

**IN THE COURT OF APPEAL OF NEW ZEALAND**

**CA424/2012  
[2013] NZCA 72**

BETWEEN                      NEW ZEALAND CARDS LIMITED  
   Applicant  
  
AND                              COLIN RAMSAY  
   Respondent

Counsel:        D G Beck for Applicant  
                     S G Wilson for Respondent

Judgment:     21 March 2013 at 11.30 am  
On the papers

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**JUDGMENT OF STEVENS J  
(Review of Registrar’s decision to decline to waive setting down fee)**

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**The application to review the decision of the Registrar declining to waive the setting down fee of \$2,658.40 is dismissed.**

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**REASONS**

**Introduction**

[1] New Zealand Cards Limited (the applicant) has applied to review the Registrar’s decision declining to waive the setting down fee of \$2,658.40. The appeal concerns a question of law under s 214 of the Employment Relations Act 2000 on which leave to appeal was given by this Court on 28 June 2012 (the leave judgment).<sup>1</sup>

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<sup>1</sup> *New Zealand Cards Ltd v Ramsay* [2012] NZCA 285 [leave judgment].

[2] The application to the Registrar was made under reg 5 of the Court of Appeal Fees Regulations 2001 (the Regulations).<sup>2</sup> I have personally considered the application to review the Registrar's decision under s 100B of the Judicature Act 1908.

### **Registrar's decision**

[3] The application to the Registrar was made on the grounds that the applicant would suffer undue hardship if the fee was paid and that the appeal involved a matter of genuine public interest.

[4] The Registrar's decision was given on 13 February 2013 and concluded:

After considering the application, and the supporting material supplied, I do not believe that the company would face undue financial hardship by being required to pay this fee. I am also of the view that there is not a question of law that is of significant interest to the public or to a substantial section of the public, rather the judgment relates to a particular set of facts relating only to this case. The application for waiver is declined.

### **Grounds of review**

[5] The applicant challenges the Registrar's decision. In addition to the information supplied to the Registrar, received on 15 January 2013, the applicant's solicitor forwarded further information from Mr Bob Beresford (the sole director and shareholder of the applicant company) under cover of a letter dated 13 March 2013. I have personally considered this information.

[6] Essentially, the applicant repeats the same arguments as were presented to the Registrar and provides some further updated financial information.

### **Discussion**

[7] This is the second time that the applicant has applied to review a decision of the Registrar in the course of this appeal. Earlier the applicant applied to review the

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<sup>2</sup> A body corporate constitutes a "person" for the purposes of reg 5: *Re Wiseline Corp Ltd* (2002) 16 PRNZ 347 (CA).

Registrar's decision on an application to dispense with security for costs. That application was unsuccessful.<sup>3</sup>

*Undue financial hardship*

[8] In the security for costs judgment I referred to the financial information that had been made available by the applicant up to early October 2012. In particular, I referred to an affidavit sworn by Mr Beresford dated 12 July 2012 which stated:<sup>4</sup>

5. The Applicant company is solvent and is moving into the most profitable part of the year for its business. The Applicant can pay the judgment and will have the means to pay any order for costs in the future (costs are currently reserved) ideally in instalments once it enters the more profitable portion of the year. The company produces postcards, primarily aimed at tourists. This market picks up from September onwards and sales are strongest in October and November, but it would take some time to build up surplus to pay the expected level of costs, and therefore the best scenario would be for the company to pay any costs in instalments.

[9] Although that affidavit referred to the market picking up from September onwards and sales being "strongest in October and November" very little further information about sales and the financial circumstances of the applicant has been provided. In particular, while the applicant has provided to the Registrar copies of the statement of financial performance for the year ended 31 March 2012, no similar information has been provided for the current year to date. There is no updating affidavit from Mr Beresford as to the most recent sales and finances. Rather, the submissions focus upon one aspect of the finances of the company, namely, a credit card debt of \$14,507.80 as at 4 March 2013. The largely self-reported information contained in the copy of the letter from the Accident Compensation Corporation does not assist in the absence of first hand financial information from the applicant or an officer of the company.

