IN THE SUPREME COURT OF NEW ZEALAND

SC 65/2016
[2016] NZSC 115

BETWEEN	JOHN EDWARD WHITEHEAD, ROSALENE MARIE WHITEHEAD AND EDWARD IVAN WHITEHEAD AS TRUSTEES OF THE J AND R WHITEHEAD TRUST First Applicants
	SHILOH CHARITABLE TRUST Second Applicant
AND	WATSON & SON LIMITED First Respondent
	DENIS ERIC WATSON AND MERYL JOY WATSON AS TRUSTEES OF THE SALEM CHARITABLE TRUST Second Respondents

Court: William Young, Glazebrook and Ellen France JJ

Counsel: M C Black and F G Dawson for Applicants
K P Sullivan for Respondents

Judgment: 30 August 2016

JUDGMENT OF THE COURT

A **The application for leave to appeal is dismissed.**

B **The applicants are to pay the respondents costs of $2,500.**

REASONS

[1] The proposed appeal arises out of a series of transactions between the applicants and associated interests ("the Whiteheads") and the respondents and associated interests ("the Watsons"). There are two Whitehead entities involved, the

J and R Whitehead Trust ("JRWT") and Shiloh (also a trust). On the Watson side, the entities were Watson & Son Limited ("WSL") and Salem (a trust).

[2] The Watsons are producers and suppliers of Manuka honey and the Whiteheads are beekeepers. The Whiteheads became involved in a tax dispute with the Commissioner of Inland Revenue in relation to a transaction between JRWT and Shiloh in relation to a sale and lease back of beehives. With a view to establishing the commerciality of the prices at which these transactions took place, the Whiteheads entered in broadly similar transactions with the Watsons.

[3] The payment arrangements as between the Whiteheads and the Watsons were interdependent, that is the ability of the Whiteheads to make payment to the Watsons was dependent on the payments the Watson were to make to the Whiteheads and vice versa. As the Court of Appeal pointed out, this interdependence makes it difficult to attribute responsibility for the consequential breakdown in relationships.[1]

[4] The litigation in the High Court involved a number of claims and counterclaims but the dispute is now confined to what in essence is a single issue which arises in this way.

[5] As at the end of July 2012, JRWT was relevantly in possession of a substantial number of hives including 1400 that were the subject of agreements to purchase between Shiloh and Salem. Salem was entitled to rent in respect of these from JRWT. As the dispute developed, JRWT stopped paying rent. The Watsons' response to the non-payment of rent was the non-payment by WSL to JRWT for honey purchased. Between 22 March and 9 April 2013, JRWT paid Shiloh $966,000. This was demanded by Shiloh on the basis that Salem's purchase price obligations to it were secured over Salem's entitlement against JRWT to rent. The underlying contractual arrangements were not cancelled until 11 April 2013.

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1 *Watson & Son Ltd v Whitehead* [2016] NZCA 241 (Kós, Keane and Dobson JJ) at [26].

[6] In issue is the liability for rent as between JRWT and Salem and in particular whether:

(a) Shiloh was the equitable owner of the rent debts so that the payment by JRWT to Shiloh discharged any obligation it had to Salem; and if not

(b) Salem's entitlement to the rent was displaced by its allegedly repudiatory conduct (namely repudiation of the agreements for the purchase of the 1400 hives).

[7] These arguments were addressed in detail by the Court of Appeal and dismissed. In the High Court the same conclusion (namely that JRWT was liable to Salem for the rent) was reached albeit that the arguments advanced in that Court appear to have been somewhat different from those now proposed.[2]

[8] Contrary to the contention of the applicants, we see no point of general or public importance involved. Rather, the case involved the application of settled principles of law to a very particular set of circumstances. The construction of the agreements adopted by the Court of Appeal was inconsistent with the equitable ownership contention. As well, given the alleged repudiation by Salem was not accepted by the Whiteheads, JRWT remained in possession of hives for which it had agreed to pay rent. In light of this, the conclusion that such rent should be paid up to the point at which the agreements were cancelled is unremarkable. As is apparent, we also see no appearance of a miscarriage of justice in result arrived at.

Solicitors:
Gaze Burt, Auckland for Applicants
WCM Legal, Wellington for Respondents

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2 *Watson v Whitehead* [2014] NZHC 2992 (Wylie J).