

IN THE SUPREME COURT OF NEW ZEALAND

SC 138/2014
[2015] NZSC 45

BETWEEN NEW ZEALAND CARDS LIMITED
Applicant

AND COLIN RAMSAY
Respondent

Court: Glazebrook, Arnold and O'Regan JJ

Counsel: R Beresford representing Applicant
S G Wilson for Respondent

Judgment: 22 April 2015

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B The applicant must pay the respondent costs of \$2,500.

REASONS

[1] The applicant, New Zealand Cards Ltd (NZ Cards), was involved in an employment dispute with the respondent, Mr Ramsay. Having been unsuccessful in the Employment Court,¹ NZ Cards sought leave to appeal to the Court of Appeal. The Court of Appeal granted leave, but on the basis that NZ Cards was to be represented at the hearing of the appeal by counsel rather than by its principal, Mr Robert Beresford, who had appeared for NZ Cards at the hearing of the application for leave.² The Court said:³

It is a matter of concern to us that the applicant company is not legally represented. A company is not generally permitted representation by a non-lawyer but the Court has a discretion to do so in appropriate cases. It is a

¹ *New Zealand Cards Ltd v Ramsay* [2012] NZEmpC 51 (Judge Couch).

² *New Zealand Cards Ltd v Ramsay* [2012] NZCA 285 (Glazebrook, Randerson and Wild JJ).

³ At [21] (citations omitted).

discretion to be exercised sparingly. We are not willing to permit Mr Beresford, or any other lay person, to present the appeal on behalf of the company in this case.

The formal orders of the Court made it clear that the appeal would not be set down and heard unless NZ Cards was legally represented.⁴

[2] The appeal was originally scheduled to be heard in February 2014, but that fixture was abandoned as NZ Cards wished at a late stage to change counsel. The next hearing date for the appeal was 31 July 2014, but this fixture was also abandoned when NZ Cards' counsel sought leave to withdraw. The appeal was then set down for a third time in October 2014. It was made clear to NZ Cards that it would be heard only if represented by counsel. Arrangements were made for the parties to be heard from Christchurch by means of an audio-visual link. When the case was called at 10.03 am on 22 October, there was no appearance on behalf of NZ Cards and the appeal was dismissed.⁵ Mr Beresford apparently turned up at the courtroom about 10.15 am, after the case had been dismissed. An order for costs was later made against NZ Cards.⁶

[3] Mr Beresford has filed a good deal of material in support of NZ Cards' application for leave. The material is rambling, repetitive and largely irrelevant. Mr Beresford alleges that he was locked out of the courtroom on 22 October by Mr Ramsay's counsel. This allegation of impropriety on the part of counsel is not only implausible but is ultimately irrelevant because the Court of Appeal had made it plain that NZ Cards was to be represented by counsel at the hearing of the appeal and not by Mr Beresford, and there is no suggestion that counsel was instructed to appear.

[4] The fact that the Court of Appeal granted leave to appeal to NZ Cards indicates that the Court considered its appeal against the Employment Court's judgment was arguable. It is therefore unfortunate that the appeal was dismissed without the merits being addressed. But that was ultimately the responsibility of

⁴ At [23](f).

⁵ *New Zealand Cards Ltd v Ramsay* [2014] NZCA 512 (Miller, Heath and Dobson JJ).

⁶ *New Zealand Cards Ltd v Ramsay* [2014] NZCA 580 (Miller, Heath and Dobson JJ).

Mr Beresford. As the Court of Appeal said, the general rule is that companies are to be represented by counsel rather than an officer of the company. While the courts are prepared to make exceptions to the general rule from time to time, the Court of Appeal considered in this case that NZ Cards should be represented by counsel, as it was entitled to do, and made that very clear to Mr Beresford. Unfortunately, NZ Cards chose not to prosecute its appeal in accordance with the Court's directions. As a result, it has no legitimate complaint about the fact that the appeal was dismissed.

[5] Finally, Mr Beresford mentioned the possibility of seeking leave to appeal directly to this Court from the Employment Court. While direct appeals are possible,⁷ there is a question whether Mr Beresford is entitled to make such an application given that the Court of Appeal has been seized of, and has dismissed, a substantive appeal against the Employment Court's decision. It seems improbable that Parliament envisaged that a party who was unsuccessful in such an appeal to the Court of Appeal could circumvent that adverse decision by seeking leave to appeal directly to this Court against the Employment Court's decision. Even if a direct appeal were possible, in the circumstances of this case an application for leave to appeal directly would not produce a different outcome.

[6] The application for leave to appeal is dismissed. The applicant must pay the respondent costs of \$2,500.

Solicitors:
Duncan Cotterill, Christchurch for Respondent

⁷ Employment Relations Act 2000, s 214A.