

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 81/2022
[2022] NZSC 122

BETWEEN

GAUTAM JINDAL
Applicant

AND

JARDEN SECURITIES LIMITED
(FORMERLY OM FINANCIAL LIMITED)
First Respondent

NZX LIMITED
Second Respondent

MINTERELLISONRUDDWATTS
Third Respondent

Court: Glazebrook, O'Regan and Kós JJ

Counsel: P N Collins for Applicant
A J Lloyd and J J K Spring for Respondents

Judgment: 19 October 2022

JUDGMENT OF THE COURT

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

[1] In 2019 the applicant issued proceedings in the District Court at Auckland against the first respondent, alleging negligence and breach of contract. The claim related to foreign exchange trading on his behalf by the first respondent. Damages of \$148,346 were sought.

[2] That claim has not yet been heard. Instead the applicant pursued an interlocutory application (and then appeals) seeking to debar the third respondent from acting for both of the other respondents on a separate (as yet undetermined) application for non-party discovery from the second respondent.

[3] Judge G M Harrison dismissed the debarment application in the District Court.¹ The applicant was then almost two months late in appealing to the High Court. He therefore was compelled to apply to that Court for an extension of time to appeal. Powell J declined that application.² He was satisfied on the evidence that the failure to appeal the District Court interlocutory judgment was advertent; moreover, the proposed appeal was without merit.³

[4] The applicant then appealed the refusal to extend time to pursue his interlocutory appeal to the Court of Appeal, seeking to adduce more evidence to explain the delay. That Court dismissed his appeal.⁴ It found the further evidence neither fresh, cogent nor credible.⁵ It agreed with Judge Harrison and Powell J that the proposed appeal lacked merit.⁶ The second respondent was not a party to the District Court proceeding; its role was merely that of the relevant recordkeeper; and there was no basis to infer a potential ethical breach by the third respondent in also acting for the second respondent on the non-party discovery application.⁷

Proposed appeal

[5] The applicant wishes to contend that there is conflict of duty in the third respondent acting to ensure the non-party second respondent complies with any non-party discovery order made, potentially against the interests of the first respondent for which it is also acting, raising a matter of legitimate public confidence. The applicant wishes also to challenge the non-receipt of his further evidence by the Court of Appeal.

¹ *Jindal v OM Financial Ltd* [2020] NZDC 2162.

² *Jindal v OM Financial Ltd* [2020] NZHC 1993.

³ At [14]–[17].

⁴ *Jindal v Jarden Securities Ltd* [2022] NZCA 329 (Cooper P, Mander and Fitzgerald JJ).

⁵ At [18] and [25].

⁶ At [34] and [40].

⁷ At [34] and [40].

Our assessment

[6] We do not consider it necessary in the interests of justice for this Court to grant leave to appeal.⁸ The proposed appeal concerns an interlocutory application in the District Court to debar the third respondent from acting on a further, as-yet unresolved, interlocutory application concerning non-party discovery. Section 74(4) of the Senior Courts Act 2016 therefore applies, and we are not satisfied that it is necessary for this Court to hear the appeal before the substantive discovery application (let alone the substantive proceeding) is resolved. Concurrent determinations on the debarment issue have now been given by all three Courts below. It is not evident that they erred in doing so: the second respondent is a non-party to the underlying proceeding and has stated it is willing to provide any document reasonably sought; the claimed conflict of duty remains a matter of speculation at this juncture; and it is (for instance) capable of being met by use of an appropriate ethical wall within the third respondent. For those reasons the criteria in s 74(2) are not met either.

Result

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

[8] The applicant must pay the respondents (collectively) costs of \$2,500.

Solicitors:
Shine Lawyers, Auckland for Applicant
MinterEllisonRuddWatts, Auckland for Respondents

⁸ Senior Courts Act 2016, s 74.