IN THE COURT OF APPEAL OF NEW ZEALAND

CA55/2016
[2016] NZCA 298

BETWEEN	JUSTIN WILLIAM PRAIN Appellant
AND	FINANCIAL MARKETS AUTHORITY Respondent

CA56/2016

BETWEEN	MARK JOSEPH SCHROEDER Appellant
AND	FINANCIAL MARKETS AUTHORITY Respondent

Hearing:	16 June 2016
Court:	Miller, Lang and Peters JJ
Counsel:	P B McMenamin for Appellants D R La Hood and D M Robinson for Respondent
Judgment:	30 June 2016 at 3.00 pm

JUDGMENT OF THE COURT

A Leave to appeal is granted.

B The appeal is allowed. The orders made against the appellants under s 38(b) of the Financial Markets Act 1993 are quashed.

C No retrial is ordered.

REASONS OF THE COURT

(Given by Miller J)

[1] Apple Fields Ltd is an issuer for purposes of the Financial Reporting Act 1993 (the 1993 Act),[1] meaning that it must register audited financial statements with the Registrar of Companies for each financial year. It failed to do so in the years ending 30 September 2011, 2012, and 2013.[2] That failure evidently continues to this day. The explanation is that generally accepted accounting practice (GAAP) required that Apple Fields consolidate its financial statements with those of Noble Investments Ltd (Noble), a company which Apple Fields does not control and whose director firmly refused to supply the financial information that Apple Fields needed. The question before us is whether the appellants, who are Apple Fields' directors, ought to be excused for non-registration on the ground that they took all reasonable and proper steps to comply.

The factual setting

[2] The appellants were charged with failing to deliver financial statements and an auditor's report for the years ending 2011, 2012 and 2013.[3] It was not in dispute that the elements of the offence were made out. The question was whether they could establish the statutory defence that they had taken all reasonable and proper steps to comply. Judge Emma Smith held that they did not.[4] Dunningham J agreed on appeal that the appellants could not avail themselves of the defence.[5] The facts are recorded in the judgments below, to which recourse may be had for a detailed narrative. It is important to recount the trial Judge's findings of fact about the relationship between Apple Fields and Noble:[6]

> [24] [Apple Fields] was originally incorporated in 1986 to grow and market apples nationally and internationally. In its early years it was a substantial company listed on the New Zealand Stock Exchange. The majority of the shares were held by the late George Thomas Carlton Kain

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1 Because it allotted securities to the public: Financial Reporting Act 1993, s 4.
2 The company's balance date. Registration was due by the 20th working day of March in the following year.
3 Under s 38(b) of the Financial Reporting Act.
4 *Financial Markets Authority v Schroeder* [2015] NZDC 2319 (District Court judgment).
5 *Schroeder v Financial Markets Authority* [2016] NZHC 4 (High Court judgment).
6 District Court judgment, above n 4.

(known as "Tom") who was the driving force (together with members of his family) behind the company.

[25] Significant setbacks, particularly the regulatory environment, resulted in the company ceasing to trade in growing and marketing apples. However, the company retained significant real estate in and around Christchurch and became involved in land development (with mixed results).

[26] Justin Prain became a director of [Apple Fields] in 2002, he also became a minority shareholder holding 2.41 per cent of the issued shares of the company. Mr Prain's experience is largely in the management of large scale property development projects.

[27] In 2003 Tom Kain approached Mr Schroeder (who was his friend) to become a director, the company having difficulty finding replacements. Mr Schroeder's evidence was that he agreed partly as an act of friendship, but also because he believed the company had the ability to provide some benefit to its shareholders (despite its much reduced operation from when it once marketed and grew apples).

[28] By the time Mr Schroeder became a director, the company was largely engaged in two areas of activity, each being development of land. The first was known as the Takamatua Development and the second a subdivision development at Yaldhurst Road, Christchurch. The Takamatua subdivision was wound up shortly after Mr Schroeder's appointment as director.

[29] There is a clear need to understand the nature, extent and nuances of the Yaldhurst Road development.

[30] A company, [Noble] owned significant land at Yaldhurst Road. [Noble] was controlled by Mr Gordon Stewart (being the sole director and shareholder). Mr Stewart is also a shareholder to approximately 10 per cent in [Apple Fields]. For complete clarity (and it is critical) [Apple Fields] never had, and never has had, any shareholding in [Noble] and accordingly I am satisfied from the evidence [Apple Fields] had no influence or control over [Noble's] actions.

