

IN THE SUPREME COURT OF NEW ZEALAND

SC 47/2015
[2015] NZSC 72

BETWEEN MITA MICHAEL RIRINUI
Applicant

AND LANDCORP FARMING LIMITED
First Respondent

THE ATTORNEY-GENERAL
Second Respondent

Hearing: 26 May 2015

Court: Elias CJ, William Young, Glazebrook and Arnold JJ

Counsel: M T Scholtens QC, A N Isac and J B Orpin for Applicant
S A Barker and B Gnanalingam for First Respondent
J R Gough and S J Humphrey for Second Respondent

Judgment: 27 May 2015

JUDGMENT OF THE COURT

- A** The application for leave to appeal is granted (*The Attorney-General v Ririnui* [2015] NZCA 160).
- B** The approved questions are whether the Court of Appeal was correct to refuse the relief sought by the applicant based on:
- (a) the claimed bad faith on the part of Landcorp;
 - (b) the acknowledged error of law by the Office of Treaty Settlements in its advice to Landcorp;
 - (c) the failure of the shareholding Ministers of Landcorp to intervene.
- C** The first respondent is restrained until further order of the Court from settling the agreement for sale and purchase of Whāreare Farm, with leave reserved to the parties or to the purchaser to apply for discharge or variation of this order.

D The Registrar is directed to serve a copy of this judgment on the purchaser.

REASONS

[1] The Court having granted leave to appeal, has made the order restraining settlement of the sale of Whārerere Farm to protect the position and ensure that the appeal is not rendered nugatory. The first respondent, the vendor, expressed itself as being “neutral” on whether interim restraint should be granted but sought an undertaking as to damages. The Crown took no position on the question whether an interim order should be made. None of the parties suggested the Court lacked jurisdiction to make such an interim order under s 8 of the Judicature Amendment Act 1972.

[2] The Court, with William Young J dissenting on the point, has taken the view that insufficient information has been placed before it to enable it to determine whether it is appropriate to impose an undertaking as to damages as a condition on the restraint. We have decided however, to reserve leave to the parties and to the purchaser to make application for reconsideration of the restraint and conditions for its continuation, should that be necessary.

[3] William Young J dissents as to the restraint order as (a) he considers it debateable whether the situation is within s 8 of the Judicature Amendment Act 1972 and that, in the absence of argument on the point it would not be appropriate to assume that there is jurisdiction under that section and (b) no argument was advanced and no substantial reasons proffered as to why an interim injunction ought to be granted without an undertaking as to damages which is an almost invariable condition of the granting of an interim injunction.

[4] The Registrar is directed to serve a copy of this judgment on the purchaser, who appeared as intervener in the High Court but who did not appear in the Court of Appeal or in this Court. Consideration should be given as to whether the purchaser should be joined in the appeal, given that the relief sought by the applicant is the setting aside of a contract to which they are party.

Solicitors:

Koning Webster, Papamoa for Applicant

Buddle Findlay, Wellington for First Respondent

Crown Law Office, Wellington for Second Respondent