

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

**SC 12/2021
[2021] NZSC 133**

BETWEEN CHESTERFIELDS PRESCHOOLS
LIMITED (IN LIQUIDATION)
First Applicant

THERESE ANNE SISSON
Second Applicant

AND COMMISSIONER OF INLAND
REVENUE
Respondent

SC 17/2021

BETWEEN THERESE ANNE SISSON
Applicant

AND CHESTERFIELDS PRESCHOOLS
LIMITED (IN LIQUIDATION)
Respondent

SC 18/2021

BETWEEN THERESE ANNE SISSON
Applicant

AND CHESTERFIELDS PRESCHOOLS
LIMITED (IN LIQUIDATION)
Respondent

Court: William Young, O'Regan and Ellen France JJ

Counsel: T A Sisson in person
S M Kinsler for Commissioner of Inland Revenue

Judgment: 8 October 2021

JUDGMENT OF THE COURT

**A The application for recall of this Court's judgment of
12 July 2021 (*Chesterfields Preschools Ltd (in liq) v***

Commissioner of Inland Revenue [2021] NZSC 83) is dismissed.

B The applicant must pay costs of \$500 to the Commissioner of Inland Revenue.

REASONS

Introduction

[1] The applicant, Ms Sisson, seeks recall of our judgment of 12 July 2021 declining leave to appeal.¹ The leave applications related to three Court of Appeal judgments which dismissed a number of appeals against judgments of the High Court.² The primary focus of the applications concerned the liquidation of Chesterfields Preschools Ltd (CPL), a company associated with Ms Sisson and her former husband, Mr Hampton.

[2] Recall is sought on the basis that the Court has not been directed to legislative provisions and authoritative decisions of plain relevance, and on the basis that for some other very special reason, justice requires that the judgment be recalled.³ The provisions relied on are ss 109 and 114 of the Tax Administration Act 1994, and the decision relied on is this Court's judgment in *Tannadyce Investments Ltd v Commissioner of Inland Revenue*.⁴

¹ *Chesterfields Preschools Ltd (in liq) v Commissioner of Inland Revenue* [2021] NZSC 83 [SC leave judgment].

² *Chesterfields Preschools Ltd (in liq) v Commissioner of Inland Revenue* [2020] NZCA 686 (Miller, Venning and Katz JJ) [2020 CA liquidation judgment]; *Sisson v Chesterfields Preschools Ltd (in liq)* [2020] NZCA 687 (Miller, Venning and Katz JJ); and *Sisson v Chesterfields Preschools Ltd (in liq)* [2020] NZCA 689 (Miller, Venning and Katz JJ).

³ *Saxmere Co Ltd v Wool Board Disestablishment Co Ltd (No 2)* [2009] NZSC 122, [2010] 1 NZLR 76 at [2], citing *Horowhenua County v Nash (No 2)* [1968] NZLR 632 (SC) at 633. See also *Craig v Williams* [2019] NZSC 60 at [10].

⁴ *Tannadyce Investments Ltd v Commissioner of Inland Revenue* [2011] NZSC 158, [2012] 2 NZLR 153. Reference is also made to *Chesterfields Preschools Ltd v Commissioner of Inland Revenue (No 4)* [2012] NZHC 1525, (2012) 25 NZTC ¶20-132 and decisions associated with that judgment, but we do not see those decisions as relevant.

Background

[3] The background to the current proceedings is procedurally complex.⁵ It is sufficient to say that the argument Ms Sisson wishes to make on appeal is that if CPL's tax debt had been properly calculated, CPL would not be insolvent and so should not have been put into liquidation. The Court of Appeal rejected this argument about the calculation,⁶ referring in that context to earlier judgments of that Court on these issues in 2010⁷ and in 2017.⁸ The relevant part of the applicant's claim for present purposes is that, in calculating the amount owing, insufficient account has been taken of what Ms Sisson says have been denials of non-disclosure by the Commissioner of Inland Revenue in relation to the Commissioner's arrangements with the taxpayer and late discovery in the context of the litigation between the parties.