[31] [Noble] devised a wish to subdivide its Yaldhurst Road land holdings. It was intended to be a large scale project with a plan for some 254 sections for residential use, together with a village centre to be created from the site.

[32] Since re-investing (and re-inventing) itself from the growing and marketing of apples to land/property development, [Apple Fields] had obtained some expertise in managing land developments. [Noble] therefore, wanting to develop its large scale project of subdivision at Yaldhurst Road, saw considerable efficacy in contracting with [Apple Fields] to manage that development of the intended Yaldhurst Road subdivision.

[33] Mr Prain, as well as a director and minority shareholder of [Apple Fields], was directly contracted/engaged as Development Manager by [Noble].

> [34] I am satisfied therefore that [Apple Fields] entered into a contract with [Noble], whereby [Apple Fields] would manage the development of the Yaldhurst Road subdivision. That contract/joint venture provided that if [Apple Fields] brought the project (i.e. the subdivision of the Yaldhurst Road holdings) to fruition, [Apple Fields] would earn the right to participate in the profits of the subdivision, after payments to [Noble] of [Noble's] capital advances and interests, to the extent of 95 per cent.
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> [35] For clarity, there was an amendment to the development joint venture agreement between [Apple Fields] and [Noble] in 2007 in order to provide for [Apple Fields'] prior share of 47.5 per cent of the rezoning profits to a higher share of 95 per cent of the development profits in return for the funding partner, being a company Southpac Property Investments Ltd ("Southpac") crystallising its rezoning interest and essentially reverting to a role as funder, earning interest on its investment thereof.

[3] As this narrative suggests, the fortunes of Apple Fields were closely intertwined with those of Noble, so much so that it caused the then auditor, Taurus Group Ltd, to qualify the 2010 statements, the last filed, in which Noble was not consolidated. The auditor stated that:

> **Qualified Opinion**
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> … the Directors are of the opinion that the Company and Group is a going concern. Their opinion is based upon their expectation of funding from the financiers of Noble Investments Limited (Noble) part of which is guaranteed by Apple Fields Ltd and the timely realisation of both parties' assets, at values sufficient to enable the repayment of the company, group and Noble's creditors as they fall due. Having raised funding and completed initial stages the Directors believe that sufficient funding will also be available for future stages however they are unable to provide us with suitable evidence that there will be sufficient funding available to complete the Yaldhurst Village property development.
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> In respect of the evidence surrounding the use of the going concern assumption we have not obtained all the information and explanations that we have required to justify a going concern assumption. In our opinion the company cannot demonstrate it has the ability to raise sufficient finance to fund its ongoing operations. It is unable to pay its accounts payable and other liabilities and is reliant on the goodwill of its creditors to continue trading. It is our opinion that the company and group is not a going concern.

[4] The auditor went on to emphasise that Apple Fields' fortunes depended on contingent returns from Noble:

> **Emphasis of Matter**
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> There is an agreement between the company, Noble Investments Ltd and Southpac Property Investments Ltd ("Southpac") which provides for the company to share in the profits of a property development called Yaldhurst

> Village being west of Christchurch. This agreement is the company's only potential means of generating future profits. Within that agreement there is a clause that allows Southpac to cancel the agreement if there have been any material breaches. The agreement has had many variations by informal and formal communications due to changing circumstances, etc. These variations are a matter of goodwill between the parties involved. Any expected future benefit accruing to the company from this agreement is therefore reliant on the continuing goodwill of Southpac.

[5] We were given to understand that the 2010 statements were prepared in accordance with NZ IAS 27, which was then in effect and remained so until it was replaced by NZ IFRS 10 with effect from 1 January 2013. Regrettably, given the importance they assumed in the Financial Markets Authority's (FMA) case, neither standard is in evidence and no independent expert gave evidence about them.

[6] This is an appropriate point at which to observe that the appeal raises some important questions about directors' obligations, the answers to which may bear on interpretation of the current legislation, the Financial Reporting Act 2013, but a combination of the unsatisfactory record and the parties' stances precludes us from addressing them in a comprehensive or satisfactory way. This judgment must be read with caution accordingly. We should say, in fairness, that this state of affairs may to some extent be explained by the combination of criminal process and an affirmative defence.[7] Mr La Hood for the FMA pointed out that the nature of the defence was not made clear until the hearing.

