

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA211/2021
[2021] NZCA 546**

BETWEEN

BRIAN SAIPE
Applicant

AND

TRUDE JEAN BETHELL (ALSO KNOWN
AS TRUDE JEAN BETHELL-PAICE)
Respondent

Court: Cooper and Brown JJ

Counsel: M C Donovan and S E Greening for Applicant
R J Hooker for Respondent

Judgment: 20 October 2021 at 10.30 am
(On the papers)

JUDGMENT OF THE COURT

A The application for recall is granted.

B [2021] NZCA 429 is recalled and reissued.

REASONS OF THE COURT

(Given by Brown J)

[1] On 3 September 2021 we delivered a judgment declining Mr Saipe's application for leave to appeal a decision of the Employment Court under s 214(1) of the Employment Relations Act 2000.¹ One of the proposed questions of law was whether the Employment Court failed to apply the correct legal test to determine the correct date the employment was terminated. Mr Saipe argued that he did not accept

¹ *Saipe v Bethell* [2021] NZCA 429.

Ms Bethell's repudiation of the employment contract, meaning the relevant date was later than 23 August 2013.

[2] In our judgment we stated that this repudiation argument was not advanced in the Employment Court. Mr Saipe has now applied to recall the judgment on the grounds that that statement was erroneous. The argument was in fact advanced in closing submissions on 9 December 2020, confirmed by Mr Saipe in an affidavit. Ms Bethell opposes the recall application.

[3] Having read the affidavit we accept that it was an error to say the repudiation argument had not been raised. However this does not change our decision to decline the application for leave to appeal. The Employment Court made no findings of fact or statement of conclusion on that line of argument. It is not appropriate for this Court to entertain an appeal on a question of law in the abstract without such findings by the lower Court. If Mr Saipe wished to pursue the repudiation proposition, the avenue to do so was a request for a recall of the Employment Court's decision.

[4] We grant the application in order to correct the factual mistake and recall [2021] NZCA 429. The judgment is amended and reissued with [17]–[19] now reflecting (a) that the repudiation argument was raised in the Employment Court and (b) the reasoning at [3] above of this judgment.

[5] There is no order to costs.

Solicitors:
Watermark Employment Lawyers, Auckland for Applicant
Vallant Hooker & Partners, Auckland for Respondent