

IN THE SUPREME COURT OF NEW ZEALAND

SC 17/2015  
[2015] NZSC 40

BETWEEN TAYLOR JADE SCHMIDT  
Applicant  
AND NOEL ROBERT HAIR  
Respondent

Court: Glazebrook, Arnold and O'Regan JJ  
Counsel: D G Chesterman for Applicant  
N W Woods for Respondent  
Judgment: 17 April 2015

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**JUDGMENT OF THE COURT**

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

[1] The applicant seeks leave to appeal against a decision of the Court of Appeal dismissing her appeal against a decision of the High Court granting summary judgment to the respondent in respect of the claim made against him by the applicant and Mr Anthony Schmidt.<sup>1</sup>

[2] The proceedings relate to a property sold by a trust associated with the Schmidts to an entity associated with a friend of Mr Schmidt's, Ebada Property Investments Ltd, and then on-sold to the respondent. The Schmidts alleged Ebada held the property on trust for their family interests and the sale by Ebada was in

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<sup>1</sup> *Schmidt v Ebada Property Investments Ltd* [2015] NZCA 6 (Wild, White and French JJ) (Court of Appeal judgment). Mr Schmidt was adjudged bankrupt before the Court of Appeal hearing.

breach of that trust and at an undervalue. In the High Court they sought an injunction against the respondent to restrain him from selling the property and alleged he was complicit in the alleged fraud by Ebada and so had a defeasible title to the property. Heath J refused to grant an injunction and granted summary judgment to the respondent on the basis that he had an indefeasible title under s 182 of the Land Transfer Act 1952.<sup>2</sup>

[3] At the time of the hearing of the appeal in the Court of Appeal the respondent had sold the property and there was no suggestion that the buyer's title was defeasible. So the focus was on whether the applicant had tenable claims against the respondent for knowing receipt or unjust enrichment, to the extent that the price he paid for the property was less than its value.<sup>3</sup> The Court of Appeal considered four key allegations made by the applicant and found that both claims were untenable. So it dismissed the appeal.

[4] The notice of application for leave recites eight grounds on which the proposed appeal would be pursued if leave is given. Those that renew factual challenges do not raise any issue of general or public importance and there is no indication that the concurrent findings are wrong, much less that they have caused a miscarriage of justice. The same can be said of the complaint that the Court of Appeal made inferences adverse to the applicant.

[5] The substantive grounds relate to the Court of Appeal's finding that there was no evidence that the respondent purchased the property at an undervalue. The applicant says there could nevertheless be an action for disgorgement of profits made by the respondent when he sold the property. But the pleaded cause of action was primarily based on the sale at an undervalue, as the Court of Appeal found.<sup>4</sup> There was no evidence that the respondent had profited on the sale.

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<sup>2</sup> *Schmidt v Ebada Property Investments* HC Auckland CIV 2011-404-4752, 1 November 2011 (Heath J). There have been other protracted proceedings initiated by the Schmidts in relation to the property. These are summarised in the Court of Appeal judgment, above n 1, at [17] and [18].

<sup>3</sup> In the notice of application, the appellant claimed the Court of Appeal should have addressed the issue of s 182 of the Land Transfer Act 1952. We agree with the Court of Appeal that the new owner's indefeasible title makes this issue irrelevant.

<sup>4</sup> Court of Appeal judgment, above n 1, at [38].

[6] The applicant also alleges the Court of Appeal erred in its approach to the case, in that it made its decision despite there being conflicts in the evidence that could be resolved only at a trial. We do not accept the Court of Appeal erred in this way. Rather, the applicant is seeking to relitigate matters of fact that are not suitable for a second appeal.

[7] The matters raised by the applicant are not matters of general or public importance, nor are they matters of commercial significance. There is no appearance of any miscarriage of justice. The application for leave to appeal is therefore dismissed.

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

Solicitors:  
Holland Beckett, Tauranga for Applicant  
Rice Craig, Papakura for Respondent