

IN THE SUPREME COURT OF NEW ZEALAND

**SC 7/2012
[2012] NZSC 6**

BETWEEN

RITA WILSON
Applicant

AND

DAVID MURRAY BLANCHETT &
GRANT EDWARD BURNS
Respondents

Court: Elias CJ, Blanchard and Tipping JJ

Counsel: G M Illingworth QC for Applicant
M D Branch for Respondents

Judgment: 24 February 2012

JUDGMENT OF THE COURT

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

REASONS

[1] While APG Holdings Ltd (now in liquidation) was under the control of Mrs Wilson's father and/or husband, substantial payments were made to her from the company. The liquidators are seeking to recover them under s 298(2) of the Companies Act 1993 saying that they were a disposition of the company's property exceeding the value of any consideration received by the company.

[2] Mrs Wilson's response, at least in its present form, is that these were drawings made by her husband which he had an obligation to repay to the extent that they exceed what is owed to him for services rendered to the company. It is now accepted for Mrs Wilson that no part of the payments was by way of salary due by the company to her husband.

[3] It must be the position for the purposes of s 298(2), that Mrs Wilson is not entitled to say that consideration has been provided by her husband merely because he accepts that he has an obligation to repay the moneys. If a person draws on their current account with the company to an extent greater than their entitlement, the consequent obligation to repay cannot be regarded as providing consideration for the overpayment by the company. To hold otherwise might frustrate the use of the section where a person has, with or without authority, overdrawn his or her account with the company and has caused the overdrawing to be paid to a third party.

[4] It is said for Mrs Wilson that she is entitled to retain the moneys to the extent that her husband has not received payment for services rendered to the company. But no evidence has been put forward about the nature or value of the alleged services.

[5] We are not persuaded that it is arguable that the Court of Appeal was wrong in these circumstances to uphold entry of summary judgment against Mrs Wilson in the (reduced) amount which it stipulated.¹

[6] No arguable question of general or public importance is raised and there is no appearance of any substantial miscarriage of justice.

[7] Before leaving this matter we should add that we consider that the use of the word “misappropriations” by the Court of Appeal was an unfortunate characterisation of the overdrawings, given that they are said to have been authorised and that no dishonesty seems to have been asserted on the part of the Wilsons.

Solicitors:
McLeod & Associates, Auckland for Applicant
Harkness Henry, Hamilton for Respondents

¹ *Wilson v AGP Holdings Ltd (In Liquidation)* [2011] NZCA 647.