[10] On the question of whether the applicant would suffer undue financial hardship if the setting down fee was paid, I have concluded that the Registrar's

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<sup>3</sup> *New Zealand Cards Ltd v Ramsay* [2012] NZCA 456.

<sup>4</sup> At [10].

decision to the contrary is correct. Financial hardship on its own is not sufficient. What the applicant must show is undue financial hardship. It has not done so.

*Significant interest to the public*

[11] On the question of whether the appeal raises an issue of significant interest to the public or to a substantial section of the public, I agree with the Registrar's decision that it does not.

[12] In its review submissions the applicant referred back to the leave judgment of this Court, contending that the fact that this Court had granted leave to appeal on a question of law meant that the test for waiver of the setting down fee had also been met.

[13] The difficulty for the applicant on this aspect is that the respective tests for leave to appeal under s 214 of the Employment Relations Act and waiver of fees under reg 5 of the Court of Appeal Fees Regulations are not aligned. As this Court said in the leave judgment, under s 214 it is necessary for an applicant to identify a question of law and "the question must be one which, by reason of its general or public importance, or for any other reason, ought to be submitted to this Court for decision".<sup>5</sup>

[14] On the specific question for which leave was granted, this Court stated:

[14] Much of the material presented to us by Mr Beresford disputed the factual conclusions reached by the Judge. In general, issues of disputed fact do not constitute questions of law for the purposes of an appeal under s 214. At this juncture, there is only one question of law which we consider might appropriately be the subject of the grant of leave, namely:

"Could the facts as found by the Employment Court Judge amount to a constructive dismissal on the basis of the duty of good faith under s 4(1A) of the Employment Relations Act 2000."

[15] Despite Mr Thompson's submissions to the contrary, we are prepared to grant leave to appeal on that question of law on the ground that it is one which is of general importance beyond the facts of the present case and ought to be the subject of this Court's attention.

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<sup>5</sup> Leave judgment at [4].

[15] When waiver of fees is sought the Registrar has a discretion under reg 5(2)(b) of the Regulations to waive the applicable fee if he or she is satisfied that the proceedings concern a matter of genuine public interest. “Genuine public interest” is defined at reg 5(4) as follows:

- (4) For the purposes of these regulations, a proceeding that concerns a matter of genuine public interest is—
  - (a) a proceeding that has been or is intended to be commenced to determine a question of law that is of significant interest to the public or to a substantial section of the public; or
  - (b) a proceeding that—
    - (i) raises issues of significant interest to the public or to a substantial section of the public;

...

[16] This test requires that the question of law or the proceeding must be of *significant* interest to the public or to a substantial section of the public.

[17] I am satisfied that, although leave was granted for the question identified in the leave judgment, that does not necessarily mean that this case qualifies as one in which the Registrar ought to have granted a waiver of the setting down fee. It is true that the Registrar said in her decision that the “judgment relates to a particular set of facts relating only to this case”. That is correct for most of the judgment under appeal. Here, this Court has identified one ground of question of law which it accepted was of “general importance beyond the facts of the present case”.

[18] That does not necessarily mean it is a case of “significant interest to the public”. Such cases are likely to be comparatively rare: an acknowledged test case would be an obvious example. I do not consider this appeal meets the test of being of significant interest to the public.

## **Result**

[19] For the reasons set out above, I am satisfied that the Registrar’s decision to decline to waive payment of the setting down fee of \$2,658.40 was correct. I therefore dismiss the application under s 100B of the Judicature Act. The applicant

must pay the setting down fee to the Registrar in relation to the present appeal if it wishes to apply for the allocation of a hearing date.

Solicitors:  
SB Law, Christchurch for Applicant  
Duncan Cotterill, Christchurch for Respondent