

IN THE SUPREME COURT OF NEW ZEALAND

**SC 89/2010
[2010] NZSC 138**

BETWEEN RAYLEE PATRICIA HARLEY
 Applicant

AND ROBERT JOHN ERWOOD
 Respondent

Court: Blanchard, Tipping and McGrath JJ

Counsel: C R Carruthers QC for Applicant
 P R W Chisnall for Official Assignee
 N Levy as Amicus Curiae

Judgment: 16 November 2010

JUDGMENT OF THE COURT

The applications for leave to appeal by Mrs Harley and Mr Erwood are both dismissed.

REASONS

[1] The High Court¹ and the Court of Appeal² are agreed that Mrs Harley's proof of debt should not have been accepted by the Official Assignee to the extent that it related to a claim which had been compromised by a consent order made by the High Court on 25 November 2003.

[2] We are not persuaded that there is any error of principle in the interpretation given to the consent order by the Courts below. Nor, to address the other test for leave, is the interpretation so obviously wrong that there may have been a substantial miscarriage of justice. On the contrary, it appears to us to be unchallengeable.

¹ *Erwood v Official Assignee* HC Wellington CIV-2008-442-449, 9 April 2009 per Simon France J.

² *Official Assignee v Erwood* [2010] NZCA 362 per Hammond, O'Regan and Arnold JJ.

[3] Mr Erwood has in his application for leave challenged the decision not to order that the Official Assignee's costs in the High Court be borne by Mrs Harley. In her very helpful submissions, the amicus, Ms Levy, has pointed out that this puts Mr Erwood in the position of bearing those costs notwithstanding his success. The High Court Judge considered, however, that in all the circumstances, including the extra and unnecessary costs caused by the manner in which Mr Erwood conducted the litigation, the appropriate outcome was that all costs and disbursements in that Court should lie where they fell. We are not disposed to interfere with that assessment which the Judge was well placed to make, noticing that the Court of Appeal also took the view that it was not unreasonable for the Official Assignee to be represented in the High Court.

Solicitors:
Thompson & Morgan, Christchurch for Applicant