IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 105/2023
[2023] NZSC 130

BETWEEN	STEPHEN GILBERT ANDERSON Applicant
AND	NZI INTERNATIONAL ACCEPTANCES LIMITED, NZI SECURITIES LIMITED AND NZI FINANCE LIMITED Respondents

Court:	Glazebrook, O'Regan and Kós JJ
Counsel:	Applicant in person No appearance for Respondents
Judgment:	2 October 2023

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] This is the applicant's third application for leave to appeal to this Court.[1] All three applications essentially concern the 1988 mortgagee sale of the applicant's farm by the respondent lenders, following the applicant's default under instruments of loan. Thereafter the applicant was adjudicated bankrupt and the respondents were restructured and liquidated.

[2] The first application was for leave to appeal the 2022 refusal of the Court of Appeal to recall its 2006 decision declining to give directions to reactivate

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1 *Anderson v NZI International Acceptances Ltd* [2022] NZSC 85 (O'Regan, Ellen France and Kós JJ) [First application]; and *Anderson v NZI International Acceptances Ltd* [2023] NZSC 64 (O'Regan, Ellen France and Kós JJ) [Second application].

proceedings brought by the applicant in the High Court in 1987. The 1987 proceedings are long extinct.[2]

[3] The second application was in substance an application to bring an appeal direct from a 1999 High Court judgment striking out a second set of proceedings brought by the applicant that year, challenging the 1988 mortgagee sale. The 1999 judgment was not appealed at the time. The respondents have long ago been liquidated in the ordinary course of a commercial restructuring. The land was acquired by a bona fide third-party purchaser 35 years ago, in 1988. The 1999 proceedings were struck out, rather than discontinued, and any appeal therefrom was long out of time.[3]

[4] This third application for leave to appeal concerns yet another attempt by the applicant to breathe life into the extinct 1987 proceedings. He applied in the High Court for damages arising from the grant of an interim injunction in the course of those proceedings. Dunningham J struck the application out as an abuse of process.[4] The Court of Appeal struck out the applicant's appeal for similar reasons.[5] It involved a continued attempt by the applicant, relying on a 1987 interim injunction that briefly stopped the mortgagee sale, to contend that the predatory behaviour of the respondents led to a disadvantageous sale and resulted in his creditors remaining unpaid.[6] It said:[7]

> We are satisfied that this appeal is yet another attempt to relitigate a closed proceeding. As such it is a plain abuse of process. It is struck out.

[5] The applicant's fundamental argument in the present application is that the 1988 mortgagee sale infringed the terms of the 1987 interim injunction because that was made in terms "until further order of the Court"—and no such order was made.

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2 Second application, above n 1, at [12].
3 At [13].
4 *Anderson v NZI International Acceptances Ltd* [2023] NZHC 1561.
5 *Anderson v NZI International Acceptances Ltd* [2023] NZCA 463 (Miller and Brown JJ).
6 At [6].
7 At [7].

Our assessment

[6] The argument is misconceived. The injunction restrained the respondents "until the further order of the Court from executing their power of sale pursuant to the two notices under the Property Law Act dated 14 August 1987".[8] That is, it related only to the two defective notices served already. Further, as we noted in our first judgment, the 1987 judgment recognised the possibility that fresh Property Law Act notices might be issued, giving the applicant time to remedy the breach. Such notices could then form the basis of a mortgagee sale of the property in the event of further default.[9] That is what occurred.

[7] We are satisfied that it is not necessary in the interests of justice to hear and determine the proposed appeal. It involves no matter of general or public importance, and, for the reasons given in [6], there is no likelihood that a substantial miscarriage of justice will arise if the proposed appeal is not heard.[10]

Result

[8] The application for leave to appeal is dismissed.

[9] Because no submissions were required of the respondents, no award of costs is made.

Solicitors:
S P Donegan, IAG New Zealand Ltd, Auckland

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8 *Anderson v NZI International Acceptances Ltd* [1988] ANZ ConvR 275 (Holland J) at 278 (for full case see HC Dunedin CP113/87, 19 November 1987).

9 First application, above n 1, at [2].

10 Senior Courts Act 2016, s 74(2); and *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].