

IN THE SUPREME COURT OF NEW ZEALAND

SC 81/2017
[2017] NZSC 126

BETWEEN Y&P NZ LIMITED
Applicant

AND YANG WANG AND CHEN ZHANG
Respondents

Court: Elias CJ, William Young and Ellen France JJ

Counsel: B P Rooney for Applicant
G P Blanchard QC for Respondents

Judgment: 22 August 2017

JUDGMENT OF THE COURT

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

[1] The applicant agreed to sell four properties to the respondents for \$2,430,000 plus GST if any. The agreement stipulated that the respondents were not, and at settlement would not be, registered for GST and did not intend to use the properties for the purpose of making taxable supplies. On the basis of these stipulations, GST of 15 per cent was payable on the purchase price.

[2] Settlement was scheduled for 28 July 2016. On 25 July, the applicant's solicitors provided a settlement statement which provided for the payment of GST. On 27 July there was a discussion between the legal executives on each side. Although the details of what was said are in dispute it is common ground that the respondent's legal executive said that the respondents were now GST registered and asked for an amended settlement statement to be prepared showing GST at

zero per cent. An amended settlement statement was provided which proceeded on the basis that the transaction was zero-rated.

[3] Despite the amended settlement statement, the applicant on settlement insisted on payment of GST of 15 per cent. This was on the basis that, although the agreement provided for changes to the GST stipulations, such changes required written notice to be given not later than two working days before settlement and such written notice had not been given. In view of the amended settlement statement, this was not a particularly meritorious point to take. In the end settlement did not take place. The respondents, having lodged caveats, issued proceedings for specific performance. They have also sought orders sustaining the caveats.

[4] In issue in the High Court were applications for summary judgment for specific performance and, in the alternative, orders sustaining the caveats. The Associate Judge declined the application for summary judgment for reasons associated with what she considered were defects in the pleadings but sustained the caveats.¹ The applicant's appeal to the Court of Appeal was dismissed.²

[5] The basis of the proposed appeal is the contention that the respondents had not complied with s 78F of the Goods and Services Tax Act 1985. Subsection (2) provided, at the relevant time, that a purchaser of land who contends that the purchase is zero-rated must provide a statement in writing to the vendor to the effect that the conditions for zero-rating are satisfied. Such statement must be provided "[a]t or before settlement". No such statement was provided. On the other hand, as the Court of Appeal pointed out, the transaction never settled and therefore the final occasion for the giving of such a statement never arose.³

[6] We see nothing in the proposed argument which warrants the grant of leave and, in particular, see no reason why the proposed appeal should be heard and determined prior to the determination of the proceedings for specific performance.⁴

¹ *Wang v Y&P New Zealand Ltd* [2016] NZHC 3173, (2016) 7 NZ ConvC ¶96-016 (Associate Judge Sargisson).

² *Y&P NZ Ltd v Wang* [2017] NZCA 280 (Cooper, Mallon and Wylie JJ).

³ At [25].

⁴ We regard the application to sustain the caveat as being in substance interlocutory, see Senior Courts Act 2016, s 74(4); and Supreme Court Act 2003, s 13(4).

[7] Accordingly, the application for leave to appeal is dismissed. The applicant must pay costs of \$2,500 to the respondents.

Solicitors:
Park Legal Barristers & Solicitors, Auckland for Applicant
Yang Lawyers, Auckland for Respondents