[7] We might have examined the standards ourselves — they are public documents of which judicial notice might be taken — but they were not the subject of analysis in argument and we think the only proper course in the circumstances is to confine ourselves to the record. We also adopt for the purposes of this case the parties' unstated assumption that statements complying with a given standard also comply, without more, with GAAP.

[8] There is evidence that when auditing past years' statements the auditors had wanted to consolidate Noble. The trial Judge found that the appellants were "quite

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[7] By agreement between counsel the bare facts were outlined in a summary of facts, and the appellants accepted that these facts made out the elements of the offence. The FMA chose to rest on the defendants' onus under s 40 of the Financial Reporting Act. The appellants gave evidence and produced a number of exhibits.

unable" to get the necessary financial information from Noble, although they pressed Mr Stewart on many occasions.[8] She appears to have accepted Mr Prain's evidence that Mr Stewart strenuously refused to accept that consolidation was necessary and that for the 2010 statements the auditor was eventually prepared to accept that stance for the time being.

[9] It appears that in 2009 or 2010 Apple Fields' accountant, Don Babe of the firm John Clark Accountants, learned of a proposal to adopt NZ IFRS 10. On 28 November 2011 he wrote to the directors advising that under the new standards consolidation was necessary because Apple Fields could receive variable returns from Noble and had the power to influence the level of its returns:

> You may recall that there have been discussions with auditors over the years regarding the treatment of [Noble]. Auditors have asked for Noble to be consolidated into the accounts and the directors have resisted because Apple Fields does not control the shareholding or directors of Noble.
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> Since the 2009 accounts were produced the accounting standards have been revised. The question about whether a company is consolidated now depends on power and returns. Taking the second test first, the question is can the investor receive variable returns from the investee. The first test is, does the investor have the power to affect the level of the returns.
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> My reading is that the answer to both these questions is yes. Therefore Noble will need to be consolidated into the Apple Fields annual accounts.
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> [Noble] will therefore require auditing. As well as the cost of the audit this step will also require that some of the issues that have been left to finalise will need to be addressed.

[10] It will be seen that this advice was unequivocal. The trial Judge held that Mr Babe genuinely believed it and the appellants honestly relied on it at all material times.[9] Dunningham J upheld those findings.

[11] Mr Babe qualified his advice shortly before the defended hearing in the District Court, stating in an email of 19 November 2014 that he had now reviewed the history of the applicable standards and advising that:

> IFRS 10 applies to all financial statements prepared for periods that start on or after 1 January 2013. That means the 1 Oct 2013 to 30 Sept 2014 year for [Apple Fields]. I am not an auditor so can not be certain but the fact that a

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8 District Court judgment, above n 4, at [40].

9 District Court judgment, above n 4, at [82] and [86].

> new definition was issued even though it was not in force yet may have encouraged auditors to adopt the more modern definition of control. I was made aware of the changed rules from a publication by BDO called Assurance Alert, their internet based publication that discusses the preparation of accounts for issuing companies. From memory this was some time in 2009 or 2010.

[12] He concluded that:

> The directors are required to sign the accounts stating they are complete. I do not think [Apple Fields'] accounts can be complete without the inclusion of Noble, however this decision is ultimately the directors' and auditors.

[13] Of course this advice came too late. The FMA relies on it not to question anyone's good faith but to show in hindsight that, had the appellants got a second opinion in 2011, they would or might have been advised that they could register audited but unconsolidated statements.

[14] The trial Judge found that Apple Fields had great difficulty finding and retaining auditors over the years 2006–2013. It is of moment that the 2011 financial statements had not been completed by August 2013, at which time Taurus Group resigned without warning. Mr La Hood sought to discount this evidence, noting that it would have been possible in 2013 to have the new auditor examine the financial statements for the years in question with a view to their belated registration. As we see it, though, the Judge's findings about auditors are significant, and for two reasons: they confirm that the appellants went to considerable effort over a long period to comply with reporting obligations, and they raise doubt, as will be seen, about the FMA's argument that GAAP-compliant statements might have been filed without consolidating Noble.

