

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 2/2024
[2024] NZSC 51

BETWEEN JAYSHREE RATILAL PATEL
Applicant

AND HEMANTKUMAR RATILAL PATEL
First Respondent

HEMANTKUMAR RATILAL PATEL AS
EXECUTOR OF THE ESTATES OF
RATILAL PARBHU PATEL AND
SHANTA PATEL
Second Respondent

RITA PATEL
Third Respondent

KRISAJ PROPERTIES LIMITED
Fourth Respondent

Court: Ellen France, Kós and Miller JJ

Counsel: Applicant in person
K B Arthur for First, Third and Fourth Respondents
No appearance for Second Respondent

Judgment: 7 May 2024

JUDGMENT OF THE COURT

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

Introduction

[1] Jayshree Ratilal Patel has filed an application for leave to appeal against a decision of the Court of Appeal.¹ The Court of Appeal dismissed her appeal from a decision of the High Court.² In that decision the High Court dismissed the applicant's claim that properties held by the first, third and fourth respondents were held subject to a constructive trust.

Background

[2] To put the proposed appeal in context we need to say a little about the parties. In referring to the parties, we follow the approach in the courts below and use their first names. Hemant, the first respondent, is Jayshree's brother. The third respondent, Rita, is Hemant's wife, and the fourth respondent, Krisaj Properties Ltd, is their company.

[3] In the High Court, the applicant advanced two constructive trust claims. The first of these was based on fraudulent or dishonest transfer of the family home which was owned by their parents, Ratilal and Shanta. The second claim related to the use of the parents' superannuation payments.

[4] It is helpful to note by way of further background to the claims that, after the death of Ratilal in 2011, his estate was left to Shanta. When Shanta passed away in 2017 she left her estate to be divided evenly amongst their four children. The estate comprised primarily a debt owing by Hemant in the sum of the \$128,000; along with a small sum in Shanta's bank account; an unquantified interest in some jewellery; a half share in a holiday home in India; and a one-sixth share of other land, also in India.

[5] As the Court of Appeal said, Jayshree claims that the value of Shanta's estate reflects only a fraction of the value of the property accumulated by their parents over their lifetime. Her claim is that Hemant effectively deceived their parents into

¹ *Patel v Patel* [2023] NZCA 630 (Courtney, Whata and Downs JJ) [CA judgment].

² *Patel v Patel* [2022] NZHC 3567 (Harland J).

transferring the family assets to him for under fair value. She also claims that Hemant had the benefit of their parents' income over some 30 years and has used his parents' wealth to acquire properties now valued in the order of \$10 million. The corollary of this is that Hemant and Rita hold their properties subject to a constructive trust in favour of the beneficiaries of Shanta's estate including Jayshree.

The proposed appeal

[6] Jayshree essentially wishes to argue that the Court of Appeal was wrong to dismiss the various bases on which she challenged the lawfulness of the transfer of her parents' property to Hemant and Rita in June 2004. She also seeks to advance various claims of dishonesty.

[7] The proposed appeal would reprise arguments made in the Court of Appeal. Those arguments are the subject of factual findings in both the High Court and the Court of Appeal.

[8] The transfer of Ritalal and Shanta's house in 2004 is discussed in the Court of Appeal judgment in some detail.³ In this part of the judgment, the Court was addressing the challenge to the findings of the High Court Judge in rejecting the claim that Hemant and Rita fraudulently or dishonestly tricked their parents into signing the transfer instruments. The Court of Appeal accepted these findings, and the analysis of the Court is summarised in the following excerpt from the judgment:

[41] As Ms Arthur [for the respondents] submits there is ample basis in the evidence to find that Ritalal instigated the Oakdale Road property transfer, and that he and Shanta agreed to lend the value of their interest in the Carlie Street property to Hemant. As Hemant plausibly explains, his parents wanted him to use this money for their large expenses like hospital bills, in the future. As he also plausibly explains, his parents did not want to guarantee a mortgage loan over the Oakdale Road property. There is also ample evidence that Hemant and Rita carried the responsibility for the mortgages over the various properties. Their account is consistent with the available documentary record, including bank statements, and for reasons we will come to, we are satisfied that the Deed and the Wills are no sham. Finally, lengthy cross-examination by Jayshree did not undermine the credibility or reliability of Hemant and Rita's evidence.

[42] In terms of Mr Sanders' [the lawyer on the Oakdale property transfer] dealings with Ritalal and Shanta, we are satisfied they were adequately

³ CA judgment, above n 1, at [19]–[24].

advised about the legal significance of the transfer of the Oakdale Road property to Hemant and Rita. ...

[43] The evidence shows that Mr Sanders was instructed to act for Ratilal, Hemant and Rita on the transfer, obtained their verbal consent to act for all of them, advised them to obtain independent legal advice, and advised them that the transfer would obviate the need for Ratilal and Shanta to be guarantors. There is also evidence from Hemant that they all consented to Mr Sanders acting for all of them, that Mr Sanders gave legal advice to Ratilal, that Ratilal understood what was happening, and that he explained what was happening to Shanta. ...

[9] The Court also rejected arguments made about the witnessing of the signing of the transfer documents. The Court similarly did not accept a complaint of trickery. Rather, the Court said the transfer was “simply one part of a mutually beneficial familial arrangement,” which involved:⁴

Ratilal and Shanta living in the various homes for more than 30 years, much of that time free of the burden of mortgage debt or rental costs, and supported by Hemant and Rita in their dotage until they passed away.

[10] As to the second basis for a constructive trust, the Court of Appeal accepted that contributions appeared to have been made by the parents out of their superannuation incomes into a general account in the name of Hemant and Rita. The Court also accepted that Ratilal would likely have made contributions to the general account while he was receiving superannuation. However, on the available evidence, the Court agreed with the High Court that these contributions were likely to have been relatively modest. Essentially, both Courts accepted that Shanta’s total contribution to the general account was in the order of \$27,000 over about seven years while over that period Hemant and Rita’s contribution was over \$600,000. The Court also said there was no evidence that Ratilal and Shanta made contributions directly to the benefit of Hemant and Rita’s company.

[11] In the circumstances, the Court of Appeal saw no basis for taking a different view to that of the High Court.

[12] Resolution of this appeal would require this Court to re-assess what are now concurrent findings of fact in the Courts below. That factual inquiry would turn on the

⁴ At [45].

particular circumstances of this case. No question of general or public importance accordingly arises.⁵ Nor does anything raised by Jayshree give rise to the appearance of a miscarriage of justice, as that term is used in the civil context, in the way the Court of Appeal analysed the factual position.⁶ The criteria for leave to appeal are not met.

[13] As the first, third and fourth respondents have been put to the expense of preparing submissions in opposition to the application for leave, they are entitled to costs in the usual way.

Result

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

[15] The applicant must pay the first, third and fourth respondents one set of costs of \$2,500.

Solicitors:
Pidgeon Judd, Auckland for First, Third and Fourth Respondents

⁵ Senior Courts Act 2016, s 74(2)(a).

⁶ Senior Courts Act, s 74(2)(b); and see *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].