

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 74/2022
[2022] NZSC 130

BETWEEN HARRY MEMELINK
 Applicant

AND COLLINS & MAY LAW
 Respondent

Court: O'Regan, Williams and Kós JJ

Counsel: B J Norling and A Cherkashina for Applicant
 H M Twomey for Respondent

Judgment: 10 November 2022

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

[1] The applicant, Mr Memelink, seeks an extension of time to apply for leave to appeal (and, if the extension is given, applies for leave to appeal) against the decision of the Court of Appeal.¹ The decision of the Court of Appeal was delivered on 25 March 2020, so the application was filed in this Court more than two years out of time.

[2] The Court of Appeal decision dealt with an application by Mr Memelink for an extension of time to appeal to the Court of Appeal against the High Court judgment

¹ *Memelink v Collins & May Law* [2020] NZCA 62 (Cooper and Wild JJ) [CA judgment].

adjudicating him bankrupt.² Mr Memelink's application to the Court of Appeal was about a year out of time.

[3] The Associate Judge who adjudicated Mr Memelink bankrupt delivered his reasons for doing so on the day after the adjudication decision. In those reasons he referred to the fact that Mr Memelink had filed a proposal to creditors under Subpart 2 of Part 5 of the Insolvency Act 2006, which Mr Memelink had filed two working days before the adjudication hearing. Mr Memelink had not alerted his creditors to that proposal. He sought an adjournment of the adjudication hearing to enable the proposal to be put to the creditors for their vote, but this was opposed by the creditors represented at the adjudication hearing and the Associate Judge refused to adjourn the hearing. The Associate Judge noted that on Mr Memelink's own analysis, his assets were exceeded by his liabilities by more than \$5,500,000.

[4] Mr Memelink did not immediately appeal to the Court of Appeal against the decision adjudicating him bankrupt, but instead applied to the High Court for an annulment of his adjudication. That application was dismissed on 14 June 2019.³ The application for an extension of time to appeal to the Court of Appeal against the adjudication decision was filed about three months after the decision of the High Court refusing the annulment.

[5] In its decision, the Court of Appeal applied the principles set out in this Court's decision in *Almond v Read*.⁴ In *Almond v Read*, this Court set out five factors that are likely to require consideration when the Court is determining whether to extend the time for filing of an appeal.⁵ In the present case, the Court of Appeal evaluated each of those factors.⁶ The Court then went on to consider the merits of Mr Memelink's proposed appeal to the Court of Appeal, concluding that the grounds of appeal were without merit.⁷

² *Re Memelink* HC Wellington CIV-2018-485-363, 28 August 2018 (Associate Judge Johnston).

³ *Memelink v Official Assignee* [2019] NZHC 1357 (Associate Judge Lester).

⁴ *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801.

⁵ At [38].

⁶ CA judgment, above n 1, at [10]–[27].

⁷ At [39].

[6] The application to this Court was accompanied by a lengthy affidavit by Mr Memelink, as was his application to the Court of Appeal. We have considered the points made in these affidavits. Mr Memelink's explanation for the delay in making his application to this Court largely focuses on the misconduct of his former lawyer, who has been the subject of disciplinary proceedings by the New Zealand Law Society | Te Kāhui Ture o Aotearoa.

[7] However, this does not fully explain a delay of more than two years since the Court of Appeal decision was delivered. As noted earlier, the application to the Court of Appeal was, itself, about a year out of time. So the net effect of these delays is that Mr Memelink is now seeking to challenge a decision of the High Court adjudicating him bankrupt that was made over four years ago.

[8] If we were to extend time and give leave to appeal, we would be considering only the Court of Appeal's refusal of an extension of time to appeal to that Court, not the merits of the adjudication. As noted earlier, the Court of Appeal applied the principles set out by this Court in *Almond v Read*, so no point of public importance as to the way in which that Court addresses applications for extensions of time arises.⁸ Nor do we see any basis for criticism of the way in which the Court of Appeal applied the factors set out by this Court in *Almond v Read* such as to give rise to a risk of a miscarriage of justice.⁹

[9] In short, we do not accept that the delay in bringing the application to this Court is adequately explained. And even if it were, we do not see any proper basis on which leave to appeal could be granted, applying the criteria set out in s 74 of the Senior Courts Act 2016.

[10] Accordingly, the application for an extension of time to apply for leave to appeal is dismissed.

⁸ Senior Courts Act 2016, s 74(2)(a).

⁹ Section 74(2)(b).

[11] We make no award of costs.

Solicitors:

Norling Law Ltd, Auckland for Applicant

Robertsons, Auckland for Respondent