

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 24/2021  
[2021] NZSC 45

BETWEEN YINGQIU ZHANG  
Applicant

AND WESTPAC NEW ZEALAND LIMITED  
Respondent

Court: William Young, Glazebrook and Williams JJ

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

Judgment: 21 May 2021

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**JUDGMENT OF THE COURT**

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**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] The applicant, Ms Zhang, was adjudicated bankrupt on 25 September 2019 on the application of Westpac New Zealand Ltd, a judgment creditor.<sup>1</sup> Ms Zhang appealed to the Court of Appeal against her adjudication in bankruptcy. Her appeal has yet to be set down for hearing. She now seeks leave to appeal to this Court against an interlocutory decision of the Court of Appeal refusing to disqualify Westpac's solicitors from acting in the substantive appeal.<sup>2</sup>

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<sup>1</sup> *Zhang v Westpac New Zealand Ltd* [2019] NZHC 2422 [HC judgment].

<sup>2</sup> *Zhang v Westpac New Zealand* [2021] NZCA 8 (Miller and Goddard JJ).

[2] This is Ms Zhang's third application for leave to appeal to this Court in respect of matters related to her bankruptcy appeal.

### **Background**

[3] Westpac had provided loans to Ms Zhang secured by mortgages over two properties. Ms Zhang defaulted, and Westpac exercised its rights as mortgagee. There was a shortfall after sale of the properties, for which amount the Bank obtained summary judgment against Ms Zhang. Relying on that judgment debt, Westpac then issued bankruptcy proceedings. Ms Zhang applied to set aside both the summary judgment and Westpac's bankruptcy notice, but these applications were dismissed, and she was adjudicated bankrupt.

[4] Ms Zhang appealed to the Court of Appeal, where she also sought an order disqualifying Westpac's solicitors, Simpson Grierson, from acting in the appeal. First, she argued that the firm had acted for the Bank on one of the mortgagee sales and so was complicit in the Bank's failure to obtain the best price for that property. Second, she indicated that she wishes to call as a witness on the appeal a solicitor at Simpson Grierson who appeared for Westpac at the High Court adjudication hearing.

[5] The Court of Appeal dismissed the application.<sup>3</sup> On the first ground, the Court said that the threshold for removal is high, requiring something extraordinary.<sup>4</sup> Ms Zhang's ground did not meet this threshold as there was no reason to think that Simpson Grierson's involvement in the mortgagee sale would preclude the firm from complying with its duties to the Court, or from representing its client with objectivity. There was nothing to suggest the firm's advice would be at issue in the appeal.<sup>5</sup>

[6] On the second ground, the Court said that it may be necessary to intervene to prevent counsel from appearing where they may be required to give relevant and contentious evidence,<sup>6</sup> but there was no reason to think evidence of that nature will be

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<sup>3</sup> At [5].

<sup>4</sup> At [3], citing *Accent Management Ltd v Commissioner of Inland Revenue* [2013] NZCA 155, [2013] 3 NZLR 374 at [32].

<sup>5</sup> At [3].

<sup>6</sup> At [4], citing *Beggs v Attorney-General* [2006] 2 NZLR 129 (HC); and *Li v Liu* [2018] NZCA 528, [2019] NZAR 259 at [25].

led on appeal. Further, Ms Zhang had not yet sought or obtained leave to adduce evidence on appeal.<sup>7</sup>

### **Applicant's submissions**

[7] Ms Zhang submits that Simpson Grierson should be removed from the appeal because that appeal will raise whether the firm breached their “fiduciary duty of care” in representing Westpac, both “by delaying the mortgagee sales process” and because one of the properties was sold to a client of Westpac.

[8] Ms Zhang also pursues her Court of Appeal submission that counsel for Westpac in the High Court will be required as a witness in the bankruptcy appeal. She relies on *Li v Liu*, where the Court of Appeal ordered that solicitors who had acted for the respondent be disqualified because there was a real chance that one of them would be called as a witness at trial.<sup>8</sup>

### **Analysis**

[9] The application does not raise any matter of general or public importance, or commercial significance.<sup>9</sup> Nor does its dismissal give rise to an appearance of a substantial miscarriage of justice.<sup>10</sup> In any event, it is not necessary in the interests of justice for the issues raised in this application to be resolved before the substantive appeal in the Court of Appeal is concluded.<sup>11</sup> First, in the High Court, Associate Judge Paulsen found as a fact that the properties were not sold at an undervalue.<sup>12</sup> Second, even if that finding were wrong, Ms Zhang does not point to any advice from, or conduct or omission by, Simpson Grierson that would or could have affected the shortfall. Third, we have not been advised of any application by the applicant pursuant to the Court of Appeal (Civil) Rules 2005 to adduce the evidence of counsel who appeared in the High Court for the Bank.

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<sup>7</sup> At [4].

<sup>8</sup> *Li v Liu*, above n 6, at [40].

<sup>9</sup> Senior Courts Act 2016, s 74(2)(a) and (c).

<sup>10</sup> Section 74(2)(b).

<sup>11</sup> Section 74(4); and *Currie v Clayton* [2015] NZSC 17 at [8].

<sup>12</sup> HC judgment, above n 1, at [52].

## **Result**

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

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

Solicitors:  
Simpson Grierson, Auckland for Respondent