

MEDIUM
PRIORITY

768

BETWEEN RAINBOW CORPORATION LIMITED
Appellant

A N D RYDE HOLDINGS LIMITED
Respondent

Coram: Richardson J
 McKay J
 Holland J

Hearing: 19 May 1993

Counsel: M J Leggat for appellant
 B Brown for respondent

Judgment: 19 May 1993

JUDGMENT OF THE COURT DELIVERED BY RICHARDSON J

Paragraph 2 of the orders of this Court granting final leave to appeal to the respondent and the appellant and consolidating appeals reads:

That final leave be granted to the appellant to appeal to Her Majesty in Council from that part of the judgments of this Honourable Court delivered on 19 March 1992 and 13 November 1990 which upheld the finding that the account of profits should be based upon the limitation to fifteen percent (15%) of the Respondent's participation in the income from the video machines in the joint venture.

We are satisfied that the order reflects a drafting error in the notice of motion for grant of conditional leave to appeal to the Privy Council of 26 March 1992 which was carried through into the order granting conditional leave and subsequently into the order granting final leave. What was intended by this Court was to grant leave to appeal against what this Court decided in the appeal before it. The notice of motion and the orders were defective in that respect and the correction


sought is to substitute "rejection of the argument" for "finding" in line 5 of the order.

We are also satisfied that, subject to one consideration, this Court has jurisdiction, in terms of R12 of the High Court Rules incorporated pursuant to R40 of the Court of Appeal Rules and under our inherent jurisdiction, to correct a slip of that kind.

The remaining consideration is whether at this point the Court has lost that jurisdiction. The order made on 12 June 1992 has been sealed and included in the Record which has been despatched to England and the appeal itself is due to be heard before their Lordships on Monday 24 May. The point that has been taken very responsibly by Mr Brown for the respondent is that there is an issue as to the jurisdiction of this Court to make an order particularly at this time. In these circumstances the respondent does not consent to the application made by the appellant for correction of the order.

In conferring powers on this Court in relation to matters happening after the grant of final leave to appeal RR20, 21, 22 and 23 distinguish between events happening before and after the dispatch of the Record to England, but in the present case the error which occurred occurred before the dispatch of the Record. It is clear that this Court cannot amend the Record itself. That is a matter for their Lordships. But we are satisfied that it is within our jurisdiction and remains appropriate for us to correct our own orders, leaving it to the Privy Council to consider what, if any, amendments should be made to the Record and to the Petition.

There will be an order accordingly amending both the order for final leave and the order for conditional leave. The respondent is entitled to costs which we fix at \$750 together with any reasonable disbursements as fixed by the registrar.

A handwritten signature in dark ink, appearing to be 'M. A. G.', is written in a cursive style.

Solicitors:

Rudd Watts & Stone, Auckland, for appellant
Parry Field & Co, Christchurch, for Respondent