IN THE COURT OF APPEAL OF NEW ZEALAND

CA322/2017 [2017] NZCA 540

BETWEEN HEATHER FUIMAONO AND MAHIA

FUIMAONO Applicants

AND LEEANNE HOUIA

Respondent

Hearing: 20 November 2017

Court: Miller, Cooper and Asher JJ

Counsel: F Handy for Applicants

A Knowsley for Respondent

Judgment: 22 November 2017 at 2.00 pm

JUDGMENT OF THE COURT

- A The application for leave to appeal is declined.
- B No order for costs.

REASONS OF THE COURT

(Given by Miller J)

[1] The applicants seek leave to appeal under s 214 of the Employment Relations Act 2000 from an Employment Court decision holding that they, rather than their company, were the respondent's employers and so personally liable to pay compensation for her unjustified dismissal.¹

FUIMAONO & ANOR v HOUIA [2017] NZCA 540 [22 November 2017]

_

¹ Fuimaono v Houia [2017] NZEmpC 63. Reference should be made to the decision for an account of the facts.

[2] The necessary point of law identified is that the Court misinterpreted the

intention to create legal relations which is fundamental to the law of contract.

The applicants concede that the Court cited the relevant principles of law, but it is

said that had they been applied correctly a different answer must have resulted.

[3] In our view, the case turns on its facts, or to put it another way it raises no

serious question of law. In essence, the applicants complain that the

Employment Court discounted evidence tending to show that the company was the

employer. The Court correctly directed itself that it must consider the real nature of

the relationship and it focused on the objective indicia.² The findings that it made

were plainly available to it.

[4] In any event, the applicants face two further difficulties which appear to

render the proposed appeal moot. The first is if they contracted as agents they did so

without disclosing the principal. It is no answer to this that they did disclose what

the Court found was their own trading name. The second is that s 25(2) of the

Companies Act 1993 applies, meaning they are personally liable unless that would

not be just and equitable. The applicants were personally responsible for the

respondent's dismissal. All that might be said in their favour is that they did not

intend to deceive by failing to disclose the company's name.

[5] The application for leave to appeal is dismissed. As the applicants are legally

aided, we make no order as to costs.

Solicitors:

Rainey Collins, Wellington for Respondent

_