The legal setting

[15] The appellants were charged under s 38 of the 1993 Act, which provides that every director commits an offence where the financial statements of the issuer and its subsidiaries are not audited in accordance with s 15, or where the audited financial statements are not delivered to the Registrar under s 18:

> **38 Offences by directors of issuers**
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> Where—

> (a) the financial statements of an issuer and any group financial statements in relation to a group comprising an issuer and its subsidiaries are not audited in accordance with section 15; or
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> (b) a copy of the financial statements of an issuer or group financial statements together with the auditor's report on those statements are not delivered to the Registrar in accordance with section 18(1),—
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> ...
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> every director of the issuer commits an offence and is liable on conviction to a fine not exceeding $100,000.

[16] Section 15 states that directors must ensure that financial statements of the issuer "and, if the issuer is required to complete group financial statements, the group financial statements" are audited by a licensed auditor or registered audit firm. Section 18 provides that the directors must deliver copies of the financial statements and auditor's report within 20 working days "after the financial statements of the issuer and any group financial statements are required to be signed".

[17] The required content of financial statements is governed by s 11 for an issuer and s 14 for group financial statements. The two sections are relevantly identical. We quote s 14:

> **14 Content of group financial statements**
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> (1) The financial statements of a group must comply with generally accepted accounting practice.
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> (2) If, in complying with generally accepted accounting practice, the group financial statements do not give a true and fair view of the matters to which they relate, the directors of the reporting entity must add such information and explanations as will give a true and fair view of those matters.
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> …

It will be seen that financial statements must comply with GAAP, and that "if, in complying" with it, the financial statements do not give a true and fair view of the matters to which they relate, the directors must "add such information and explanations as will give a true and fair view of those matters".

[18] The 1993 Act provides that the auditor's report must state:[10]

> (a) the work done by the auditor; and
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> (b) the scope and limitations of the audit; and
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> (c) the existence of any relationship (other than that of auditor) which the auditor has with, or any interests which the auditor has in, the reporting entity or any of its subsidiaries; and
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> (d) whether the auditor has obtained all information and explanations that he or she has required; and
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> (e) whether, in the auditor's opinion, as far as appears from an examination of them, proper accounting records have been kept by the reporting entity; and
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> (f) whether, in the auditor's opinion, the financial statements and any group financial statements comply with generally accepted accounting practice, and if they do not, the respects in which they fail to comply; and
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> (g) whether, in the auditor's opinion and having regard to any information or explanations that may have been added by the reporting entity pursuant to section 11(2) or section 14(2), the financial statements and any group financial statements give a true and fair view of the matters to which they relate, and, if they do not, the respects in which they fail to give such a view.

[19] Where the auditor's report indicates that "the requirements of this Act have not been complied with" the auditor must report to the Registrar, who must in turn notify the External Reporting Board and the Financial Markets Authority, which administers the legislation.[11]

[20] We mention, because it informs construction, that under s 36(2) directors commit an offence, punishable by a fine of $100,000, if the financial statements do not comply with an applicable financial reporting standard. The appellants were not charged under this section.

[21] Section 40(a) provides that it is a defence to charges laid under, inter alia, ss 36 or 38 that the directors "took all reasonable and proper steps to ensure that the

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10 Section 16(1).
11 Section 16(2).

applicable requirement" of the Act would be complied with.[12] The burden of proof is on the directors.

Might an issuer file financial statements that were not GAAP-compliant under the 1993 Act?

[22] It is important to recognise that in finding the charges proved, Judge Smith reasoned that the appellants might file statements that were not GAAP-compliant provided they added such information and explanations as would give a true and fair view.[13] She held that s 14(2) contemplated just that course of action and noted that as a matter of policy it cannot be right that an issuer may avoid filing on an indefinite basis merely because it cannot obtain information the directors think essential to complete the financial statements.

[23] Relying on that premise, the Judge questioned Mr Prain, establishing that he did not want the qualified audit that would have resulted. She held that it would have been reasonable and proper to file qualified financial statements in this case, and found that the appellants failed to do that because they believed the auditors "may either not complete the accounts or return a qualified audit, a matter that the directors wished to avoid".[14]

[24] It appears from her decision that the Judge was adopting a view of the legislation advanced by the FMA.[15] If so, the FMA changed its stance on appeal, where Dunningham J recorded that both parties agreed the Judge was in error:

> [47] It was common ground at the hearing that s 14(2) would not allow the appellants to submit financial statements, which are not otherwise compliant with generally accepted accounting practice, by simply providing an accompanying explanation or further information.

