

## CASE SUMMARY

# High Court allows the Commissioner's strike-out application, dismisses Mr McGuire's Judicial Review proceedings and awards indemnity costs to the Commissioner

Decision date: 22 April 2024

CSUM 24/04

## CASE

***Commissioner of Inland Revenue v McGuire* [2024] NZHC 883**

## LEGISLATIVE REFERENCES

High Court Rules 2016, r 15.1(1)(a), (b) and (d)

High Court Rules 2016, r 15.1(2)

## CASE LAW REFERENCES

*Commissioner of Inland Revenue v McGuire* [2022] NZDC 12179

*Commissioner of Inland Revenue v McGuire* [2023] NZHC 1314

*Attorney General v Prince* [1998] 1 NZLR 262 (CA) at 267

*Commissioner of Inland Revenue v Michael Hill Finance (NZ) Ltd* [2016] NZCA 276, [2016] 3 NZLR 303

*Pharmacy Care Systems Ltd v Attorney-General* (2001) 15 PRNZ 465 (CA)

*Southern Ocean Trawlers Ltd v Director-General of Agriculture and Fisheries* [1993] 2 NZLR 53 (CA)

*Westpac Banking Corporation v Commissioner of Inland Revenue* [2009] NZCA 24

## LEGAL TERMS

*Ultra Vires*, beyond one's legal authority

## Summary

On 12 July 2022, Judge S B Edwards struck out Jeremy McGuire's (Mr McGuire's) defence to the Commissioner of Inland Revenue's claim for \$39,763.48 in unpaid tax, entered judgment in that amount and awarded costs.<sup>1</sup>

Mr McGuire filed a Judicial Review application claiming that Judge Edwards' judgment involved a miscarriage of justice due to various mistakes of fact, was unreasonable, was ultra vires and undermined by breaches of natural justice on the part of the Commissioner.

The Commissioner's applied to strike-out the Judicial Review proceeding while also seeking indemnity costs on the basis that Mr McGuire's claim disclosed no reasonably arguable cause of action, that Mr McGuire's legitimate expectations were met, and that the claim amounts to an abuse of Court process.

The High Court allowed the Commissioner's strike-out application as Mr McGuire's claim was so clearly untenable to the extent that it could not possibly succeed. The High Court could not substantiate Mr McGuire's alleged mistakes of fact/unreasonableness and the allegations of breaches of natural justice and legitimate expectation had no prospect of justifying the relief of setting aside Judge Edwards' judgment.

In finding that there was no reasonably arguable cause of action, it was not necessary for the High Court to determine the question of abuse of process. The Court granted the strike-out application and dismissed the proceedings except that Mr McGuire is to pay the Commissioner's reasonable costs.

## Impact

The decision reaffirms that pleadings must have a reasonably arguable cause of action to proceed and where the pleading is clearly untenable, all or part of that pleading may be struck-out.

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<sup>1</sup> *Commissioner of Inland Revenue v McGuire* [2022] NZDC 12179.

## Facts

On 2 March 2021, the Commissioner initiated proceedings in the Palmerston North District Court seeking judgment in respect of unpaid income tax and PAYE, including penalties and interest relating to a range of tax years and PAYE periods.

On 16 July 2022, Judge S B Edwards struck-out Jeremy McGuire's defence to the Commissioner of Inland Revenue's claim for \$39,763.48 in unpaid tax, entered judgment in that amount and awarded costs.<sup>2</sup>

Judge Edwards judgment observed that Mr McGuire "denied he owed the Commissioner any tax and opposed the Commissioner's strike-out application on the grounds that the claims for arrears are disputed, are time-barred and have been settled".<sup>3</sup> And that, in maintaining he did not owe any tax arrears, he claimed a set off.

Judge Edwards proceeded to find that section 109(a) of the TAA operates to deprive the District Court of justification to hear and determine disputes over the correctness of assessment of tax or the amounts imposed for penalties and interest such as those which underpinned the Commissioner's claim. Therefore, Mr McGuire had no reasonably arguable defence.<sup>4</sup>

On 1 March 2023, the Commissioner initiated bankruptcy proceedings. Mr McGuire applied to the High Court for an order setting the bankruptcy notice aside but on 29 May 2023, his setting aside application was dismissed.<sup>5</sup> By application dated 13 June 2023, the Commissioner proceeded to apply for an order adjudicating Mr McGuire bankrupt.

