

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 96/2018
[2019] NZSC 3

BETWEEN FREDRICK HILL
 Applicant

AND MĀORI TRUSTEE
 Respondent

Court: William Young, Glazebrook and Ellen France JJ

Counsel: Applicant in person
 C M Reuhman for Respondent

Judgment: 19 February 2019

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B The applicant must pay the respondent costs of \$2,500.**
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REASONS

Introduction

[1] Mr Hill seeks leave to appeal from a decision of the Court of Appeal relating to the payment of security for costs.¹

Background

[2] The application for leave to appeal arises in the context of Mr Hill's appeal to the Court of Appeal against a decision of Associate Judge Smith.² The Associate

¹ *Hill v Māori Trustee* [2018] NZCA 280 (Winkelmann, Clifford and Williams JJ).

² *Māori Trustee v Hill* [2017] NZHC 2377.

Judge dismissed Mr Hill's application to set aside a bankruptcy notice issued by the respondent, the Māori Trustee. As Associate Judge Smith notes, the background to the application is that the Māori Trustee had brought a successful claim for damages in the District Court for breaches by Mr Hill, as tenant, of a lease of Māori freehold land at Mangatainoka near Pahiatua.³ Mr Hill had appealed unsuccessfully against the District Court decision, which had found him liable for damages of \$87,423.33 together with costs, to the High Court⁴ and to the Court of Appeal.⁵ Subsequently, on 31 August 2016 the Māori Trustee issued the bankruptcy notice claiming the judgment debt along with costs.

[3] Mr Hill then filed the application asking the High Court to refuse or dismiss the bankruptcy notice. That is the application which was dismissed by Associate Judge Smith. Mr Hill subsequently filed a notice of appeal in the Court of Appeal against the decision of the Associate Judge. Security for costs on the appeal was set at \$6,600.

[4] Mr Hill sought an order that security be dispensed with. The Deputy-Registrar of the Court of Appeal declined this application. Mr Hill sought review of that decision by a Judge. In a judgment delivered on 16 February 2018, Brown J dismissed the application by Mr Hill to review the decision of the Deputy Registrar.⁶ Then, in a judgment delivered on 11 June 2018, the Court of Appeal declined, by consent, an application for strike-out by the Māori Trustee and granted Mr Hill's application for an extension of time to apply for the allocation of a hearing date and to file the case on appeal. The Court also relevantly determined that if Mr Hill was not granted legal aid, the sum of \$6,600 originally ordered as security for costs was to be paid within 20 working days after the date of the relevant decision of Legal Aid Services.⁷ Mr Hill then filed his application for leave to appeal to this Court.

³ At [2]–[3], citing *Māori Trustee v Hill* DC Palmerston North CIV-2011-054-533, 23 February 2015.

⁴ *Hill v Māori Trustee* [2016] NZHC 364. Dobson J also declined leave to appeal to the Court of Appeal: *Hill v Māori Trustee* [2016] NZHC 1847.

⁵ Leave to appeal to the Court of Appeal was declined: *Hill v Māori Trustee* [2016] NZCA 487. A stay, pending leave to appeal being heard, was also declined: *Hill v Māori Trustee* [2016] NZCA 380.

⁶ *Hill v Māori Trustee* [2018] NZCA 17.

⁷ At [21(b)]. An interim legal aid grant was made to enable a barrister to examine the appeal and make a recommendation to Legal Aid Services. Subsequently, we understand that legal aid was declined after a recommendation had been made by a barrister.

The proposed appeal

[5] The focus of Mr Hill's submissions is on the merits of his initial dispute with the Māori Trustee and on the findings in the courts below on those issues rather than on the principles relating to dispensation with security for costs. The relevant principles related to security for costs were set out in *Reekie v Attorney-General* and were applied in this case.⁸ No question of general or public importance accordingly arises out of the approach to security for costs and there likewise is no appearance of a miscarriage of justice.⁹

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

[7] The applicant is to pay costs of \$2,500 to the respondent.

Solicitors:
Te Tumu Paeroa, Wellington for Respondent

⁸ *Reekie v Attorney-General* [2014] NZSC 63, [2014] 1 NZLR 737.

⁹ *Junior Farms Ltd v Hampton Securities Ltd (In liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [4]–[5].