

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 107/2023  
[2023] NZSC 163

BETWEEN TUARIKI JOHN EDWARD DELAMERE  
Applicant  
AND YINGHENG LIU  
Respondent

Court: O'Regan, Ellen France and Williams JJ

Counsel: Applicant in person  
D B Hickson for Respondent

Judgment: 8 December 2023

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**JUDGMENT OF THE COURT**

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- 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**

**Background**

[1] After a High Court trial, the applicant was found liable to the respondent for breach of contract.<sup>1</sup> After a second hearing, the liability was quantified as \$326,816.25 damages and \$75,437.62 interest.<sup>2</sup> In addition, the applicant was ordered to pay costs of \$56,956 to the respondent. The total sum was \$459,209.87.

[2] The applicant appealed against both High Court judgments to the Court of Appeal, but his appeal was dismissed.<sup>3</sup>

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<sup>1</sup> *Liu v Delamere* [2021] NZHC 2445 (Lang J).

<sup>2</sup> *Liu v Delamere* [2021] NZHC 3345 (Lang J).

<sup>3</sup> *Delamere v Liu* [2023] NZCA 427 (Cooper P, Mallon and Wylie JJ).

[3] The applicant now seeks leave to appeal to this Court against the decision of the Court of Appeal.

### **The proposed appeal**

[4] The first proposed ground of appeal advanced by the applicant relates to the conduct of the Court of Appeal hearing. The applicant's senior counsel in the Court of Appeal was unwell at the time of the hearing and sought, and was granted, permission to appear by VMR (that is, by video conferencing technology). The applicant wishes to argue, if leave is granted, that the Court of Appeal erred in refusing to allow the applicant to address the Court personally. The Court of Appeal judgment does not refer to this refusal, but on the applicant's account he requested such permission and the Court declined, presumably on the basis that parties represented by counsel are required to make their submissions through that counsel.

[5] The applicant argues that the Court's refusal was inconsistent with tikanga Māori, particularly rights he says are owed to him through the principles of mana and manaakitanga. We do not consider that the requirements for the grant of leave under s 74 of the Senior Courts Act 2016 are met in relation to this proposed ground. The applicant's interests were, at his choice, advanced by his counsel. It was, of course, open to him to dispense with the services of his counsel and argue his own case, but he did not do this. We do not see any issues of tikanga arising in those circumstances.

[6] The second proposed ground of appeal the applicant wishes to advance is that the respondent committed fraud, which he says created a hara. There is no indication in the Court of Appeal judgment that any such allegation was made either in the High Court or the Court of Appeal. It is inappropriate to seek to advance a new allegation, especially one of such seriousness, in a second appeal. In effect, this Court would be required to address that argument as a first and last Court, something which is obviously inappropriate, when the allegation could have been made in the High Court if it had any evidential foundation. The allegation is of a factual nature, is strongly disputed by the respondent, does not appear to have an evidential foundation in the evidence adduced in the High Court and does not appear to have been advanced

in the Court of Appeal either. No matter of general or public importance,<sup>4</sup> or any arguable matter relating to the Treaty of Waitangi arises,<sup>5</sup> and we see no appearance of a miscarriage if leave to appeal on this entirely new ground is refused.<sup>6</sup> Accordingly, it is not in the interests of justice to grant leave on this ground.

[7] The applicant's third proposed ground is that the respondent did not intend to comply with the agreements between the respondent and the applicant. Again, this appears to be a new point, not based on the evidence adduced in the lower Courts and strongly disputed by the respondent. We decline leave on this ground for the same reasons as noted above in relation to the second ground.

[8] The fourth proposed ground is that the applicant wishes to argue that the respondent did not come to the Court with clean hands. However, that doctrine arises only in relation to claims for equitable remedies and is therefore inapplicable to a case involving a breach of contract. Again, we decline leave on this point for the same reason as in relation to the second and third grounds.

[9] The applicant also wishes to argue that the Judge at first instance made errors of fact. Those arguments face the difficulty that the High Court judgment was upheld by the Court of Appeal, thus meaning the factual findings are concurrent. As the matters are entirely factual, no matter of general or public importance arises and we see no appearance of a miscarriage in the way these points were addressed below.

[10] None of the grounds on which the application for leave to appeal is advanced meets the criteria set out in s 74 of the Senior Courts Act for the grant of leave.

## **Result**

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

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<sup>4</sup> Senior Courts Act 2016, s 74(2)(a).

<sup>5</sup> Section 74(3).

<sup>6</sup> Section 74(2)(b).

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

Solicitors:  
PCW Law Ltd, Auckland for Respondent