IN THE SUPREME COURT OF NEW ZEALAND

SC 10/2014
[2014] NZSC 74

BETWEEN	VINELIGHT NOMINEES LIMITED First Applicant
	WEYAND INVESTMENTS LIMITED Second Applicant
AND	COMMISSIONER OF INLAND REVENUE Respondent

Court: Elias CJ, William Young and Arnold JJ

Counsel: M T Lennard for Applicants
J H Coleman for Respondent

Judgment: 17 June 2014

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B The applicants are jointly and severally liable to pay costs of $2,500 to the respondent.

REASONS

[1] The applicants are entities associated with the Chin family, members of which have been resident at various times in New Zealand and Hong Kong. They seek leave to bring what would be a third appeal, the case having been heard at first instance in the Taxation Review Authority,[1] then on appeal in the High Court[2] and later on appeal to the Court of Appeal.[3] The applicants were unsuccessful before all courts, apart from a finding by the Taxation Review Authority that the Commissioner

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1 *Vinelight Nominees Ltd v Commissioner of Inland Revenue* [2011] NZTRA 07.
2 *Vinelight Nominees Ltd v Commissioner of Inland Revenue* [2012] NZHC 3306. [*Vinelight* (HC)].
3 *Vinelight Nominees Ltd v Commissioner of Inland Revenue* [2013] NZCA 655. [*Vinelight* (CA)].

of Inland Revenue was wrong to conclude that they had adopted an abusive tax position, justifying the imposition of penalties. This finding was overturned in the High Court on the Commissioner's cross-appeal.[4]

[2] We will not set out the factual background, explanations of which can be found in the decisions of the High Court[5] and Court of Appeal.[6] Numerous issues were raised in the courts below but those have now reduced to three, which the applicants argue raise matters of general or public importance. We describe each in turn.

[3] The first issue concerns the application of the time bar in s 108 of the Tax Administration Act 1994, which begins to run where a taxpayer "provides a tax return" and is assessed. In contention is the Commissioner's ability to issue assessments for resident withholding tax (RWT) against the first applicant, Vinelight Nominees Ltd, in respect of interest payments that it made to the second applicant, Weyand Investments Ltd. It is not now disputed that Vinelight was liable to pay RWT. Although Vinelight had filed returns in relation to the interest payments, the returns were not RWT returns but returns under the approved issuer levy (AIL) regime in the Stamp and Cheque Duties Act 1971, which involved a substantially lower withholding rate.

[4] The applicants identify three particular matters for determination in relation to s 108 – what constitutes a return, what constitutes an assessment and what amounts to an omission of income. The Court of Appeal, like the High Court and the Taxation Review Authority, concluded that there was no relevant "return" because the returns filed were not RWT returns but AIL returns.[7] As a consequence, there was no "assessment" for RWT. The applicants say that all s 108 requires is that a taxpayer file a return that complies with its reporting obligations as it understands them to be. In other words, the taxpayer's obligation is simply to advise the Commissioner of a particular item of income, so that the filing of an AIL return was sufficient to trigger the running of the limitation period.

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4 *Vinelight* (HC), above n 2, at [154].
5 At [13]–[41].
6 *Vinelight* (CA), above n 3, at [1]–[11].
7 At [59].

[5] The second issue is whether a purpose of tax avoidance can be properly inferred from aspects of a transaction other than those which produce the impugned tax result, that is, what is the scope of the arrangement that may be considered? The applicants submitted that the scope of the arrangement considered by the Court of Appeal was too broad and a much narrower transaction should have been the focus of analysis.

[6] The third issue relates to the extent of the reconstruction powers of the Commissioner of Inland Revenue in relation to a tax avoidance arrangement. The applicants say that although the Commissioner had characterised her reassessment as an exercise of her power of reconstruction, the Court of Appeal held that she did not need to, and did not, exercise her reconstruction power. The applicants say that this Court should determine whether the Commissioner did in fact exercise her power of reconstruction and, if so, whether she was entitled to do so.

[7] We are not satisfied that it is necessary in the interests of justice that we hear and determine the proposed appeal. Given the factual findings below, we do not consider that any matter of general or public importance is raised. Further, we see no risk that a substantial miscarriage of justice may have occurred.

[8] Accordingly, we dismiss the application for leave to appeal. The applicants are jointly and severally liable to pay costs of $2,500 to the respondent.

Solicitors:
Chapman Tripp, Auckland for Applicants
Crown Law Office, Wellington for Respondent