IN THE SUPREME COURT OF NEW ZEALAND

SC 28/2015
[2015] NZSC 166

BETWEEN	BRUCE BRENDON VAN ESSEN First Applicant
	JASON JAMES PATTERSON Second Applicant
AND	THE ATTORNEY-GENERAL First Respondent
	PETER JAMES GIBBONS Second Respondent
	GRAEME JOHN SCOTT Third Respondent

Court:	Elias CJ, William Young and Glazebrook JJ
Counsel:	A Shaw for Applicants F R J Sinclair for First Respondent D P Robinson for Second and Third Respondents
Judgment:	13 July 2015
Reissued:	3 November 2015
Effective date of Judgment:	13 July 2015

JUDGMENT OF THE COURT

A **The applications for leave to appeal are dismissed.**

B **There is no order as to costs.**

REASONS

Background

[1] The applications arise out of the execution of two search warrants, one directed at the house of Bruce Van Essen and the other at Jason Patterson's house. They arose out of entirely separate investigations into suspected Accident Compensation Corporation fraud. The investigations were primarily carried out by private investigators who were former police officers, Peter Gibbons and Graeme Scott. Mr Scott had no involvement with the Van Essen investigation and search and Mr Gibbons no involvement with the Patterson investigation and search.

[2] The search warrant applications were largely prepared by the private investigators. It was common ground well before trial that they were invalid. The private investigators participated in the execution of the warrants along with police officers. There are two other particular points that should be mentioned: (a) the Patterson warrant was unsigned; and (b) one of the police officers involved in the Van Essen warrant and its execution was Mr Gibbons' son-in-law.

[3] Subsequent to the execution of the search warrants, the applicants made complaints which led to internal police investigations and an Independent Police Conduct Authority (IPCA) inquiry.

The High Court

[4] Whata J rejected the claims in tort against the police and Messrs Gibbons and Scott.[1] This was essentially based on the immunities under ss 38 and 39 of the Police Act 1958 which he held extended to Messrs Gibbons and Scott and not just the police. He issued declarations in respect of both searches[2] and awarded $10,000 compensation (under the New Zealand Bill of Rights Act 1990) for Mr Van Essen.[3] There were also complex costs orders.[4]

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1 *Van Essen v Attorney-General* [2013] NZHC 917, [2013] NZAR 809 at [112]–[118].
2 At [126].
3 At [127].
4 See *Van Essen v Attorney-General* [2013] NZHC 2016, [2014] NZAR 11.

The Court of Appeal

[5] The Court of Appeal upheld the refusal to award Mr Patterson compensation and quashed the award to Mr Van Essen.[5] In doing so the Court relied on the IPCA investigation and a subsequent report (in the case of Mr Patterson) and a letter written from the Commissioner to the IPCA outlining the action the police had taken as a follow-up to the complaint (in the case of Mr Van Essen).[6] The Court did, however, hold that Messrs Van Essen and Patterson were entitled to indemnity costs up to the commencement of the trial.[7]

[6] The conclusions in favour of Messrs Gibbons and Scott were examined by the Court of Appeal in what would appear to have been the context of a consideration of the costs orders with the Court concluding that ss 38 and 39 of the Police Act did not apply[8] but rather that they had immunity under s 27 of the Crimes Act 1961.[9]

The applications for leave to appeal

[7] Messrs Van Essen and Patterson now seek leave to appeal and put in issue not only the public law compensation issue but also the claims against all respondents for trespass to goods and land. The applications raise a number of issues:

(a) The proper approach to appeals said to involve the exercise of discretion; this associated with the complaint that inconsistent approaches were taken to the appeals of Mr Patterson and Mr Van Essen.

(b) The proper approach to public law compensation in the broader context that the approach of appellate courts has been too niggardly, an invitation to reconsider/reinterpret *Taunoa v Attorney-General*[10]

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5 *Attorney-General v Van Essen* [2015] NZCA 22 (Ellen France P, Stevens and French JJ) [*Van Essen* (CA)].
6 At [134].
7 See [150]–[165].
8 At [142]–[144].
9 At [145]–[149].
10 *Taunoa v Attorney-General* [2007] NZSC 70, [2008] 1 NZLR 429.

and a contention that plaintiffs should be properly incentivised to bring such cases

(c) Whether the Court of Appeal placed too much weight on the actions of the IPCA.

(d) Whether there was an adequate evidential basis (in a general sense) as to offending for the issue of the warrants or whether, to put it another way, they were more deficient than Whata J and the Court of Appeal thought.

(e) The significance of the Patterson warrant being unsigned, something which the Court of Appeal considered was not particularly material and as being within s 204 of the Summary Proceedings Act.[11]

(f) The entitlement of Messrs Gibbons and Scott to immunity.

Our appreciation

[8] On the factual and legal findings of the High Court and Court of Appeal, there was an evidential basis for the warrants but they were technically deficient. Challenges to these findings do not give rise to questions of public or general importance and there is, in relation to them, no appearance of a miscarriage of justice. The searches were carried out over a limited period of time and involved no inconvenience or proved consequences which were out of the ordinary in relation to the way in which search warrants are usually executed. The police accepted before trial that the warrants were defective.

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11 *Van Essen* (CA), above n 5, at [95].

[9] Although some of the issues raised by the applicants might, in other circumstances, warrant consideration in this Court, the essentially trivial nature of the case means that such issues do not, in the present context, warrant a grant of leave to appeal.

Solicitors:
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