Supreme Court of New Zealand
Te Kōti Mana Nui

5 November 2014

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

LSG SKY CHEFS NEW ZEALAND LTD v PACIFIC FLIGHT CATERING LTD and PRI FLIGHT CATERING LTD
(SC 103/2013) [2014] NZSC 158

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.

LSG Sky Chefs Ltd and the respondents Pacific Flight Catering Ltd and PRI Flight Catering Ltd (together "Pacific") are competitors in the airline catering business. Both provide airline meals for passenger aircraft operating out of Auckland Airport. Following a tender process in late 2010, LSG replaced Pacific as the supplier of meals to Singapore Airlines. This took effect in February 2011.

For the purpose of pt 6A of the Employment Relations Act 2000, the replacement of Pacific by LSG was a "restructuring" with the result that the affected employees of Pacific were entitled to transfer their employment to LSG. Such transfers were required to be on the existing terms and conditions of their employment and LSG was required to recognise their accrued leave entitlements to annual holidays, alternative holidays and sick and bereavement leave.

LSG now seeks reimbursement from Pacific for the costs of these accrued entitlements. Its claim is based on the common law cause of action for money paid to the use of another by compulsion of law. The discharge of an existing liability of the defendant is fundamental to the cause of action and the payments made by LSG to discharge these entitlements were only "to the use of" Pacific if Pacific remained legally liable in relation to those entitlements after the transfer date.

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In the High Court Woolford J held that the under the Holidays Act 2003 and the relevant collective agreement there was a continuing obligation on Pacific to pay the transferring employees for their leave entitlements, despite their transfers to LSG. He further held that Pacific's liabilities had not been displaced by the Employment Relations Act. The Judge thus concluded that Pacific's liability enured until discharged by LSG and that the primary liability lay with Pacific. Accordingly he held it was right to require Pacific to reimburse LSG.

The Court of Appeal allowed Pacific's appeal. The Court held that the effect of the relevant provisions of the Employment Relations Act was that Pacific's liability was discharged from the time of transfer.

The Supreme Court, in agreement with the Court of Appeal, has unanimously held that the payments which LSG made and for which it now seeks reimbursement did not discharge any residual indebtedness of Pacific.

As an employee is not entitled to be paid for untaken sick and bereavement leave, Pacific could not have had any associated related residual liabilities. Under the legislative scheme, transferring employees had no redundancy entitlements against Pacific and Pacific was prohibited from paying such employees for untaken holidays. More generally, the scheme as a whole makes it clear that LSG was substituted for Pacific and leaves no room for residual liability.

The conclusion that Pacific had no residual liability is consistent with the disclosure regime in the Act. There would not be much point in providing for a disclosure regime as to service-related entitlements unless a new contractor is to be responsible for them.

Accordingly the appeal is dismissed.

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