

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

**SC 56/2019
[2019] NZSC 109**

BETWEEN ALLAN JACK WEST
 Applicant

AND GEOFFREY ALLAN WEST
 First Respondent

 DAVID JOHN CAMERON WEST
 Second Respondent

 THE PARTNERS OF LANGLEY TWIGG
 LAW
 Third Respondents

Court: O'Regan and Ellen France JJ

Counsel: Applicant in person
 D M Kerr for First and Second Respondents
 C L Bryant for Third Respondents
 J F Armstrong for C J Davis

Judgment: 9 October 2019

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B There is no order as to costs.**
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REASONS

Introduction

[1] The applicant (Mr West) seeks leave to appeal from a decision of the Court of

Appeal dismissing his appeal from a judgment of Edwards J.¹ Edwards J dismissed three applications by Mr West for particular discovery.²

Background

[2] The present application arises in the context of a challenge brought in an earlier proceeding in the High Court relating to the transfer, in late November 2014, by Mr West (then aged 92) of his property at Muriwai, Auckland, to his two sons, the first and second respondents. Under the terms of the transfer, the purchase price was forgiven, Mr West retained the right to live on the property and the first and second respondents undertook various financial obligations.

[3] The proceeding was issued by Mr West in the High Court in November 2016. Mr West sought return of the property on various bases, including that the transfer was an unconscionable bargain. Mr West also claimed that the transfer was the result of negligence by a lawyer in the third respondents' firm who had acted for all parties to the transfer.

[4] In late 2017, Downs J issued a judgment dismissing all of the claims.³ The judgment was subsequently sealed. Mr West was granted an extension of time to file a notice of appeal to the Court of Appeal in June 2018.⁴ Subsequently, he was granted an extension of time to file his case on appeal and apply for a hearing date.⁵ Mr West did not take the necessary steps to maintain the appeal and it was deemed abandoned on 19 December 2018.

[5] After the appeal against the judgment of Downs J had been filed in August 2018, Mr West made applications for discovery in the High Court. Edwards J described the applications as follows:⁶

¹ *West v West* [2019] NZCA 225 (Brown, Whata and Moore JJ).

² *West v West* [2018] NZHC 2723 [HC judgment].

³ *West v West* [2017] NZHC 3110. The claim based on an unconscionable bargain failed because the Judge concluded that, although Mr West was elderly, he was not disabled in the relevant sense. The Judge also found that while it was inappropriate for the solicitor in question to act for all parties (as the firm admitted), that was not causative of loss.

⁴ *West v West* [2018] NZCA 216.

⁵ *West v West* [2018] NZCA 511.

⁶ HC judgment, above n 2, at [6].

- (a) An application against Mr Davis, a partner in the law firm, Armstrong Murray. Mr Davis previously acted for [the first respondent] and a letter that he wrote dated 6 December 2015 was produced in evidence at the trial. Mr West seeks discovery of emails referred to in that letter.
- (b) Two applications directed to Mr Kerr, counsel for [the first and second respondents]. Mr West seeks orders requiring Mr Kerr to substantiate evidence given by the first and second defendants at trial, and to disclose whether the first [respondent] has a connection with Asher and/or Venning JJ.

[6] Edwards J dismissed the applications on the basis the High Court was *functus officio*. The Judge explained:

[10] Once a Court has made an order, and an appeal has been lodged, the Court becomes *functus officio*, and is unable to take any further action in relation to that order. That is the position in this case. The delivery of Downs J's judgment in this case, and the filing of an appeal, means this Court is *functus officio* in relation to the proceeding giving rise to the judgment.

[11] In addition, the applications for discovery are misconceived. Mr West's complaint appears to be aimed at the adequacy of the evidence called at trial on behalf of the defendants. The appeal provides the appropriate avenue to address those concerns.

(footnote omitted)

[7] The Court of Appeal dismissed Mr West's appeal on the basis Edwards J was correct.

The proposed appeal

[8] Mr West seeks to challenge the finding upheld by the Court of Appeal that the High Court was *functus officio* on the basis, amongst other matters, that the Judge did not consider the facts enumerated and that the interests in finality are not relevant in this case. In addition, he seeks to raise other matters most of which would revisit the judgment of Downs J, for example, the finding that he was not under a disability at the time of the transfer of the property.

[9] None of the matters Mr West wishes to argue give rise to any question of general or public importance.⁷ Rather, the issues are either fact-specific or relate to the earlier High Court judgment of Downs J which are outside the scope of the Court

⁷ Senior Courts Act 2016, s 74(2).

of Appeal's judgment. Nor does anything raised by Mr West about the Court of Appeal's decision give rise to any appearance of a miscarriage of justice.⁸

[10] The criteria for leave to appeal are not met. The application for leave to appeal is accordingly dismissed. In the circumstances we make no order as to costs.

Solicitors:

Bannister & von Dadelszen, Hastings for First and Second Respondents

Hesketh Henry, Auckland for Third Respondents

Armstrong Murray, Auckland for Mr Davis

⁸ *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [4]–[5].