

IN THE SUPREME COURT OF NEW ZEALAND

SC 25/2017
[2017] NZSC 65

BETWEEN CLARENCE JOHN FALOON
Applicant

AND COMMISSIONER OF INLAND
REVENUE
First Respondent

THE OFFICIAL ASSIGNEE IN
BANKRUPTCY OF CLARENCE JOHN
FALOON, ESTATE NUMBER 878331
Second Respondent

Court: William Young, O'Regan and Ellen France JJ

Counsel: Applicant in person
D W Jacyk and M J Bryant for First Respondent

Judgment: 5 May 2017

JUDGMENT OF THE COURT

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

[1] The applicant was adjudicated bankrupt on 14 April 2016.¹ The underlying debts were pursuant to orders for costs made against him in earlier proceedings against the Commissioner of Inland Revenue.² He appealed against that decision to the Court of Appeal.³ In that appeal, his review of a decision of the Registrar as to

¹ *Commissioner of Inland Revenue v Faloon* [2016] NZHC 760, (2016) 27 NZTC 22-076 (Associate Judge Bell).

² These cases are set out at [5]–[9].

³ *Faloon v Commissioner of Inland Revenue* [2016] NZCA 537, (2016) 27 NZTC 22-077 (Randerson, Cooper and Winkelmann JJ) [*Faloon* (CA)].

security for costs was unsuccessful but he has not provided security for costs.⁴ Nor has he taken any other steps to have the appeal set down for hearing. He did, however, file an application for an extension of time for the filing of the case on appeal. Unless such extension can be obtained, his appeal is deemed to be abandoned.

[2] He has also applied, unsuccessfully, to the High Court for an order under s 416 of the Insolvency Act 2006 suspending his bankruptcy pending the hearing of his appeal.⁵ He has also appealed against the judgment refusing him the extension sought.⁶

[3] When his application for an extension of time in respect of the first appeal came on for hearing, the position he adopted was that the suspension appeal should be heard first, with the adjudication appeal suspended indefinitely while he pursued five other sets of proceedings in the High Court.⁷ As the Court of Appeal noted, this position is not consistent with the purpose of s 416 which provides for suspension of an adjudication pending appeal against the adjudication.⁸ Section 416 does not provide a basis for the deferring an adjudication appeal.

[4] It follows that, as the Court of Appeal held, the basis upon which the applicant sought an extension of time was illegitimate.⁹ This was a sufficient basis for a refusal of the extension sought. For good measure the Court addressed the merits of the appeal.¹⁰ We are inclined to the view that, for the reasons given, the adjudication appeal can be regarded as truly hopeless. But given that the applicant has not provided a credible argument for challenging the view of the Court of Appeal as to his reasons for an extension, we need not go into that aspect of the case.

⁴ See at [10].

⁵ *Faloon v Commissioner of Inland Revenue* [2016] NZHC 2063.

⁶ See *Faloon* (CA), above n 3, at [12] the application has been given the file number CA450/2016.

⁷ At [16].

⁸ At [17].

⁹ At [17].

¹⁰ At [19]–[29].

[5] The proposed appeal does not meet the leave criteria and accordingly leave to appeal is refused.

Solicitors:
Crown Law Office, Wellington for First Respondent