

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

**SC 3/2022
[2022] NZSC 24**

BETWEEN

LIYUN CHEN
Applicant

AND

**AUCKLAND WEIHAO INVESTMENT
LIMITED**
Respondent

Court: O'Regan, Ellen France and Williams JJ

Counsel: Applicant in person
D K Wilson for Respondent

Judgment: 17 March 2022

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant and the respondent were parties to an agreement for sale and purchase of land owned by the respondent, as well as a term loan agreement under which the respondent would provide vendor finance to the applicant. However, the sale did not proceed because the parties could not agree on the terms of the deed of priority and subordination. The applicant lodged a caveat and issued a proceeding against the respondent seeking the return of her deposit and damages for breach of the term loan agreement. The applicant applied to the High Court for an order that a caveat lodged in relation to the property not lapse. That application was declined.¹

¹ *Chen v Auckland Weihao Investment Ltd* [2020] NZHC 2450.

[2] The applicant appealed to the Court of Appeal against the High Court decision after being granted an extension of time to do so.² She applied to the Court of Appeal for an order dispensing with security for costs under r 35(6)(c) of the Court of Appeal (Civil) Rules 2005. That application was dismissed by the Deputy Registrar of the Court of Appeal.

[3] The applicant then applied for a review of the Deputy Registrar's decision. The review was undertaken by Miller J. He concluded that the Deputy Registrar's decision was manifestly correct and adopted her reasons. The application for review was declined.³

[4] The applicant now applies for leave to appeal to this Court against the decision of Miller J. The applicant wishes to argue if leave to appeal is granted that security for costs should have been dispensed with because the High Court judgment raised matters of genuine public interest. She says this is evidenced by the fact that the judgment has been published. She does not claim to be impecunious. She argues that the case raises issues about the conduct of the proceedings by the lawyers acting for the respondent and makes various accusations against them.

[5] This Court must not grant leave to appeal unless it is necessary in the interests of justice for the Court to hear and determine the appeal.⁴ Under s 74(2) of the Senior Courts Act 2016, the criteria for determining whether it is in the interests of justice for this Court to hear and determine a proposed appeal are whether the proposed appeal involves a matter of general or public importance or a matter of general commercial significance, or if a substantial miscarriage of justice may have occurred or may occur unless the appeal is heard.

[6] It is clear that none of these criteria applies in the present case. Both the Deputy Registrar of the Court of Appeal and Miller J applied well-settled law about dispensation from security for costs, as set out in this Court's decision in

² *Chen v Auckland Weihao Investment Ltd* [2021] NZCA 421. The applicant also unsuccessfully applied to the Deputy Registrar for waiver of the filing fee. Her subsequent application for review of the waiver decision was declined: *Chen v Auckland Weihao Investments Ltd* [2021] NZCA 14.

³ *Chen v Auckland Weihao Investment Ltd* [2021] NZCA 657 (Miller J).

⁴ Senior Courts Act 2016, s 74(1).

Reekie v Attorney-General.⁵ In particular, no point of general or public importance relating to dispensation of security for costs arises, and we are satisfied that there is no appearance of a substantial miscarriage of justice. If the applicant wishes to pursue her appeal to the Court of Appeal, she will need to meet the requirements of the Court of Appeal (Civil) Rules in relation to the payment of security for costs.

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

Solicitors:
Raymond S Walker, Auckland for Respondent

⁵ *Reekie v Attorney-General* [2014] NZSC 63, [2014] 1 NZLR 737.