

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC UR 31/2023
[2023] NZSC 145

RE KIRSTY ALICE DE MEYER AND
JOHN KENNETH SLAVICH
Applicants

Counsel: Applicants in person

Judgment: 1 November 2023

JUDGMENT OF GLAZEBROOK J

The application for review of the decision of the Registrar declining to waive the filing fee is dismissed.

REASONS

[1] Ms de Meyer and Mr Slavich (the applicants) seek a review of the Registrar's decision not to waive the filing fee relating to their application for leave to appeal.¹

Background

[2] The applicants (along with the other defendants in the High Court) have a beneficial interest in the sales proceeds of a farm owned by Nic Slavich Ltd. A dispute arose regarding the company accounts. Insight Legal Ltd gave a solicitor's undertaking to hold the funds of the sale on trust and not to disburse them except by agreement or pursuant to a court order. In 2020, Insight Legal issued proceedings to seek an order that it be released from its undertaking.

[3] The applicants originally elected not to participate in the proceeding. However, Ms de Meyer filed a memorandum pre-trial in which she took issue with

¹ Supreme Court Act 2003, s 40; and Senior Courts Act 2016, s 160.

aspects of the proceeding and requested measures to allow the non-participating defendants to take a more active role, as well as for the non-participating defendants to be named as plaintiffs.² In an interlocutory minute, Katz J granted the applicants an opportunity to file evidence.³

[4] At the hearing of the substantive proceeding, the High Court held that the only issue arising out of the pleadings was the narrow issue of whether Insight Legal should be released from its undertaking.⁴ The Court held that it should not be released.⁵ The applicants applied to recall the High Court judgment which was declined.⁶

[5] The applicants then applied for an extension of time in which to appeal against the substantive High Court judgment to the Court of Appeal. The applicants argued that they should have been allowed to pursue the issue of an order requiring arbitration and that Edwards J had failed to comply with Katz J's earlier directions.

[6] The Court of Appeal declined the application for an extension of time, finding that the appeal lacked merit: the High Court had dealt with the only issue that remained live on the pleadings.⁷ The plaintiffs had abandoned the arbitration argument at the hearing and no other party had raised it in a pleading, including the applicants.⁸ The applicants applied to recall the Court of Appeal's decision, which was declined.⁹

Application for leave to appeal

[7] The applicants now apply for leave to appeal to this Court. The applicants wish to argue that the Court of Appeal decision breached their rights because the Court did not deal with the issues that the applicants put to them. They submit that Katz J's minute meant they did not have to file new pleadings in the High Court.

² *Insight Legal Ltd v Slavich* HC Auckland CIV-2020-404-2267, 6 December 2021 (Katz J) at [5]–[7]. Katz J treated the memorandum as being on behalf of Ms de Meyer and Mr Slavich: at [5].

³ At [10].

⁴ *Insight Legal Ltd v Slavich* [2022] NZHC 1050 (Edwards J) at [20]–[21].

⁵ At [37].

⁶ *Insight Legal Ltd v Slavich* [2022] NZHC 1491 (Edwards J).

⁷ *De Meyer v Insight Legal Ltd* [2023] NZCA 82 (Cooper P and Brown J) at [23] and [25].

⁸ At [24].

⁹ *De Meyer v Insight Legal Ltd* [2023] NZCA 370 (Cooper P and Brown J).

Fee waiver decision

[8] The applicants applied for a fee waiver on the basis that the appeal concerns a “matter of genuine public interest” and “is unlikely to be commenced or continued unless the fee is waived”.¹⁰

[9] The Registrar declined the fee waiver application, on the basis that the proposed appeal would not determine a question of law of significant public interest: the appeal “raises issues specific to the parties, affects only the parties and applies the well-established legal principles relating to recall and extension of time applications”.

Application for review

[10] The applicants apply for a review of the Registrar’s decision on the basis that their proposed appeal does concern a matter of genuine public interest. They say the questions of law are:

- (a) Whether the Court of Appeal breached the applicants’ rights when it did not deal with an issue properly put to it about the High Court breaching their rights;
- (b) Whether the High Court breached the applicants’ rights when it did not deal with the material they filed in accordance with Katz J’s directions; and
- (c) Whether these alleged breaches are properly remedied in accordance with *Attorney-General v Chapman*.¹¹

[11] The applicants say that the questions of law are of significant interest to the public because every litigant should have the right to have their issue (and evidence) dealt with by the Court of Appeal if properly put to it and by the High Court when

¹⁰ Supreme Court Fees Regulations 2003, reg 5(2)(b). Sub-regulation (4)(a) specifies that an appeal concerns a matter of genuine public interest when it “has been or is intended to be commenced to determine a question of law that is of significant interest to the public or to a substantial section of the public”.

¹¹ *Attorney-General v Chapman* [2012] 1 NZLR 462, [2011] NZSC 110.

presented in accordance with a judge's minute. They submit that there is also a public interest in this Court dealing with breaches of litigants' rights, without financial restrictions.

My assessment

[12] The issues raised by the applicants are entirely fact specific. The issues they wish to raise have no broader implications beyond the parties themselves and do not raise any novel legal principles. The proposed appeal involves the application of orthodox and settled law to their particular circumstances.

[13] The proposed appeal therefore raises no questions of law of genuine public interest. The Registrar was correct to decline the fee waiver application.

Result

[14] The application for review of the decision of the Registrar declining to waive the filing fee is dismissed.