALAND

**SC 96/2011
[2011] NZSC 145**

BETWEEN DAMIEN GRANT AND STEVEN KHOV
 Applicants

AND COMMISSIONER OF INLAND
 REVENUE
 Respondent

Court: Elias CJ, Blanchard and Tipping JJ

Counsel: R M Dillon for Applicants
 P W O'Regan and R A Hearn for Respondent

Judgment: 30 November 2011

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed with costs of \$2,500 to the respondent.

REASONS

[1] The proposed appeal seeks to raise two issues concerning the validity of a deed of company arrangement (DOCA) under Part 15A of the Companies Act 1993. The first is whether the chairman of the watershed meeting was entitled to exercise a casting vote in favour of the proposed scheme in circumstances where a majority of creditors in number had voted in favour but those creditors represented less than 75% of the company's indebtedness by value. The second issue is whether, if the casting vote was valid so that the scheme embodied in the DOCA was adopted by the meeting of creditors, nevertheless the High Court should have terminated the DOCA under the power given in s 239ADD because it was oppressive or unfairly prejudicial to, or unfairly discriminatory against, the Commissioner of Inland Revenue because it did not give him the preferential priority which he would have

had if the company were put into liquidation (another possible outcome of the watershed meeting).

[2] The appeal cannot succeed unless the applicant can prevail on both issues. While the second issue may be arguable, we are not persuaded that the applicant has any prospect of succeeding on the casting vote issue. We are in full agreement with the Court of Appeal's reasoning that the chairman was not empowered to exercise a casting vote in the circumstances.¹

[3] It is therefore not in the interests of justice that leave be given.

Solicitors:
Queen City Law, Auckland for Applicants
Crown Law Office, Wellington

¹ *Grant and Khov v Commissioner of Inland Revenue* [2011] NZCA 390 at [45]–[53].