

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 133/2022
[2023] NZSC 36

BETWEEN GAUTAM JINDAL
 Applicant

AND ORANGE CAPITAL LIMITED
 (IN LIQUIDATION)
 Respondent

Court: O'Regan and Williams JJ

Counsel: Applicant in person
 J K Mahuta-Coyle for Respondent

Judgment: 19 April 2023

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B The applicant must pay the respondent costs of \$2,500.**
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REASONS

[1] The applicant, Mr Jindal, was the sole director and shareholder of the respondent, Orange Capital Ltd (the company). After the company was placed into liquidation, the liquidator, on behalf of the respondent, sued Mr Jindal for the outstanding balance of his shareholder's current account with the company. The liquidator applied for summary judgment seeking recovery of \$82,277. The liquidator was largely successful in the District Court: the Judge entered summary judgment for \$68,680.03 plus costs and disbursements.¹

¹ *Orange Capital Ltd v Jindal* DC Auckland CIV-2017-004-2856, 31 May 2021 (Judge Hinton).

[2] Mr Jindal appealed to the High Court. He was partially successful. The High Court Judge reduced the amount for which summary judgment was entered to \$50,696.49.² But Mr Jindal's arguments that summary judgment should not have been entered against him were rejected.

[3] Mr Jindal applied to the High Court for leave to appeal to the Court of Appeal. The High Court Judge rejected most of the grounds on which Mr Jindal wished to appeal, but granted leave to appeal on one ground:³

Does the District Court have jurisdiction to hear a liquidator's common law debt claim against a director in respect of an overdrawn shareholder's account?

[4] In the Court of Appeal, Mr Jindal sought leave to adduce further evidence and also tried to expand the scope of the appeal beyond the issue for which leave had been granted by the High Court. The Court of Appeal briefly considered the five additional grounds of appeal that Mr Jindal sought to raise but concluded there was nothing in any of them.⁴ On the question of law for which leave to appeal was granted, the Court of Appeal upheld the finding of the High Court that the District Court had jurisdiction to determine the liquidator's claim for the balance due on Mr Jindal's shareholder's current account with the company.⁵

[5] Mr Jindal now seeks leave to bring a further appeal to this Court. His notice of application seeking leave to appeal specifies four grounds. Two of these are broadly related to the question for which leave to appeal to the Court of Appeal was granted. Two are points on which leave to appeal to that Court had not been permitted.

[6] Mr Jindal seeks to re-categorise the liquidator's claim as being a claim to void transactions entered into between Mr Jindal and the company under s 292 of the Companies Act 1993, and to argue that the liquidator's claim came within s 301 of the Companies Act. The concurrent findings of the Courts below are that this is a mischaracterisation of the liquidator's claim, which was simply a claim for a debt

² *Jindal v Orange Capital Ltd (in liq)* [2021] NZHC 2917 (Whata J).

³ *Jindal v Orange Capital Ltd (in liq)* [2021] NZHC 3449 (Whata J) at [57].

⁴ *Jindal v Orange Capital Ltd (in liq)* [2022] NZCA 540 (Gilbert, Venning and Mander JJ) at [20] and [26].

⁵ At [29]–[33].

outstanding to the company. We see Mr Jindal's arguments as being entirely limited to the facts of the present case, and therefore raising no matter of general or public importance nor any matter of general commercial significance.⁶ Nor do we see any appearance of a miscarriage of justice in the way the lower Courts addressed these issues.⁷

[7] Mr Jindal also wishes to argue that certain evidence given in the District Court was expert evidence, on which he should have had the opportunity to cross-examine the expert. This is a mischaracterisation of that evidence and we see no error in the way in which the lower Courts addressed the issue. Thus, the criteria in s 74(2) of the Senior Courts Act 2016 are not met in relation to this ground.

[8] The last ground on which leave is sought is that Mr Jindal claimed minimum wage entitlements as prescribed by the Minimum Wage Act 1983 in relation to work done for the company prior to the liquidation. However, as the Courts below found, that claim was also misguided, given that no payment of salary was authorised under s 161(1) of the Companies Act. Again, the leave criteria in s 74(2) of the Senior Courts Act are not met.

[9] None of the grounds on which Mr Jindal seeks leave to appeal meets the criteria for the grant of leave. The application for leave to appeal is therefore dismissed.

[10] Mr Jindal must pay the respondent costs of \$2,500.

Solicitors:
Langford Law, Wellington for Respondent

⁶ Senior Courts Act 2016, s 74(2)(a) and (c).

⁷ Section 74(2)(b).