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

**CRI 2009-409-000041**

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| BETWEEN | MARGARET CHURCHMAN-WATSON<br>Applicant |
| AND | ACCIDENT COMPENSATION CORPORATION<br>Respondent |

Hearing: 3 December 2009

Appearances: Appellant in Person
S J Jamieson for Respondent

Judgment: 3 December 2009

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**JUDGMENT OF FOGARTY J**

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[1] This is an appeal by Mrs Churchman-Watson from three convictions entered on 5 June 2008 in the District Court by Judge P Moran for making false statements to the Accident Compensation Corporation in breach of ss 308(1)(a) and (2)(b) of the Injury Prevention, Rehabilitation and Compensation Act 2001.

[2] The appellant, Mrs Churchman-Watson, is a tax agent. Her daughter and son-in-law had gone into business as a professional bricklaying company. She had registered this company "Two-Thick Bricks Professional Bricklaying Company Ltd" on 4 July 2003. The two employees were Geoffrey Donaldson and Amy Donaldson, her son-in-law and daughter respectively. Geoffrey suffered injury on 23-25 August and Amy on 4 September.

[3] The Accident Compensation Corporation have a form ACC729. It is called a "Shareholder Employee Earning Certificate" and at the top of the form it contains

advice that has to be completed by the company's tax agent, accountant or payroll clerk. Mrs Churchman-Watson was in that capacity. They must be completed only if the client receives PAYE deducted earnings from a company of which they are a shareholder employee. Mrs Churchman-Watson filled out claims in respect of the employees' PAYE earning details indicating hours worked and gross taxable earnings.

[4] The Judge was satisfied on the evidence that was brought before the trial that these documents were misleading:

> [10] The September certificate for Geoffrey recorded gross taxable earnings for four consecutive weeks preceding the accident, week 1, 48 hours worked, gross taxable earnings $1,248. Weeks 2, 3 and 4, 68 hours worked in each case and in each case gross taxable earnings of $1,768.
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> [11] The certificate for Amy of September 2003 recorded gross taxable earnings for four consecutive weeks, each week 63 hours worked, gross taxable earnings each week $945.
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> [12] The February 2004 certificate for Geoffrey showed gross taxable earnings for the four weeks preceding his accident as follows, week 1 68 hours $1,768. Weeks 2 and 3, 70 hours $1,820. Week 4, 65 hours $1,690.
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> [13] In relation to all of these weekly gross taxable earnings it is plain that for Geoffrey an hourly rate of $26 has been applied to the hours that he worked and an hourly rate of $15 to the hours that Amy worked.

The Judge then went on:

> [14] These entries are made under panel 4 of the certificate which requires the claimant to provide details of the claimant's PAYE earnings in the four and 52 weeks immediately prior to the date stated from the company in which they are shareholder employees and there cannot be any escaping the fact that Mrs Churchman-Watson was representing to ACC that Geoffrey and Amy had earned gross taxable PAYE earnings for each of the weeks in question. So why did she do it, because it is conceded, and, if not conceded, certainly proven beyond reasonable doubt, that these gross taxable earnings were not paid any sort of wages at all by their company. The company simply could not afford to pay them. Amy and Geoffrey it seems were living out of the company's bank account and treating it as their own but there is nothing apparent in the bank statements that could be characterised as salary or wages.

[5] Mrs Churchman-Watson has given me what I think are conflicting oral arguments. Essentially she has agreed that initially it was not intended that these two employees would be paid wages with deducted PAYE on a regular basis at the

outset. This was a start-up company. After the accidents had been suffered, though, it appears that she did attempt to document the documents of the business putting them on a PAYE basis.

[6] I am quite satisfied that the Judge found correctly that at the time the appellant filed these forms the forms were misleading inasmuch as they suggested that these employees had received, in the past, PAYE deducted earnings.

[7] The arguments that Mrs Churchman-Watson has marshalled on this appeal really go to mitigating the culpability of the conduct. They are not defences to the conduct.

[8] Firstly, when the appeal was eventually heard (it has been adjourned a number of times) Mrs Churchman-Watson endeavoured to adduce fresh evidence from a clinician establishing that she was in ill health at the time. I have ruled that evidence out in a minute which I delivered on 25 November. Secondly, I refused to hear evidence from Professor Sawyer, a tax expert, to the effect that cash drawings that were being made from the company could have been treated as PAYE earnings.

[9] Mrs Churchman-Watson has argued that she was not well served by her counsel, Mr Peters, that he did not really understand the case and that she had more evidence that could be called.

[10] From listening to her submissions I am satisfied that they are not exculpatory evidence but they do not answer the charge that at the time she filed the forms the information contained on those forms, without any explanation, were misleading, and deliberately so. They were deliberately so because of Mrs Churchman-Watson's experience which is, for these purposes, adequate for the Court to draw the inference, as Judge Moran did, that she knew what she was doing.

[11] For these reasons I am satisfied that Mrs Churchman-Watson has not advanced any arguments which justify me disturbing the decision of Judge Moran as to conviction.

[12] As to penalty, Judge Moran was well aware of the stresses Mrs Churchman-Watson was under at the time and his penalty that he imposed in the circumstances was quite modest. She was sentenced on these three charges to 200 hours' community work.

[13] For these reasons this appeal is dismissed.

Solicitors:
Raymond Donnelly & Co, Christchurch, for Respondent

cc: Mrs Churchman-Watson