

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 130/2023
[2024] NZSC 18

BETWEEN LUCIA RENATE PFISTERER
 Applicant

AND CLAIMS RESOLUTION SERVICE
 LIMITED
 First Respondent

 GRANT SHAND BARRISTERS AND
 SOLICITORS
 Second Respondent

Court: Glazebrook and Kós JJ

Counsel: M S Smith and R J Lynn for Applicant
 A R B Barker KC for First Respondent
 A B Darroch and B A Mathers for Second Respondent

Judgment: 5 March 2024

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B The applicant must pay each respondent costs of \$1,250.**
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REASONS

[1] The applicant entered into a “no win, no pay” contract with the first respondent to facilitate the resolution of her insurance claim. The second respondent was subsequently engaged to file proceedings against the applicant’s insurer. However, the applicant’s relationship with the second respondent broke down and she engaged new lawyers.

[2] When the first respondent sought to recover fees for its services, the applicant raised several affirmative defences and counterclaims against both respondents. These encompassed unconscionable bargain, breach of contract, misleading and deceptive conduct, and breach of fiduciary duty.

[3] The High Court largely found against the applicant.¹ It found two breaches of fiduciary duty by the second respondent, but that these breaches were not causative of loss.² No relief was awarded.

[4] The Court of Appeal upheld the High Court's decision.³

Proposed appeal

[5] The applicant seeks leave to appeal to this Court against the Court of Appeal decision. The grounds of the proposed appeal largely mirror those argued in the lower Courts. Broadly, she challenges the legitimacy of the first respondent's business arrangements, contract and relationship with the second respondent.

Our assessment

[6] The proposed appeal does not meet the statutory criteria for leave.⁴ The applicant argues her submissions raise issues of general importance and will impact other proceedings issued against the respondents. However, the emphasis of the appeal must be to challenge factual findings made in the lower Courts which involve certain adverse credibility findings against the applicant.⁵ The proposed appeal accordingly raises no question of public or general importance.⁶ Nor, for the same reason, does it involve any matter of general commercial significance.⁷ We also find there is no risk of a substantial miscarriage of justice (as that expression is used

¹ *Claims Resolution Service Ltd v Pfisterer* [2021] NZHC 1088 (Hinton J) [HC judgment].

² Namely, by failing to obtain and follow informed instructions on settlement and to keep client information confidential: at [156] and [158].

³ *Pfisterer v Claims Resolution Service Ltd* [2023] NZCA 511 (Cooper P and Katz J). The Court of Appeal also upheld the High Court's decision on interest and costs: *Claims Resolution Service Ltd v Pfisterer* [2021] NZHC 1943 (Hinton J).

⁴ Senior Courts Act 2016, s 74.

⁵ HC judgment, above n 1, at [60]–[64].

⁶ Senior Courts Act, s 74(2)(a).

⁷ Section 74(2)(c).

in a civil context) if the appeal is not heard, there being no evident error in the reasoning of the lower Courts.⁸

Result

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

[8] The applicant must pay each respondent costs of \$1,250.

Solicitors:

GCA Lawyers, Christchurch for Applicant

Canterbury Legal, Christchurch for First Respondent

Darroch Forrest Lawyers, Wellington for Second Respondent

⁸ Section 74(2)(b); and see *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].