IN THE SUPREME COURT OF NEW ZEALAND

SC 86/2006
[2007] NZSC 60

DAVID JAMES THOMAS WATT

v

THE QUEEN

Court: Elias CJ, Blanchard and Tipping JJ

Counsel: T J Darby for Applicant
K Hastie for Crown

Judgment: 30 July 2007

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] Mr Watt was the sole trustee of a deceased estate. As solicitor for the estate he rendered bills to it which he paid out of its funds held for the estate in his trust account. He was charged under s 230 of the Crimes Act 1961 (as it then stood) with criminal breach of trust. The trial was by Judge alone. The guilty verdict followed from the Judge's finding that Mr Watt knew that he was not entitled to charge for the particular matter, namely for work which he did when beneficiaries of the estate sought a revision of costs which he had previously rendered. The applicant's case that the verdict was unreasonable or unsupported by the evidence was rejected by the

Court of Appeal. Although at points in its judgment the Court of Appeal says that it was "open" to the Judge to find as he did, it is clear enough that on the central issue of Mr Watt's dishonesty in relation to his charging of fees the Court considered that the Judge was obviously correct.

[2] The applicant seeks to raise a number of matters in this Court for the first time. None of them has any force. It is suggested that Mr Watt was acting in his capacity as a solicitor rather than as a trustee so that, technically, s 230 did not apply. Certainly he rendered the bills as a solicitor but when he paid them from his trust account he was doing so in his capacity as a trustee. At best it can be said that he had both hats on at this time, as trustee authorising the transfer of the funds from the trust account and as solicitor undertaking the mechanics of that exercise. The Judge was well entitled to conclude that Mr Watt must have known he was not entitled to charge for the matters in question. He was plainly acting with dishonest intent and in violation of the trust and therefore converting the funds to a use not authorised by the trust. His actions did therefore fall within s 230.

[3] The Court of Appeal also dismissed an argument that Mr Watt in fact thought he was entitled to charge for work done relating to the possibility of a negligence claim, which the Judge thought was an artifice, on the basis that it was open to the Judge so to conclude. But it also said that, on its analysis, this aspect of the case was not central. Given the apparent weakness of the suggestion - the lawyer for the children made no threat of a proceeding for negligence and the will had been prepared by another solicitor from whom Mr Watt obviously could have sought indemnity - this does not provide an arguable ground that the verdict was unreasonable.

[4] The argument that the prosecutorial delay of three years before laying the charge was an abuse of process is forlorn. Section 25(b) of the New Zealand Bill of Rights Act 1990 has no application to pre-charge delay except possibly to require greater speed post-charge[1] and no issue of post-charge delay was raised below.

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1 *Rust v R* (1995) 13 CRNZ 621 at 627.

[5] It is further submitted that the trial Judge could not go behind the findings of the cost revisors under the Law Practitioners Act 1982. We do not accept that this proposition is reasonably arguable. The Judge found that the attendances which were the subject of the cost provision were not in fact undertaken. He could not be precluded from determining that they were fraudulent merely because the cost revisors had carried out an examination of whether the quantum of the bill of costs was properly calculated for the supposed attendances.

[6] We are satisfied that no question of general or public importance has been raised and that there is no appearance of any miscarriage of justice in relation to the conviction.

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