IN THE SUPREME COURT OF NEW ZEALAND

SC 64/2007

BETWEEN	SAXMERE COMPANY LTD AND ORS Appellants
AND	WOOL BOARD DISESTABLISHMENT COMPANY LTD Respondent

STATEMENT OF JUSTICE WILSON IN REPLY TO APPLICATION FOR RECALL OF JUDGMENT

Introduction

1 The application for recall[1] asserts that my previous statement (dated 19 December 2008) was incomplete because it did not address:

- whether I was in breach of s 4(2A) of the Judicature Act 1908 while a member of the Court of Appeal which heard the *Saxmere* appeal;[2]
- whether at that time I was beholden to Mr Galbraith QC because of our "financial interdependence and resulting obligations";[3]
- a mortgage from Rich Hill Ltd to the Bank of New Zealand;[4]

[1] Dated 27 July 2009.
[2] Particulars (a) to (m).
[3] Particular (nB).

- the possibility of subdivision of the land owned by Rich Hill Ltd;[5]

- what compensation I received from Rich Hill Thoroughbreds Ltd, the proprietor of Rich Hill Stud.[6]

2 I did not address these issues in my previous statement because they were not raised in the affidavits of the appellants to which I was replying, or in the submissions for the appellants.

Section 4(2A)

3 Mr Radford knew that I was a director of Rich Hill Ltd.[7] So far as I was aware, however, the appellants did not allege in their affidavits or in their submissions that because of this directorship I was in breach of s 4(2A).

4 When I prepared my previous statement, I gave no thought to that sub-section. If I had, I would have thought that it could not be relevant to the approved ground of appeal of whether there was a reasonable apprehension of bias because of my relationship with Mr Galbraith.[8] Even if I had thought that s 4(2A) was relevant, I would have concluded that it applied neither to Judges of the Court of Appeal nor to a directorship of a private company of this kind. In any event, at the time of my appointment as a Judge the Chief Justice was aware of my involvement in Rich Hill Ltd and did not raise with me the possibility that the continuation of that involvement would be incompatible with judicial office.

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4 Particular (nA).
5 Particular (nC).
6 Particular (nD).
7 See Exhibit "B" to his affidavit dated 22 August 2008, paragraph 9 and Exhibit "B" to his affidavit dated 25 September 2008 and paragraph 37 of his affidavit dated 21 November 2008.
8 [2008] NZSC 94.

Beholdenment

5 My only financial dealings with Mr Galbraith have been through Rich Hill Ltd[9] and three horse partnerships.

6 I note that Justice Blanchard referred in his judgment to the three partnerships as appearing to be "small in scale and quite unremarkable".[10] To avoid any possible misunderstanding, I wish to make clear that the horses owned by the partnerships, although few in number,[11] were high in value. The structure and operation of the partnerships did not however result in my assuming any obligation to Mr Galbraith, or him to me, beyond the general obligations of partnership.

7 Although Rich Hill Ltd is only minimally capitalised, Mr Galbraith and I have as shareholders made substantial advances to the company to finance in part the acquisition and development of its land. As a general principle, we have attempted to achieve approximate equality of contribution. Imbalances in the level of our shareholders' accounts did however develop from time to time because of differing payments which we made to or on behalf of the company. When we became aware of a significant imbalance, usually from reading the annual financial statements when these became available, we discussed and agreed on how we should return to a position of approximate equality. For example, on one occasion we agreed that I should assume sole responsibility for paying the interest on and repaying part of the bank borrowing by Rich Hill Ltd. At all material times it has been well within my ability to fund such proportion of the company's actual or projected needs as have been met by shareholders' advances, from my own resources or (as I have preferred) from ordinary personal bank borrowing.

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9 As I explained at paras 4 to 6 of my previous statement.

10 At para [25].

11 As I explained at para 7 of my previous statement.

8 At the time that the *Saxmere* appeal was heard by the Court of Appeal (April 2007) I thought that the shareholders' contributions of Mr Galbraith and myself were approximately equal when allowance was made for the bank debt for which I was solely responsible. The accuracy of that belief was confirmed when the financial statements of Rich Hill Ltd for the year to 31 March 2007 were received from the company's accountants. Taking into account my responsibility for the bank debt, they showed that, as at 31 March, my contributions were approximately six per cent less than those of Mr Galbraith. That difference represented about 2.5 per cent of the then value of the assets of Rich Hill Ltd.