[25] Before the hearing in this Court we queried this shared stance and were given to understand that while the FMA accepts that Judge Smith's view is available it remains of the view that an issuer cannot meet its obligations by filing financial statements that are not GAAP-compliant, whatever may be said in an accompanying

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12 The section establishes other defences too, but they are not invoked here.
13 District Court judgment, above n 4, at [94]–[97].
14 At [97].
15 At [71].

statement. That is so, we were told, because the 1993 Act prescribes in s 14(1) that financial statements must be GAAP-compliant and s 14(2) uses the parenthetical phrase "in complying with generally accepted accounting practice". On this view of the legislation, that phrase does not contemplate a process of preparing statements intended to comply with accounting standards so far as possible, and ultimately to present a true and fair view of the issuer's affairs, but merely repeats and reinforces s 14(1). The FMA emphasises that if financial statements are not GAAP-compliant an offence is committed under s 36(2); that being so, counsel submitted, no explanatory statement can make statements compliant.

[26] We do not wish to be seen to endorse this reading of the legislation. We question whether it is necessary and, as Judge Smith recognised, it would excuse directors the obligation to register statements if for some reason beyond their control they could not comply with an applicable accounting standard, notwithstanding that it was within their power to register audited statements that were true and fair merely by adding an appropriate explanation. But this is a criminal proceeding in which, as we have said, the record is unsatisfactory, and in the circumstances it would be unfair to the appellants to depart from the interpretation adopted in the High Court. We will assume it to be correct, but without adopting it.

The issues on appeal

[27] Dunningham J held that:[16]

> [67] In my view, taking "all reasonable and proper steps" to ensure compliance with s 18 requires the directors to both:
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> (a) take all practical steps to ensure compliance (such as the efforts to appoint auditors and to obtain the [Noble] accounts); and
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> (b) to seek comprehensive legal and/or accounting advice as to the range of options available to them when those practical steps did not bear fruit.

[28] She reasoned, with reference to s 138 of the Companies Act 1993, that directors might sometimes rely on professional advice.[17] That was common ground

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16 High Court judgment, above n 5.

17 *Ministry of Economic Development v Feeney* (2010) 10 NZCLC 264,715 (DC) at [39]–[40].

before us. But in this case she found that the appellants did not take further accounting advice because they did not want to file financial statements that excluded the potential profits from Noble, without which Apple Fields might not be a going concern.[18] She also held that the appellants ought to have taken legal advice on whether they could compel Noble to deliver the necessary financial information.[19]

[29] We will deal with the questions of accounting and legal advice in turn.

Did the appellants act reasonably by not seeking a second opinion about the need for consolidation?

[30] As noted, Judge Smith found that the appellants honestly relied on Mr Babe's advice, which they were right to take seriously, and made diligent efforts to obtain information from Noble with a view to consolidation. That being so, they must be taken to have acted reasonably, unless a second opinion ought to have been sought in the circumstances and there is reason to suppose that it might have resulted in advice that consolidation was not required.

[31] In framing the issue in this way we do not overlook the FMA's stance, confirmed when we invited counsel to seek instructions, that a second opinion might be needed even if the original advice was correct. The FMA could not answer the question how many identical and equally correct opinions would suffice. Counsel's instructions were that advice should be taken from a "top tier" accountancy firm given that non-registration is a serious matter.

[32] This is to prefer process to substance. In our opinion it matters not how few professional opinions were taken in this case, so long as the appellants prove that the advice was correct. If it was correct, the decision to consolidate was necessarily reasonable and proper and all that matters for s 40 purposes is whether the appellants did everything they reasonably could to follow it. Of course this is not to deny that a second opinion may be needed in the quite different case where the first one is or may be wrong and there is reason to suppose that the directors ought not to have

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18 High Court judgment, above n 5, at [70].
19 At [71].

relied upon it without further inquiry.[20] Nor is it to suggest that directors can hide behind professional advice about things they ought to know for themselves.

[33] On the facts, we do not accept that the appellants chose to rely on Mr Babe because they wanted to avoid a qualified audit. That assumes they may have doubted its veracity or accuracy and chose not to get a second opinion, a conclusion that is irreconcilable with Judge Smith's findings that they honestly relied on Mr Babe's advice, properly considered it should be taken seriously, and diligently went about trying to follow it.

