

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

**SC 102/2020
[2021] NZSC 23**

BETWEEN	AN LI TAO Applicant
AND	STRATA TITLE ADMINISTRATION LIMITED First Respondent
	JIGAR PANDYA Second Respondent
	BODY CORPORATE 198693 Third Respondent

Court: Glazebrook, O'Regan and Ellen France JJ

Counsel: Applicant in person
C Baker for Respondents

Judgment: 17 March 2021

JUDGMENT OF THE COURT

- A The application for an extension of time to apply for leave to appeal is dismissed.**
- B There is no order as to costs.**
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REASONS

Introduction

[1] The applicant seeks leave to appeal directly to this Court against two judgments of the High Court, which we will call the substantive judgment and the costs judgment

respectively.¹ As the two High Court decisions were made more than four years ago, the applicant also needs an extension of time to file her application for leave. The respondents abide the decision of the Court.

[2] This judgment should be read alongside the judgment we have issued today in relation to an associated application by the applicant for leave to appeal (SC 103/2020).²

High Court judgments

[3] In the substantive judgment, the High Court entered summary judgment in favour of the respondents in relation to two separate sets of proceedings commenced by the applicant in the High Court. In the first proceeding, the applicant, who at the relevant time owned a unit in a unit title complex, sued the first respondent (Strata), which is the secretary of the body corporate for the complex, and the second respondent, Mr Pandya, the chair of the body corporate. Her proceeding called into question both the contract between the body corporate and Strata and Strata's conduct in relation to the body corporate. She also sought the removal of Mr Pandya as chair. In the second proceeding, she sought the appointment of an administrator to the body corporate itself (the third respondent). Thomas J gave summary judgment for Strata and Mr Pandya in relation to the first proceeding and dismissed the application for the appointment of an administrator for the body corporate.

[4] In the costs judgment, the High Court Judge ordered Ms Tao to pay costs to the respondents of \$60,210, which involved an award of increased costs (25 per cent above the scale).

The present application

[5] The application faces a number of hurdles.

¹ *Tao v Strata Title Administration Ltd* [2016] NZHC 814, (2016) 17 NZCPR 312 (Thomas J) [substantive judgment]; and *Tao v Strata Title Administration Ltd* [2016] NZHC 1821 (Thomas J).

² *Tao v Strata Title Administration Ltd* [2021] NZSC 24.

[6] First, as noted earlier, the judgments against which the applicant wishes to appeal were delivered in April 2016 and August 2016 respectively, so the application is out of time by more than four years in respect of both judgments. We will address later the application for an extension of time.

[7] Second, the application seeks leave for a leapfrog appeal, that is, a direct appeal from the High Court to this Court. That means that the applicant must not only demonstrate that the “interests of justice” criteria for leave to appeal in s 74 of the Senior Courts Act 2016 are made out, but also that the “exceptional circumstances” test in s 75 of that Act is met.

[8] Third, the applicant has attempted unsuccessfully to appeal against the substantive judgment and the costs judgment to the Court of Appeal on more than one occasion.

Procedural history

[9] The procedural history in the Court of Appeal is complicated. In relation to the first appeal to the Court of Appeal against the substantive judgment:

- (a) The applicant applied to the Court of Appeal for dispensation with, or reduction of the amount of, security for costs. This application was declined by the Deputy Registrar, whose decision was upheld by Miller J on review.³
- (b) The applicant then sought leave to appeal to this Court against the decision of Miller J, but that application was dismissed.⁴
- (c) The applicant then sought an extension of time for the allocation of a hearing date for her appeal to the Court of Appeal and for the filing of the case on appeal under r 43 of the Court of Appeal (Civil) Rules 2005

³ *Tao v Strata Title Administration Ltd* [2016] NZCA 437 (Miller J).

⁴ *Tao v Strata Title Administration Ltd* [2016] NZSC 150.

(the CA Rules). This application was dismissed.⁵ Her appeal was therefore treated as being abandoned under r 43(1) of the CA Rules.

[10] In relation to the first appeal to the Court of Appeal against the costs judgment, the applicant sought an extension of time for the filing of the case on appeal, but this was also refused.⁶ So, that appeal was also treated as abandoned under r 43(1).

