

IN THE SUPREME COURT OF NEW ZEALAND

SC 33/2012  
[2012] NZSC 73

BETWEEN	JOHN GEORGE RUSSELL Applicant
AND	THE COMMISSIONER OF INLAND REVENUE Respondent

Court: Elias CJ, Tipping and William Young JJ

Counsel: Applicant in Person  
M S R Palmer and M J Ruffin for Respondent

Judgment: 13 August 2012

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**JUDGMENT OF THE COURT**

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- A      The application for leave to appeal is dismissed.**
- B      The applicant is to pay costs of \$5,000 to the respondent  
Commissioner plus all reasonable disbursements to be fixed  
if necessary by the Registrar.**

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**REASONS**

[1] The applicant, Mr Russell, seeks leave to appeal from a decision of the Court of Appeal which rejected his objection to a tax assessment.<sup>1</sup> The assessment was made on the footing that Mr Russell was affected by a tax avoidance arrangement and was liable to pay income tax on the basis of a reconstruction undertaken by the Commissioner.

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<sup>1</sup> *Russell v Commissioner of Inland Revenue* [2012] NZCA 128.

[2] We consider leave to appeal should be declined. The statutory criteria for leave are not made out. In essence, the decision of the Court of Appeal represented the application of what are now well settled legal principles to the particular facts of this case. The Court of Appeal upheld the concurrent findings in the Taxation Review Authority and the High Court<sup>2</sup> that: (i) there was an arrangement; (ii) its purpose or effect was to alter the incidence of tax; (iii) Mr Russell was affected; and (iv) the tax avoidance involved was more than merely incidental. The Court of Appeal was also satisfied, in agreement with the Authority and the High Court, that Mr Russell had not shown the Commissioner's reconstruction was wrong, let alone by how much.

[3] The Court of Appeal gave Mr Russell leave to advance a point which he had expressly not taken in the High Court, namely the effect of s 99(4). The Court, after careful examination of the matter, was satisfied that there was no merit in this point. None of the matters which Mr Russell seeks to raise by further appeal to this Court are matters of general or public importance. Nor is there any basis for concern that a substantial miscarriage of justice might occur if leave is not given.

[4] There is a further reason why granting leave would not be in the interests of justice. None of the points Mr Russell seeks to raise are reasonably arguable in his favour. The Court of Appeal was undoubtedly correct in the conclusions to which it came on the facts of this case. Save for some inconsequential minor matters, those facts were the subject of agreement in the Court of Appeal.

[5] For these various reasons the application for leave to appeal to this Court must be dismissed, with costs to the respondent Commissioner of \$5000 plus all reasonable disbursements.

Solicitors:  
Crown Law Office, Wellington for Respondent

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<sup>2</sup> *Russell v Commissioner for Inland Revenue* HC Auckland CIV 2009-404-006653, 3 September 2010.