IN THE SUPREME COURT OF NEW ZEALAND

SC 14/2009
[2009] NZSC 28

BETWEEN	AUDREY BREDMEYER Applicant
AND	THE CHIEF EXECUTIVE OF THE MINISTRY OF SOCIAL DEVELOPMENT Respondent

Court: Elias CJ, Blanchard and Wilson JJ

Counsel: J A Dean for Applicant
U R Jagose for Respondent

Judgment: 30 March 2009

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed, with costs of $2,500 to the respondent.

REASONS

[1] Article 9(3) of the March 2001 Agreement on Social Security between the Government of New Zealand and the Government of Australia provides, in material part, that where a resident of Australia is entitled to New Zealand Superannuation "the amount the person is entitled to receive shall not exceed the amount of Australian age pension that would have been payable to that person if he or she was entitled to receive on Australian age pension". The Benefit Review Committee, the

Social Security Appeal Authority,[1] the High Court[2] and the Court of Appeal[3] have all held (where relevant, unanimously) that the effect of these words is to cap the rate of New Zealand Superannuation payable at the rate of the Australian Age Pension which would, in fact, be payable if the claimant were not eligible for New Zealand Superannuation. The applicant, a New Zealand resident living in Australia, wishes to argue again, however, on an appeal to this Court, that the effect of the word "if" is to require the assumption that those in the position of the applicant are entitled to the Australian benefit even though, in reality, they are not because that benefit is means-tested.

[2] It is not surprising that this argument has been consistently rejected. It requires the adoption of a strained interpretation in substitution for the plain and ordinary meaning of the words. It would result in inequity by advantaging New Zealand residents who have lived for many years in Australia over Australian residents, contrary to the expressed objective of the Social Welfare (Reciprocity with Australia) Order 2002[4] of enhancing "equitable access" to social security benefits. As the Court of Appeal demonstrated,[5] it would also defeat the intention of the New Zealand Parliament.

[3] The argument which the applicant seeks to advance is not a tenable one. The application for leave to appeal is therefore dismissed, with costs of $2,500 to the respondent. The respondent did not seek costs in the Courts below, and may or may not wish to enforce this costs order.

Solicitors:
John Dean Law Office, Wellington for Applicant
Crown Law, Wellington for Respondent

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1 [2006] NZSSAA 57.
2 High Court, Wellington, CIV-2007-485-105; 20 September 2007, Gendall J.
3 [2008] NZCA 557, Arnold, Ellen France and Baragwanath JJ; 17 December 2008.
4 This Order enacted the Agreement as secondary legislation.
5 At paras [42] to [50].