[4] In declining leave, this Court said that questions about disclosure were at the heart of misfeasance proceedings brought by the applicant. The judgment noted:⁹

But the argument that the liquidation order was premature and should have awaited the outcome of those proceedings faces a number of impediments such that we are satisfied that it has insufficient prospects to warrant leave. This argument was rejected by the Court of Appeal in its 2017 judgment. Leave to appeal on this point was declined. In addition, nothing raised by Ms Sisson suggests any apparent error in the 2020 Court of Appeal's assessment of the legal position. As the Court said, at its best, this is a contingent and unliquidated claim. It is for the liquidator to decide whether to pursue it. Finally, the misfeasance proceedings are currently stayed and the stay would still need to be lifted by the High Court.

The recall application

[5] Ms Sisson's argument in respect of the recall application is that this Court's expectation that the misfeasance proceedings were capable of providing a full range of remedies to her are frustrated by the ouster provisions in ss 109 and 114 of the Tax Administration Act as construed by the Court in *Tannadyce*. That is because, she says, the effect of *Tannadyce* is that the questions as to the import of the issues relating to

⁵ See the description in SC leave judgment, above n 1, at [3]–[7] and [13]–[15].

⁶ 2020 CA liquidation judgment, above n 2.

⁷ *Commissioner of Inland Revenue v Chesterfields Preschools Ltd (No 2)* [2010] NZCA 400, (2010) 24 NZTC 24,500.

⁸ *Sisson v Commissioner of Inland Revenue* [2017] NZCA 326, (2017) 28 NZTC ¶23-023 [2017 CA judgment].

⁹ SC leave judgment, above n 1, at [24] (footnotes omitted).

disclosure could only be heard and resolved by the Taxation Review Authority (or the High Court if elected) in the context of earlier tax challenge proceedings brought by the applicant.¹⁰ In other words, the tax challenge proceedings provide the appropriate forum for the outstanding issues to be resolved and the failure to recognise that may have given rise to a miscarriage of justice.

[6] Ms Sisson also says that this Court and the other Courts which have heard these and related proceedings have been misled by the Commissioner's denials of non-disclosure and late discovery. The argument is that, if proven, this would provide a basis for challenging aspects of both the Court of Appeal's 2010 judgment and the later 2017 judgment.¹¹ This, she says, constitutes a very special reason where justice requires the judgment be recalled.

[7] We do not see these matters as providing a basis for recall of the Court's earlier judgment. The Court of Appeal in the 2017 judgment said that the "issues that were ultimately addressed and resolved" by that Court "may not be revisited again in the so-called TRA proceeding or the NOPA proceeding".¹² That was because "[t]hose proceedings do not live on in isolation from the previous conclusions reached by this Court".¹³ Ms Sisson seeks to downplay that conclusion, but she needed to challenge the *res judicata* finding in that context. Her attempt to do so was not successful.¹⁴ That is the end of the matter. Further, whatever the merits of the argument Ms Sisson now wishes to make based on the approach in *Tannadyce* or based on denials of non-disclosure and late discovery, those arguments could and should have been made well before now. The claims about the Commissioner's approach to disclosure and discovery are by no means recent ones. It is simply too late now to seek to recast the arguments about the effect of those matters.

¹⁰ This is a reference to a proceeding brought in 2005 (and amended in 2007) in the Taxation Review Authority (the TRA proceeding) and a proceeding brought in 2009 to enforce a Notice of Proposed Adjustment lodged in 2007 (the NOPA proceeding).

¹¹ The end result would be to show there was a genuine and substantial dispute as to the existence of the debt, such that it was premature to make a liquidation order. The applicant relies in this respect on s 290(4) of the Companies Act 1993 and *Yan v Mainzeal Property and Construction Ltd (in rec and in liq)* [2014] NZCA 190.

¹² 2017 CA judgment, above n 8, at [102].

¹³ At [102].

¹⁴ *Chesterfields Preschools Ltd (in liq) v Commissioner of Inland Revenue* [2017] NZSC 168, (2017) 28 NZTC ¶23-038.

Result

[8] The application for recall of this Court's judgment of 12 July 2021 (*Chesterfields Preschools Ltd (in liq) v Commissioner of Inland Revenue* [2021] NZSC 83) is dismissed.

[9] The applicant must pay costs of \$500 to the Commissioner of Inland Revenue.

Solicitors:

Lane Neave, Christchurch for Chesterfields Preschools Ltd (in liq)

Crown Law Office, Wellington for Commissioner of Inland Revenue and Official Assignee