

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

**SC 4/2022
[2022] NZSC 34**

BETWEEN	YINGQIU ZHANG Applicant
AND	WESTPAC NEW ZEALAND LIMITED Respondent

Court: William Young, O'Regan and Ellen France JJ

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

Judgment: 31 March 2022

JUDGMENT OF THE COURT

- 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, Yingqiu Zhang, obtained loans from the respondent, Westpac New Zealand Ltd, on the security of registered mortgages over two properties. After the applicant defaulted under the mortgages Westpac sold the properties as mortgagee. There was a shortfall after the sale for which Westpac obtained summary judgment. Westpac also issued bankruptcy proceedings. The applicant applied to the High Court to set aside the summary judgment and opposed

the bankruptcy proceedings. The High Court declined to set aside the summary judgment and made an order adjudicating the applicant bankrupt.¹

[2] The applicant appealed unsuccessfully to the Court of Appeal against the decision of the High Court.² The Court of Appeal also declined the applicant's application to admit new evidence. She now seeks leave to appeal to this Court.

The proposed appeal

[3] The applicant seeks to challenge the Court of Appeal decision on a number of grounds emphasising the public interest in these matters and the prospect of a miscarriage of justice. The principal points which emerge from her submissions are as follows:

- (a) The Court of Appeal was wrong to reject the claim Westpac breached s 176(1) of the Property Law Act 2007. That section provides that a mortgagee exercising the power of sale has a duty of reasonable care to persons, including the current mortgagor, "to obtain the best price reasonably obtainable as at the time of sale".
- (b) The Court of Appeal erred in not considering the source of the funds lent to her by Westpac was "not clean". This is a reference to the possibility the loan funds were obtained either through overcharging of credit card fees or anti-money laundering law breaches.
- (c) The Court of Appeal erred in rejecting her argument that the High Court hearing was unfair because extensions of time were not granted.
- (d) It was an error for the Court not to accept arguments going to the discretion to make an order adjudicating the applicant bankrupt. This aspect of the proposed appeal refers to claims against Auckland Council and against a Mr Wu in China.

¹ *Yingqiu Zhang v Westpac New Zealand Ltd* [2019] NZHC 2422 (Associate Judge Paulsen). The Court also declined the applicant's application for discovery against Westpac and non-parties.

² *Yingqiu Zhang v Westpac New Zealand Ltd* [2021] NZCA 672 (Courtney, Duffy and Dunningham JJ) [CA judgment].

Our assessment

[4] The proposed appeal would turn on an assessment of the various factual matters on which the applicant relies. There is no challenge, in particular, to the principles applied in determining whether there was a breach of s 176(1). No questions of general or public importance or of commercial significance accordingly arise.³ Nor is there any appearance of a miscarriage of justice in the civil sense.⁴

[5] In terms of the alleged breach of s 176(1), the Court of Appeal reviewed the various matters advanced by the applicant in support of this claim and the way in which the Associate Judge had addressed them. The Court concluded there was “a proper basis” for the Associate Judge’s views on the available valuations.⁵ The Court also considered that the reasoning for the view Westpac had taken all reasonable steps to secure the best possible price for the two properties was “unimpeachable”.⁶ Nothing raised by the applicant calls into question these assessments.

[6] Westpac says the point about the source of the loan funds was not an issue raised in the High Court nor in the affidavit the applicant sought to have admitted as new evidence in the Court of Appeal. Westpac’s submission is that although not specifically referred to in the judgment it was addressed nonetheless by the Court of Appeal. This submission is a reference to the discussion by the Court of matters raised which were outside the notice of appeal. The Court, not surprisingly, said these matters were “irrelevant to the essential issues raised by” the appeal.⁷ We add that, in any event, Westpac challenges the allegations underpinning the claim relating to the source of the loan funds.⁸

³ Senior Courts Act 2016, s 74(2)(a).

⁴ Section 74(2)(b); and see *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [4]–[5].

⁵ CA judgment, above n 2, at [21].

⁶ At [22].

⁷ At [33].

⁸ The respondent submits the allegations relating to money laundering were premised on a misunderstanding of media reporting and that the issue in terms of overcharging of fees has been resolved but was, in any event, irrelevant to the bankruptcy adjudication.

[7] The proposed argument relating to extensions of time would also reprise arguments made in the Court of Appeal. Again, we see no error in the Court of Appeal's assessment of the conduct of the hearing.⁹

[8] Nor does anything raised by the applicant about the approach to the discretion to make an order adjudicating bankruptcy give rise to any point of merit.

Result

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

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

Solicitors:
Simpson Grierson, Auckland for Respondent

⁹ The Court said the Associate Judge's initial decision to decline an extension of time was "understandable" in part because of the applicant's prior delay: at [32]. There was, ultimately, a three-day adjournment after the hearing commenced to enable childcare difficulties to be resolved. In terms of overall fairness of the approach to the discretion, the Court made the point that the Associate Judge had stood back at the end and considered whether there was anything else in the applicant's favour.