

IN THE SUPREME COURT OF NEW ZEALAND

SC 78/2016
[2016] NZSC 119

BETWEEN PETER ANTHONY WILLIAMS
 Applicant

AND TREVOR NELSON CAMERON
 First Respondent

 ROBIN WHALLEY
 Second Respondent

 RICHARDS WOODHOUSE
 Third Respondent

Court: William Young, Arnold and Ellen France JJ

Counsel: Applicant in person
 S Galbreath for Respondents

Judgment: 5 September 2016

JUDGMENT OF THE COURT

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

[1] The applicant, Mr Williams, and an associated company, Williams Turbochargers Ltd, brought proceedings against their former accountants arising out of the sale of a business. One partner in the firm had acted on the sale for Mr Williams and his company as vendor and another partner had acted for the purchaser. Based on a valuation which the firm had obtained but which was not disclosed to him, Mr Williams alleged that the business had been sold at a significant undervalue. One of the partners, the first respondent Mr Cameron, ultimately accepted in disciplinary proceedings that he had breached the New Zealand Institute

of Chartered Accountants' Code of Ethics in several respects (the other partner involved had retired by this stage).

[2] Mr Williams then commenced proceedings against the partners individually and the firm. The respondents contended that the claim had been settled and applied to strike out the proceedings. The strike out application was granted in the District Court,¹ but this was overturned on appeal.² An order was then made that the issue of settlement be determined as a preliminary question. The District Court held that a binding settlement had been reached in respect of most of the claim.³ Mr Williams did not immediately appeal this decision. He later made an application for recall, essentially on the basis that Mr Cameron and his solicitors had knowingly made false statements to the Court and had produced fabricated documents. This application was dismissed,⁴ a decision upheld on appeal to the High Court.⁵ Soon after, Mr Williams was adjudicated bankrupt and the company was placed into liquidation (on the basis that costs awards against them in respect of the District Court hearings had not been paid).

[3] Mr Williams then made three applications to the High Court – one was for an order that the right to challenge the District Court Judge's decision as to settlement,⁶ which the Official Assignee had disclaimed, be vested in him; another was for leave to appeal out of time against the District Court's decision; and the third was for leave to adduce new evidence in support of the appeal. Mallon J refused all three applications.⁷

[4] Mr Williams then filed a notice of appeal against Mallon J's decision. It was three days out of time, so that he required an extension of time within which to file the appeal. The Court of Appeal refused to grant the extension.⁸ Under the general rubric of the interests of justice, the Court considered the length of the delay, the merits of the appeal and prejudice to the respondents. Although the period of delay

¹ *Williams v Cameron* DC Nelson CIV-2009-042-544, 26 May 2010 (Zohrab DCJ).

² *Williams v Cameron* HC Nelson CIV-2010-422-222, 22 September 2010 (Mallon J).

³ *Williams v Cameron* DC Nelson CIV-2009-042-544, 26 October 2012 (Tuohy DCJ).

⁴ *Williams v Cameron* DC Nelson CIV-2009-042-544, 15 April 2013 (Tuohy DCJ).

⁵ *Williams v Cameron* [2013] NZHC 1794 (Kós J).

⁶ *Williams v Cameron*, above n 3.

⁷ *Williams v Cameron* [2016] NZHC 264.

⁸ *Williams v Cameron* [2016] NZCA 317 (Harrison, French and Cooper JJ).

was short, the Court considered that Mr Williams was attempting to re-litigate matters that had been finally determined some years earlier and that the respondents would be prejudiced if Mr Williams were permitted to do so.⁹

[5] Mr Williams now seeks leave to appeal against that decision. Mr Williams focuses not on the decision of the Court of Appeal to refuse to extend time but on the merits of his proposed appeal against the original decision of the District Court. In essence, he submits that he was deprived of the right to a fair hearing in the District Court and subsequently because the respondents' counsel breached r 13.5.3 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.¹⁰ This is because two emails which had been sent by Mr Cameron to one of counsel's partners were produced in the course of the hearing before the District Court.

[6] In *Erwood v Maxted*, this Court accepted that it had jurisdiction to grant leave to appeal against a decision of the Court of Appeal refusing an extension of time to appeal, provided that the requirements of s 13 of the Supreme Court Act 2003 were met.¹¹ We are satisfied that the requirements of s 13 are not met in this case. The proposed appeal raises no ground of general or public importance, nor do we see any risk of a substantial miscarriage of justice. The approach of the Court of Appeal to the application for an extension of time was orthodox and its reasoning cannot be impeached. We note that the alleged breach of r 13.5.3 by the respondents' counsel was one of the grounds relied on by Mr Williams in his application for recall of the District Court's decision. In dismissing Mr Williams' appeal against the District Court's refusal to recall, Kós J said that he was satisfied on the evidence that there was no basis for the allegation that r 13.5.3 had been breached.¹² Moreover, the emails concerned were of "peripheral relevance".¹³

⁹ At [6]–[9].

¹⁰ Rules 13.5.3 provides: "A lawyer must not act in a proceeding if the conduct or advice of the lawyer or of another member of the lawyer's practice is in issue in the matter before the court".

¹¹ *Erwood v Maxted* [2007] NZSC 38, (2007) 18 PRNZ 544 at [7].

¹² *Williams v Cameron*, above n 5, at [22].

¹³ At [10] and [22].

[7] The application for leave to appeal is dismissed. The applicant must pay the respondents costs of \$2,500.

Solicitors:
Duncan Cotterill, Nelson for Respondents