

**IN THE HIGH COURT OF NEW ZEALAND
INVERCARGILL REGISTRY**

CIV-2010-425-000181

UNDER the District Courts Act 1947

IN THE MATTER OF an appeal against the Judgment of the
District Court at Queenstown in CIV-2008-
059-000151 given on 23 March 2010

BETWEEN PETER JOHN TAIT-JAMIESON
Appellant

AND CARDRONA SKI RESORT LIMITED
Respondent

Counsel: M Colthart for Appellant
A M Cunninghame for Respondent

Judgment: 14 December 2011

**JUDGMENT OF HON JUSTICE FRENCH
on Application for Leave to Appeal**

[1] In my decision of 16 August 2011, I dismissed Mr Tait-Jamieson's appeal against a decision of the District Court. The District Court Judge had found Mr Tait-Jamieson liable under an unsigned guarantee on the basis of the authenticated signature fiction. I held that the Judge's reasoning was wrong, but that the decision was justifiable on other grounds, namely estoppel.

[2] Mr Tait-Jamieson wishes to appeal my decision to the Court of Appeal. To do that, he requires leave.

[3] The principles applicable to the granting of leave are well established. The appeal must raise some question of law or fact capable of bona fide and serious argument in a case involving some interest, public or private, of sufficient

importance to outweigh the cost and delay of the further appeal. Ultimately, the guiding principle must be the requirements of justice.

[4] The questions Mr Tait-Jamieson wishes to pursue in the Court of Appeal are formulated in the following terms:

- (a) Whether an unsigned guarantee can be enforced by the Court by the application of the doctrine of estoppel.
- (b) Whether the doctrine of estoppel ought to have been applied in this case.
- (c) Whether the Court ought to have granted the respondent leave to rely on the doctrine of estoppel.

[5] In opposing the application for leave, Ms Cunninghame submits:

- (i) The class of persons potentially affected by my decision is a narrow one, limited to those who entered into unsigned guarantees prior to the enactment of the Property Law Act 2007.
- (ii) The District Court and High Court have each found that Mr Tait-Jamieson was liable to Cardrona as a result of his deliberate actions.
- (iii) The amount at stake, while subjectively important to Mr Tait-Jamieson, is relatively modest.

[6] I have carefully considered Ms Cunninghame's submissions.

[7] I accept that the amount at stake is relatively modest. I also accept that morally Mr Tait-Jamieson's position is not a particularly meritorious one. As noted in my judgment, this case is very much a case of someone attempting to evade liability on what a layperson might not unreasonably see as a technical loophole.

[8] On the other hand, the key legal issue raised by the proposed appeal is a matter of general importance and not fact-specific. My decision appears to have been the first time anyone has held in New Zealand that an unwritten or unsigned guarantee can be enforced by the doctrine of estoppel.

[9] I am not persuaded that the implications of that decision are as limited as Ms Cunninghame suggests. In particular, I am not persuaded that the effect is limited to pre-Property Law Act guarantees. While ss 24 to 27 of the Property Law Act 2007 appear to exclude the application of part performance to guarantees (limiting it to contracts for the sale of land), the statute does not address the issue of estoppel. Guarantees post-Property Law Act may also therefore be caught by the reasoning in my decision.

[10] I am also conscious of the fact that estoppel was not pleaded. Nor was it the subject of evidence or argument in the District Court, or indeed in the High Court in oral argument. It was only raised by me following the first round of supplementary submissions. In those circumstances, there is some force in Mr Colthart's argument that Mr Tait-Jamieson has only had one opportunity to argue the issue.

[11] In all the circumstances, and weighing up the competing factors, I consider the interests of justice do favour the granting of leave. Leave is accordingly granted.

[12] I make no award of costs in relation to the application for leave.

Solicitors:
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(Counsel: M Colthart, Auckland)
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