

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 34/2023
[2023] NZSC 64

BETWEEN STEPHEN GILBERT ANDERSON
 Applicant

AND NZI INTERNATIONAL ACCEPTANCES
 LIMITED, NZI SECURITIES LIMITED
 AND NZI FINANCE LIMITED
 Respondents

Court: O'Regan, Ellen France and Kós JJ

Counsel: Applicant in person
 No appearances for Respondents

Judgment: 31 May 2023

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] This is a further application brought by Mr Anderson relating to matters the subject of litigation conducted in the High Court in the 1980s and 1990s.

[2] There are two sets of proceedings, one commenced in 1987 and the other in 1999. Both concern the same subject matter, being the respondent creditors' actions in enforcing payment of Mr Anderson's unpaid indebtedness by the compulsory sale of his farm in 1987/1988. As that farm had been in his family since the 1880s, its sale has evidently caused Mr Anderson enduring upset.

The 1987 proceedings

[3] In 1987, Holland J granted an interim injunction restraining the respondents from selling Mr Anderson’s farm (1987 judgment).¹ However, a 2005 High Court decision declined to direct that the proceeding be set down for a substantive hearing.² In 2006, the Court of Appeal dismissed Mr Anderson’s appeal of the 2005 High Court decision.³ Then, in 2022, the Court of Appeal declined to recall its 2006 decision.⁴ Finally, in July 2022, this Court dismissed Mr Anderson’s application for leave to appeal the 2022 Court of Appeal decision.⁵

[4] As we noted in our judgment in July 2022.⁶

[2] The interim injunction granted by Holland J in 1987 restrained the defendants (the respondents in these proceedings) from proceeding with a mortgagee sale of Mr Anderson’s farm pursuant to Property Law Act 1952 notices. The judgment recognised the possibility that another Property Law Act notice might be issued, giving Mr Anderson time to remedy the breach and which could then form the basis of a mortgagee sale of the property in the event of further default.

As we also noted, that is precisely what then occurred. Mr Anderson defaulted, and the farm was sold by mortgagee sale in June 1988. Mr Anderson was adjudicated bankrupt. The defendants were liquidated and de-registered.

[5] After our decision dismissing the application for leave to appeal, Mr Anderson submitted a document for filing described as an “application for leave to hear submissions in lieu of the Court of Appeal ‘Minute Order’ stating that it does not have jurisdiction in this matter”. A Deputy Registrar declined to receive it for filing. On review we concluded the purported application did not fall within the statutory

¹ *Anderson v NZI International Acceptances Ltd* HC Dunedin CP113/87, 19 November 1987 (Holland J).

² *Anderson v NZ International Acceptances Ltd* HC Dunedin CIV-2005-412-610, 20 October 2005 (Chisholm J) [2005 HC judgment].

³ *Anderson v NZI International Acceptances Ltd* CA242/05, 16 March 2006 (Glazebrook, Hammond and Cooper JJ) [2006 CA judgment].

⁴ *Anderson v NZI International Acceptances Ltd* [2022] NZCA 167 (Cooper P and Goddard J).

⁵ *Anderson v NZI International Acceptances Ltd* [2022] NZSC 85 (O’Regan, Ellen France and Kós JJ) [SC judgment]. [Collectively, the 1987 proceedings].

⁶ SC judgment, above n 5 (footnote omitted).

pathways for filing in the Supreme Court prescribed by Part 4 of the Senior Courts Act 2016.⁷

The 1999 proceedings

[6] In September 1999 Master Venning (as he then was) struck out a second set of proceedings that Mr Anderson had commenced against the same defendants, challenging the 1988 mortgagee sale.⁸

[7] The 1999 proceedings were correctly described by Chisholm J (in the 2005 judgment) in these terms:⁹

[3] In 1999 Mr Anderson attempted to re-open the matter in CP43/00. The defendants successfully sought to have the proceeding struck out ... Master Venning expressed the view that the case in favour of the strike out application was decisive. Amongst other things the proceedings failed to disclose a reasonable cause of action.

Proposed appeal

[8] Mr Anderson's present application is expressed to be:

“Further” written submission in support of an application for leave to appeal the High Court's refusal of the 20th July 1999 relief/damages claim filed by S G Anderson to finalize the injunctive damages running on from the interim injunction dated 19th November 1987. (C.P. No; 113/87) granted by Holland J”.

[9] This, in substance, is an application to bring an appeal direct from the High Court's 1999 judgment, under s 69 of the Senior Courts Act. We assess it accordingly.

[10] Mr Anderson submits that he should be entitled to now revive the struck-out 1999 proceedings, as he had been under the impression that the interim injunction from the 1987 judgment precluded anyone from touching his family farm property “until the Court had looked into circumstances” associated with the first attempted mortgagee sale.

⁷ *Re Anderson* [2022] NZSC 147 (Kós J).

⁸ *Anderson v NZI International Acceptances Ltd* HC Dunedin CP43/99, 1 September 1999 (Master Venning). [The 1999 judgment, and the 1999 proceedings].

⁹ 2005 HC judgment, above n 2.

Our assessment

[11] This Court must not give leave to appeal directly from the High Court unless satisfied that it is necessary in the interests of justice to hear and determine the appeal, and there are exceptional circumstances that justify a direct appeal.¹⁰

[12] The Court of Appeal has determined that the 1987 judgment did not have the effect asserted by Mr Anderson.¹¹ The 1987 judgment produced the interim injunction because the initial statutory demand had been mis-served, but it expressly did not immunize Mr Anderson from a further mortgagee sale should a demand be properly served. As noted at [3], in 2022 this Court declined leave to appeal the decision not to recall that determination, and the 1987 proceedings are effectively at an end.¹²

[13] The 1988 mortgagee sale (under a properly served second demand) was not challenged at the time. The 1999 judgment struck out a belated challenge to that mortgagee sale. The 1999 judgment was not appealed at the time. The respondents have long ago been liquidated in the ordinary course of a commercial restructuring. The land was acquired by a bona fide third-party purchaser 35 years ago, in 1988. The 1999 proceedings were struck out, rather than discontinued, and any appeal therefrom is long out of time.

[14] We are satisfied that it is not necessary in the interests of justice to hear and determine the proposed appeal. Nor are there any exceptional circumstances that would justify a direct appeal.

¹⁰ Senior Courts Act 2016, s 75.

¹¹ 2006 CA judgment, above n 3.

¹² SC judgment, above n 5.

Result

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

[16] As the respondents did not file submissions, we make no order for costs.

Solicitors:
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