9 Should the Court wish to see them, I am prepared to make available copies of the 2007 financial statements of Rich Hill Ltd and evidence of the then market (as opposed to accounting) value of the land and buildings of the company. If the Court so requests, I will also provide copies of the financial statements of the horse partnerships for the year to 31 March 2007. Because all of the documents to which I have referred in this paragraph contain confidential financial information of other parties, I would first ask for an order that their contents are to be confidential to the Court and counsel.

10 So far as I was aware, there was no material change in Rich Hill Ltd between April and August 2007, when the judgment of the Court of Appeal was delivered. Settlement of the additional land being acquired by the company[12] took place on 1 June 2007. That purchase was financed in full by borrowing from the company's bank on the security of its existing land. We anticipated that with the additional land there would be increased income which, together with the sale of horses, would be more than sufficient to service the increased borrowings.

11 Because of the cost of acquiring and developing its land, Rich Hill Ltd was not in a position to pay directors' fees or dividends or to make any reduction in the shareholder accounts. I therefore preferred to fund as much of my contribution to

[12] As I explained at para 5 of my previous statement.

the company as was practicable from borrowed funds. In part, I did this, as I have explained, by assuming sole responsibility for some of the company's bank debt. I also arranged with my bank to borrow, on normal commercial terms, against my equity in Rich Hill Ltd. In order that I might do so, Rich Hill Ltd was required to guarantee that borrowing. If I had defaulted and the guarantee had been called upon, my equity would have been reduced accordingly. In effect, I was borrowing against my own money.

12 For completeness, I should add that in 2008 Mr Galbraith and I took a different approach in the way that we financed the development of the additional land acquired by Rich Hill Ltd. That change was not in contemplation at the time the Court of Appeal delivered its judgment and is therefore of no relevance to the position at that time.

Mortgage to Bank of New Zealand

13 I did not refer to this mortgage in my previous statement because it did not seem to be of any relevance to the matters I was addressing. In any event, Mr Radford was aware of the mortgage because it is recorded on the copy of the Certificate of Title which was Exhibit "R" to his affidavit dated 21 November 2008.

Subdivision

14 As I explained in my previous statement,[13] following subdivision of the additional land which was acquired in 2007 that part which adjoins the land owned by Rich Hill Ltd will be amalgamated with that land. This will require the issue of a new Certificate of Title. As a consequence, Rich Hill Ltd would lose an existing right to subdivide up to one hectare from the land which is recorded in the existing Certificate of Title. That right was available because the title was issued prior to November 1996.

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[13] At para 5.

15 To preserve the value of this right, it seemed sensible to subdivide one hectare off the existing land before the balance area was amalgamated with the new land. This step is therefore being undertaken, without any intention to transfer the one hectare into different ownership at any time in the foreseeable future. There is therefore no financial consequence to Rich Hill Ltd or its shareholders.

Payment by Rich Hill Thoroughbreds Ltd

16 I have never received any payment or other form of compensation directly from Rich Hill Thoroughbreds Ltd. The only indirect payments or other compensation I have received from that company were the agistment payments to Rich Hill Ltd to which I referred in my previous statement.[14]

Other matters

17 Although I believed that the allegations made against me by the appellants are unfounded, I was not prepared to subject myself to the possibility of similar allegations being made against me in the future. I therefore agreed with Mr Galbraith that he would purchase all my shareholding in Rich Hill Ltd, at valuation, and I would resign as a director. As it happens, settlement of this transaction has taken place today.

18 The three horse partnerships were also wound up as at 1 August 2009. The transactions required to give effect to this are also in the course of completion.

[14] At para 19.

19 I arranged for Mr Galbraith to see a copy of this statement, as signed. He has authorised me to say that, insofar as its contents are within his knowledge, they are correct. I attach a copy of his letter accordingly.

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W M Wilson
28 August 2009