

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 134/2022  
[2023] NZSC 44

BETWEEN JINYUE YOUNG  
First Applicant

HSIANG-FEN YING  
Second Applicant

AND ZIE ZHANG  
Respondent

Court: O'Regan, Ellen France and Williams JJ  
Counsel: Applicants in person  
Judgment: 2 May 2023

---

JUDGMENT OF THE COURT

---

- A The application for leave to appeal is dismissed.**
- B The application for recall of this Court's judgment of 28 March 2018 (*Ying v Zhang* [2018] NZSC 27) is dismissed.**
- C There is no order as to costs.**
- 

REASONS

**Introduction**

[1] The applicants have filed an application for leave to appeal from a judgment of the Court of Appeal.<sup>1</sup> In that decision, the Court declined to recall its earlier judgment<sup>2</sup> in the proceedings. In the earlier judgment, the Court had dismissed an

---

<sup>1</sup> *Young v Zhang* [2022] NZCA 560 (Cooper P, Courtney and Katz JJ) [CA judgment].

<sup>2</sup> *Young v Zhang* [2017] NZCA 622 (Kós P, Courtney and Toogood JJ). Leave to appeal dismissed: *Ying v Zhang* [2018] NZSC 27.

appeal against the refusal of the High Court to set aside a consent order and dismissed an appeal against a finding of contempt.<sup>3</sup>

## Background

[2] The litigation arose from a sale and purchase agreement. Under the agreement King David Investments Ltd (King David) (a company controlled by Hsiang-Fen Ying, the second applicant) agreed to sell a property to Zie Zhang, the respondent. Jinyue Young (the first applicant) although not a director of King David, signed the agreement on the company's behalf. Zie Zhang sought specific performance when King David did not settle.

[3] The parties agreed to settle the proceedings. Relevantly, the agreement was that King David would transfer the property to Zie Zhang. Duffy J made a consent order to this effect in a minute of 5 July 2016. Contrary to the terms of the consent order King David sold the property to a third party bona fide purchaser for value without notice. Ultimately, the applicants applied to set aside the consent order. The respondent sought an order the applicants be held in contempt until the proceeds of the sale were disgorged. The High Court declined to set aside the order. The second applicant was found guilty of contempt. The Court of Appeal upheld the judgment of the High Court.<sup>4</sup>

[4] The applicants sought recall of the Court of Appeal judgment on the basis there was fresh evidence proving it was the respondent who breached the consent order and it was she who was in contempt.

[5] In declining recall, the Court of Appeal treated the recall application as one based on the third ground in *Horowhenua County v Nash (No 2)*, namely, that “for some ... very special reason justice requires” recall.<sup>5</sup> The Court considered the proposed evidence the applicants wished to rely on was either not fresh or not relevant. The two key affidavits were directed to supporting the applicants' argument that the

---

<sup>3</sup> *Zhang v King David Investments Ltd (in liq)* [2016] NZHC 3018 (Palmer J).

<sup>4</sup> *Young v Zhang*, above n 2. An appeal against the penalty was nevertheless allowed.

<sup>5</sup> CA judgment, above n 1, at [7]–[8] citing *Horowhenua County v Nash (No 2)* [1968] NZLR 632 (SC) at 633; and *Saxmere Co Ltd v Wool Board Disestablishment Co Ltd (No 2)* [2009] NZSC 122, [2010] 1 NZLR 76 at [2].

consent order had been dishonestly altered to reduce the purchase price but that the Judge would correct the alteration so that if the respondent wanted the property she would have to provide the correct price. There were other arguments similarly addressed to show King David was not in breach of the order and to show there had been no contempt.

[6] The Court of Appeal saw no merit in these arguments. Some of the issues had been addressed in the earlier judgments and others were inconsistent with the evidence for the applicants in the High Court. The new evidence was either not fresh or not cogent.

### **The proposed appeal**

[7] The applicants wish to pursue the arguments based on alleged forgery and arguments directed to showing that the respondent breached the consent order and similarly that she was in contempt, not the second applicant. They say the proposed appeal involves a question of general or public importance and that there has been a miscarriage of justice.<sup>6</sup>

[8] There is a question about the Court's jurisdiction to hear the proposed appeal or at least a part of it. That question arises in this way. The Court of Appeal in its earlier judgment treated the finding of contempt as a finding of criminal contempt. There is no right of appeal from the decision of the Court of Appeal declining recall in the criminal jurisdiction.<sup>7</sup> We accordingly treat the application relevantly as an application for recall of this Court's earlier decision declining leave to appeal. In terms of the civil aspect of the proposed appeal we assume, without deciding, that there is a right of appeal from the decision of the Court of Appeal declining to recall its earlier decision in relation to the consent order.

[9] However the proposed appeal is characterised, it is clear that the criteria for leave to appeal nor for recall are not met. The Court of Appeal, in turn, applied well-settled principles in the approach to the recall application. The applicants do not

---

<sup>6</sup> Senior Courts Act 2016, s 74(2)(a) and (b).

<sup>7</sup> *Uhrle v R* [2020] NZSC 62, [2020] 1 NZLR 286 at [19].

challenge those principles nor the principles applied to the approach to new evidence. No question of general or public importance arises. Further, nothing raised by the applicants gives rise to the appearance of a miscarriage in the application of those principles to this case.<sup>8</sup> Under either guise, the application for recall is in substance an attempt to re-litigate the merits of the case. Moreover, to the extent the application for leave can be construed as an application for leave to adduce new evidence, it is formally dismissed.

## **Result**

[10] The application for leave to appeal is accordingly dismissed. The application for recall of this Court's judgment of 28 March 2018 (*Ying v Zhang* [2018] NZSC 27) is dismissed. As there was no appearance for the respondent, we make no order as to costs.

---

<sup>8</sup> *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5]. The further document filed by the applicants from the Disputes Tribunal (order dated 18 April 2023) adds nothing.