

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA727/2021
[2022] NZCA 194**

BETWEEN REEGAN PAORA LAWTON
Applicant
AND ORMOND BRIAN STOCK
Respondent

Court: Miller and Dobson JJ
Counsel: P A McBride and S P Radcliffe for Applicant
K T Dalziel for Respondent
Judgment: 1 June 2022 at 11.00 am
(On the papers)

JUDGMENT OF THE COURT

The application for leave to appeal is declined.

REASONS OF THE COURT

(Given by Dobson J)

[1] This judgment deals with an application for leave to appeal from a decision of the Employment Court.¹ That judgment was a first instance decision in respect of the dispute, which had been removed from the Employment Relations Authority (the Authority) to the Employment Court.² The application for leave to appeal is governed by s 214 of the Employment Relations Act 2000 (the Act). Pursuant to s 214, a party seeking leave to appeal a decision of the Employment Court must satisfy this

¹ *Lawton v Steel Pencil Holdings Ltd (in liq)* [2021] NZEmpC 199 [Employment Court decision].

² *Lawton v Steel Pencil Holdings Ltd (in liq)* [2021] NZERA 92.

Court that the appeal involves a question of law that, by reason of its general or public importance or for any other reason, ought to be submitted to this Court for decision.

[2] The applicant (Mr Lawton) was a director and employee of Steel Pencil Holdings Ltd (the company). Throughout the period to which the dispute relates, Mr Lawton was in charge of a subsidiary company operating in the Philippines. Family trusts operated by him and the respondent (Mr Stock) were the shareholders of the company. Mr Stock was also a director and employee of the company, based in New Zealand. In the period up to July 2014, the directors made agreements to transfer some of the shares from Mr Stock's family trust to Mr Lawton's, leaving Mr Stock in control of a bare majority of the company's shares. Mr Lawton was to pay for his family trust's acquisition of additional shares by debiting his family trust's loan account within the company with the agreed cost for the shares and thereafter crediting that loan account with salary entitlements earned by him as an employee.

[3] The company was under financial pressure and did not prosper. After various attempts to resolve terms on which Mr Lawton would exit from all his connections with the company, he and Mr Stock concluded an agreement in May 2020 (the Agreement). The Agreement was described as an "agreement for sale and purchase of shares" but included an acknowledgement that the agreement was in full and final settlement of the issues between the parties as to shareholding and associated liability, to the maximum extent permitted by law. The Agreement recorded Mr Lawton's resignation of his employment (he having previously been removed as a director in April 2020) and committed the company to paying his salary up to the effective date of resignation of 31 May 2020 plus two months thereafter in lieu of notice.

[4] Mr Lawton served a statutory demand on the company in July 2020 claiming arrears of annual leave entitlements and referring to additional sums that were not quantified in respect of annual leave and/or holiday pay. The demand was not met and Mr Lawton filed a statement of problem with the Authority. The claims filed with the Authority extended to amounts he claimed as owing for wages, holiday pay and expenses. The claim was brought against both the company and against Mr Stock who

was cited as a respondent to the claim as a person involved in a breach of employment standards.³

[5] The company was placed in liquidation on 26 February 2021 and Mr Lawton indicated his intention to proceed with his claim against Mr Stock, the company's liquidator having indicated that he required a stay of proceedings against the company.

[6] The Authority removed the proceedings to the Employment Court in March 2021, recognising as a preliminary question of law whether Mr Stock could be held liable in the absence of a finding by the Authority against the company. The Ministry of Business, Innovation and Employment sought leave to intervene in the Employment Court proceedings, attributing general importance to the preliminary question of law identified by the Authority.

[7] Judge Holden held that Mr Stock could be held liable in circumstances where the claimant could not proceed against the employer, upholding the approach urged on the Court by the intervener as well as by Mr Lawton.⁴ However, the Judge also held that the Agreement was binding on Mr Lawton as quantifying the extent of entitlement that he could make out in relation to his former employment with the company.⁵ The Judge also found, after analysis of the evidence, that there had been a miscalculation of the entitlements recognised in the Agreement. Mr Stock was found liable to pay Mr Lawton the eight per cent allowance for outstanding holiday pay that ought to have been included in the final pay up to May 2020 and the two months' salary in lieu of notice under the Agreement.⁶ In other respects, the claims failed.

