

## CASE SUMMARY

# High Court dismisses application for company director to represent company at appeal hearing and strikes out appeal on procedural grounds

Decision date: 19 September 2023

CSUM 23/02

## CASE

***Jayashree Limited v Commissioner of Inland Revenue [2023] NZHC 2723***

## LEGISLATIVE REFERENCES

High Court Rules 2016, 5 5.36

Lawyers and Conveyancers Act 2006, ss 6, 24 & 27

Lawyers and Conveyancers Act (Lawyers Conduct and Client Care) Rules 2008, rr 5.2 & 6

## CASE LAW REFERENCES

*Re G J Mannix* [1984] 1 NZLR 309 (CA), *The Commissioner of Inland Revenue v Chesterfields Preschools Ltd* [2013] NZCA 53, *Keemati Ltd v MR Civil Ltd* [2021] NZHC 538

## LEGAL TERMS

*Mannix* rule, right of audience, representation of company

## Summary

Mr Karmarkar, the director of Jayashree Limited (Jayashree), filed an appeal in the High Court against a decision of the District Court to strike out a statement of claim he filed against the Commissioner. The claim filed name the Commissioner as second defendant. An accountancy firm was named as first defendant. The strike-out application was on the basis the claim

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disclosed no reasonably arguable cause of action against the Commissioner, by either Mr Karmarkar or Jayashree.

In the Notice of Appeal, Mr Karmarkar named himself as the "plaintiff". Court orders were later made joining Jayashree Ltd as the appellant and removing Mr Karmarkar as the appellant.

Mr Karmarkar then filed an application for Jayashree seeking leave for him to represent the company at the hearing of the appeal.

The High Court dismissed the application for Mr Karmarkar to represent Jayashree. The High Court was not persuaded that the *Mannix* rule, that a company has no right to be represented in the conduct of a case in court except by a barrister or solicitor of the High Court, should be departed from in this case. The Court also struck out the appeal on procedural grounds.

## Impact

The decision upholds the *Mannix* principles regarding companies being represented in the High Court by a barrister or solicitor.

## Facts

Mr Karmarkar filed a claim in the Auckland District Court against an accountancy firm as first defendant and the Commissioner as second defendant. The claim sought \$50,000 compensation from Inland Revenue "for stress caused by habitually wrong scrutiny". The claim arose out of scrutiny of Jayashree's GST returns. No pleading relating to Jayashree or any purported loss it suffered included in the claim.

The Commissioner filed an interlocutory application seeking an order to strike out the claim on the grounds that the claim disclosed no reasonably arguable cause of action against the Commissioner. One of the grounds was that Mr Karmarkar was not the correct plaintiff; Jayashree was the correct plaintiff.

The Commissioner also initiated the disputes process by issuing a Notice of Proposed Adjustment to Jayashree. Jayashree then issued a Notice of Response.

The District Court granted Mr Karmarkar leave to join Jayashree (and another of his companies) as additional plaintiffs and directed that those companies were to file amended pleadings. No amended statement of claim was filed.

The District Court heard the strike-out application and held that the claim disclosed no reasonably arguable cause of action against the Commissioner by either Mr Karmarkar or Jayashree.

Mr Karmarkar then filed a Notice of Appeal in the High Court naming himself as the “plaintiff”. Counsel for the Commissioner filed a memorandum submitting that the Court should join Jayashree as an appellant and that Mr Karmakar should either engage counsel for Jayashree or seek orders from the Court allowing him to represent Jayashree.

Mr Karmarkar accepted those orders should be made including his removal as appellant and they were made accordingly.

Mr Karmarkar then filed an application for Jayashree with the High Court seeking leave for him to represent Jayashree. Mr Karmarkar was permitted to appear and make submissions on the application.

## Issues

The issue for consideration by the High Court was whether the Court should exercise its discretion to allow Mr Karmarkar, a non-lawyer, to appear on Jayashree’s behalf.

## Decision

The High Court dismissed the application for Mr Karmarkar to represent Jayashree at the hearing of the appeal. It also struck out the appeal on procedural grounds.

The *Mannix* rule is that a company has no right to be represented in court except by a barrister or solicitor of the High Court. However, the courts maintain a residual discretion to allow unqualified advocates to appear before them. Relevant considerations for the exercise of the Court’s discretion include the nature and complexities of the litigation, the importance of an understanding of the law and a dispassionate consideration of the circumstances, the need for professional objectivity. *Keemati Ltd v MR Civil Ltd* [2021] NZHC 538 at [6] and whether the application is made in an emergency situation. *Re G J Mannix* [1984] 1 NZLR 309 (CA) at 314.

The High Court considered that Mr Karmarkar’s actions had demonstrated a disregard for court procedure and showed that he did not respect the rule of law. Mr Karmarkar did not advise the Court that he had previously attempted to act for Jayashree without the leave of the Court and that he had been told many times by both the High Court and the Court of Appeal that a company requires legal representation before the High Court and the Court of Appeal. The High Court observed that Mr Karmarkar was clearly aware of the *Mannix* rule but chose to ignore it rather than comply with it.

Additionally, the Court considered that professional objectivity was absent in the case. Mr Karmarkar appeared to be aligning his interests with Jayashree’s interests and did not consider Jayashree as a separate legal entity.

The High Court also considered that there was a lack of understanding of the law and the relevant legal issues on Mr Karmarkar's part as the primary relief sought in the interlocutory application could not be given. Further, the Court considered there would be difficulties for Jayashree in advancing the appeal because of a non-compliant claim, and identified further legal issues that create difficulties for Jayashree; there can be no compensation for stress by a limited liability company, there is no loss pleaded by Jayashree and a final determination of Jayashree's GST position has yet to be determined as it is going through the statutory disputes process. The High Court considered those are all issues on which Jayashree should have legal assistance to understand them and address them as necessary in the appeal.

The High Court was satisfied that Mr Karmarkar should not be permitted to represent Jayashree at the hearing of Jayashree's appeal. The High Court also found that Mr Karmarkar was not permitted to file documents on behalf of Jayashree for the proposed appeal.

The appeal was also struck out on procedural grounds. However, the High Court noted that a solicitor instructed by Jayashree may apply for leave to file a fresh appeal out of time. Whether leave should be given will be considered in all the circumstances existing at that time.

## Appeal Period

An appeal must be filed by 31 October 2023.

An appeal is required to be filed within 20 working days after the date of the decision (2 October 2023) in accordance with the Judicial Review Procedure Act 2016, s 20, the Senior Courts Act 2016, s 56 and the Court of Appeal (Civil) Rules 2005, s 29.

## About this document

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