

IN THE SUPREME COURT OF NEW ZEALAND

SC 19/2016
[2016] NZSC 46

BETWEEN GRAHAM WILLIAM D'ARCY-SMITH
 Applicant

AND NATURAL HABITATS LIMITED
 Respondent

Court: William Young, Arnold and O'Regan JJ

Counsel: Applicant in Person
 L Herzog for Respondent

Judgment: 28 April 2016

JUDGMENT OF THE COURT

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

[1] The applicant seeks leave to appeal to this Court directly from a decision of the Employment Court.¹ In that decision, the Employment Court decided that the applicant had not been an employee of the respondent, but was rather an independent contractor. His claim against the respondent for unjustifiable dismissal therefore failed.

[2] The applicant applied for leave to appeal to the Court of Appeal against the decision of the Employment Court. Leave was refused on the basis that his proposed appeal essentially challenged factual findings and therefore did not meet the criteria

¹ *D'Arcy-Smith v Natural Habitats Ltd* [2015] NZEmpC 123 (Judge Christina Inglis).

in s 214 of the Employment Relations Act 2000.² There is no provision for an appeal against a decision of the Court of Appeal refusing leave to appeal to that Court.³

[3] Faced with that impediment, the applicant seeks leave to appeal directly to this Court against the Employment Court decision. The provision applying to the application is s 214A of the Employment Relations Act, which limits appeals under the Employment Relations Act to appeals alleging the Employment Court decision is “wrong in law”.

[4] In addition, s 214A of the Employment Relations Act is subject to s 14 of the Supreme Court Act 2003. Under that section, this Court may not grant leave for a direct appeal from a Court other than the Court of Appeal unless it is satisfied that it is in the interests of justice to do so and, in addition, that there are exceptional circumstances that justify taking the proposed appeal directly to the Supreme Court. In a case where an application for leave to appeal to the Court of Appeal has already been refused, the circumstances in which a direct appeal could be brought to this Court “would have to be extremely compelling”.⁴

[5] The Court of Appeal refused leave to appeal to that Court because it considered that the proposed appeal essentially challenged factual findings and that it failed, by a wide margin, to meet the threshold in s 214 of the Employment Relations Act.⁵ Section 214A is materially identical to s 214. The matters that the applicant wishes to raise on appeal are, as the Court of Appeal noted, matters of fact which are outside the scope of an appeal from the Employment Court, whether to the Court of Appeal or to this Court. We do not consider that the criteria in s 214A are met, let alone the requirement of s 14 of the Supreme Court Act that there be exceptional circumstances.

² *D’Arcy-Smith v Natural Habitats Ltd* [2016] NZCA 20 (Wild, Winkelmann and Kós JJ) [*D’Arcy-Smith* (CA)].

³ Supreme Court Act 2003, s 7(b).

⁴ *Burke v Western Bay of Plenty District Council* [2005] NZSC 46, (2005) 18 PRNZ 560, at [4].

⁵ *D’Arcy-Smith* (CA), above n 2, at [16].

[6] In those circumstances, we decline leave.

[7] The respondent filed a brief submission opposing leave. We consider that an award of costs is appropriate, but given that a full submission from the respondent was not required, we limit that award to \$500.

Solicitors:
Smith and Partners, Auckland for Respondent