

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 9/2020
[2020] NZSC 26

BETWEEN YINGQIU ZHANG
 Applicant

AND WESTPAC NEW ZEALAND LIMITED
 Respondent

Court: Glazebrook and Ellen France JJ

Counsel: Applicant in person
 B J Upton and L B Harrison for Respondent

Judgment: 31 March 2020

JUDGMENT OF THE COURT

- A An extension of time to apply for leave to appeal is granted.**
- B The application for leave to appeal is dismissed.**
- C The applicant must pay costs of \$2,500 to the respondent.**
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REASONS

Background

[1] Ms Zhang seeks leave to appeal against a decision of the Court of Appeal declining her application for a stay of the order adjudicating her bankrupt.¹

[2] Ms Zhang's debts arose because she defaulted on the repayment of loans owed to Westpac New Zealand Ltd (Westpac NZ). The properties securing the loans were sold by Westpac NZ as mortgagee. Westpac NZ obtained summary judgment for the

¹ *Zhang v Westpac New Zealand Ltd* [2019] NZCA 682 (Kós P, Brown and Goddard JJ) [CA judgment].

shortfall and then commenced bankruptcy proceedings. Associate Judge Paulsen granted Westpac NZ's application to adjudicate Ms Zhang bankrupt on 25 September 2019.²

Court of Appeal decision

[3] The Court of Appeal dismissed Ms Zhang's application for a stay. The Court said that Ms Zhang's arguments in favour of her application largely duplicated those made to Associate Judge Paulsen in an application to suspend adjudication under s 416 of the Insolvency Act 2006. Those arguments were intensely factual and raised no issues of either legal novelty or wider public interest.³

[4] The Court held that a stay is not necessary for Ms Zhang to pursue her appeal against the bankruptcy order.⁴ Nor is her appeal rendered nugatory by the adjudication order remaining in place.⁵

[5] The Court accepted that there had been a separate proceeding against a Mr Wu (in China), Westpac NZ and others filed by Ms Zhang but the rights under that proceeding have been disclaimed by the Official Assignee.⁶ In any event, the Court considered "there is insufficient cogent evidence before us to suggest that proceeding has real merit or that Ms Zhang has the capacity to pursue it or the prospect of recovering material sums under it".⁷

[6] The Court pointed out that Westpac NZ is not the only creditor concerned in Ms Zhang's estate.⁸ There is no evidence of her financial circumstances and no security has been offered. It held that the bankruptcy should proceed in the ordinary way, absent a compelling case of prejudice demonstrated by Ms Zhang.⁹

² *Zhang v Westpac New Zealand Ltd* [2019] NZHC 2422 [First HC judgment].

³ CA judgment, above n 1, at [13], referring to *Zhang v Westpac New Zealand Ltd* [2019] NZHC 2797 [Second HC judgment].

⁴ At [10].

⁵ At [9].

⁶ This is the same proceeding referred to below at [10] below: CIV-2019-404-1327. See further Second HC judgment, above n 3, at [12].

⁷ At [9].

⁸ At [12].

⁹ At [11].

Grounds of application

[7] In support of her application for leave to appeal to this Court Ms Zhang advances the following grounds:

- (a) “Credibility” issues with Westpac NZ related to proceedings brought by AUSTRAC¹⁰ against Westpac in Australia in November 2019 relating to money laundering allegations.
- (b) That, absent a stay, she cannot pursue her claim against third parties.
- (c) A substantial miscarriage of justice may have occurred when Associate Judge Paulsen dismissed her application for discovery in a related proceeding.
- (d) Westpac NZ should have challenged Auckland Council’s rezoning of one of Ms Zhang’s properties but did not do so.

Respondent’s submission

[8] Westpac NZ submits that the interests of justice do not require this Court to hear the proposed appeal in this case. This is a procedural matter, relating to a temporary stay of adjudication pending the outcome of an appeal.

[9] As to the specific grounds raised by Ms Zhang, any alleged failure in monitoring and reporting was by Westpac Banking Corporation in Australia, a separate Australian company, and not Westpac NZ. In any event, these matters are not relevant to Ms Zhang’s adjudication or whether her bankruptcy should be stayed pending her appeal.

[10] Further, there is no general or public interest in Ms Zhang’s ability to bring a claim against a third party in China (Mr Wu) pending her appeal. This is a matter of private concern. In any event, the Courts below considered this claim had little

¹⁰ Australian Transaction Reports and Analysis Centre (AUSTRAC) is an Australian Government agency that monitors financial transactions to detect criminal activity.

prospect of success. As to the change to the zoning of one of Ms Zheng's properties by the Auckland Council in 2017, this is irrelevant to the issue of a stay or suspension of her bankruptcy. Ms Zhang can pursue this argument at the substantive hearing of the appeal against the adjudication order.

Extension of time

[11] Westpac NZ also says that Ms Zhang's application was out of time as it should have been filed and served on or before 11 February 2020. The notice of application for leave to bring civil appeal is dated 13 February 2020. Ms Zhang's submissions, which were filed prior to her application for leave, were only received by the Court on 12 February 2020.

[12] The application was only two days out of time. Westpac NZ has not pointed to any prejudice suffered as a result. We therefore grant an extension of time.

Our assessment of the leave application

[13] There is no issue of principle involved in this proposed appeal. The application relates to the particular facts of this case. Further, nothing raised by Ms Zhang suggests the Court of Appeal's reasoning was in error.

[14] Ms Zhang attempts to raise new grounds in the proposed appeal. We accept Westpac NZ's submission that none of those grounds warrant a stay being granted. The leave criteria are not met.¹¹

Result

[15] An extension of time to apply for leave to appeal is granted.

[16] The application for leave to appeal is dismissed.

¹¹ Senior Courts Act 2016, s 74(4).

[18] The applicant must pay costs of \$2,500 to the respondent.

Solicitors:
Simpson Grierson, Auckland for Respondent