

**NOTE: ORDERS ARE IN FORCE IN THE HIGH COURT PROHIBITING
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RESPONDENT.**

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

**SC 129/2021
[2021] NZSC 164**

BETWEEN LFDB
 Applicant

AND SM
 Respondent

Court: William Young, Glazebrook and Ellen France JJ

Counsel: Applicant in person
 R J Hollyman QC and P B Friedlander for Respondent

Judgment: 30 November 2021

JUDGMENT OF THE COURT

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

Introduction

[1] In late 2020, the Registrar of the High Court declined to accept for filing a notice of application in which, amongst other matters, the applicant sought reconsideration and setting aside of the judgment of the High Court of 27 October 2015 (the October 2015 judgment) in the parties' relationship property proceeding.¹

¹ *SM v LFDB* [2015] NZHC 2630 (as reissued on 26 November 2015).

The Registrar’s decision was upheld on review by Brewer J. The applicant appealed to the Court of Appeal against Brewer J’s decision. The Court subsequently made orders striking out the appeal under r 44A(1) of the Court of Appeal (Civil) Rules 2005, essentially on the basis the appeal was an abuse of the process of the Court.² The applicant now seeks leave to appeal to this Court from that decision.

Background

[2] The lengthy litigation history of this matter is set out in the judgment of the Court of Appeal.³ For present purposes, we need only note that an order debarring the applicant from taking any further part in the relationship property proceeding after non-compliance with unless orders remains in force.⁴ This Court granted leave to appeal against the decision to make the order debarring the applicant,⁵ but leave was subsequently withdrawn.⁶ The Court had “formed the view that the manner in which the [applicant] has continued to conduct the proceeding [was] oppressive”⁷ and the applicant was “gaming the court system”.⁸

[3] Following that decision, the High Court determined the substantive relationship property proceeding on a formal proof basis. This is the October 2015 judgment the applicant sought to challenge through the notice of application in the High Court. In that judgment, the Court made various orders for the division of relationship property and payment of compensation, including maintenance, the effect of which was that the applicant was to pay various sums to the respondent.

[4] The applicant sought to appeal the October 2015 judgment out of time. On 29 June 2016, the Court of Appeal granted an extension of time to appeal on various conditions, including that outstanding costs orders (of over \$755,000) and security for

² *LFDB v SM* [2021] NZCA 445 (Kós P, Brown and Goddard JJ) [CA judgment]. After the Court advised the parties it was considering strike-out, the parties filed submissions on strike-out.

³ At [5]–[15].

⁴ *SM v LFDB* [2014] NZCA 326, [2014] 3 NZLR 494 at [37].

⁵ *LFDB v SM* [2014] NZSC 131.

⁶ *LFDB v SM* [2014] NZSC 197, (2014) 22 PRNZ 262.

⁷ At [26].

⁸ At [27].

costs be paid.⁹ As the conditions were not complied with by the required date, the appeal was dismissed.¹⁰

[5] In the decision from which the applicant now seeks leave to appeal, the Court of Appeal rejected the applicant's arguments that, as the application met the formal requirements in the High Court Rules 2016, the Registrar was obliged to accept the application for filing and would then need to decide whether to refer the proceeding to a judge for consideration under r 5.35A(3)(b) of the High Court Rules.¹¹ The Court also considered that Brewer J was right to reject the argument that this was a case where the High Court might review its own decisions.¹² Finally, the Court said that if there was a legitimate basis for pursuing a recall application, that application would need to be filed in the Court of Appeal. But, in order to take that course, the applicant would need to purge his contempt by complying with the conditions earlier imposed by the Court when granting him an extension of time. The applicant had not done so. Instead, the Court considered the applicant was seeking to "sidestep the need to do so by the device of a fresh application in the High Court"; this was a further illustration of his gaming of the system.¹³

The proposed appeal

[6] The proposed appeal would in large part reprise arguments made in the Court of Appeal. The applicant also seeks to rely on r 15.10 of the High Court Rules, which provides for judgments obtained by default to be set aside or varied where there has been or may have been a miscarriage of justice.¹⁴ Finally, the applicant wishes to challenge the effect of the debarment order.

[7] The criteria for leave to appeal are not met.¹⁵ As is apparent from the brief summary of the history of the litigation outlined above, the applicant seeks to return to the High Court to review orders from which he has unsuccessfully appealed. As the

⁹ *LFDB v SM* [2016] NZCA 295.

¹⁰ *LFDB v SM* [2016] NZCA 399.

¹¹ CA judgment, above n 2, at [25]–[26].

¹² At [20] and [27]–[28], referring to *R v Smith* [2003] 3 NZLR 617 (CA).

¹³ At [28]–[29].

¹⁴ The applicant says this issue was raised with the Court of Appeal but not addressed, in breach of procedural fairness.

¹⁵ Senior Courts Act 2016, s 74(2).

respondent submits, on this basis alone, the proposed appeal has insufficient prospects of success to justify a grant of leave. In addition, nothing raised by the applicant raises any concerns about the assessment by the Court of Appeal. In the circumstances, no question of general importance arises, and there is no appearance of a miscarriage of justice.

Result

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

Solicitors:
Friedlander & Co Ltd, Auckland for Respondent