

IN THE SUPREME COURT OF NEW ZEALAND

**SC 37/2006
[2006] NZSC 55**

DAVID CHARLES ADAMS

v

THE QUEEN

Court: Elias CJ, McGrath and Anderson JJ

Counsel: J N Bioletti for Applicant
K B F Hastie for Crown

Judgment: 21 July 2006

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant was convicted by a jury in the District Court at Auckland on 11 charges of using a document to obtain a pecuniary advantage (s 229A(b), Crimes Act 1961). He appealed unsuccessfully to the Court of Appeal against both his conviction and sentence. He now seeks leave to appeal to this Court against the dismissal of his appeal against conviction. His sole ground is that a substantial miscarriage of justice may have occurred or may occur unless the appeal is heard.

[2] The background is that the applicant controlled a company called Champion People Ltd (“Champion”) which invoiced clients for labour costs, adding a 12.5 per cent GST component to each invoice. The customers would only pay Champion the GST component. Another company controlled by the applicant invoiced Champion for fictitious insurance premiums, also adding a GST component. Champion filed monthly GST returns with Inland Revenue which aggregated GST income and expenditure, the overall effect being to reduce to close to nothing the amount of GST apparently payable to Inland Revenue in accordance with the monthly returns. They were signed and filed by the applicant.

[3] In the Court of Appeal, the applicant argued that he had been wrongly convicted. His counsel said that Champion had not been carrying on a taxable activity so that the payments when received in its hands did not have a GST character. It followed that neither Champion nor the applicant had any liability to account to Inland Revenue for the monies received from Champion’s clients. Counsel argued that, in the absence of any such tax liability, the false returns filed by the applicant were incapable of being used to obtain a pecuniary advantage so that he should not have been convicted under s 229A(b).

[4] That argument was rejected by the Court of Appeal and the applicant now seeks to raise it in a further appeal to this Court. We are satisfied, however, that the argument is untenable. Whether or not the monies received by Champion had the character of GST when Champion received them, the applicant submitted false returns with the intention that Inland Revenue would act on them to allow an input credit. Champion derived a benefit through the applicant’s false returns, because it had no right to keep the monies it received and the applicant’s purpose in filing the false returns was to prevent discovery of the dishonest retention.

[5] It was accordingly open to the jury to decide, in accordance with the Crown case, that Champion had derived a pecuniary advantage through the applicant’s use of the false return documents. In those circumstances no miscarriage of justice arises from the contention by the applicant that Champion had not been undertaking a taxable activity and did not owe GST. It is not in the interests of justice for the

Court to grant leave to the applicant to bring a second appeal in this matter and the application is dismissed.

Solicitors:
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