

IN THE COURT OF APPEAL OF NEW ZEALAND

CA371/2012
[2012] NZCA 298

BETWEEN	PERPETUAL TRUST LIMITED Appellant
AND	FINANCIAL MARKETS AUTHORITY Respondent
AND	TRUSTEES EXECUTORS LIMITED Intervenor

Hearing: 4 July 2012

Court: Glazebrook, Ellen France and Stevens JJ

Counsel: J R Billington QC and S E Fitzgerald for Appellant
H B Rennie QC and B J Moffat for Respondent
C M Stevens and F M Russell for Intervenor

Judgment: 4 July 2012 at 4.45 pm

ORAL JUDGMENT OF THE COURT

- A** By consent, we grant the appellant's application to adduce further evidence.
- B** We dismiss the appeal, subject to the following.
- C** The confidentiality order made by Ellis J on 24 May 2012 is discharged as from midday, Thursday 5 July 2012.
- D** In the meantime, the confidentiality order made by Ellis J is varied to allow the appellant to release a statement to unit holders immediately if it wishes to do so. The respondent and the intervenor may comment on that statement publicly, again if they wish to do so.
- E** The order made by Heath J on 14 June 2012 that the High Court file not be searched, copied or inspected without leave of a Judge of the High

Court, remains intact. The order is extended to this Court's file on this appeal.

F Heath J's judgment of 26 June 2012 may be published in its entirety on or after midday, Thursday 5 July 2012.

G This Court's judgment may also be published in its entirety on or after midday, Thursday 5 July 2012.

H The appellant (personally and not in its capacity as trustee) must pay the respondent and the intervenor costs for a complex appeal on a Band B basis plus usual disbursements. We certify for:

(a) an uplift of 50% in terms of r 53C(1)(b) of the Court of Appeal (Civil) Rules 2005; and

(b) two counsel.

REASONS OF THE COURT

(Given by Glazebrook J)

[1] Reasons to follow.

[2] We comment at this point that Heath J's decision is an interlocutory decision focused on the issue of confidentiality and that further information may arise in the substantive proceeding and/or in other proceedings that are relevant to the broader matters discussed in his judgment.

[3] We also note that it was conceded before us today by the appellant that it has an obligation immediately to release information to unit holders about the fact of Torchlight loan, the total outstanding compared to the total value of the Fund, together with any relevant history of the transaction. It also accepted that the Financial Markets Authority should be free to make any public comment on the Torchlight issue in accordance with its statutory obligations.

Solicitors:

Russell McVeagh, Wellington for Appellant

Financial Markets Authority, Wellington for Respondent

DLA Phillips Fox, Wellington for Intervenor