

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 27/2018
[2018] NZSC 42

BETWEEN DESMOND WILLIAM COOK
 Applicant

AND HOUSING NEW ZEALAND
 CORPORATION
 Respondent

Court: Elias CJ, William Young and O'Regan JJ

Counsel: Applicant in person

Judgment: 8 May 2018

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B There is no award of costs.**
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REASONS

[1] The applicant commenced a civil proceeding against the respondent in the District Court at Auckland, claiming that the respondent breached its statutory duties under ss 3B and 18 of the Housing Corporation Act 1974 to provide him with “suitable housing”. He also claimed negligence, alleging breach of a duty of care to provide him with “suitable rental accommodation”.

[2] The respondent applied to strike out the applicant’s statement of claim on the grounds that neither of the causes of action was reasonably tenable and that the proceeding was an abuse of process. The applicant sought to strike out the respondent’s pleading and the two applications were heard together. The District

Court Judge found in favour of the respondent, struck out the applicant's statement of claim and refused to strike out the respondent's pleading.¹

[3] The applicant appealed to the High Court. That Court dismissed his appeal, essentially for the same reasons as had been given by the District Court Judge.² The High Court refused leave for a second appeal to the Court of Appeal.³

[4] The applicant applied to the Court of Appeal for special leave to appeal against the High Court decision. The Court of Appeal dismissed his application.⁴ The Court found that none of the allegations of error on the part of the High Court Judge was capable of serious or bona fide argument and no prospect of a miscarriage of justice if the decision of the High Court stood intact.⁵

[5] The applicant now applies to this Court for leave to appeal against the decision of the Court of Appeal. The Registrar declined to accept the application for filing and advised the applicant that this Court did not have jurisdiction to hear and determine an application for leave to appeal against a decision of the Court of Appeal refusing special leave to appeal to that Court.⁶ The applicant requested that this decision be reconsidered and, in light of that request, the Registrar accepted his application for leave for filing and referred it to a panel of Judges for decision.

[6] It is clear that the Court does not have jurisdiction to hear and determine the application for leave to appeal. The decision of the Court of Appeal was a refusal to give special leave to appeal to that Court and this Court is specifically precluded by statute from hearing and determining an appeal against a decision of that kind.⁷

[7] We have considered whether the application should be treated as an application to bring a leapfrog appeal against the decision of the High Court. Even if we did this, there would be two difficulties in the way of such an application.

¹ *Cook v Housing New Zealand Corporation* [2016] NZDC 676 (Judge Hinton).

² *Cook v Housing New Zealand Corporation* [2017] NZHC 1781 (Downs J).

³ *Cook v Housing New Zealand Corporation* [2017] NZHC 2405 (Downs J).

⁴ *Cook v Housing New Zealand Corporation* [2018] NZCA 57 (Kós P, Brown and Williams JJ).

⁵ At [12].

⁶ Supreme Court Act 2003, s 7(b); Senior Courts Act 2016, s 68(b).

⁷ See n 6 above.

[8] First, the applicant would need to establish that the criteria for leave to appeal were met. This would involve establishing that the appeal involved a matter of general or public importance or that a substantial miscarriage of justice may have occurred or may occur unless the appeal is heard.⁸ In addition he would need to establish that there are exceptional circumstances justifying taking a proposed appeal directly from the High Court to this Court.⁹

[9] Secondly, this Court has made it clear that it will be rare that a leapfrog appeal would be permitted in circumstances where an appeal from the Court of Appeal to this Court is precluded by statute. In *Burke v Western Bay of Plenty District Council*, the leave panel considering that application for leave said:¹⁰

... when an appeal from the Court of Appeal to this Court is precluded by s 7(b) [s 68(b)] it cannot be right, save perhaps in very exceptional circumstances, to allow that embargo to be circumvented by a direct appeal from the High Court. While there is no express statutory provision preventing an appeal directly from the High Court to this Court following a refusal of leave to appeal to the Court of Appeal, the policy behind the embargo in s 7(b) [s 68(b)] suggests that the circumstances in which such a direct appeal could be brought would have to be extremely compelling.

[10] The applicant's statement of claim in his proceedings against the respondent were struck out on the basis that his claims were not reasonably arguable and that they constituted an abuse of process. The District Court and High Court decisions made concurrent findings to that effect. The applicant's attempt to institute a further appeal to the Court of Appeal failed in both the High Court and the Court of Appeal, again for substantially the same reasons. It is clear that his application for leave to appeal fails to meet the criteria for leave to appeal to this Court, let alone the elevated criterion ("extremely compelling") set out in *Burke v Western Bay of Plenty District Council*.

[11] In these circumstances the application for leave to appeal is dismissed.

[12] We make no award of costs.

⁸ Supreme Court Act, s 13(2); Senior Courts Act, s 74(2).

⁹ Supreme Court Act, s 14; Senior Courts Act, s 75.

¹⁰ *Burke v The Western Bay of Plenty District Council* [2005] NZSC 46, (2005) 18 PRNZ 560 at [4].