

IN THE SUPREME COURT OF NEW ZEALAND

SC 91/2017
[2017] NZSC 168

BETWEEN CHESTERFIELDS PRESCHOOLS
LIMITED (IN LIQUIDATION)
First Applicant

THERESE ANNE SISSON
Second Applicant

AND THE COMMISSIONER OF INLAND
REVENUE
Respondent

Court: Elias CJ, William Young and O'Regan JJ

Counsel: Second Applicant in person
P J Shamy and S M Kinsler for Respondent

Judgment: 16 November 2017

JUDGMENT OF THE COURT

- A** Leave to appeal is granted on one ground only (*Sisson v Commissioner of Inland Revenue* [2017] NZCA 326).
- B** The approved question is whether the conditional order of the Court of Appeal setting aside the order of the High Court putting the first applicant into liquidation and remitting the proceeding to the High Court for rehearing should be quashed and replaced with an unconditional order.
- C** The application for leave to appeal is otherwise dismissed.
- D** We make no award of costs.
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REASONS

[1] The essential paragraph of the Court of Appeal's judgment on the appeal to that Court was in these terms:¹

The appeal is allowed on the condition that within 15 working days of this judgment the appellant pays into the High Court at Christchurch the amount of \$109,675.22. Subject to the condition being satisfied, the liquidation order is set aside and the proceeding is remitted to the High Court for rehearing.

[2] The liquidation order referred to by the Court of Appeal was the order made by the High Court putting the first applicant (Chesterfields), a company with which the second applicant is associated, into liquidation.²

[3] The respondent accepts that the condition was imposed on the mistaken assumption that Chesterfields had cash available to satisfy the condition and that, in reality, it has not been feasible for the condition to be satisfied. The respondent accepts, therefore, that leave should be given on this point and the consequent appeal should be allowed so the condition is discharged and the Court of Appeal judgment will take effect.

[4] We therefore grant leave on the question set out above. However, for reasons that follow, we do not grant leave on the other questions on which the leave is sought.

[5] We ask the Registrar to set down the appeal on the approved question for a brief formal hearing at 9:00 am on 23 November 2017.

[6] The hearing can be dispensed with if the parties consent to the appeal being dealt with on the papers. Ms Sisson and counsel for the respondent should confer and advise on or before 21 November 2017 whether they consent to the matter being dealt with on the papers.

[7] If the hearing proceeds, Ms Sisson may appear by videolink from Christchurch if the necessary facilities at the Christchurch court are available. She should notify

¹ *Sisson v Commissioner of Inland Revenue* [2017] NZCA 326, (2017) 28 NZTC ¶23-023 at [109] (Brown, Dobson and Brewer JJ).

² *Commissioner of Inland Revenue v Chesterfields Preschools Ltd* [2015] NZHC 2440, (2015) 27 NZTC ¶22-029 (Associate Judge Osborne).

the Registrar as soon as possible if she wishes to do so. No further written submissions should be filed.

[8] As mentioned earlier, leave to appeal is declined on the other three points of appeal foreshadowed in the application for leave to appeal for the reasons that follow.

[9] Ms Sisson wants to challenge the decision of the Court of Appeal to dismiss the application to adduce fresh evidence in support of the appeal to the Court of Appeal. No point of public importance arises in relation to this point and we see no appearance of miscarriage in the way the Court of Appeal applied settled law to the application.

[10] Ms Sisson also seeks to challenge the finding that *res judicata* applied to a finding by the Court of Appeal³ in an earlier case that a reduction of penalties payable to the respondent by 15 per cent would more than fulfil the requirements of an earlier High Court case in which Chesterfields had been successful in a judicial review application against the respondent.⁴ This is a fact-specific issue that raises no point of public importance and we do not consider it meets the criteria for leave to appeal to this Court.

[11] The final issue on which leave is sought relates to the finding by the Court of Appeal that Chesterfields could not rely on potential claims of stayed proceedings alleging misfeasance in public office and malicious institution of civil proceedings against the respondent as an off-set or counterclaim against the amount it owes to the respondent for tax and penalties. Ms Sisson seeks to argue that the applicants' claims of maladministration should be dealt with in the context of the liquidation proceeding. Nothing put forward by Ms Sisson causes us to doubt the correctness of the Court of Appeal's finding on this point.

[12] The application for leave to appeal is granted to the extent set out in the judgment of the Court but otherwise dismissed.

³ *Commissioner of Inland Revenue v Chesterfields Preschools Ltd* [2010] NZCA 400, (2010) 24 NZTC 24,500.

⁴ *Chesterfields Preschools Ltd v Commissioner of Inland Revenue* (2007) 23 NZTC 21,125 (HC).

[13] We record that, as this judgment was being finalised, we received a memorandum from Ms Sisson seeking leave to file further submissions and a memorandum from counsel for the respondent seeking to respond to this and other communications from Ms Sisson. We decided that we would not be assisted by further submissions and that leave was therefore not granted. This meant there was no need for a response from the respondent. Ms Sisson's application for interim relief will be addressed in the light of this judgment.

[14] As each party has had a measure of success, we make no award of costs.

Solicitors:
Crown Law Office, Wellington for Respondent