

IN THE SUPREME COURT OF NEW ZEALAND

SC 126/2014
[2015] NZSC 5

BETWEEN ROBERT CLIFFORD HOANI CRIBB
Applicant

AND EVIA RURAL FINANCE LIMITED
First Respondent

THE OFFICIAL ASSIGNEE
Second Respondent

Court: McGrath, Glazebrook and O'Regan JJ

Counsel: Applicant in Person
No appearance for Respondents

Judgment: 18 February 2015

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] On 6 March 2012, Associate Judge Bell delivered an oral judgment in which he made an order adjudicating Mr Cribb bankrupt.¹

[2] Mr Cribb appealed against that decision to the Court of Appeal. He also made an application for leave to adduce further evidence in the Court of Appeal. The Court of Appeal refused leave to adduce further evidence and dismissed the appeal.²

¹ *Evia Rural Finance Ltd v Cribb* [2012] NZHC 579 (Associate Judge Bell).

² *Cribb v Evia Rural Finance Ltd* [2014] NZCA 543 (French, Winkelmann and Asher JJ).

[3] Mr Cribb applies to this Court for leave to appeal against the judgment of the Court of Appeal.

[4] In the Court of Appeal Mr Cribb argued that the Associate Judge was wrong to conclude that Mr Cribb did not have adequate assets to repay his creditors. He sought to adduce new evidence in support of this ground. The Court of Appeal refused leave on the basis that the evidence related to events that post-dated adjudication. It analysed the factual basis for Mr Cribb's contention that his net asset position was considerably better than the Associate Judge had found but concluded that the findings made by the Associate Judge were correct.

[5] Mr Cribb also argued that the Associate Judge was wrong to find that the first respondent was not precluded from proceeding with the application to have Mr Cribb adjudicated bankrupt because it had assigned its debt. The Court of Appeal carefully evaluated the factual underpinning of that contention and concluded that the Associate Judge was right to find that the first respondent had not assigned the debt owed to it by Mr Cribb.

[6] Mr Cribb's third ground of appeal in the Court of Appeal related to the discretion to refuse to make an order of adjudication even if the judgment creditor has committed an act of bankruptcy.³ Mr Cribb said the Associate Judge had erred in the exercise of his discretion and had failed to follow an earlier High Court authority.⁴ The Court of Appeal decided that the three considerations that the Associate Judge had identified as favouring an adjudication, accountability, the administration of the debtor's affairs and the discharge of the indebtedness, weighed heavily in favour of the exercise of the discretion to bankrupt Mr Cribb. It found that the Associate Judge's exercise of the discretion had been correct.

[7] Mr Cribb seeks to revisit all of these matters in a further appeal. He says that the Court of Appeal did not thoroughly examine the Associate Judge's findings, and that a miscarriage of justice has occurred. However, we do not see anything in the Court of Appeal judgment or in the material brought before us by Mr Cribb that

³ Insolvency Act 2006, s 37(d).

⁴ *Re Taylor, ex parte Greenwood* (1992) 4 NZBLC 102, 875 (HC).

indicates any basis for Mr Cribb's concern or any risk that a substantial miscarriage of justice may have occurred.

[8] Mr Cribb also argues that the points he wishes to raise on appeal involve matters of general or public importance or general commercial significance.

[9] He says it is a matter of general or public importance that this Court clarify the distinction between persons who have become bankrupt because of wrongful commercial acts involving dishonesty or unacceptable commercial conduct and those who do so because of circumstances beyond their control. We do not think that this is an area of law that requires clarification. In this case the Associate Judge and the Court of Appeal were satisfied that, notwithstanding the fact that Mr Cribb's financial situation arose largely as a result of factors associated with the global financial crisis, it was not an appropriate case for the exercise of the discretion to refuse an order of adjudication. The law is clear and the High Court and Court of Appeal applied it to the facts of the case in an orthodox manner.

[10] In relation to matters of commercial significance, Mr Cribb argues that the way in which the Court below approached the case is important to the commercial community as a whole. We disagree. The matters raised by Mr Cribb are matters that are no doubt of significant importance to him, but they are fact specific, rather than raising any point of general commercial importance.

[11] In these circumstances we see no proper basis for granting leave and we therefore dismiss the application.