

IN THE SUPREME COURT OF NEW ZEALAND

SC 19/05
[2005] NZSC 32

BETWEEN CHAMBERLAINS
Appellant

AND SUN POI LAI
Respondent

BETWEEN CHAMBERLAINS
Appellant

AND HILDA LORRAINE LAI
Respondent

Court: Elias CJ and Gault J

Counsel: A C Challis and G M Wishart for Appellant
P F A Woodhouse QC and J J Troup for Sun Lai
R M Gapes for Hilda Lai
W M Wilson QC, M G Colson and C F Finlayson for
New Zealand Law Society
J A Farmer QC and G M Coumbe for New Zealand Bar Association

Judgment: 13 June 2005

JUDGMENT OF THE COURT

[1] The court has before it applications for leave to appeal the judgment of the Court of Appeal delivered 8 March 2005 and granting leave to the New Zealand Law Society and the New Zealand Bar Association to intervene in the appeal. The Court of Appeal allowed an appeal on an application to strike out a defence of barristerial immunity. The High Court had declined to strike out the defence, considering it was bound by the decision of the Court of Appeal in *Rees v Sinclair*.¹ The Court of Appeal has decided that *Rees v Sinclair* should not be followed.

¹ [1974] 1 NZLR 180.

[2] The effect of the decision in the Court of Appeal is that the common law immunity for barristers in the conduct of court proceedings is no longer the law of New Zealand. The majority judgments of the Court of Appeal follow the decision of the House of Lords in *Arthur JS Hall and Co v Simons*² in which the common law immunity for barristers was also repudiated by the House of Lords. Following the delivery of the decision of the Court of Appeal, the High Court of Australia in *D'Orta-Ekenaike v Victoria Legal Aid*³ has declined to follow the House of Lords and has upheld continuation of barristers' immunity in Australia.

[3] The point raised by the appeal, whether the defence based on barristerial immunity was rightly struck out on the ground that there is now no such immunity in New Zealand, is a matter of general and public importance which is clearly appropriate for leave to appeal to this court. There is no need for amplification of the written submissions received through oral hearing of the application. Indeed, the question of leave could have been resolved without putting the respondents to the trouble of making submissions in response except for an intimation that application for leave would be opposed. In the event, the respondents make no submissions on the question of leave to appeal or on leave to intervene in the appeal by the New Zealand Law Society and the New Zealand Bar Association. They seek instead to attach conditions as to costs on the grant of leave.

[4] The conditions sought by the respondents are in the alternative. First, they seek a condition that the appellant and the interveners, if granted leave to intervene, be required to pay the respondents' indemnity costs in the Supreme Court and the Court of Appeal irrespective of the outcome of the appeal. In the alternative, they seek a condition that, if the appeal succeeds, the appellant and the interveners shall not be entitled to costs in this court or in the Court of Appeal.

[5] The New Zealand Law Society and the New Zealand Bar Association were interveners by leave in both the High Court and the Court of Appeal. In this matter of public importance of direct interest to members of the two professional bodies it is clearly desirable for the court to have their assistance on the questions of law and

² [2002] 1 AC 615.

³ [2005] HCA 12 (10 March 2005).

legal policy that arise. Neither of the proposed interveners resists a condition that, should the appeal succeed, they will not be entitled to costs against the respondents. We see no merit in the indemnity for their costs sought by the respondents irrespective of the outcome of the appeal. Leave to intervene is therefore granted on the condition that neither the New Zealand Law Society nor the New Zealand Bar Association will be entitled to costs, should the appeal succeed.

[6] Leave to appeal is granted on the question whether the defence based on barristerial immunity was rightly struck out on the ground that there is now no such immunity in New Zealand.

Solicitors:

McElroys, Auckland for Appellant

Glaister Ennor, Auckland for S P Lai

Simpson Grierson, Auckland for H L Lai