

IN THE SUPREME COURT OF NEW ZEALAND

SC 127/2015
[2016] NZSC 11

BETWEEN

YOON LEE
Applicant

AND

DISTRICT COURT AT AUCKLAND
First Respondent

ZHI HONG GAO AND LIN GE
Second Respondents

JOHN CARTER AND BRENT
O'CALLAGHAN
Third Respondents

THE OFFICIAL ASSIGNEE
Fourth Respondent

Court: Elias CJ, Glazebrook and Arnold JJ

Counsel: Applicant in person
No appearance for First Respondent (abiding)
G J Luen for Second Respondents
A C Challis for Third Respondents
No appearance for Fourth Respondent

Judgment: 17 February 2016

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
 - B The applicant must pay each of the second and third respondents costs of \$2,500.**
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REASONS

[1] The applicant, Mr Lee, is a solicitor. In 2005 he acted for the second respondents, Ms Gao and Mr Ge (the Gaos), on their intended purchase of a section from Pro Rata Investments Ltd. The third respondents, Carter & Partners (Carters),

acted for Pro Rata on the transaction. When the transaction could not be completed and the Gaos lost their deposit, they sued Mr Lee in negligence. Mr Lee joined Carters, alleging that he had been given certain undertakings by the firm which had been breached. In the District Court, the Gaos were successful in their claim against Mr Lee, while Mr Lee was unsuccessful in his claim against Carters.¹

[2] Mr Lee appealed the District Court decision, but succeeded only to the extent that the amount of damages was reduced as was the award of costs against him.² That remained the position despite Mr Lee's subsequent attempts to appeal further and then to judicially review the District Court decision. Those subsequent proceedings resulted in further costs orders against Mr Lee, some on an indemnity basis.

[3] The upshot was that Mr Lee owed some \$90,000 to the Gaos by way of outstanding costs orders and approximately \$93,000 to Carters. They obtained charging orders against an otherwise unencumbered property owned by Mr Lee. Mr Lee then attempted to prevent the forced sale of the property by seeking what was effectively a stay of enforcement under r 17.29 of the High Court Rules. Ellis J refused his application and ordered that he pay indemnity costs on the unsuccessful application.³

[4] Mr Lee then appealed to the Court of Appeal.⁴ However, before the appeal was heard, Mr Lee completed his own sale of the property and used some of the proceeds to discharge his liabilities to the Gaos and to Carters. As a consequence, the Court of Appeal refused to hear his appeal against the refusal of a stay.⁵ It did, however, hear his appeal against the indemnity costs award which Ellis J made against him. Mr Lee argued that he did not have a proper opportunity to challenge the claim for indemnity costs and that, in any event, an award of indemnity costs was not merited in the particular circumstances of the case. The Court of Appeal dismissed Mr Lee's appeal, and made a further order of costs against him on an

¹ *Gao v Lee* DC Auckland CIV-2007-004-2591, 14 May 2010 (Judge Gittos).

² *Lee v Gao* HC Auckland CIV-2010-404-3599, 19 May 2011 (Peters J).

³ *Lee v District Court at Auckland* [2015] NZHC 737.

⁴ *Lee v District Court at Auckland* [2015] NZCA 498 (Winkelmann, Dobson and Gilbert JJ).

⁵ At [2].

indemnity basis, which in part reflected the fact that the respondents had offered Mr Lee the opportunity to abandon his appeal on a “no costs” basis given that the outstanding costs orders had been met but he refused to accept their offer.

[5] We are not satisfied that it is necessary in the interests of justice that we hear and determine this appeal. It raises no point of general or public importance, nor do we see any appearance of injustice in the outcome. In essence, the proposed appeal involves an assessment on particular facts. In addition, it is time that this long-running saga was brought to an end. Accordingly, the application for leave to appeal is dismissed.

[6] Both the Gaos and Carters seek indemnity costs orders against Mr Lee. This is on the basis that that his application for leave to appeal is, in the circumstances, vexatious and frivolous. They draw attention to the warnings given by the Courts on earlier occasions that this litigation must come to an end.

[7] While we are sympathetic to these arguments, we consider that the interests of justice will be met sufficiently by the Court’s standard order for costs in favour of the Gaos and Carters. Accordingly, the applicant must pay each of the second and third respondents costs of \$2,500. The Court’s general practice is not to make orders for disbursements on leave applications which are dealt with on the papers.

Solicitors:
Crown Law Office, Wellington for First Respondent
Hesketh Henry, Auckland for Second Respondents
McElroys, Auckland for Third Respondents