

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 62/2023  
[2023] NZSC 89

BETWEEN TANYA FELICITY DUNSTAN  
Applicant

AND BANK OF NEW ZEALAND  
First Respondent

EDDIE (WHETŪ) RANGI  
Second Respondent

Court: O'Regan, Ellen France and Williams JJ

Counsel: Applicant in person  
D T Broadmore and L M Edginton for Respondents

Judgment: 26 July 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 respondents one set of costs of \$2,500.**
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**REASONS**

[1] The applicant seeks leave to appeal against a decision of the High Court striking out her claim against the first respondent (the Bank).<sup>1</sup>

[2] The applicant sent a document said to be a promissory note to the Bank, in which she promised to pay to the Bank the amount owing on a home loan by certain customers of the Bank. The customers are not parties to the present proceeding and

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<sup>1</sup> *Dunstan v Bank of New Zealand* [2023] NZHC 200 (Associate Judge Lester).

the applicant is not a guarantor of the loan. She is, as the Associate Judge said, a “stranger to the debtor/creditor relationship” between the Bank and the customers.<sup>2</sup>

[3] The applicant claimed that the promissory note was effective to meet the customers’ indebtedness to the Bank and sought summary judgment in the High Court to that effect. In response, the Bank applied for a strike-out or summary judgment.

[4] The Associate Judge concluded that the applicant’s cause of action was without merit and that it should be struck out.<sup>3</sup> He said that the idea that the Bank was committed to the applicant’s promise to pay simply through her having posted her promissory note to the Bank without more was untenable, and that the proceeding could not be salvaged.<sup>4</sup> He described the applicant’s proceeding as “fatally flawed”.<sup>5</sup> He also rejected the applicant’s claim that the Bank had breached the privacy of its customers.<sup>6</sup>

[5] In a separate judgment, the Associate Judge awarded costs against the applicant in favour of the Bank of \$25,632.75 and disbursements of \$970.89.<sup>7</sup> This award included a 50 per cent uplift over the amount of costs payable on a 2B basis.<sup>8</sup>

[6] Under s 74 of the Senior Courts Act 2016, this Court must not give leave to appeal unless it is satisfied that it is in the interests of justice for the Court to hear and determine the appeal. As the proposed appeal in this case is a direct appeal from the High Court, s 75 of the Senior Courts Act also applies. That section limits this Court’s ability to give leave to directly appeal against a decision made by a court other than the Court of Appeal. The s 74 “interests of justice” test must be met and there must be “exceptional circumstances that justify taking the proposed appeal directly to [this] [C]ourt”.<sup>9</sup>

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<sup>2</sup> At [3].

<sup>3</sup> At [43].

<sup>4</sup> At [44].

<sup>5</sup> At [45].

<sup>6</sup> At [52].

<sup>7</sup> *Dunstan v Bank of New Zealand* [2023] NZHC 1286 at [10] (Associate Judge Lester).

<sup>8</sup> At [6]–[7].

<sup>9</sup> Senior Courts Act 2016, s 75(b).

[7] Applying the criteria in s 74, we are satisfied that no matter of general or public importance or matter of general commercial significance arises in relation to the strike-out judgment or the costs judgment.<sup>10</sup> Rather, the High Court applied well settled law in an orthodox manner in both judgments. We are also satisfied that there is nothing in the High Court judgments or in the submissions made by the applicant indicating any risk that a substantial miscarriage of justice may have occurred or may occur unless the appeal is heard.<sup>11</sup>

[8] We consider that the criteria for the grant of leave to appeal under s 74 are not met. Nor are there any exceptional circumstances justifying a direct appeal to this Court.

[9] The application for leave to appeal is therefore dismissed.

[10] The applicant must pay the respondents one set of costs of \$2,500.

Solicitors:  
Buddle Findlay, Auckland for Respondents

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<sup>10</sup> Section 74(2)(a) and (c).

<sup>11</sup> Section 74(2)(b).