Mr McGuire responded by filing the current proceeding, an amended statement of claim dated 17 August 2023, seeking judicial review of Judge Edwards' judgment of 16 July 2022.

## Issues

Whether to grant the Commissioner's strike-out application of Mr McGuire's pleadings for Judicial Review by assessing whether Mr McGuire has a reasonably arguable cause of action.

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<sup>2</sup> *Commissioner of Inland Revenue v McGuire*, above n 1, at [8]-[12].

<sup>3</sup> At [13].

<sup>4</sup> At [35].

<sup>5</sup> *The Commissioner of Inland Revenue v McGuire* [2023] NZHC 1314.

## Decision

The High Court struck out Mr McGuire's claim, finding that the claim had no reasonable cause of action in Judicial Review.

The High Court outlined that where a pleading discloses no reasonably arguable cause of action or case appropriate to the nature of the pleading, or is likely to cause prejudice or delay, or is otherwise an abuse of the process of the Court, the Court may strike out all or part of that pleading.<sup>6</sup> If the Court strikes out a statement of claim under the High Court Rules 2016, it may by the same order dismiss the proceeding.<sup>7</sup>

The High Court went onto observe and assess Mr McGuire's arguments under the claim.

The High Court considered that none of those alleged mistakes of facts could be substantiated. By the time the Commissioner's claim was pursued before Judge Edwards, it was limited to income tax-related debts arising from the 2012, 2013, 2015 and 2016 tax years and a \$50 late filing penalty for Goods and Services Tax (GST). The amounts relating to the 2012 and 2013 tax years arose as a matter of self-assessment which were not amended or disputed by either party within applicable time limitations, and s 109(b) applied, deeming them to be accurate. Regarding 2016, Mr McGuire had filed a tax return for 2016 in a manner which he accepted he was unable to do so, and the Commissioner amended the 2016 assessment, accordingly, leaving no other part in dispute and in the absence of challenge under Part 8A of the TAA, s 109(b) deemed it to be accurate.

Considering the 2015 year, a dispute between the Commissioner and Mr McGuire arose and was the subject of administrative review by Inland Revenue's Disputes Review Unit (DRU) resulting in a claim in the Taxation Review Authority (TRA). A deed of settlement resulted from the TRA, and the issues for the 2015 tax year were fully and finally settled after Mr McGuire paid \$1,000.00 in accordance with the deed of settlement.

Mr McGuire alleged unreasonableness and ultra vires decision-making on the same basis he alleged mistakes of fact.

The High Court stated that for the same reasons, they cannot substantiate those pleadings.

Mr McGuire claimed alleged breaches of natural justice on part of the Commissioner's procedure as he did not receive a legible colour-printed affidavit of up-to-date tax calculations and that the employees of the Commissioner failed to consult with Mr McGuire about content of the referral to DRU.

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<sup>6</sup> High Court Rules 2016, r 15.1(a), (b) and (d).

<sup>7</sup> Rule 15.1(2).

The High Court dismissed those allegations as they have no prospect of justifying the relief of setting aside Judge Edwards' judgment. The allegation regarding the procedure adopted during the DRU referral was described as "meritless and served only to waste the Court's time".

As the arguments were so untenable for a reasonable cause of action, it was not necessary to determine the question of abuse of process. However, notably, the Court mentioned that it did not overlook the fact that Mr McGuire pursued an appeal against Judge Edwards only once he was served with a bankruptcy notice on 1 March 2023.

The High Court considered it appropriate to award indemnity costs as the case was seen as broadly hopeless especially in relation to the claim of natural justice and legitimate expectations, which only served to achieve simple delay, rather than any prospect of success.

## About this document

These are brief case summaries, prepared by Inland Revenue, of decisions made by the Taxation Review Authority, the District Court, the High Court, the Court of Appeal or the Supreme Court in matters involving the Revenue Acts. For Taxation Review Authority matters, names have been anonymized. The findings of the court described in a case summary will no longer represent current law where the matter has been successfully appealed or subsequent amended legislation has been enacted.