

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 120/2021
[2021] NZSC 169

BETWEEN JOHN LAWSON LITTLE
Applicant

AND NZ NATURAL THERAPY LIMITED
(IN LIQUIDATION)
First Respondent

VIVIEN JUDITH MADSEN-RIES AND
HENRY DAVID LEVIN
Second Respondents

Court: O'Regan, Ellen France and Williams JJ

Counsel: P J Dale QC for Applicant
K H Morrison and B J Hamilton for Respondents

Judgment: 3 December 2021

JUDGMENT OF THE COURT

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

[1] The applicant seeks leave to appeal against a decision of the Court of Appeal,¹ dismissing his appeal against a costs judgment in the High Court.²

¹ *Little v NZ Natural Therapy Ltd (in liq)* [2021] NZCA 461 (Clifford, Ellis and Muir JJ) [CA judgment].

² *NZ Natural Therapy Ltd (in liq) v Little* [2020] NZHC 1506 (Brewer J) [HC judgment].

Background

[2] The second respondents, the liquidators of the first respondent, sued the applicant initially for a large sum. There was a dispute as to whether the first respondent was trustee of a trust, a matter which required a ruling by the High Court after extensive argument.³ The Court ruled that the company was indeed the trustee of a trust. The matter was then adjourned.

[3] The relevant trust documentation was eventually produced by the applicant. The first High Court hearing would have been avoided if it had been produced earlier. It was accepted by the parties at the first hearing that much of the initial claim was unsustainable if the company was indeed a trustee.

[4] After receiving the trust documentation, the liquidators claimed the amount showing as owed by the applicant on current account (\$323,148). That claim could be substantiated with documentary evidence in the form of the trust's accounts, which had belatedly been provided to the liquidators.

[5] The applicant disputed his liability for \$323,148, but the High Court found against him after a four day hearing.⁴ The applicant then appealed to the Court of Appeal but abandoned his challenge to the finding that he owed \$323,148 when the hearing in that Court commenced. Instead, he wished to argue that he should not have to pay the full amount of that debt where it exceeded the extent of the creditors' claims against the company (about \$208,000) because the liquidators' conduct had been disproportionate to the amount in issue.

[6] The Court of Appeal adjourned the hearing and referred the case back to the High Court, to determine the defence based on disproportionality. This led to a further High Court hearing, after which the defence was rejected.⁵

[7] Subsequent to that decision, the High Court Judge dealt with the application for costs by the liquidators. He awarded costs on a 2B basis (which amounted to

³ *NZ Natural Therapy Ltd (in liq) v Little* [2016] NZHC 2585.

⁴ *NZ Natural Therapy Ltd (in liq) v Little* [2018] NZHC 2164.

⁵ *NZ Natural Therapy Ltd (in liq) v Little* [2019] NZHC 3132.

\$151,245.50) and disbursements of \$65,124.82.⁶ He refused the application by the liquidators for increased costs.⁷

[8] The Court of Appeal upheld that award in the judgment under challenge in this application.

[9] The applicant argues that he should not have to pay costs because the liquidators actions were disproportionate. He says the creditors totalled \$208,000, but the initial claim was for over \$1 million and at one stage the liquidators made a settlement offer which was, in effect, demand for over \$1.6 million. The applicant made a settlement offer of \$150,000. He argues that neither the High Court nor the Court of Appeal put sufficient weight on the conduct of the liquidators. He is particularly critical of the High Court Judge for not mentioning the settlement offer of \$1.6 million, especially when it made an allowance for liquidators' costs that had yet to be incurred.

[10] We see the issues arising as essentially matters of fact, in particular the assessment of the conduct of each of the parties. There is no doubt that if the applicant had produced the trust documentation and agreed to pay the amount owing on the current account at the outset, rather than (in both cases) after extensive litigation, many of the costs incurred would have been avoided. Demand for \$1.6 million was not pursued once the position of the company as trustee was established, and does not therefore seem to have had any significant ongoing impact on the conduct of the litigation. Overall, we do not see any matters of general or public importance arising in relation to the costs jurisdiction of the High Court, or any matter of general commercial significance.⁸ Nor do we see an appearance of a miscarriage of justice in the way in which the Court of Appeal dealt with the appeal to that Court.⁹

⁶ HC judgment, above n 2, at [31]–[32].

⁷ At [24].

⁸ Senior Courts Act 2016, s 74(2)(a) and (c).

⁹ Section 74(2)(b).

[11] In those circumstances, we do not consider it would be in the interests of justice to grant leave to appeal. The application for leave is therefore dismissed.

[12] The applicant must pay the respondents costs of \$2,500.

Solicitors:

KooTelle Lawyers, Auckland for Applicant

Meredith Connell, Auckland for Respondents