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IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY

CP 439/96

NZLR  
NOT  
RECOMMENDED

IN THE MATTER of the Judicature Act 1908

AND

IN THE MATTER of the Judicature Amendment Act 1972

AND

IN THE MATTER of the Land Transport Act 1993

AND

IN THE MATTER of the Transport Services Licencing Act 1989

BETWEEN HECHTER INDUSTRIES LTD

First Plaintiff

AND

DELTA MARKETING LIMITED

Second Plaintiff

AND

WILLIAM ALAN McNEIL

Third Plaintiff

AND

PAUL LIONEL PICOT

Fourth Plaintiff

AND

THE LAND TRANSPORT SAFETY  
AUTHORITY OF NEW ZEALAND

First Defendant

AND

VEHICLE IDENTIFICATION  
NEW ZEALAND LIMITED

Second Defendant

AND

DAKTRONICS AUST/NZ LIMITED

Third Defendant

A N D

ROY LEONARD MCGREEVY and PAUL  
FERGUSON MACNICOL

Fourth Defendants

Hearing: 29 October 1996

Counsel: R.J. Hooker for all Plaintiffs  
A.R. Burns & W.E. Andrews for First Defendant  
No appearance for Second Defendant which has previously indicated  
that it abides the Court's decision at this stage  
No appearance for other Defendants

Judgment: 29 October 1996

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ORAL JUDGMENT OF ANDERSON J

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SOLICITORS

Vallant Hooker & Partners (Auckland) for all Plaintiffs  
Meredith Connell (Auckland) for First Defendant

This is an application for interim relief pursuant to s 8 of the Judicature Amendment Act 1972 brought in the wake of a decision by the Director of Land Transport Safety, appointed under s 24 of the Land Transport Act 1993, cancelling or purporting to cancel goods service licence no. 55645 issued on 7 March 1991 to a company then called Hechter Industries Limited. That licensee subsequently changed its name to Daktronics Aust/NZ Limited. The present plaintiff was originally incorporated under the name "American Vehicle Imports Limited". It changed its name to Hechter Industries Limited on 18 February 1993, being a date later than the change of name of the original Hechter Industries Limited to Daktronics Aust/NZ Limited. The role of the second plaintiff in the proceeding is obscure at this stage and nothing of consequence hangs on that.

The third and fourth plaintiffs are the owners and controllers of the first plaintiff. They acquired their shareholding in the first plaintiff under aliases. Mr McNeil chose to call himself Colin Woodley. Mr Picot preferred the pseudonym Harold William Wilson. In the present proceeding Mr McNeil and Mr Picot disclose the use of such aliases but they are strangely silent on their motives. It is a reasonable possibility at least that they selected aliases for the purposes of the transaction out of anxiety that recognition of their habitual names might cause the Director to consider his powers under s 11 of the Transport Services Licensing Act 1989. It is inappropriate to put the matter higher than that at this interlocutory level and when there are other proceedings

afoot. I refer, for example, to CP 692/93, a pending application for injunction in this Court, scheduled to be heard in March and pursuant to which the Land Transport Safety Authority seeks orders enjoining Mr Picot and Mr McNeil from operating goods services.

In February 1993 Mr McNeil, then calling himself Colin Woodley, negotiated with Daktronics for the purchase of that company's 1982 Nissan diesel truck, the purchase of Hechter Industries Limited, and a transport service licence. In fact the only relevant licence was that which had been issued to Daktronics and for the reasons appearing earlier in this decision there was then no such company as Hechter Industries Limited. The transaction was completed pursuant to an agreement dated 24 March 1993 between Mr McGreevy and Mr MacNicol, the fourth defendants, resulting in the present first plaintiff at least purporting to operate under the aegis of the licence no. 55645. Over the years the first plaintiff purchased road user licences for the operation of its service. There is a pervading concern on the part of the first defendant that the operators of the first plaintiff, allegedly, have systematically defrauded the public revenue by failing to purchase licences to cover extensive transport operations. This interim application cannot properly be concerned with the merits or otherwise of those allegations.

