IN THE SUPREME COURT OF NEW ZEALAND

SC 132/2015
[2016] NZSC 49

BETWEEN		GALVANISING (HB) LIMITED First Applicant
		STUART DAVID EASTON AND ROBERT ELVIDGE AS TRUSTEES OF THE EASTON PROPERTY TRUST Second Applicants
		HOOKED ON TRANSPORT LIMITED Third Applicant
		STUART DAVID EASTON AND VIVIENNE JANE EASTON Fourth Applicants
AND		JOHN HOWARD ROSS FISK AND TONY WAYNE PATTISON AS LIQUIDATORS OF EAST QUIP LIMITED (IN LIQUIDATION) Respondents

Court: Elias CJ, William Young and O'Regan JJ

Counsel: C R Carruthers QC and G J Harley for Applicants
D Chan for Respondent

Judgment: 3 May 2016

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

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

REASONS

[1] This is an application for leave to appeal against a decision by the Court of Appeal[1] upholding orders made in the High Court[2] setting aside certain transactions between each of the applicants and a company now in liquidation, East Quip Limited (East Quip), on the basis that they were voidable transactions[3] and ordering each applicant to pay sums relating to the transactions to the respondents, who are the liquidators of East Quip (the liquidators).[4] For convenience we will refer to these orders by the colloquial name, claw back orders. The present application focuses on s 292(4B) of the Companies Act 1993, which treats all transactions entered into as part of a continuing business relationship as if they were a single transaction for the purposes of determining whether a transaction is voidable.

[2] East Quip and the applicants, Galvanising (HB) Limited (Galvanising) and Hooked on Transport Limited, the Easton Property Trust and Mr and Mrs Easton comprised a corporate trading group. Mr and Mrs Easton owned and controlled the group of companies. The liquidators succeeded in obtaining claw back orders in relation to payments and set offs made by East Quip to or in favour of all of the applicants. The most significant claw back order related to Galvanising, which was ordered to pay over $700,000 to the liquidators.

[3] The applicants wish to argue that the "continuing business relationship" for the purposes of s 292(4B) was not the individual relationships between East Quip and each of the applicants other than Mr and Mrs Easton but a tripartite relationship involving East Quip, the payee and Mr and Mrs Easton, who acted as bankers for the whole group. The applicants illustrate this by an example of a notional payment from East Quip to Galvanising.[5] The argument is that any payment by East Quip to Galvanising would be matched by a credit entry in the shareholder current account of Mr and Mrs Easton with East Quip and a matching debit entry in the current account of Mr and Mrs Easton with Galvanising.

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1 *Galvanising (HB) Ltd v Fisk* [2015] NZCA 529, (2015) 14 TCLR 204 (Cooper, Venning and Williams JJ) [*Fisk* (CA)].
2 *Fisk v Galvanising (HB) Ltd* [2013] NZHC 3543 (Associate Judge Osborne) [*Fisk* (HC)].
3 Companies Act 1993, ss 292 and 294.
4 Companies Act, s 295.
5 See *Fisk* (CA), above n 1, at [32].

[4] The process described in the example is said to have applied to all payments to and from group entities. On this basis, it is argued that it was necessary that the banking role played by Mr and Mrs Easton be recognised as part of the continuing business relationship. If the tripartite relationships were regarded as a continuing business relationship and transactions within the tripartite structure were treated as a single transaction as s 292(4B) requires, there would be no basis for the claw back orders. This argument was rejected by both the High Court and the Court of Appeal.

[5] Although the applicants raise arguments which may give rise to issues of general or public importance, the argument the applicants wish to make rests on a version of the facts that is contrary to concurrent findings in the High Court and Court of Appeal. The Associate Judge found that the transactions in issue were not part of a pre-planned and agreed arrangement under which all transactions would be netted off in the shareholder current accounts of Mr and Mrs Easton and the Court of Appeal upheld that finding.[6] We do not see any proper basis to revisit these factual findings and we see them as precluding the argument the applicants wish to pursue if leave is granted.

[6] For this reason, we do not consider that it is in the interests of justice to grant leave to appeal. We therefore dismiss the application for leave and award costs of $2,500 to the respondents.

Solicitors:
Lawson Robinson, Napier for Applicants
Carlile Dowling, Napier for Respondents

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6 *Fisk* (CA), above n 1, at [50]; *Fisk* (HC), above n 2, at [72].