IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 100/2022
[2023] NZSC 98

BETWEEN	GREGORY JOHN JONES Applicant
AND	NEW ZEALAND BLOODSTOCK FINANCE AND LEASING LIMITED Respondent

Court: Glazebrook, Williams and Kós JJ

Counsel: Applicant in person
F A King and A Osama for Respondent

Judgment: 2 August 2023

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B The applicant must pay the respondent costs of $2,500.

REASONS

[1] This application for leave to appeal stems from a dispute over two loan agreements between the applicant and the respondent. The first, entered into on 23 May 2016, granted the applicant access to monies up to an initial limit of $200,000 in advances at a 10 per cent interest on the unpaid daily balance. Full payment had to be made on "30th June 2017 or upon demand". By the end of 2016, the applicant had obtained over $400,000 in advances. The second contract, entered into on 10 October 2017, was a lease purchase agreement enabling the applicant to acquire an interest in another horse for $44,000. The contract required the applicant to pay the respondent a partial annual repayment each July and to pay the remainder on 10 October 2020 or on earlier termination.

[2] Ultimately, in April 2019, the respondent served a notice of demand seeking the outstanding debt of $369,800 under the first contract. At the same time, it also served a notice of default in due payments under the second contract, amounting to $22,718 and stated that, if not remedied, all amounts owing under the agreement would fall due, totalling $61,832. The applicant did not make any payments after receiving these notices.

[3] As the Court of Appeal noted, these proceedings have a somewhat protracted history.[1] What follows is a condensed version to the extent it is relevant to this leave application.

[4] In early September 2019, the respondent filed an application for summary judgment in the High Court in respect of the applicant's debts and sought $431,632 in repayments (plus interest and costs). The applicant opposed the application on a number of grounds, including on the basis that the respondent had acted oppressively, and that the applicant had a claim to equitable set-off. He alleged that there was a conspiracy in the thoroughbred industry to harm his business interests. Jagose J held that there was no evidence to suggest the applicant had any available defence to the respondent's claims, nor was there anything unfair or unjust about determining the respondent's claim without taking the applicant's intended cross-claim into account. He gave judgment against the applicant.[2]

[5] The applicant appealed to the Court of Appeal.[3] He made allegations in various affidavits that certain High Court judges were party to the alleged conspiracies against his interests, alongside several members of his own family, his friends and others in the horse racing industry. The Court of Appeal took what it described as an "unduly lenient approach to admissibility essentially because the overall breadth of [the applicant's] suspicions [were] potentially relevant to an assessment of the credibility of his claims" and admitted some aspects of the further evidence.[4] It disagreed with the High Court's decision that the applicant's claims, even if they had

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1 *Jones v New Zealand Bloodstock Financing and Leasing Ltd* [2022] NZCA 397 (Dobson, Thomas and Duffy JJ) [CA judgment] at [2].
2 *New Zealand Bloodstock Finance & Leasing Ltd v Jones* [2020] NZHC 1233 (Jagose J).
3 CA judgment, above n 1.
4 At [61] and [65].

merit, were not capable of qualifying for equitable set-off.[5] It nevertheless dismissed the applicant's appeal. The Court held that there was no tenable cause of action in relation to fraud,[6] and that the wide-ranging conspiracies alleged by the applicant were neither substantiated nor credible.[7]

[6] The applicant has applied for leave to appeal. In a series of memoranda and affidavits, he criticised certain Judges in the Courts below who had dealt with litigation involving him. He requested Judges of this Court recuse themselves where they had personal knowledge of the issues he referred to, had a personal relationship with the Judges complained of or where they had discussed the applicant or any aspect of his litigation with those Judges. In a minute of 28 April 2023, this Court observed that it is for the Court to determine whether any member should recuse him or herself, and that it is contrary to principle that the judiciary be interrogated on such matters. Notwithstanding that principle, it confirmed that no Judge of this Court, whether assigned to the panel or not, met any of the applicant's criteria.[8]

The applicant's submissions

[7] The applicant argues that his case involves matters of general public importance and general commercial significance.[9] He argues that there is a risk of a substantial miscarriage of justice if the case is not heard.[10]

[8] He raises 12 substantive grounds of appeal, which can be broadly grouped into four categories. The applicant first contests the Court of Appeal's decision that the two loan contracts are enforceable, arguing instead that the contracts should be varied or that the respondent should be estopped from demanding repayments in the manner sought. Second, according to the applicant, the Court of Appeal erred in deciding he could not succeed in a defence based on fraud or oppressive conduct. He argues that the principle in *Lazarus Estates Ltd v Beasley*, that "fraud unravels everything", applies here.[11] Third, he argues that the evidence does not fall short of the standard

