

**IN THE SUPREME COURT OF NEW ZEALAND**

**SC 62/2007  
[2007] NZSC 107**

BETWEEN                      CAMPBELL ROBERT THOM  
   Appellant  
  
AND                              DAVYS BURTON  
   Respondent

Court:                      Elias CJ, McGrath and Anderson JJ

Counsel:                  J Cox for Appellant  
                                 C T Walker for Respondent

Judgment:                13 December 2007

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**JUDGMENT OF THE COURT**

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**A     The application for extension of time for applying for leave to appeal is allowed.**

**B     The application for leave to appeal is granted in respect of the following ground:**

**Whether the Court of Appeal was wrong to decide that the appellant had suffered loss or damage on account of the respondent's negligence, which caused the limitation period to commence, by October 1993 (when the couple moved into the appellant's home).**

**C     Costs in respect of the application for leave are reserved. Any submissions should be made at the hearing of the appeal.**

**REASONS**

[1]     Rule 11(1) of the Supreme Court Rules 2004 requires an intending appellant to apply for leave to appeal within 20 working days after the decision against which the appellant wishes to appeal. The Court may on application extend that period and such an application for extension may be made after the expiry of the 20 working day period (r 11(4) and (5)).

[2] A litigant in civil proceedings who has been successful in the Court of Appeal will naturally conclude that finality has been reached in the litigation if the time for applying to this Court for leave to appeal is expired. This Court will accordingly not grant an extension of time under Rule 11(4) lightly. The appellant must show that in all the circumstances the interests of justice favour granting leave. In future cases the Court would expect that facts relied on to support an application for extension of time to apply for leave should be supported by affidavit.

[3] In the present case the application is nearly two months out of time. Counsel has advised the Court that the appellant decided to seek leave to appeal “relatively quickly” and that the failure to file an application arose from the appellant’s misunderstanding of how long he had to apply. This was compounded by difficulties that his solicitors had in contacting the appellant. At the relevant time the appellant was overseas and unable to be contacted by email.

[4] While these circumstances do not provide a strong case for an extension, no prejudice to the respondent arises from the appellant’s failure to apply in time. On balance we conclude that the interests of justice favour the granting of an extension of time to apply for leave.

[5] Leave to appeal is granted on the ground specified in B above.

[6] We have decided that the statutory requirement that it is necessary in the interests of justice for the Court to hear and determine the appeal is not made out in respect of the proposed ground of appeal based on reasonable discoverability. The appellant’s argument would be that, although the facts giving rise to liability were reasonably discoverable, the legal consequences of those facts were not. This unorthodox proposition is not supported by this Court’s recent judgment in *Murray v Morel and Co*,<sup>1</sup> and it was understandably not addressed in the Court of Appeal. As the interests of justice requirement is not met, leave to appeal does not extend to this ground.

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<sup>1</sup> [2007] NZSC 27.

Solicitors:

Rennie Cox, Auckland for Appellant

Gilbert Walker, Auckland for Respondent