

IN THE SUPREME COURT OF NEW ZEALAND

SC 58/2014
[2014] NZSC 111

BETWEEN

MALCOLM JAMES BEATTIE
First Applicant

ANTHONY JOSEPH REGAN
Second Applicant

CT NZ GROUP LIMITED
(PREVIOUSLY KNOWN AS CARTAN
GLOBAL LIMITED)
Third Applicant

PARNELL PARTNERS GROUP
LIMITED
Fourth Applicant

CARTAN GLOBAL LLP
Fifth Applicant

AND

PREMIER EVENTS GROUP LIMITED
Respondent

Court: McGrath, William Young and Arnold JJ

Counsel: J R Eichelbaum for Applicants
Z G Kennedy and M D Pascariu for Respondent

Judgment: 13 August 2014

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B The applicants are jointly and severally liable to pay to the respondent costs of \$2,500 together with any disbursements authorised by the Registrar.**
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REASONS

[1] The applicants and the respondent are parties to separate proceedings brought in the Employment Court and in the High Court which arise from common circumstances. The applicants were employed by, and were directors of, the respondent and have since gone into business in competition with it. The Employment Court proceedings are concerned with claims made by the first and second applicants against the respondent and claims made against those applicants by the respondent. The respondent's claim is based on alleged breaches by the applicants of restraint of trade and confidentiality provisions in their employment contracts. The High Court claim alleges that the applicants, along with others, have breached fiduciary obligations owed to the respondent. Separate proceedings have been brought because, although under the Employment Relations Act 2000 the Employment Court has exclusive jurisdiction over employment relationship problems, its jurisdiction is confined to those matters.¹ The respondent's case is that its High Court claim raises issues falling outside of that specialist jurisdiction.

[2] The Employment Court proceedings were heard by that Court over 13 days in May 2012. Judgment has not yet been delivered. That delay is both extraordinary and most unfortunate.

[3] The present application is for leave to appeal against the refusal by the Court of Appeal to strike out the High Court proceedings as an abuse of process.² The applicants contend that those proceedings would involve relitigation in the High Court of what they say are the same allegations, relating to the same events, that have been addressed in the Employment Court proceedings.

[4] The Court of Appeal, however, held that, in the context of an Act that creates potential for both courts to have jurisdiction, in relation to different kinds of claim based on the same or similar facts, the fact that there were existing claims in the Employment Court did not make commencement of a proceeding in the High Court

¹ Employment Relations Act 2000, s 187. See also s 161 which sets out the jurisdiction of the Employment Relations Authority.

² *Beattie v Premier Events Group Ltd* [2014] NZCA 184.

an abuse of process.³ The Court of Appeal also upheld the High Court's imposition of a stay on the High Court proceedings,⁴ pending release of the Employment Court judgment, in order to prevent unnecessary duplication of processes in relation to evidence that might have to be called in the High Court.⁵

[5] The usual approach of this Court is to entertain appeals against judgments of the Court of Appeal refusing strike-outs only in compelling circumstances.⁶ The applicants do not meet that high threshold. First, they are unable to contend that the matters in issue in the High Court fall within the exclusive jurisdiction of the Employment Court. This is a major impediment to complete success in an appeal against refusal to strike out. Secondly, an appeal is likely to put this Court in the position of entering into the management by the High Court of this litigation having regard to the Employment Court's decision which the High Court has not yet seen. This is not consistent with the role of this Court.

[6] There are indications that the Employment Court judgment will shortly be released at which stage matters can hopefully be taken up by the parties promptly in the High Court. This is what both Courts below envisaged would happen and it is an appropriate way to proceed.

[7] We do not find it necessary to rule on the application to admit further affidavit evidence. For these reasons the application for leave to appeal is dismissed.

Solicitors:
Franklin Law, Pukekohe for Applicants.
Minter Ellison Rudd Watts, Auckland for Respondent.

³ At [49].

⁴ *Premier Events Group Ltd v Beattie* [2013] NZHC 2755.

⁵ *Beattie v Premier Events Group Ltd*, above n 2, at [57].

⁶ *Bank of New Zealand v Deloitte Touche Tohmatsu* [2008] NZSC 54, [2009] 1 NZLR 145 at [5].