

113

NRK

NOT
RECOMMENDED

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CIV-2003-404-558

UNDER the Judicature Act 1908 and the Judicature
Amendment Act 1972

IN THE MATTER OF a judicial review of the decision of His
Honour Judge Joyce QC in the Auckland
District Court dated 7 January 2004

BETWEEN CHRISTOPHER JUSTIN FRANCIS
Applicant

AND THE ATTORNEY-GENERAL FOR THE
AUCKLAND DISTRICT COURT
First Respondent

AND DOMINION FINANCE GROUP LTD
Second Respondent

Hearing: 14 May 2004

Appearances: No appearance for Applicant
Gareth Neil for First Respondent
John Waymouth for Second Defendant

Judgment: 14 May 2004

JUDGMENT OF HARRISON J

SOLICITORS

Crown Law Office (Wellington) for First Respondent
Jones Young (Auckland) for Second Respondent

[1] The applicant, Mr Christopher Justin Francis, has filed a largely unintelligible statement of claim in this Court seeking judicial review of a decision made by Judge Roderick Joyce QC in the District Court at Auckland on 7 January 2004. Mr Francis filed the document in his own name. When the case was called this morning he did not appear. Instead his father attended and sought leave to represent his son. I will deal further with that application at the end of this judgment. However, I record formally that I have refused leave for Mr Francis Snr to represent the applicant.

[2] I gather from other documents on the file that the essence of Mr Francis' claim is that Judge Joyce acted in breach of the principles of natural justice when ordering him to pay costs of \$2035 in a proceeding brought by Dominion Finance Group Ltd ("Dominion") in the District Court at Auckland. Dominion had sued Mr Francis, it appears, as second defendant in his personal capacity as guarantor of the liability of Bay Rentals Ltd. At a late stage, after at least four appearances, Mr Francis produced evidence that he was at the time of execution of the guarantee a ward of the Court. This status operated as an absolute bar to Dominion's claim because Mr Francis was deemed to be contractually incapacitated.

[3] It appears also that Dominion and Bay Rentals Ltd entered into a settlement which included a reservation of the formers rights to seek costs against Mr Francis personally. The Judge called for submissions on costs. Both Mr Francis and Mr John Waymouth, Dominion's counsel, filed memoranda. Judge Joyce then made his decision. The best I can discern from the documents is that Mr Francis now alleges he was denied an opportunity to submit a memorandum in response to Mr Waymouth's memorandum. In legal terms Mr Francis says that amounted to a breach of natural justice by a person empowered by statute to make a decision.

[4] Mr Francis' statement of claim mounts a discursive and incoherent attack on the merits of the decision. It seeks orders invalidating and setting aside the decision and striking out the District Court proceeding. The claim could never succeed on an application for judicial review for two obvious and independent reasons. First, it is well settled that the remedy of review is inappropriate where the applicant has rights of appeal which could, if exercised, secure the same or similar relief. Here

undeniably Mr Francis had a right of appeal against the decision. He failed to exercise it. Judicial review is not an acceptable substitute.

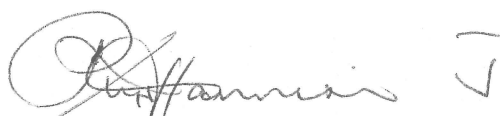
[5] Second, even if Mr Francis proved his allegation of breach of natural justice (on which it is unnecessary for me to make a finding), I have a residual discretion on whether or not to grant relief. The best result for Mr Francis would be an order quashing the decision and remitting it to Judge Joyce for reconsideration. I am satisfied beyond doubt that the result would be no different. Costs, as all lawyers know, are in the discretion of the Court. Judge Joyce was particularly familiar with this proceeding. His decision acknowledges that costs normally follow the event, including on a discontinuance. However, in exercising his discretion, and taking into account the interests of justice, the Judge concluded that Dominion was entitled to costs against Mr Francis rather than the reverse (paras 14-17). This course was dictated by the unusual circumstances of the case and, in particular, by Mr Francis' delay in providing Dominion with evidence about his contractual incapacity. The Judge made a very modest award of costs of \$2035. I am satisfied that he would not reach a different view on reconsideration, except possibly he may be inclined to increase the sum awarded to reflect commercial reality.

[6] For these two reasons this application was doomed to failure. I enter judgment for the defendant.

[7] I revert to the question of representation. I am treating Mr Francis as unrepresented today. He has not appeared either personally or through counsel but I am satisfied he has notice of the fixture. The law is well settled. In summary, no-one other than the parties themselves or legal counsel have a right to appear in proceedings (*Re GJ Mannix Ltd* [1984] 1 NZLR 309). A Judge has a residual discretion in exceptional circumstances to allow unqualified advocates to appear. Mr Francis Snr has today advanced arguments that, for example, it is beyond his son to appear for himself, presumably for emotional reasons, and beyond his financial resources to engage counsel. Mr Francis Snr also refers to his son's previous history as a ward of the Court and his own part in securing revocation of that status; he advises that he appeared personally on his son's behalf in this Court. In my judgment these circumstances are far from exceptional and do not warrant any

relaxation of the rule that Mr Francis should represent himself or be represented by a duly qualified counsel. He is not present and does not, of course, apply for leave to appoint a McKenzie friend.

[8] This was a hopeless case. Dominion is entitled to costs having been joined as second respondent. In the normal course I would award costs on a solicitor/client or indemnity basis. However, Mr Waymouth confirms that Dominion is content for costs to be fixed according to category 2B.

A handwritten signature in cursive script, appearing to read 'Rhys Harrison J', followed by a large, stylized 'J' to the right. The signature is written in dark ink on a white background.

Rhys Harrison J