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5 At [64].
6 At [86] and [89].
7 At [93], [95], [100] and [112]–[115].
8 *Jones v New Zealand Bloodstock Finance and Leasing Ltd* SC 100/2022, 28 April 2023.
9 Senior Courts Act 2016, s 74(2)(a) and (c).
10 Section 72(2)(b).
11 *Lazarus Estates Ltd v Beasley* [1956] 1 QB 702 (CA) at 712.

required to establish a lawful or unlawful conspiracy against him. Finally, he challenges the principles of summary judgment relied on by the Court of Appeal, including the Court's characterisation of the onus of proof. As part of this argument, the applicant submits that the Court of Appeal did not conduct its hearing in accordance with the principles of natural justice because it relied on *McGrouther v Paulden* without giving the applicant a chance to respond.[12]

[9] Alongside his written submissions, the applicant filed a supplementary memorandum, responding to the Court's minute on recusal. He argued that a fair-minded lay observer would reasonably apprehend that the Judges of this Court might not bring an impartial mind to this case because the applicant has "indicated an immediate intention to issue proceedings against 13 Judges with whom there is at least a clear link of collegiality to be expected amongst the judiciary". He submitted that the only alternative was for the leave application to be heard by members of the Supreme Court who are no longer actively sitting, or by overseas Judges.

[10] In his affidavit accompanying the application, the applicant states that during his time as a partner at Jones Fee, people would "present themselves immediately on the making of a telephone call or other possible connector" and that he recalled "this occurred in a judicial management conference in which Justice Kós was presiding and my impression … was that he was responsible for an activity of [that] type". He also states that, at a very early point in time when the alleged conspiracy was beginning, he saw Williams J in the TAB at Eastridge on several occasions. While his presence "was not intimidating in any way … I gained the impression that he was aware that I was under pressure at that time from the types of parties of which I now complain". He also states that he has no reason to assume that Williams J "even now knows of me or my identity".[13]

Our assessment

[11] We deal first with recusal, and then with leave.

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12 *McGrouther v Paulden* HC Christchurch CIV-2010-409-1124, 7 December 2010.

13 To clarify the position, Williams J, who lives in Wellington, has never visited the Eastridge TAB, which appears to be in Auckland.

Recusal

[12] As to recusal, we reiterate the conclusion recorded in our minute of 28 April 2023 and above at [6]. We note, also, that the Senior Courts Act 2016 does not permit substitution of retired or overseas Judges. The further claims made by the applicant—traversed at [10] above—are mystifying. The short point is that nothing advanced by the applicant could possibly concern a fair-minded and fully-informed observer as to the impartiality of the panel in hearing this leave application.

Leave

[13] The proposed appeal raises no matter of general public importance or commercial significance.[14] The issues raised are confined to the facts of this particular case and lack broader implications beyond the parties themselves.

[14] Nor are we satisfied that the prospects of success are such that a substantial miscarriage of justice may have occurred in the decision of the Court of Appeal.[15] For an applicant in a civil case to establish that there is a risk of a substantial miscarriage of justice, they must demonstrate a sufficiently apparent error of such a substantial character that it would be repugnant to justice to allow it to go uncorrected.[16] We see no error in the approach taken by the Court of Appeal, and the appeal grounds raised by the applicant have insufficient prospects of success to justify a grant of leave.[17]

[15] The Court of Appeal applied orthodox principles relating to summary judgment in reaching its decision. Those principles are well settled. We do not see the Court of Appeal judgment (and *McGrouther*) as in conflict with the basic principle that the plaintiff has the ultimate onus to show that there is no arguable defence (including, where relevant, an interdependent equitable set-off counterclaim). Instead, the Court of Appeal's judgment merely acknowledges the forensic reality that where

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14 Senior Courts Act, s 74(2)(a) and (c).
15 Section 74(2)(b).
16 *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].
17 *Prime Commercial Ltd v Wool Board Disestablishment Company Ltd* [2007] NZSC 9, (2007) 18 PRNZ 424 at [2]; *Hookway v R* [2008] NZSC 21 at [4]; and *B (SC 18/2020) v R* [2020] NZSC 52 at [12].

a plaintiff has met this standard, the evidential onus shifts to the defendant to demonstrate a tenable defence if it is to defeat the application.[18]

[16] We see no error in the Court's conclusion that both contracts are enforceable, and that the respondent had established that the applicant had no arguable defence. The evidential onus then shifted to the applicant. Contrary to his submissions, we consider the Court of Appeal did not fail to grasp the essence of his defence. Rather, the Court found it was not tenable. This conclusion was available to the Court on the evidence before it. The evidence plainly fell short of establishing a conspiracy; the applicant's allegations were, at best, entirely speculative and lacking in credibility. It is not, therefore, necessary in the interests of justice for this Court to hear and determine the appeal.[19]

Result

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

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

Solicitors:
McKenna King Dempster, Hamilton for Respondent

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18 A point clearly stated in *Krukziener v Hanover Finance Ltd* [2008] NZCA 187, (2008) 19 PRNZ 162 at [26].

19 Senior Courts Act, s 74(1).