Supreme Court Dismisses Mr Dowden's Application for Leave to Appeal the Court of Appeal's Refusal to Extend Time to Appeal

Decision date: 15 July 2021

CASE

Dowden v Commissioner of Inland Revenue [2021] NZSC 86

LEGISLATIVE REFERENCES

Senior Courts Act 2016, s 74; and Court of Appeal (Civil) Rules 2005, r 43

LEGAL TERMS

Leave to Appeal, Extension of Time, General or Public Importance, Miscarriage of Justice

Impact

The Supreme Court applied an orthodox approach to this leave application. There is no further impact beyond the immediate case. The decision puts an end to a longstanding tax challenge that has progressed from the Taxation Review Authority, the High Court, the Court of Appeal and finally to the Supreme Court.

Facts

The Commissioner of Inland Revenue (**"the Commissioner"**) assessed Mr John Alfred Dowden (**"Mr Dowden"**) for tax liabilities in relation to his business, Safeguard Security, for the periods between 2004 and 2012.

Mr Dowden challenged these assessments in the Taxation Review Authority (**"the TRA"**). Mr Dowden's position was that he transferred his interest in Safeguard Security to his former partner, Ms Maureen Jackson (**"Ms Jackson"**) in December 2003 and so she was liable for the tax liabilities assessed by the Commissioner. The Commissioner's position was that Mr Dowden owned and operated Safeguard Security at all relevant times.

In 2018, the TRA dismissed Mr Dowden's challenge. Mr Dowden appealed to the High Court. In October 2019, the High Court dismissed Mr Dowden's appeal and upheld the findings of the TRA. In November 2019, Mr Dowden appealed to the Court of Appeal.

On 14 July 2020, Mr Dowden's appeal was deemed abandoned after an unsuccessful application to dispense with security for costs, an unsuccessful review of that refusal and after being granted multiple extensions to apply for a hearing date.

Mr Dowden then applied to the Court of Appeal for a further extension of time (pursuant to r 43 of the Court of Appeal (Civil) Rules 2005) to file the case on appeal and pay the scheduling fee. The Court of Appeal declined to grant the extension.

Mr Dowden applied to the Supreme Court for leave to appeal the Court of Appeal decision declining to grant the extension.

Issues

Is it necessary in the interests of justice for the Supreme Court to give leave to appeal?

Namely, has Mr Dowden satisfied the criteria set down in s 74 of the Senior Courts Act 2016:

- Does the appeal involve a matter of general or public importance?

- Will a substantial miscarriage of justice occur unless the appeal is heard?

Decision

The Supreme Court declined to give Mr Dowden leave to appeal.

The Supreme Court did not consider Mr Dowden's application raised any issues of general or public importance. The Court of Appeal applied settled law to the application before it. Mr Dowden did not challenge the Court of Appeal's application of the settled law or its application in this leave application.

The Supreme Court was not satisfied there would be a miscarriage of justice if Mr Dowden was not permitted to continue his appeal in the Court of Appeal and submit evidence from Ms Jackson that he alleged would prove he should not be liable for the tax which he was assessed.

The Supreme Court considered Mr Dowden's case was fully ventilated before the TRA (in which Mr Dowden gave evidence and was cross examined at length). Ms Jackson's statements were fully dealt with in the TRA. The TRA considered all the evidence and made credibility findings against Mr Dowden.

About this document

These are brief case summaries, prepared by Inland Revenue, of decisions made by the Taxation Review Authority, the District Court, the High Court, the Court of Appeal or the Supreme Court in matters involving the Revenue Acts. For Taxation Review Authority matters, names have been anonymized. The findings of the court described in a case summary will no longer represent current law where the matter has been successfully appealed or subsequent amended legislation has been enacted.