

IN THE SUPREME COURT OF NEW ZEALAND

SC 137/2016  
[2017] NZSC 8

BETWEEN

AMANDA ADELE WHITE  
First Applicant

ANNE LEOLINE EMILY FREEMAN  
Second Applicant

AND

CHRISTOPHER MAURICE LYNCH  
First Respondent

STUART GORDON SPENCE  
Second Respondent

Court: William Young, Glazebrook and Ellen France JJ

Counsel: Applicants in person  
J S Cooper for Respondents

Judgment: 16 February 2017

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**JUDGMENT OF THE COURT**

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**The application for leave to appeal is dismissed.**

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**REASONS**

[1] The applicants seek leave to appeal against a judgment of the Court of Appeal that:<sup>1</sup>

- (a) refused their application for an extension of time to file a case on appeal and seek a hearing date;
- (b) dismissed their application to prevent Mr Peter Wright acting as counsel for the respondents; and

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<sup>1</sup> *White v Lynch* [2016] NZCA 513 (Randerson, Wild and French JJ) [*Adjudication appeal*].

- (c) directed the Registrar of the Court of Appeal not to accept, without the prior written consent of a Judge, any proceedings directed against the respondents or Mr Wright.

The appeal in respect of which an extension was sought was against a judgment of Faire J of 15 December 2015 in which, inter alia, he adjudicated the applicants bankrupt.<sup>2</sup> Although the appeal is against all aspects of the judgment, we will, for reasons which will become apparent, refer to it as the adjudication appeal.

[2] The background to the order of adjudication is reviewed fully in the judgment of the Court of Appeal.<sup>3</sup> For present purposes, an abbreviated summary is sufficient. The starting point is a judgment given against the applicants in the High Court by Priestley J.<sup>4</sup> The applicants appealed against that judgment to the Court of Appeal but the appeal was never prosecuted to a hearing.<sup>5</sup> In the course of that appeal costs were awarded against the applicants. This award of costs provided the basis for bankruptcy notices which resulted in the judgment of Faire J which was challenged in the adjudication appeal. The applicants also issued proceedings in the High Court seeking to have the judgment of Priestley J set aside as obtained by fraud but these proceedings were struck out.<sup>6</sup> This strike-out decision was also challenged by an appeal to the Court of Appeal but this appeal too was not prosecuted to substantive hearings.<sup>7</sup> Procedural issues associated with the dispute have been before the Court of Appeal on five occasions.<sup>8</sup>

[3] In his judgment of 15 December 2015, Faire J: (a) dealt with the bankruptcy proceedings and (b) dismissed an application for the rescission of his judgment striking out the fraud proceedings. The applicants have purported to challenge the

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<sup>2</sup> *White v Lynch* [2015] NZHC 3202.

<sup>3</sup> At [3]–[15].

<sup>4</sup> *Spence v Lynch* [2013] NZHC 1478.

<sup>5</sup> In *White v Spence* [2014] NZCA 298, the Court of Appeal granted extensions of time to apply for a fixture and file a case on appeal against the judgment of Priestley J. An extension of time was also granted to appeal against the costs judgment of Priestley J. The Official Assignee later abandoned the appeal: *Adjudication appeal*, above n 1, at [7].

<sup>6</sup> *White v Lynch* [2015] NZHC 1020.

<sup>7</sup> *Adjudication appeal*, above n 1, at [10]–[11].

<sup>8</sup> *White v Spence* [2014] NZCA 298; *White v Lynch* [2016] NZCA 78; *White v Lynch* [2016] NZCA 149; *White v Lynch* [2016] NZCA 306; and the *Adjudication appeal*, above n 1.

latter aspect of his judgment, but the effect of the bankruptcy orders is that they lack standing to do so.

[4] Although the adjudication appeal is formally addressed to the judgment of Faire J in which he made bankruptcy orders against the applicants, the substantive challenge is to the judgment of Priestley J.<sup>9</sup> The applicants' complaints come down primarily to the contention that Mr Spence did not, in the course of that litigation, discover certain material which they claim to have been relevant and that he was assisted in suppressing this information by his counsel, Mr Wright. The Court of Appeal could, perhaps, have dismissed this complaint as a collateral challenge to the judgment of Priestley J and thus an abuse of process. The Court, however, did its best to get to the bottom of the underlying argument. This was despite the applicants maintaining the paradoxical position that the relevance of the documents in question was of no concern to the Court. In the end, the Court concluded that the discovery complaint was without substance.<sup>10</sup>

[5] The Court saw no point in extending time for an appeal which had no merit and in respect of which the applicants had not paid security for costs.<sup>11</sup>

[6] The applicants' submissions in support of their application for leave to appeal contain much assertion and rhetoric but do not engage with the substance of the reasons given by the Court of Appeal. One of their main contentions is that their allegations in relation to discovery have not been properly assessed by any court. But, as the Court of Appeal judgment indicates, when they were offered the opportunity to substantiate this argument, they declined to do so.<sup>12</sup>

[7] There is no point of public or general importance in the proposed appeal and no appearance of a miscarriage of justice. Accordingly, the application for leave to appeal is dismissed. We make no order for costs. This is because the applicants are bankrupt and the respondents have not sought costs.

Solicitors:  
Sellar Bone & Partners, Auckland for Respondents

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<sup>9</sup> *Adjudication appeal*, above n 1, at [4].

<sup>10</sup> At [16]–[31].

<sup>11</sup> At [31]–[32].

<sup>12</sup> At [16]–[21].