The transaction relating to the above-mentioned licence was completed with the assistance of solicitors. In all the circumstances a claim on behalf of the

plaintiffs that they carried on their goods service in the belief that it was covered by the above-mentioned licence cannot be dismissed as utterly untenable. Again I refrain from making any finding other than that such a plea cannot be excluded at this stage on the grounds of frivolity or vexatiousness.

A goods service licence is not transferable. Section 26 of the Transport Services Licensing Act states unequivocally that no transport service licence may be transferred, leased or assigned to any person. The situation when a licence is issued to a company, the shareholding or control of which changes, is covered within the general scheme of the Act by the power vested in the Director pursuant to s 11 to revoke a licence where, amongst other things, a person having control or a person having an involvement in the operation of the service is not a fit and proper person, coupled with a statutory obligation on the part of a licence holder to notify the Director of changes in ownership or control. In the present case none of the plaintiffs purchased any shares in Daktronics. There was therefore no actual change in ownership, although it is implicit in the plaintiffs' case that there has effectively been a change in control of the service. It may prove relevant in due course that even on that approach there has been a default in relation to notification of change of control of the hypothetically transferred licence.

The plaintiffs assert on the present interim application that they contracted for ownership of the company which was the licensee and that due to mistake or

other causes they in fact purchased a company of the same name as that noted as licensee but in reality a different legal personality from the company which was the licensee. They contend that they would be entitled to relief in equity and/or pursuant to the Contractual Mistakes Act or otherwise against the third and fourth defendants to achieve the transfer to them of the shares in the licensee company. The present proceedings, although possibly requiring some amendment, are redolent of that theme.

There are limited provisions for the termination, to use a neutral term, of an issued licence. I have referred to s 11 of the Transport Services Licensing Act which authorises the Director to revoke a licence where a holder, controller or person involved is not a fit and proper person, such power of revocation being subject however to certain procedural and appellate controls. In addition, s 27(2) of the Act provides that where no vehicle has been operated pursuant to a licence for a period of two years, the licence shall be deemed to have been surrendered and shall be revoked by the Director. Section 25(2) provides that where the Director proposes to make an adverse decision under the Act in respect of any person, the Director shall by notice in writing notify the person directly affected and specify a date for the making of submissions and other matters. Although revocation pursuant to s 27 is not apparently envisaged as requiring notice under s 25, it is at least reasonably arguable on general public law principles that a person likely to be affected by revocation pursuant to s 27

should be informed of an intention to revoke on the grounds of absence of operation pursuant to a licence for a period of two years.

In the present case Mr Nickson, a Regional Compliance Officer acting on behalf of the Director, informed the fourth plaintiff in terms which included the following, contained in a letter of 24 June 1996:-

“This letter is to inform you that Goods Service Licence 55645, previously issued in the name of Hechter Industries Limited, AK465535 has been cancelled with effect from 24 June 1996. Your company has no rights and has never had any right to use of licence 55645 and any services carried on by your company pursuant to that licence are not legal.”

It is that “cancellation”, or purported cancellation, which has given rise to the present proceeding, particularly following a direction to the second defendant by the first defendant in terms which have resulted in the second defendant declining to issue certificates of fitness in respect of certain vehicles of the plaintiffs, on the grounds that such vehicles are not involved in a licensed goods service. It is to be noted that the basis of the purported cancellation is not expressed. The Director does not seem to have determined to revoke pursuant to s 11, nor to revoke pursuant to s 27(2). A purported administrative power of cancellation seems to be relied upon but it is highly unlikely that any such administrative power exists. Reference can be made to s 27(1) which provides:-

“Every transport service licence shall take effect on the day it is granted and shall continue in force until it is surrendered or revoked under this Act.”

It follows that revocation must be a revocation authorised by the Act itself and not exercised administratively for legally arbitrary reasons.