[8] Mr Lawton seeks leave to appeal the Employment Court's decision. He argues that the Employment Court erred in its findings, which he would describe in the following terms:

- (a) That the parties were able lawfully and effectively to contract out of Mr Lawton's minimum statutory entitlements to receive unpaid wages

³ Employment Relations Act 2000, s 142W.

⁴ Employment Court decision, above n 1, at [38].

⁵ At [75] and [77]–[78].

⁶ At [81].

and annual leave, notwithstanding statutory provisions precluding the contracting out of employees' statutory entitlements.

- (b) (In obiter dicta) that statutory entitlements to holiday pay were not enforceable where the relevant leave had not been taken, and that a variation to the employment agreement reducing Mr Lawton's level of remuneration was valid and enforceable notwithstanding the failure to complete the variation agreement in a manner complying with statutory requirements.
- (c) That Mr Stock would not be personally liable as a person involved in the breach of employment standards because an element of *mens rea* or intention to breach was required and was not made out.

[9] The articulation of the proposed question of law in (a) above mischaracterises the Judge's reasoning on the status of the Agreement. The Agreement did not deny Mr Lawton's right to advance any of his statutory entitlements as an employee. What it achieved, as part of Mr Lawton's disengagement from all capacities in which he was connected with the company, was to provide a compromised quantification of the overall settlement that would be honoured by the company, with financial assistance from Mr Stock.

[10] In evidence, both Messrs Lawton and Stock had agreed, effectively without qualification, that the Agreement resolved all matters between them including in relation to Mr Lawton's wages and holiday pay.⁷ The Judge held that s 131(2) of the Act (which maintains an employee's statutory entitlements notwithstanding acceptance of payments at a lower rate) did not preclude parties reaching an agreement as to the extent of disputed entitlements between them. Here, the Agreement covered employment matters, notwithstanding that the principal relationship between Mr Lawton and Mr Stock was as shareholders of the company (through their respective family trusts) and their employment relationship with the company was secondary. The Agreement thus reflected a global settlement including shareholding

⁷ At [67]–[70].

and employment matters and such an agreement was held not to be precluded by s 131.⁸

[11] We note that the Judge had regard to the Agreement notwithstanding that it had not been expressly pleaded as a defence to Mr Lawton's claims. The Judge did so on the basis of the equity and good conscience aspect of the Employment Court's jurisdiction.⁹ Although Mr Lawton criticised the Judge for invoking equity and good conscience, no separate question of law was proposed in relation to that aspect. We consider that omission by Mr Lawton was appropriate. We are of the view that the Judge was entitled to consider the Agreement as a matter of equity and good conscience.

[12] The relevant reasoning on the character of the Agreement is fact-dependent. We are not persuaded that question (a) of those proposed for an appeal raises a question of law. Even if the issue was capable of being cast as a question of law, we can see no tenable question of law that might have general or public importance, in the circumstances of this relationship. The Agreement was a composite resolution for Mr Lawton's exit from the company as a shareholder and an employee. Arguably, had he negotiated for a larger sum on account of employee entitlements, then the company and Mr Stock may have insisted on a corresponding reduction in his exit as a shareholder. He reached the Agreement as a final settlement — it “wraps up everything”.¹⁰ We are therefore not persuaded that question (a) qualifies for leave.

[13] The remainder of the proposed questions would be moot, given the lawful effect of the Agreement. Even if they stood alone, we are not persuaded that they would justify granting leave. Given the circumstances of Mr Lawton's various positions with the company, and the facts pertaining to his claims, we are not persuaded that the claims for unused annual leave and for an invalid variation of his employment agreement raise questions of law of general or public importance.

⁸ At [77].

⁹ Employment Relations Act, s 189.

¹⁰ Employment Court decision, above n 1, at [68].

[14] The third proposed question of law as to the circumstances in which a person would be liable for involvement in a breach of employment obligations by an employer has been addressed recently in this Court's decision in *A Labour Inspector v Southern Taxis Ltd*.¹¹ To the extent that decision lowers the threshold for attributing liability to persons alleged to be involved in a breach of employment obligations, the reasoning in that judgment applies on its own terms. No question of general or public importance could arise in using an appeal in the present case to add a gloss to it.

[15] For these reasons, the application for leave is dismissed.

Solicitors:
McBride Davenport James, Wellington for Applicant

¹¹ *A Labour Inspector v Southern Taxis Ltd* [2021] NZCA 705.