**IN THE SUPREME COURT OF NEW ZEALAND**

**I TE KŌTI MANA NUI**

**SC 100/2018**
**[2019] NZSC 14**

| | |
|---|---|
| BETWEEN | JIA WEN MAO<br>Applicant |
| AND | INNO CAPITAL NO. 4 LIMITED<br>First Respondent |
| | DAMIEN GRANT AND STEVEN KHOV AS LIQUIDATORS OF CHEN HONG CO LIMITED (IN LIQUIDATION)<br>Second Respondents |

| | |
|---|---|
| Court: | Glazebrook, O'Regan and Ellen France JJ |
| Counsel: | L Ponniah for Applicant<br>A S Botterill for Second Respondents |
| Judgment: | 26 February 2019 |

---

**JUDGMENT OF THE COURT**

---

**A The application for leave to appeal is dismissed.**

**B The applicant must pay the second respondent costs of $2,500.**

---

**REASONS**

## Introduction

[1] Jia Wen Mao, in her capacity as a director of Chen Hong Co Ltd (the company), seeks leave to appeal from a decision of the Court of Appeal declining to terminate the liquidation of the company.[1]

---

[1] *Mao v Inno Capital No 4 Ltd* [2018] NZCA 433 (Gilbert, Venning and Dunningham JJ) [CA judgment].

## Background

[2] The company was incorporated primarily to undertake a property development in Otahuhu. It became indebted to Inno Capital No 3 Ltd (Inno 3) and failed to pay the debt owing by the due date. Inno 3 served a statutory demand for the sum owing. An amount was paid on account but, as at 4 October 2017, the amount still owing to Inno 3 by the company was over $370,000. Inno 3 issued liquidation proceedings against the company on the basis it had not satisfied the statutory demand in full.

[3] Before the first call of the proceedings, Inno 3 sought an order substituting Inno Capital No 4 Ltd (Inno 4), the first respondent, as the plaintiff on the grounds the debt owing by the company to Inno 3 had been assigned to Inno 4. The order for substitution was made under r 4.52 of the High Court Rules 2016 (the Rules). An amended statement of claim was filed and served at the registered office of the company but there was no affidavit verifying the allegations in the amended statement of claim in terms of the requirements in the Part of the Rules dealing with liquidation (r 31.24(5)(c)). A solicitor's certificate confirmed the debt remained owing. When the matter next came before the Court on 15 December 2017, Lang J made an order placing the company into liquidation. The second respondents were appointed as liquidators of the company.

[4] Subsequently, orders were sought terminating the liquidation under s 250 of the Companies Act 1993. The application was dismissed in the High Court[2] and that decision appealed unsuccessfully to the Court of Appeal.

## The proposed appeal

[5] The proposed appeal would raise a number of grounds which the applicant says are issues of general or public importance.[3] The first set of issues arises from the approach to be taken to the requirements of r 31.24. In essence, the applicant wishes to argue that Part 31 of the Rules dealing with liquidation proceedings is a code and that non-compliance with r 31.24 meant the proceeding was a nullity.[4] In this context,

---

2 *Mao v Inno Capital No 4 Ltd* [2018] NZHC 1534 (Associate Judge Andrew).

3 Senior Courts Act 2016, s 74(2).

4 Relying on *Spicers Paper (NZ) Ltd v B P K & G A Buckley Ltd* (1993) 6 PRNZ 16 (HC). Compare *Regal Haulage Ltd v Palmford Investments Ltd* M48/93, HC Hamilton, 1 November 1993.

the applicant also challenges reliance on the solicitor's certificate as confirmation the debt remained owing. Second, the applicant relies on issues of natural justice said to arise from the approach to service.

[6] These matters were addressed by the Court of Appeal. The Court rejected the applicant's submission non-compliance with r 31.24 meant the proceeding was a nullity. Rather, the Court said, r 31.24 applied where the substituted creditor relies on a separate debt. In that case, the basis for the new debt "should be deposed to".[5] In contrast, here, the debt was the same but had simply been assigned from Inno 3 to Inno 4. In any event, the Court considered any defect "was of a nature which the Court would readily excuse" under r 1.5 which provides that procedural errors do not nullify.[6]

[7] The Court also found there was sufficient evidence for the High Court to conclude the company was unable to pay its debts. There was an affidavit which the Court said that, although not mentioned in the sealed order, was before the High Court. Even if that affidavit was put to one side, the Court of Appeal said the solicitor's certificate confirmed the debt remained owing.

[8] On the question of service the Court of Appeal found the High Court was "entitled to conclude" that the company had been served and was aware of both the orders for substitution and the hearing date.[7] The same conclusion was reached in relation to service of the amended statement of claim and notice of hearing date.

[9] Finally, the Court of Appeal considered it was not just and equitable to terminate the liquidation of the company where the evidence was that significant debts remained outstanding and the company was unable to pay.[8]

---

5 CA judgment, above n 1, at [21].
6 At [21].
7 At [25].
8 At [31]–[32], *Re Bell Block Lumber Ltd (in liq)* (1992) 5 PRNZ 642 (HC) at 643; and *Canterbury Squid Co Ltd v Southwest Fishery Ltd* HC Whanganui M31/93, 24 August 1993 at 6.

## Evaluation

[10] It may be that there is a question of general or public importance arising in relation to the scope and application of Part 31 of the Rules. However, this is not the appropriate case to address the question given the concurrent finding in the Courts below that the company remains insolvent. In those circumstances, nothing raised by the applicant gives rise to any question about the Court of Appeal's conclusion that it would not be just and equitable to terminate the liquidation and allow the company to recommence trading.

[11] The issues relating to service do not give rise to any question of general or public importance given the concurrent factual findings the company was served. For the same reasons, there is no appearance of a miscarriage of justice.[9]

[12] The application for leave to appeal is dismissed. The applicant must pay the second respondent costs of $2,500.[10]

Solicitors:
Aaron Kashyap, Auckland for Applicant
Anthony Harper, Christchurch for First Respondent
Adam Stevenson Botterill, Auckland for Second Respondents

---

9 *Junior Farms Ltd v Hampton Securities Ltd (In liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [4]–[5].

10 The first respondent abided the decision of the Court.