

IN THE SUPREME COURT OF NEW ZEALAND

SC 19/2011
[2011] NZSC 48

BETWEEN SHIRLEEN SHIA LING SIM
 Applicant

AND MONCRIEFF PASTORAL LIMITED
 Respondent

Court: Elias CJ, Blanchard and William Young JJ

Counsel: Applicant in person
 P J Reardon for Respondent

Judgment: 9 May 2011

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B The applicant is to pay the respondent costs in the sum of \$2,500.**

REASONS

[1] The Court of Appeal refused the applicant an extension of time to appeal¹ against a judgment delivered by Keane J in the High Court on 31 August 2007.² Ms Sim had filed a timely appeal against that judgment but, because she failed to take the necessary steps to prosecute the appeal, it was deemed to be abandoned. Subsequently, there was a further hearing in the High Court in which the respondent sought relief against Ms Sim consequential upon the earlier judgment and, on 1 October 2010, Keane J awarded the respondent damages of \$230,000 together with interest of \$319,948 and costs.³ It was only after this second judgment of Keane J was delivered that Ms Sim sought an extension of time to appeal against the

¹ *Sim v Moncrieff Pastoral Ltd* [2011] NZCA 21.

² *Moncrieff Pastoral Ltd v Sim* HC Auckland CIV-2004-404-5603, 31 August 2007.

³ *Moncrieff Pastoral Ltd v Sim* HC Auckland CIV-2004-404-5603, 1 October 2010.

judgment delivered in August 2007. This application was refused by the Court of Appeal on 18 February 2011 and she now seeks leave to appeal to this Court.

[2] We are prepared to accept, for the sake of argument, that this Court has jurisdiction to entertain an appeal from the refusal of the extension of time to appeal.⁴ That said, however, we are satisfied that the application for leave to appeal against the decision of the Court of Appeal should be refused. As the Court of Appeal pointed out, there has been a substantial delay which has not been adequately and convincingly explained and, in the meantime, the respondent has acted on the judgment by proceeding with the further hearing before Keane J. Further, although the applicant claims to rely on new evidence, the basis upon which she wishes to challenge the August 2007 judgment of Keane J is simply a reiteration of an argument which has previously been convincingly rejected.⁵

Solicitors:
Cooper Rapley, Palmerston North for Respondent

⁴ The application was made pursuant to r 29A of the Court of Appeal (Civil) Rules 2005 and r 29A(5) requires such an application to be “made and treated” as if it were an application for leave to appeal. This particular direction is arguably not sufficient to engage s 7(b) of the Supreme Court Act 2003 which excludes the right of appeal to this Court against a decision refusing leave to appeal to the Court of Appeal.

⁵ The respondent had unsuccessfully sought summary judgment and although its appeal against the refusal of summary judgment was unsuccessful, the Court of Appeal directly addressed and convincingly rejected the proposed argument, which concerned the construction of a contractual provision see *Moncrieff Pastoral Limited v Sim* CA 79/05 28 September 2006.