IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 37/2021
[2021] NZSC 41

BETWEEN	GEORGINA RACHELLE Applicant
AND	TIMOTHY CADOGAN First Respondent
	LYNETTE MARGARET MCFARLANE Second Respondent
	BERNADETTI NONI SCURR Third Respondent
	ALLWASTE CROMWELL DESPATCH/TROJAN HOLDINGS COMPANY Fourth Respondent
	STEVE GEE Fifth Respondent

Court: William Young, Ellen France and Williams JJ

Counsel: Applicant in person

Judgment: 11 May 2021

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B There is no order as to costs.

REASONS

[1] The present application arises out of a decision by the District Court to strike out Ms Rachelle's claim for damages of $200,000 from the respondents.[1] A notice of appeal against that decision was struck out by the High Court as an abuse of process.[2] This Court dismissed an application for leave to appeal against the decision of the High Court.[3] Ms Rachelle then sought an extension of time under r 29A of the Court of Appeal (Civil) Rules 2005 to file an appeal in the Court of Appeal against the High Court decision. The Court of Appeal declined the application.[4] The Court said the delay in filing the appeal was a factor against granting an extension of time but it was not the decisive factor.[5] What was decisive was the nature of the claim and, in particular, the Court's assessment that the proposed appeal was hopeless.[6] Ms Rachelle seeks leave to appeal from the decision to decline the extension of time.[7]

[2] At the heart of Ms Rachelle's proposed appeal is her submission that her claim, which she says is broader than that described by the Court of Appeal, has merit. But she submits that claim has not been allowed to get off the ground in breach of her right to freedom of speech and the Human Rights Act 1993. Ms Rachelle also states that the delay in filing the appeal in the Court of Appeal was explained and, in any event, her claim was brought within the relevant limitation period. Finally, Ms Rachelle wishes to challenge the costs order made against her by the Court of Appeal, given her case has not been heard.

[3] The earlier application for leave to appeal directly from the High Court to this Court was dismissed on the basis the principles relating to strike-out are well settled and were applied by both of the Courts below.[8] No question of general or public importance arose. Nor did anything raised by Ms Rachelle suggest any risk of a

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1 *Rachelle v Cadogan* [2020] NZDC 8374.
2 *Rachelle v Cadogan* HC Invercargill CIV-2020-425-27, 12 June 2020.
3 *Rachelle v Cadogan* [2020] NZSC 70 [SC judgment].
4 *Rachelle v Cadogan* [2021] NZCA 69 at [19] (Collins and Goddard JJ).
5 At [14].
6 At [16]–[18].
7 Reference is also made to the District Court decision but the application is focused on the Court of Appeal decision and we have treated the application as directed to the latter decision.
8 SC judgment, above n 3, at [5].

miscarriage of justice.[9] The present application essentially would have the Court revisit that earlier assessment. In any event, the Court of Appeal has applied well-settled principles to the application before it.[10] No question of general or public importance accordingly arises. Nor does anything raised by Ms Rachelle give rise to the appearance of a miscarriage of justice in relation to the assessment of the Court of Appeal. In awarding costs to the first to third respondents, the Court of Appeal said that those respondents, having succeeded in relation to the application before the Court, were entitled to costs in the ordinary way, given they had prepared a memorandum of opposition to the application. The criteria for leave to appeal are not met.[11]

[4] The application for leave to appeal is dismissed. As the respondents filed no submissions, there is no order as to costs.

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9 At [5], citing *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [4]–[5]; and *Shell (Petroleum Mining) Co Ltd v Todd Petroleum Mining Co Ltd* [2008] NZSC 26, (2008) 18 PRNZ 855 at [4].

10 *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801 at [38].

11 Senior Courts Act 2016, s 74(2)(a) and (b).