

## **A-G v Forestry Corporation of NZ Ltd 3/9/02, CA92/01**

Mostly unsuccessful appeal by Crown - in 1963 and 1966 Crown entered into agreements ("Tasman Contracts") with Tasman Company to supply it with timber which Tasman Company would fell and remove - Crown Forest Assets Act 1989 authorised Crown to sell trees and other forestry assets but to retain the underlying land - Crown Forestry Licences ("CFL") were transferred from the Crown to FCNZ as a State Owned Enterprise under an agreement which included transfer of rights and obligations in Tasman Contracts - the Tasman Contracts were incorporated into CFL by inclusion of statutory management restrictions ("SMR") - Crown entered a Deed of Covenant with FCNZ to ensure full compliance with Tasman Contracts - Fletcher Challenge purchased Crown's shares in FCNZ and released Crown from its Tasman Contracts obligations in a Deed of Release - Crown argued that SMR have been extinguished by other agreements or by waiver by the Crown - FCNZ argued that it is still subject to the SMR because the SMR has the effect of depressing the annual licence fee - High Court found that Crown no longer had obligations under Tasman Contracts because of the Deed of Release but that FCNZ had made out a case for rectification of the Deed of Release that as licensee it remained obligated to comply with its obligations under the Tasman Contracts.

Held, the essential issue is whether by the Deed of Covenant, Deed of Release, or waiver the licensee under a relevant CFL has ceased to be bound by the SMR - the Crown could have easily made provision for the expiry of the SMR but it did not and this could only be because it did not intend such a result - the Crown's liability to Tasman is extinct but FCNZ's liability as an assignee is not and FCNZ's liability under the covenants is extinct but the liability of a licensee by virtue of the SMR is not - the forbearance of the Crown as the licensor to insist compliance with the SMR does not relieve a licensee from a contractual duty to comply - the legal obligation defined by the terms of the contract subsists - a party to a contract can waive its own benefit but cannot unilaterally erase related interests of other non-consenting parties - the appeal is formally allowed but in practical terms the appellant has substantially failed.