

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 28/2024
[2024] NZSC 71

BETWEEN ECOMI TECHNOLOGY PTE LIMITED
Applicant

AND MB TECHNOLOGY LIMITED
Respondent

SC 29/2024

BETWEEN ORBIS TECHNOLOGY LIMITED
Applicant

AND MB TECHNOLOGY LIMITED
Respondent

Court: Glazebrook, Ellen France and Miller JJ

Counsel: C P Browne and J P Rea for Applicant in SC 28/2024
M Heard and R M Keane for Applicant in SC 29/2024
J S Cooper KC and S A Barker for Respondent

Judgment: 20 June 2024

JUDGMENT OF THE COURT

- A** The applications for leave to appeal are dismissed.
- B** The applicants must pay the respondent one set of costs of \$2,500.
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REASONS

[1] This judgment addresses two applications for leave to appeal from the consolidated judgment of the Court of Appeal in *Ecomi Technology Pte Ltd v MB Technology Ltd* and *Orbis Blockchain Technologies Ltd v MB Technology Ltd*.¹

Background

[2] The issue is whether a claim in this proceeding, which is called the Orbis Action, was settled pursuant to a settlement agreement reached in related proceedings brought in Singapore and New Zealand. These are called the Singapore Action and the New Zealand Ecomi Action respectively. Clause 1.1 of the settlement agreement provided that:

1 FULL AND FINAL SETTLEMENT

1.1 The Parties hereby irrevocably and unconditionally agree, without any admission as to liability, to a full and final settlement of all claims as between the Parties in respect of, arising directly or indirectly out of, or in connection with the Singapore Action and the New Zealand Ecomi Action, and the allegations made in the Singapore Action and the New Zealand Ecomi Action however so arising, on the terms and conditions of this Settlement Agreement. For the avoidance of doubt, this clause does not apply to the New Zealand Orbis Action.

[3] The applicants say the language of the provision is apt to include allegations pleaded in the Orbis Action on the ground that an affidavit first filed in the Singapore Action in support of an application for freezing orders referred to these allegations. Specifically, the affidavit referred to a claim that the respondent was entitled to payment of bonus cryptocurrency tokens in connection with its investment in Orbis Technology Ltd.

[4] The facts are complex. For our purposes, we adopt the account given in the judgment of the Court of Appeal.² The applications for leave to appeal are brought from the refusal of the Court of Appeal to strike out the bonus tokens claim or grant

¹ *Ecomi Technology Pte Ltd v MB Technology Ltd* [2024] NZCA 47 (Katz, Hinton and Churchman JJ) [CA judgment]. Orbis Technology Ltd was previously known as Orbis Blockchain Technologies Ltd and was referred to by that name in the lower Courts' decisions.

² CA judgment, above n 1, at [1]–[34].

summary judgment.³ In the High Court, Jagose J had also declined to strike out or grant summary judgment.⁴ Both Courts held that the settlement agreement was not apt to include the bonus tokens claim, which is part of the Orbis Action.⁵

Our assessment

[5] This Court will entertain appeals against judgments of the Court of Appeal refusing strike-outs only in compelling circumstances.⁶

[6] The applicants say that the proposed appeals raise a question of general or public importance about the scope of settlement agreements that settle all allegations connected with a proceeding.⁷ They also say the appeals raise a matter of general commercial significance.⁸

[7] We do not agree. The settlement in this case must be interpreted in accordance with Singaporean law. The decision of this Court would have little or no wider significance, and to the extent that Singaporean law permits recourse to the commercial context, its interpretation depends on facts that are not yet settled.

[8] We add that the applicants now claim that the judgment below will have unintended consequences, in that two causes of action will need to be struck out if it is correct.⁹ It would be inappropriate for this Court to address that claim without the views of the Courts below.

[9] When granting leave to appeal to the Court of Appeal, Jagose J thought determination of the scope of the settlement might reduce the scope of trial.¹⁰ It is not

³ At [70].

⁴ *MB Technology Ltd v Orbis Blockchain Technologies Ltd* [2022] NZHC 1257 at [23].

⁵ At [20]–[23]; and CA judgment, above n 1, at [65]–[68].

⁶ *Bank of New Zealand v Deloitte Touche Tohmatsu* [2008] NZSC 54, [2009] 1 NZLR 145 at [5]. As refusing summary judgment also allows the proceeding to continue, we proceed on the same basis in regard to the summary application. It is an open question whether an application to appeal a strike-out decision in a proceeding is an “interlocutory application” for the purposes of ss 65 and 74(4) of the Senior Courts Act 2016: *Ceramalus v Chief Executive of the Ministry of Business, Innovation and Employment* [2018] NZSC 26, (2018) 24 PRNZ 8 at [8].

⁷ Senior Courts Act, s 74(2)(a).

⁸ Section 74(2)(c).

⁹ Relying on s 74(2)(b). See also *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].

¹⁰ *MB Technology Ltd v Orbis Blockchain Technologies Ltd* [2022] NZHC 2408 at [8].

clear to us that a decision in the applicants' favour would have that effect, and it is a consideration that cannot weigh heavily when it comes to a second appeal. What matters for present purposes is that the proposed appeals do not raise an issue of general or public importance.

Result

[10] The applications for leave to appeal are dismissed.

[11] The applicants must pay the respondent one set of costs of \$2,500.

Solicitors:

Wilson Harle, Auckland for Applicant in SC 28/2024

LeeSalmonLong, Auckland for Applicant in SC 29/2024

Buddle Findlay, Wellington for Respondent