[34] In coming to a different conclusion, Dunningham J may have overlooked that heavily qualified statements were nothing new for this company; we have noted at [3] above that the 2010 statements were qualified by reference to Noble and the auditor stated that on the information available — that is, without Noble's financial statements — Apple Fields was not a going concern. Dunningham J may have read too much into Judge Smith's questions of Mr Prain, which as noted proceeded on the premise, abandoned in the High Court, that it was open to the appellants to comply with their obligations by filing qualified statements.

[35] Nor, having regard to our remarks at [5] to [7] above, is there good reason to suppose that a second opinion would have differed from Mr Babe's. Mr La Hood invited us to infer that the advice was wrong because NZ IAS 27 was the applicable standard at the time and, based on previous years' financial statements, financial statements that did not consolidate Noble would nonetheless have been GAAP-compliant.[21] We are not prepared to draw that inference, for several reasons:

(a) First, one might think it unsurprising, as a matter of common sense, that an auditor would insist on consolidation; after all, Apple Fields was not a going concern without returns from Noble.

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[20] Compare, in a different context, *R v Moses* HC Auckland CRI-2009-004-1388, 8 July 2011; and *R v Graham* [2012] NZHC 265, [2012] NZCCLR 6 at [30]–[39].

[21] As noted at [7] above, this proposition rests on the assumption that accounts complying with an applicable standard would necessarily be GAAP-compliant.

(b) Second, the only evidence that non-consolidated statements would have complied with the existing standard is that Taurus Group signed the 2010 financial statements, certifying that subject to qualifications the statements complied both with GAAP and with "International Financial Reporting Standards". The balance of the evidence displaces the inference about consolidation that might be drawn from that fact. Mr Prain deposed that the auditor began pressing for consolidation after a 2007 agreement under which Apple Fields was entitled to 95 per cent of rezoning profits. Evidence was given by Mr Babe, confirming that in his opinion Noble was a "deemed subsidiary" and as such ought to have been consolidated. Taurus Group had advised in 2010 that consolidation was necessary, and after being reappointed in 2011 the firm focused closely on the consolidation issue, asking for historic information about Noble that the directors could not provide; this rather suggests that Taurus had based its 2010 certificate on imperfect information. Taurus then resigned rather than completing the 2011 audit.

(c) Third, there is no evidence that Mr Babe was wrong in his opinion that once aware of the proposed new standard an auditor might properly insist on taking it into account, making it still more likely that consolidation would be unavoidable if the financial statements were to be certified at all.

[36] We conclude, differing in this respect from the Courts below, that the appellants acted reasonably by pursuing consolidation, rather than separate but qualified financial statements, in reliance on Mr Babe's opinion.

Did the appellants act reasonably by not seeking legal advice about whether Noble could be required to deliver financial information?

[37] We can deal with this issue shortly. The trial Judge did not find that the appellants ought to have inquired into whether Apple Fields could compel Noble to deliver its financial information. No legal advice was taken.

[38] As noted, Dunningham J held that the appellants ought to have taken such advice, and having failed to do so they could not claim to have taken all reasonable and proper steps.

[39] We take a different view. On the evidence, there is no reason to suppose that Apple Fields could compel Noble to comply. It does not control Noble in any orthodox sense. The evidence of Mr Prain, given in answer to questions from the trial Judge, was that Apple Fields had no such right. That may have been his own opinion, or hearsay, but it was admitted and the issue was not pursued in cross-examination. Before us, Mr La Hood was not able to identify any basis on which production might have been compelled. The most he could do was suggest that the documentary record is incomplete and, that being so, there is a possibility that some right exists in the contracts between Apple Fields and Noble such that the appellants have not discharged the burden of proof.

[40] In our opinion the evidence, such as it is, is that legal advice would have made no difference. That being so, it cannot be said that reasonable and proper steps required that legal advice be taken.

Leave and result

[41] This is a second appeal by leave.[22] For the reasons given above, we are satisfied that the test for leave has been met, in that the judgment under appeal raises a question of general or public importance. Leave is granted. The appeal is allowed. The orders made against the appellants under s 38(b) of the 1993 Act are quashed. No retrial is ordered.

Solicitors:
K J McMenamin & Sons, Christchurch for Appellants
Crown Solicitor, Wellington for Respondent

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[22] Criminal Procedure Act 2011, s 237; and *McAllister v R* [2014] NZCA 175, [2014] 2 NZLR 764.