

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 81/2018  
[2018] NZSC 99

BETWEEN                      MARIE DEANNE CASTLE  
   Applicant  
  
AND                                WHAKATANE DISTRICT COUNCIL  
   Respondent

Court:                          William Young, Glazebrook and Ellen France JJ  
  
Counsel:                      Applicant in person  
   P Moodley for Respondent  
  
Judgment:                      30 October 2018

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**JUDGMENT OF THE COURT**

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

[1]    The applicant seeks leave to appeal against a judgment of Woolford J delivered on 10 July 2018 in which he dismissed her application for a declaration of invalidity in respect of rates assessed by the Whakatane District Council against two properties which she owns.<sup>1</sup> She issued these proceedings after the Council had obtained judgment against her for outstanding rates.

[2]    The properties had been declared by the District Court to be abandoned; this pursuant to s 77 of the Local Government (Rating) Act 2002. This entitled the Council to sell them by public tender and they were acquired by the applicant in 2012. After

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<sup>1</sup>    *Castle v Whakatane District Council* [2018] NZHC 1687.

she acquired the properties, the Council sent rates assessment notices to the applicant giving her notice of liability for the rates owed in relation to the properties. From March 2014 to July 2015, the applicant made only nominal payments towards the rates she owed. The Council issued rates recovery proceedings in September 2014 and, after judgment was entered against the applicant, took steps to enforce the judgment.

[3] The applicant's broad position seems to be that her method of acquiring the properties means that they are no longer liable for rates and for the purposes of this argument she relies on the long repealed provisions of The Sale for Non-payment of Rates Act 1862. This statute provided a memorialising process associated with the recovery of rates and that where the rates in issue were later paid a memorial of satisfaction would be registered, discharging the land from the charge previously created. Self-evidently, the statute did not purport to exempt such land from future rates demands.

[4] In his judgment, Woolford J pointed out the governing statute now is the Local Government (Rating) Act 2002 and that, under that Act, the applicant is liable for rates on the properties.

[5] The applicant appealed to the Court of Appeal against the judgment of Woolford J but this appeal was deemed abandoned as she did not provide security for costs. Her application for leave to appeal direct to this Court from the High Court falls to be determined under s 75 of the Senior Courts Act 2016 and requires her to establish that there are exceptional circumstances which warrant the granting of leave. This she has not done and the application is accordingly dismissed. She is to pay the respondent costs of \$2,500.

Solicitors:  
Brookfields Lawyers, Auckland for Respondent