NOTE: LOWER COURT ORDERS PROHIBITING PUBLICATION OF NAMES AND IDENTIFYING PARTICULARS OF THE APPLICANT AND THE BARRISTER ENGAGED BY RENNIE COX LAWYERS REMAIN IN FORCE. SEE [2019] NZHC 3191.

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 9/2022
[2022] NZSC 37

BETWEEN	EA Applicant
AND	RENNIE COX LAWYERS Respondent

Court:	William Young, O'Regan and Ellen France JJ
Counsel:	R J Hollyman QC and A J Steel for Applicant S P Bryers for Respondent
Judgment:	4 April 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.

REASONS

Introduction

[1] The respondent filed a proceeding for recovery of a barrister's fees of $95,738.51 plus interest in the District Court in March 2012. The applicant has not yet filed a response to the claim. Instead, the matter has become mired in ongoing procedural disputes.

[2] The latest step in these procedural skirmishes is the Court of Appeal judgment from which the applicant seeks leave to appeal.[1] In that judgment the Court allowed an appeal by the respondent and reinstated timetable directions made in the District Court, with some variations.[2]

Background

[3] The background is set out in full in the judgment of the Court of Appeal.[3] We need only note some key steps. The first of these steps is that in applying without notice for judgment by default in June 2015, counsel then instructed to act for the barrister also applied for the necessary extension of time to make the application. At that point, absent an extension of time, in order to pursue the claim it would have been necessary to start it afresh. An extension of time was granted and judgment entered by default in the District Court on 21 August 2015.

[4] Relevantly, next, on 5 March 2018 the Court of Appeal allowed an appeal by the applicant against the entry of judgment by default against the applicant.[4] The Court found that the default judgment had been irregularly obtained in the District Court and should not have been entered on the Court record. The respondent then promptly sought directions in the District Court for the future conduct of the proceedings. Judge Harrison granted the respondent's application for an extension of time for the applicant to file a response to the claim and other timetable directions. In his judgment of 1 November 2018, the Judge concluded that it was appropriate in the interests of justice to extend time pursuant to r 1.18.1 of the District Court Rules 2009.[5] The applicant's appeal against those timetabling directions succeeded in the High Court.[6] And, as we have noted, the Court of Appeal in 2021 allowed the respondent's appeal and reinstated timetable directions with variations.

[5] In allowing the appeal and reinstating the directions, the Court of Appeal rejected the applicant's submission that the 2018 Court of Appeal judgment setting

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1 *Rennie Cox Lawyers v EA* [2021] NZCA 648 (Gilbert, Collins and Goddard JJ) [CA judgment].
2 *Rennie Cox Lawyers v EA* [2018] NZDC 21916 (Judge G M Harrison) [DC judgment].
3 CA judgment, above n 1, at [4]–[23]; and see the chronology annexed to *Rennie Cox Lawyers v EA* [2020] NZCA 348.
4 *EA v Rennie Cox Lawyers* [2018] NZCA 33, [2018] 3 NZLR 202.
5 DC judgment, above n 2, at [29].
6 *EA v Rennie Cox Lawyers* [2019] NZHC 3191.

aside the default judgment effectively meant the courts were functus officio and there was no jurisdiction to make directions to take steps that could revive the proceeding. Rather, the Court analysed the matter in this way:[7]

> [29] On this analysis, the proceeding came to an end in late May 2015 but was enlivened in August 2015 when the extension of time to apply for judgment by default was granted. Numerous steps were taken in the proceeding after that date. As noted, no fewer than eight judgments have been given in the proceeding since August 2015. It seems to us to be quite artificial to suggest that, despite all of these steps having been taken without pause in the intervening six-year period, the proceeding should now be regarded as having been at an end as from late May 2015.

[6] The Court also took a different view from that of the High Court as to the effect of the 2018 timetable directions made by Judge Harrison after the default judgment was set aside. The Court of Appeal did not accept those directions revived the proceeding. The Court continued:[8]

> … For the reasons given, the proceeding was revived in August 2015 and did not need to be revived for a second time. Nor do we agree that the effect of making the timetable directions was to "evade the purpose of the strict deadlines in the rules and the purpose of the limitation period prohibiting new proceedings of this age". The delay between late-May 2015 and mid-June 2015 (when the extension of time was sought) was comparatively short and caused no prejudice to EA. … Nor was the purpose of the limitation period evaded by making these directions. The purpose of the Limitation Act is to encourage claimants to make claims for monetary or other relief without undue delay by providing defendants with defences to stale claims. Rennie Cox commenced the claim in March 2012, very soon after the invoices covering the period June to November 2011 fell due for payment. EA was promptly served. This was by no means a stale claim.

The proposed appeal

[7] The applicant submits that the proposed appeal raises issues of general or public importance. Those issues are, first, whether the Court of Appeal can recall sealed judgments on appeal in a different appeal and, second, whether the District Court has inherent powers to extend time after the statutory limitation period has expired. In addition, the applicant wishes to argue the errors in the Court of Appeal

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7 CA judgment, above n 1.

8 CA judgment, above n 1, at [30] (footnotes omitted).

judgment are so substantial so as to give rise to a miscarriage of justice if left uncorrected.

[8] We agree with the respondent that the argument the applicant wishes to make about the effect of the Court of Appeal judgment relies on there being some inconsistency between the 2021 Court of Appeal judgment and its 2018 judgment. The Court of Appeal did not consider there was any such inconsistency. The correctness of that analysis is dependent on the facts. It does not give rise to any question of general or public importance.[9] Nor do we see any appearance of a miscarriage in the civil sense in the Court's interpretation of those facts.[10] There is, as the Court of Appeal said, a level of artificiality in the applicant's approach to this aspect.

[9] Similarly, the proposed ground directed to the District Court Rules 2009 turns on the claim that the proceeding had not been revived in 2015 as the Court of Appeal found. If the Court of Appeal's analysis of the state of the proceedings is correct, there was power to make the directions under the District Court Rules. No question of inherent jurisdiction arises. Again, the exact status of the proceeding at the relevant time turned on an analysis of this particular set of facts. Further, the 2009 Rules, although still applicable here,[11] have been revoked.[12] No question of general or public importance arises. Nor do we see any appearance of error in the Court of Appeal's assessment of the facts.

[10] In these circumstances, we do not consider it is in the interests of justice to grant leave.[13]

Result

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

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9 Senior Courts Act 2016, s 74(2)(a).
10 Section 74(2)(b); and see *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369.
11 District Court Rules 2014, sch 1 cl 8, and see more generally, sch 1 cl 1.
12 District Court Rules, r 22.1.
13 Senior Courts Act, s 74(4).

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

Solicitors:
Friedlander & Co Ltd, Auckland for Applicant
Rennie Cox Lawyers, Auckland for Respondent