IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 2/2025
[2025] NZSC 20

BETWEEN	WENG-YUAN TSAO Applicant
AND	YEN WEI CHEN First Respondent
	KUEI-HUAN CHEN Second Respondent

Court:	Ellen France and Kós JJ
Counsel:	Applicant in person Respondents in person
Judgment:	27 March 2025

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B There is no order as to costs.

REASONS

[1] The applicant, Weng-Yuan Tsao, has filed an application for leave to appeal to this Court from a decision of the Court of Appeal.[1] In that decision, the Court of Appeal declined to grant the applicant (along with Shan-Hua Chen) an extension of time to appeal against a decision of the High Court.[2] The High Court struck out a proceeding filed by the applicant and Shan-Hua Chen (together "the

1 *Tsao v Chen* [2024] NZCA 664 (Katz and Palmer JJ) [CA judgment].
2 *Tsao v Chen* [2023] NZHC 2787 (van Bohemen J) [Strike-out judgment].

plaintiffs") in that Court on the ground it disclosed no reasonably arguable cause of action.

[2] The background is set out in more detail in the judgments of the Courts below.[3] In essence, the parties (the plaintiffs and the respondents, Yen Wei Chen and Kuei-Huan Chen) have been engaged in litigation since 2014 after they fell out over a business venture that began in May 2009. On 1 November 2018, the parties agreed to settle the proceedings then afoot (the "settlement agreement"). However, as the High Court observed, the plaintiffs did not implement that agreement.[4] The current proceeding was brought in 2021.

[3] In that proceeding, the plaintiffs sought to challenge the validity of earlier judgments, arguing they were obtained as a result of fraudulent evidence, and that the settlement agreement was illegal. Eventually the matter was set down for a preliminary trial on three questions:

(a) whether identified prior judgments, including the costs orders, were obtained by fraud;

(b) whether the settlement agreement was an illegal contract; and

(c) whether the settlement agreement was otherwise voidable.

[4] In a comprehensive judgment, the High Court canvassed these questions concluding that the answer to each question was "no". It followed, the Court said, that there was "no arguable cause of action based on alleged fraud in relation to the judgments or in relation to alleged illegality or voidability of the Settlement Agreement".[5] The proceeding was struck out.

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3 Strike-out judgment, above n 2, at [1]–[63]; CA judgment, above n 1, at [1] and [3]–[4].

4 At the end of the hearing before van Bohemen J, the Court was told Mr Tsao had in fact paid the outstanding costs which, in the settlement agreement, the plaintiffs had agreed to do. The Court said that if that fact had been disclosed earlier, it was "highly unlikely the proceeding would have been allowed to go any further": Strike-out judgment, above n 2, at [101].

5 At [97].

[5] Some seven months after the High Court judgment, the plaintiffs filed an application for an extension of time to file an appeal in the Court of Appeal.

[6] In the application for leave to appeal to this Court and supporting submissions the applicant advances a number of grounds. He says it is necessary in the interests of justice for this Court to hear and determine the proposed appeal because a substantial miscarriage of justice may occur if the appeal is not heard and matters of commercial and general importance arise (including application of the principles of the Treaty of Waitangi).[6] In this context, the applicant goes through the arguments which were addressed in the decision of the High Court to strike out and says why he considers that Court was wrong. The applicant also submits, amongst other matters, that the Court of Appeal did not adequately consider the significance of the respondents' actions.

[7] In dismissing the application for an extension of time, the Court of Appeal applied the settled principles set out in this Court's judgment in *Almond v Read*.[7] The Court was not persuaded there was an adequate explanation for the delay. In terms of the merits of the proposed appeal, the Court said this:[8]

> [9] As for the merits, the proposed grounds of appeal are difficult to discern. We infer, however, that the applicants [the plaintiffs in the High Court] wish to advance essentially the same arguments on appeal as they did in the High Court. In our view those grounds lack merit and the prospects of success on appeal are negligible, for the reasons explained by the Judge at considerable length in his very comprehensive judgment.

[8] In conclusion, the Court did not consider that continuation of the "protracted and unmeritorious litigation" was in the overall interests of justice.[9]

[9] There is no challenge to the principles applied by the Court of Appeal. No questions of general or public importance or general commercial significance arise.[10] Rather, the proposed appeal would turn on the application of settled principles to these facts. Nor do we see any appearance of a miscarriage of justice in the

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6 Senior Courts Act 2016, s 74(1)–(3).
7 *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801 at [35]–[40].
8 CA judgment, above n 1.
9 At [10].
10 Senior Courts Act, s 74(2)(a), (2)(c) and (3).

assessment of the Court of Appeal as that term is used in the civil context.[11] While the applicant continues to feel aggrieved by what has happened, these matters have been thoroughly canvassed in the numerous decisions to date. The interests in finality are such that they must, as the Court of Appeal said, prevail.

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

[11] In the circumstances, we make no order as to costs.

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