

IN THE SUPREME COURT OF NEW ZEALAND

SC 119/2014  
[2014] NZSC 190

BETWEEN                      PATRICK DEAN NORRIS  
   Applicant

AND                              BRUCE DONALD GEMMELL AND  
   RHYS JAMES CAIN  
   Respondents

Court:                          William Young, Arnold and O'Regan JJ

Counsel:                      Applicant in person  
   G K Riach for Respondents

Judgment:                      19 December 2014

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**JUDGMENT OF THE COURT**

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- A      The application for leave to appeal is dismissed.**
- B      The applicant is to pay the respondents costs of \$2,500  
and reasonable disbursements to be fixed by the  
Registrar.**
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**REASONS**

[1]      The applicant was the liquidator of four companies. On the afternoon of 16 October 2012, he was found guilty of theft (by failing to account)<sup>1</sup> in respect of one of them.<sup>2</sup> By reason of ss 280(1)(k) and 382(1)(b) of the Companies Act 1993, he was, from that point, disqualified from acting as a liquidator. Acting on the basis that there was, as a result, a vacancy in the office of liquidator,<sup>3</sup> the Official Assignee appointed the respondents as liquidators under s 283(6) of the Companies Act. The respondents applied for a search order in respect of the applicant's premises, which

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<sup>1</sup> Crimes Act 1961, s 220.

<sup>2</sup> *R v Norris* DC Nelson CRI-2011-42-1272, 16 October 2012.

<sup>3</sup> Companies Act 1993, s 283(1).

was duly executed. In issue now is a challenge to the search order. This challenge was dismissed in the High Court<sup>4</sup> and Court of Appeal.<sup>5</sup>

[2] A primary basis of the challenge in those courts and the sole focus of the applicant's submissions in support of the application for leave is that he had, on the morning of 16 October 2012, that is, before he was found guilty, appointed another person as liquidator. The argument is that the appointment of the other person was effective, there was no vacancy in the office and the respondents' appointment as liquidators was invalid with the result that they had no right to apply for a search order.

[3] Both the High Court and Court of Appeal held that the applicant's resignations and his appointment of the other person as liquidator were not effective because notice of the appointment, as required by s 283(2) of the Companies Act, was not sent or delivered to the Registrar of Companies until 18 October 2012.<sup>6</sup> The applicant disputes that conclusion. He says that when regard is had to the whole statutory scheme, including ss 241, 241A, 255, 280, 282 and 283 of the Companies Act, his resignation and the appointment of the other person was effective prior to his conviction in the afternoon of 16 October 2012.

[4] This is a unique case with unusual facts. We are not persuaded that the proposed appeal raises any issue of public or general importance. As well, the applicant's arguments, at least in the round, have been fully considered in the reasoned judgments of the High Court and Court of Appeal and the interpretation adopted is in accordance with the language of s 283(2). More generally, there is no appearance of a miscarriage of justice.

Solicitors:  
Harmans Lawyers, Christchurch for Respondents

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<sup>4</sup> *Gemmell v Norris* [2012] NZHC 3339.

<sup>5</sup> *Norris v Gemmell* [2014] NZCA 490.

<sup>6</sup> *Norris v Gemmell*, above n 5, at [27]; *Gemmell v Norris*, above n 4, at [21]–[22].