

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 4/2019
[2019] NZSC 47

BETWEEN MUHAMMAD SHAMSUD-DEAN
SAHU KHAN
Applicant

AND MOHAMMED SHARIFF
Respondent

Court: William Young, O'Regan and Ellen France JJ

Counsel: Applicant in person
No appearance for Respondent

Judgment: 14 May 2019

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B No order as to costs.

REASONS

Introduction

[1] Dr Sahu Khan brought proceedings in deceit in the High Court. The claim was dismissed by Fitzgerald J.¹ An appeal against that decision to the Court of Appeal was unsuccessful.² Dr Sahu Khan now seeks leave to appeal from that decision to this Court.

¹ *Sahu Khan v Shariff* [2017] NZHC 294 [*Sahu Khan* (HC)].

² *Sahu Khan v Shariff* [2018] NZCA 583 (French, Duffy and Katz JJ) [*Sahu Khan* (CA)].

Background

[2] Dr Sahu Khan was a lawyer practising in Fiji where he had a high profile. He emigrated to New Zealand in 2011. Some time after that, in late 2012/early 2013, Dr Sahu Khan said that he was contacted by Mr Shariff. He claimed that Mr Shariff told him that, in view of Dr Sahu Khan's qualifications, the Prime Minister and Attorney-General of Fiji wanted Mr Shariff to act as an intermediary to arrange to appoint Dr Sahu Khan as the Chief Legal Advisor to Fiji on constitutional matters or to be a member of the Fiji Constitutional Reform Committee. The salary for that position was said to be approximately \$3 million per annum.

[3] Dr Sahu Khan said that Mr Shariff then made a series of representations about various sums Dr Sahu Khan needed to pay to facilitate the appointment. Dr Sahu Khan told the High Court he trusted Mr Shariff and in reliance on the representations he paid Mr Shariff FJD 173,000 for this purpose. He also said that Mr Shariff promised to pay a further sum if the appointment did not eventuate. No appointment was made and Dr Sahu Khan filed proceedings in the High Court in deceit seeking to recover both the sum that he had paid to Mr Shariff and also the money apparently owed because there was no appointment. Dr Sahu Khan did not plead there was a contract between him and Mr Shariff.

[4] Mr Shariff did not participate in the proceeding and it proceeded by way of formal proof.

[5] In the High Court, Fitzgerald J was satisfied on the balance of probabilities that six of the pleaded representations had been made and that Dr Sahu Khan relied on them by paying money to Mr Shariff.³ However, the Judge was not satisfied that there was sufficient evidence to warrant a finding that the representations were false at the time they were made or, even if they were false, that Mr Shariff knew that they were false.⁴ The Judge said the possibility could not be excluded that Mr Shariff had been misled about the correct position or was being given correct information but the

³ *Sahu Khan* (HC), above n 1, at [37]–[38]. The amount of money paid to Mr Shariff in reliance on these representations was FJD 30,802.00.

⁴ At [46]–[48].

position kept changing. Accordingly, dishonesty was not established. A claim for special damages was also dismissed.

[6] The Court of Appeal agreed with the High Court that the emails were representations and that payments were made in reliance on those representations.⁵ The Court also agreed with the Judge's conclusion that there was insufficient evidence to justify a finding that Mr Shariff had the requisite dishonest intent.⁶

The proposed appeal

[7] On the proposed appeal Dr Sahu Khan would challenge the factual findings made by the Courts below. Amongst other things, he argues that the Courts below erred in finding that the requisite elements of the tort of deceit were not met and that there was insufficiently "clear and cogent evidence" from which to make a finding of dishonesty.⁷ In addition, Dr Sahu Khan seeks to argue there was sufficient evidence of fraud pointing to what Dr Sahu Khan describes as "overwhelming evidence of the falsity of the representations made".

[8] Mr Shariff has not participated in this application.

[9] This Court may not grant leave to appeal except where satisfied it is necessary to do so in the interests of justice.⁸ That, relevantly, involves consideration of whether the appeal involves a matter of general or public importance or of general commercial significance, or whether a substantial miscarriage of justice may have occurred.⁹ In terms of the first of these criteria, there is nothing to indicate any matter of general or public importance or of commercial importance arises. Dr Sahu Khan's submissions do not develop any challenge to the relevant principles. Rather, the focus is on the factual findings and the application of the principles in relation to the tort of deceit to the specific facts. Nor is there an appearance of a miscarriage of justice.¹⁰ Dr Sahu

⁵ *Sahu Khan* (CA), above n 2, at [29].

⁶ At [36]–[37].

⁷ *Sahu Khan* (HC), above n 1, at [49]; and *Sahu Khan* (CA), above n 2, at [38].

⁸ Senior Courts Act 2016, s 74(1).

⁹ Section 74(2).

¹⁰ *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [4]–[5].

Khan in this respect would seek to revisit concurrent findings of fact in the High Court and Court of Appeal. The criteria for leave are accordingly not met.

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

[11] We make no order as to costs.