

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 54/2021
[2021] NZSC 86

BETWEEN JOHN ALFRED DOWDEN
Applicant
AND COMMISSIONER OF INLAND
REVENUE
Respondent

Court: William Young, Glazebrook and Williams JJ
Counsel: Applicant in person
M J Bryant and C M Kern for Respondent
Judgment: 15 July 2021

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B The applicant must pay the respondent costs of \$2,500.**
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REASONS

Introduction

[1] Mr Dowden (who is self-represented) applies for leave to appeal the decision of the Court of Appeal declining his application for an extension of time.

Background

[2] Around 2010, the Inland Revenue Department | Te Tari Taake (IRD) began investigating Mr Dowden's tax affairs in relation to his business, Safeguard Security.

The Commissioner assessed him for tax liabilities for the period between 2004 and 2012.

[3] Mr Dowden challenged the assessment. His case was that he transferred his interest in the business to his former partner, Ms Jackson, in December 2003, so she is liable for the tax assessed by the Commissioner. The Commissioner's position was that Mr Dowden owned and operated Safeguard at all relevant times.

[4] The Taxation Review Authority (TRA) dismissed Mr Dowden's challenge in 2018.¹ It did not accept Mr Dowden's evidence that he had stopped trading as Safeguard in the relevant period. Mr Dowden's appeal to the High Court was dismissed in October 2019.²

[5] Mr Dowden filed a notice of appeal in the Court of Appeal in November 2019. After an unsuccessful application to dispense with security for costs, an unsuccessful application for review of that refusal, and the grant of multiple extensions to apply for a hearing date, Mr Dowden's appeal was deemed abandoned on 14 July 2020.³

[6] Mr Dowden then applied for a further extension of time to file the case on appeal and pay the scheduling fee. The Court of Appeal decision on that extension application is the subject of the present application for leave to appeal.⁴

Court of Appeal decision

[7] The Court of Appeal applied the principles in *Almond v Read*.⁵ The Court acknowledged that delays subsequent to April 2020 were attributable to Mr Dowden's ill health and the death of his son in May 2020, and also that some latitude should be allowed to unrepresented litigants.⁶

¹ *XXX v Commissioner of Inland Revenue* [2018] NZTRA 7.

² *Dowden v Commissioner of Inland Revenue* [2019] NZHC 2729, (2019) 29 NZTC ¶24-025 (Peters J).

³ See Court of Appeal (Civil) Rules 2005, r 43.

⁴ *Dowden v Commissioner of Inland Revenue* [2020] NZCA 630, (2020) 29 NZTC ¶24-068 (Miller and Courtney JJ).

⁵ At [3]–[4], citing *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801 at [35]–[40].

⁶ At [6] and [10].

[8] The Court found, however, that there was insufficient merit in the proposed appeal to justify the extension of time.⁷ Mr Dowden had not identified any specific grounds of appeal, and the Court considered there was no apparent error in the High Court’s decision, given the TRA’s credibility findings and reliance on contemporaneous documents.⁸

Applicant’s submissions

[9] Essentially, Mr Dowden’s case is that Ms Jackson should have been called to give evidence in the TRA. Mr Dowden says that she would have confirmed her written statements to the IRD admitting liability in place of Mr Dowden. Mr Dowden also alleges that the IRD actively prevented Ms Jackson from giving evidence in the TRA. He seeks an opportunity to produce her evidence as new evidence.

[10] Mr Dowden also makes reference to “a number of other matters” he intends to raise, but these are not particularised.

Analysis

[11] Mr Dowden’s application does not raise any issue of general or public importance.⁹ The Court of Appeal applied settled law to the application before it.¹⁰ Mr Dowden has not raised any challenge to that Court’s application of *Almond v Read* or its principles.

[12] Mr Dowden’s main argument is that a miscarriage of justice will occur if he is not permitted to continue his appeal in the Court of Appeal because he has “a very worthwhile case”. He relies on the fact that evidence from Ms Jackson would prove that he should not be liable for the tax for which he has been assessed.

[13] We are not satisfied that this is the case. The merits of Mr Dowden’s position were fully ventilated before the TRA. Ms Jackson’s statements to the IRD were

⁷ At [10].

⁸ At [9].

⁹ Senior Courts Act 2016, s 74(2)(a).

¹⁰ See *Rabson v Attorney-General* [2017] NZSC 149 at [3] as to the applicability of *Almond v Read* to applications for extensions of time under the Court of Appeal (Civil) Rules generally.

addressed there. The TRA considered all the evidence and made credibility findings against Mr Dowden. We see no prospect that a miscarriage of justice will occur if Mr Dowden does not obtain an extension.¹¹

Result

[14] The application for leave to appeal is dismissed.

[15] The applicant must pay the respondent costs of \$2,500.

Solicitors:
Crown Law Office, Wellington for Respondent

¹¹ Senior Courts Act, s 74(2)(b). See also *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [4]–[5].