[11] Undaunted, the applicant tried again in 2018 to appeal against the substantive judgment and the costs judgment to the Court of Appeal. She applied for an extension of time to appeal, but her application for such an extension was dismissed by the Court of Appeal.⁷

Extension of time

[12] The applicant says an extension of time should be granted because she now has new evidence, being copies of bank statements for the trust account operated by Strata for the body corporate, which she says she received in September 2020. She implicitly seeks to adduce this evidence in support of her application.

[13] We do not consider it is appropriate to admit fresh evidence at this stage of the proceedings, given that more than four years has now passed since the High Court judgments were delivered and because there is no doubt a dispute about what the bank statements the applicant seeks to adduce signify. There is no sufficient explanation of this in the applicant's notice of appeal or submissions and her allegations against Strata in relation to the operation of its trust account appear to misconstrue the High Court's findings about this.⁸

[14] The only other reason given for the delay is that the Court of Appeal has not addressed the merits of her appeal because neither of her attempted appeals to that Court proceeded to a hearing. But that occurred because she did not comply with the CA Rules, so cannot be used as a justification for delay. In any event, it does not

⁵ *Tao v Strata Title Administration Ltd* [2016] NZCA 594 (Randerson, Cooper and Winkelmann JJ).

⁶ *Tao v Strata Title Administration Ltd* [2017] NZCA 130 (Randerson, Asher and Brown JJ).

⁷ *Tao v Strata Title Administration Ltd* [2018] NZCA 317 (Winkelmann, Brown and Clifford JJ).

⁸ Substantive judgment, above n 1, at [61] and [85].

explain the delay of over two years between the most recent decision of the Court of Appeal in August 2018 and the date on which the present application was filed (30 November 2020).

[15] In short, we do not consider the delay in applying for leave has been sufficiently explained. We will, however, address the merits of the application. If there had been compelling evidence that a substantial miscarriage of justice may have occurred, that may have supported the applicant's case for an extension of time.

Merits

[16] In relation to the substantive judgment, the applicant argues that summary judgment should not have been entered for Strata and Mr Pandya in relation to her claims against them. She says that a substantial miscarriage of justice has occurred because summary judgment was entered despite evidence which, she alleges, shows that Strata was fraudulent and Mr Pandya acted improperly when executing his functions as chair, and that the High Court Judge denied the applicant a fair hearing.⁹ She also argues that her application raises a point of general and public importance, together with a matter commercial significance, because Strata manages many other body corporates in New Zealand.¹⁰ In addition, she seeks to adduce the new evidence referred to above, which she says support her allegations against Strata. She appears to maintain a similar position in relation to the High Court's decision to dismiss her application for the appointment of an administrator to the body corporate.

[17] We are not satisfied that either of the grounds on which the application is advanced meets the requirements of s 74 of the Senior Courts Act, let alone the exceptional circumstances criteria set out in s 75. We do not consider that any point of general or public importance or commercial significance arises, as the matters that would be in issue in the appeal if leave were given are all specific to the particular facts and the particular parties concerned. We do not see the fact that Strata manages other body corporates as affecting that assessment. In relation to the miscarriage ground, the Court will grant leave on the basis of a miscarriage in civil cases only.¹¹

⁹ Senior Courts Act 2016, s 74(2)(b).

¹⁰ Section 74(2)(a) and (c).

¹¹ *Junior Farms Ltd v Hampton Securities (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].

... in the rare case of a sufficiently apparent error, made or left uncorrected by the [Court appealed from], of such a substantial character that it would be repugnant to justice to allow it to go uncorrected in the particular case.

We see no appearance of such a miscarriage in the present case.

[18] The applicant made no separate submissions in relation to the costs judgment. The High Court Judge applied settled law to the question as to whether increased costs were appropriate and we do not see any appearance of a miscarriage in the outcome.

Result

[19] In the absence of substantial merit in the application and sufficient explanation for the delay in applying for leave, we see no proper basis for granting the applicant an extension of time to apply for leave to appeal.

[20] The application for an extension of time to file an application for leave to appeal is therefore dismissed. As the respondent took no steps in relation to the application, we make no award of costs.

Solicitors:
Price Baker Berridge, Auckland for Respondents