

IN THE SUPREME COURT OF NEW ZEALAND

SC 45/2014
[2014] NZSC 97

BETWEEN BRUCE JAMES KING
 Applicant

AND ASB BANK LIMITED
 Respondent

Court: Elias CJ, Glazebrook and Arnold JJ

Counsel: Applicant in person
 P V Shackleton for Respondent

Judgment: 28 July 2014

JUDGMENT OF THE COURT

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

[1] The applicant, Mr King, borrowed money from the respondent, ASB Bank Ltd, against the security of a property he owned. The loans fell into arrears and ASB sought to realise its security. Having allowed Mr King time to attempt to sell the property himself, ASB sold the property by mortgagee sale.

[2] Mr King then issued proceedings against ASB seeking to have the loan agreements reopened or to obtain other relief, on the basis that ASB breached the Credit Contracts and Consumer Finance Act 2003 and the Fair Trading Act 1986. As the proceeds of the sale were insufficient to meet Mr King's full indebtedness, ASB issued a counterclaim seeking to recover the balance. ASB sought summary

judgment both on its counterclaim and as a defendant in respect of Mr King's claims against it. Katz J granted both applications.¹

[3] Mr King then filed an appeal in the Court of Appeal. He applied for a waiver of the requirement to pay security for costs. When the Registrar dismissed his application, Mr King sought a review of her decision by a single Judge of the Court of Appeal. Ellen France J dismissed his application and ordered him to pay security in the amount of \$5,880 by 28 April 2014.² Mr King now seeks leave to appeal against that decision.

[4] In addition, Mr King has filed an application for a stay of the determination of his leave application. He did so because a friend has agreed to lend him sufficient funds to cover the security fixed by the Court of Appeal and he wishes to see whether the Court of Appeal will permit him to revive his appeal by paying security for costs after the date fixed by Ellen France J.

[5] Whatever the outcome of Mr King's further application to the Court of Appeal, we see no reason to delay dealing with his application for leave to appeal to this Court against Ellen France J's decision. Accordingly, we dismiss his application for a stay of our determination.

[6] We are not satisfied that it is necessary in the interests of justice that we hear and determine this appeal. As the principles concerning security for costs were recently addressed by this Court in *Reekie v Attorney-General*,³ the proposed appeal does not raise any issue of general or public importance. Moreover, there is nothing in the material before us to indicate that there is any risk of a substantial miscarriage of justice.

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

Solicitors:
Simpson Grierson, Auckland for Respondent

¹ *King v ASB Bank Ltd* [2013] NZHC 2914.

² *King v ASB Bank Ltd* [2014] NZCA 102.

³ *Reekie v Attorney-General* [2014] NZSC 63.