

IN THE SUPREME COURT OF NEW ZEALAND

SC 91/2017
[2017] NZSC 176

BETWEEN CHESTERFIELDS PRESCHOOLS
LIMITED (IN LIQUIDATION)
First Appellant

THERESE ANNE SISSON
Second Appellant

AND THE COMMISSIONER OF INLAND
REVENUE
Respondent

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

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

Judgment: 23 November 2017

JUDGMENT OF THE COURT

- A The appeal is allowed.**
- B The order made by the Court of Appeal setting aside the order of the High Court putting the first appellant into liquidation and remitting the proceeding to the High Court for rehearing, subject to the condition that within 15 working days of the Court of Appeal judgment, the second appellant pay into the High Court at Christchurch the amount of \$109,675.22, is quashed.**
- C In its place we make an order setting aside the order putting the first appellant into liquidation and remitting the proceeding to the High Court for rehearing.**
- D There is no order as to costs.**
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REASONS

[1] On 16 November 2017, leave to appeal was granted on a single ground.¹ The approved question was:

... 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.

[2] In the reasons for judgment, it was noted that the condition imposed by the Court of Appeal was imposed on the assumption that the first appellant had cash available to satisfy the condition but, as it transpired, that had proved to be incorrect and it had not been feasible for the condition to be satisfied.² The respondent accepted that leave should be given on this point and the consequent appeal should be allowed so that the condition was discharged. That would mean no condition attached to the Court of Appeal's order. The proceeding would then be remitted to the High Court for a rehearing on the issue as to whether the first appellant should be placed in liquidation.

[3] We set a fixture for the hearing of the appeal, but noted that this could be dispensed with if the parties consented to the appeal being dealt with on the papers.³ The parties have advised that they consent to the appeal being dealt with on the papers.

[4] We are satisfied that the condition imposed by the Court of Appeal was based on an assumption that has proven to be incorrect and that it should be discharged. We therefore allow the appeal by consent and make the orders set out above.

¹ *Chesterfields Preschools Ltd (in liq) v Commissioner of Inland Revenue* [2017] NZSC 168.

² At [3].

³ At [5]–[6].

[5] No costs were awarded in relation to the leave application, given that each party had a measure of success. As this judgment is based on the parties' agreed position, we take the same approach in this judgment.

Solicitors:
Crown Law Office, Wellington for Respondent