IN THE SUPREME COURT OF NEW ZEALAND

SC 58/2016
[2016] NZSC 80

BETWEEN	MORRIS BURTON SUCKLING Applicant
AND	THE QUEEN Respondent

Court: William Young, Glazebrook and Arnold JJ

Counsel: Applicant in person
P D Marshall for Respondent

Judgment: 4 July 2016

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] Following a jury trial before Judge Atkins QC the applicant, Mr Suckling, was convicted of five charges of knowingly providing misleading income tax returns and 10 charges of evading the assessment or payment of GST. Judge Lynch sentenced him to one year's imprisonment, with leave to apply for home detention.[1] His appeal to the Court of Appeal against both conviction and sentence was dismissed.[2]

[2] Mr Suckling now seeks leave to appeal to this Court. His principal grounds are that the Courts below "ignored or misapplied" s 109 of the Tax Administration Act 1994 and that there was "procedural injustice" because the District Court did not hear and determine, post-trial, certain objections to the admissibility of evidence relied on by the Crown. He also argues that although his Notice of Proposed

1 *R v Suckling* [2015] NZDC 14634.
2 *Suckling v R* [2016] NZCA 187, (2016) 27 NZTC 22-051 (French, Simon France and Ellis JJ).

Adjustment (NOPA) was in evidence, it was not referred to by the Judge in his summing up. The overall thrust of Mr Suckling's submissions is that a substantial miscarriage of justice has occurred.

[3] As to the s 109 ground, despite the explanations that have been given by the Courts below, Mr Suckling appears to misunderstand the relationship between the process for challenging a tax assessment, which is a civil process, and the process for prosecuting breaches of the tax laws, which is a criminal process. Where a taxpayer who is charged with tax evasion offences is challenging his tax liability through the civil dispute process, the appropriate course is that the criminal proceedings be dealt with first. That is what occurred in this case. In the criminal proceedings, the Crown was obliged to prove all elements of the charges beyond a reasonable doubt. It did so without relying on the Commissioner's challenged assessments. The assessments were referred to in evidence only as part of the factual narrative; the evidence also made it clear that Mr Suckling was disputing them and that the dispute had not been resolved at the time of trial. In the particular circumstances of this case, s 109 was irrelevant to the prosecution.

[4] Turning to the post-hearing admissibility ground, Mr Suckling's concern appears to be with evidence which he considered to be propensity evidence prejudicial to him. This appears to be evidence relating to the Commissioner's audit of Mr Suckling in 2006. In the course of the audit process, the Commissioner wrote to Mr Suckling setting out his legal obligations in relation to income tax and GST. This evidence was clearly relevant to the issue of Mr Suckling's knowledge of his obligations and was accordingly admissible. Judge Atkins took care to instruct the jury that the evidence was not to be used as indicating that Mr Suckling had a propensity to act in a particular way or have a particular state of mind.

[5] Finally, in relation to the NOPA, the Crown says that it was not put in evidence by either party. The Crown did not produce the NOPA as it did not see it as being relevant to the issues in the trial. Mr Suckling, who appeared for himself despite Judge Atkins' suggestions that he obtain counsel, did not cross-examine any of the Crown witnesses, did not give or call evidence and made no closing address to the jury. In any event, even if the NOPA was in evidence, it is difficult to see what

relevance it could have had. Moreover, this ground does not appear to have been raised before the Court of Appeal, so that this Court does not have the benefit of the Court of Appeal's views on it. For these reasons, we do not consider that the point is one that this Court should address.

[6] In the result, we are not satisfied that it is necessary in the interests of justice that we hear and determine this appeal. It raises no point of general or public importance, nor is there any risk of a substantial miscarriage of justice. The application for leave to appeal is accordingly dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent