

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 66/2023
[2023] NZSC 101

BETWEEN JAMES HOWARD NIGEL SMALLEY
Applicant

AND GRANT ROBERT WILLIAMSON, IAN
PERRY, DAVID MICHAEL HAYES,
GRANT TREVOR DAVIES and JEREMY
DANIEL SULLIVAN
Respondents

Court: Glazebrook, O'Regan and Ellen France JJ

Counsel: W J Palmer for Applicant
R W Raymond KC and J M McGuigan for Respondents

Judgment: 10 August 2023

JUDGMENT OF THE COURT

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

Introduction

[1] This proposed appeal relates to the valuation of shares held by Mr Smalley in companies providing financial advisory and investment services in Christchurch. These shares were being sold to the remaining shareholders in accordance with a transfer notice issued by Mr Smalley in September 2018.

Background

[2] The parties were unable to agree on the value of the shares and, until mid-2021, were in dispute over the process of valuation. Finally, it was agreed that they would instruct Ernst & Young Strategy and Transactions Ltd (EY) to value the shares. However, the parties were unable to agree to the terms on which the valuation was to be done but agreed that these would be decided by arbitration. In the course of the arbitration and following further negotiations, the parties reached an agreement on the terms of reference for EY to conduct the valuation. These were recorded in a Joint Instruction to Valuer in March 2021.

[3] EY issued a final valuation report in December 2021. A draft report had been issued in October 2021 and the parties had been given the opportunity to provide further information and submissions.

[4] The parties had agreed that payment for the shares would be made 20 working days after the independent valuation was released. Mr Smalley refused to settle on the basis that the EY report was not final and there should be the opportunity to make further submissions.

Procedural history

[5] The remaining shareholders brought an application for summary judgment which was granted by the High Court.¹ An appeal against that decision to the Court of Appeal was dismissed.²

Application for leave to appeal

[6] Mr Smalley seeks leave to appeal against the Court of Appeal decision basically on the basis that the EY valuation was wrong and that the Courts below made errors of principle when evaluating whether EY had complied with the terms setting out the agreed basis for the valuation.

¹ *Williamson v Smalley* [2022] NZHC 1452 (Associate Judge Paulsen) [HC judgment].

² *Smalley v Williamson* [2023] NZCA 174 (Collins, Venning and Gendall JJ) [CA judgment].

Our assessment

[7] The issue in both the High Court and the Court of Appeal was whether the valuation was conducted in accordance with the agreed terms. After careful analysis, both Courts concluded that it had been.³ It is also relevant that the parties had agreed to be bound by the independent valuation and that they would not challenge it “either directly or indirectly”.⁴

[8] This case depends on its particular facts and therefore raises no issue of general or public importance or commercial significance.⁵ Nothing raised by Mr Smalley suggests that the analysis in the courts below was in error or that there is any risk of a miscarriage of justice.⁶

Result

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

[10] The applicant must pay the respondents costs of \$2,500.

Solicitors:
Buddle Findlay, Christchurch for Applicant
David Stock for Respondents

³ HC judgment, above n 1, at [90]; and CA judgment, above n 2, at [103].

⁴ CA judgment, above n 2, at [41].

⁵ Senior Courts Act 2016, s 74(2)(a) and (c).

⁶ Section 74(2)(b). For what is required for miscarriages in civil cases see: *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].