The plaintiffs are in a difficult position. Because there is a statutory prohibition against transfer of a licence none of the plaintiffs can claim to be a licensee by assignment or transfer. At best one or more of them may claim to be entitled to the shares in the licensee company. Such a plea is inconsistent with an assertion of actual legal ownership of course, but the possibility of a plaintiff acquiring legal ownership cannot be dismissed at this stage as purely fanciful, frivolous or vexatious. The plaintiffs must diligently proceed to attempt to enforce entitlement to the shares in the third defendant.

Unless the licence shall have lapsed pursuant to the surrender provision of s 27(2) it is still extant. It cannot be revoked without notice to affected persons either pursuant to s 11 or in terms of long established public law principles as I have indicated. Plainly a person affected is the third defendant but there is no evidence of any notice of intention to revoke being given to the third defendant, although there is some evidence of an attempt to inform Mr McGreevy. That is insufficient for the purposes of the Act. Furthermore, if it is intended to revoke on the grounds provided by s 11 then the first, third and fourth plaintiffs collectively or individually must have a reasonable



argument of at least potential entitlement to notification as, arguably, persons having control of a service or involvement in the operation of a service purportedly carried on pursuant to the relevant licence.

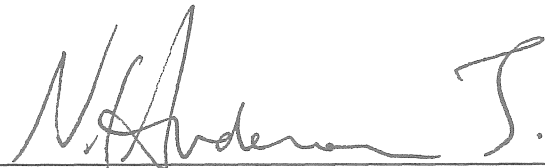
The purpose of relief pursuant to s 8 of the Judicature Amendment Act 1972 is essentially preservative. I approach the present situation on the assumption that the plaintiffs, or any of them, are entitled to claim relief which might result in ownership of the shares in the licensed company, the third defendant. I specifically refer to entitlement to a claim to distinguish the concept of entitlement to succeed, a matter which cannot be canvassed at an interlocutory level. Unless relief directed to the interim preservation of the licence is granted then remedies to which the plaintiffs or any of them might ultimately be entitled against the third or fourth defendants would be seriously demeaned by the relevant licence having expired through administrative decisions which in fact, for reasons which might include absence of notice, may have been unchallenged by the third defendant as the apparent licensee.

The plaintiffs cannot reasonably hope at this interlocutory level to obtain relief affirmatively authorising the carrying on of a goods service as if licensed, against the hoped for possibility of the third and fourth defendants becoming owners of the licensed company. They can, however, ask for interim relief which will preserve the position sufficiently to enable them to pursue the various remedial courses which they seek to undertake with a view to the third

and fourth plaintiffs, or either of them, acquiring the shares in the licensed company.

For these various reasons I grant relief pursuant to s 8 of the Judicature Amendment Act 1972 declaring that goods service licence 55645 has continued and shall be deemed to continue in force until further order of the Court, without prejudice however to the exercise by the Director of the Director's powers of revocation pursuant to s 11 of the Transport Services Licensing Act 1989 after notice to the first, third and fourth plaintiffs in accordance with the provisions of s 11 of that Act. For the sake of clarity, I direct that any such notice to the first, third or fourth plaintiffs shall be without prejudice to an assertion by the Director, on any appeal from or review of a decision by the Director to revoke or in any proceedings in connection with the subject matter of the dispute in this Court, that having regard to all the circumstances none of the first, third or fourth plaintiffs were required to be given notice pursuant to s 11. The intent of that reservation is to ensure that the first, third and fourth plaintiffs are informed of any intention to revoke but the Director shall not be estopped from asserting in appropriate proceedings that the first, third and fourth plaintiffs have not been carrying on, controlled or been involved in the operation of a goods service pursuant to goods service licence 55645. Leave is reserved generally to any party to apply for such further or other relief or directions as may be necessary or expedient.

Having heard from both counsel in the matter of costs, I fix the same in respect of today's hearing and the affidavits for the various parties in connection therewith in the total sum of \$1200 plus Court filing fees and other disbursements thereon and I reserve the question as to to whom and by whom such costs shall be paid.

A handwritten signature in cursive script, appearing to read "N. Anderson J.", is written above a horizontal line.

NC Anderson J