

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 86/2020
[2020] NZSC 117

BETWEEN MARGARET ANN WOOTTON
Applicant
AND PHILLIP GARY WOOTTON
Respondent

Court: Glazebrook, O'Regan and Williams JJ
Counsel: Applicant in person
E J Collins for Respondent
Judgment: 29 October 2020

JUDGMENT OF THE COURT

- A** The application for a stay pending determination of the applicant's application for leave to appeal to this Court against the judgment of the Court of Appeal (*Wootton v Wootton* [2020] NZCA 478) is dismissed.
- B** There is no order as to costs.
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REASONS

[1] The applicant seeks a stay of proceedings pending the determination of her application for leave to appeal to this Court.

[2] The applicant sought leave to appeal to the Court of Appeal against a decision of the High Court on certain interlocutory applications made by her.¹ She applied to the Court of Appeal under r 12(3)(a) of the Court of Appeal (Civil) Rules 2005 for an

¹ *Wootton v Wootton* [2020] NZHC 2584 (Edwards J). The application for leave to appeal to the Court of Appeal was made under s 56(5) of the Senior Courts Act 2016, as Edwards J had refused to grant leave under s 56(3).

order staying the High Court proceedings between the applicant and the respondent (her former husband) pending the determination of her application for leave to appeal.

[3] In a judgment issued on 5 October 2020, Brown J declined her application.²

[4] The applicant has applied to this Court for leave to appeal against the decision of Brown J. She seeks a stay of proceedings pending determination of her application for leave. The application for a stay is made pursuant to r 30 of the Supreme Court Rules 2004.

[5] The background is set out in Brown J's reasons judgment as follows:³

[3] Mr E J Collins is counsel for the respondent, the applicant's former husband, in the caveat proceeding. Ms Wootton's application for an order prohibiting Mr Collins from continuing to act for the respondent in the caveat proceeding was declined by Associate Judge Johnston on 25 September 2020.

[4] The applicant then filed an urgent without notice interlocutory application in the caveat proceeding seeking the following orders:

- (a) applying for the transfer of the proceeding to a High Court Judge;
- (b) adjourning the 5 October 2020 hearing date pending the New Zealand Law Society's (NZLS) decisions of the joint complaints before it regarding Mr Eugene Collins and Mr Lloyd Collins;
- (c) restraining Mr Eugene Collins pending the outcome of the NZLS and Land Information New Zealand (LINZ) complaints process;
- (d) allocating a further case management conference for rescheduling a hearing date for the caveat application;
- (e) varying the order for the proceeds of sale of one of the properties so that the monies currently held in the trust account may be held by the Court; and
- (f) seeking leave to appeal to [the Court of Appeal] in the event that the application was not granted.

[5] Following a hearing at short notice (the Judge having declined to deal with the application on a without notice basis) Edwards J concluded there was no basis either to restrain Mr Collins from acting or to adjourn the 5 October 2020 hearing. The application was accordingly declined.

² *Wootton v Wootton* [2020] NZCA 474.

³ *Wootton v Wootton* [2020] NZCA 478.

[6] Ms Wootton's application for leave to appeal to this Court under s 56(3) of the [Senior Courts] Act was also declined by Edwards J.

[6] The essential reasoning of Brown J is articulated in the following paragraphs of his judgment:

[16] Having regard to the high threshold for the making of an order restraining counsel from acting, it is not apparent to me how the present circumstances would support a grant of leave under s 56(5) [of the Senior Courts Act]. Both the Associate Judge and Edwards J considered that the circumstances of the case fell well short of the threshold. Edwards J declined leave to appeal under s 56(3).

[17] While I accept that declining a stay will in all probability remove any prospect of Ms Wootton obtaining an order restraining Mr Collins from appearing on the caveat matter, I consider that the prospects of her (a) obtaining leave to appeal and (b) succeeding on appeal in obtaining an injunction are remote.

[18] On the other side of the scales, the grant of a stay would have the effect of granting a de facto adjournment of Ms Wootton's application for an order to sustain the caveats which she has registered. That is neither in the interests of the respondent nor the public interest. There does not appear to have been an undertaking as to damages lodged by Ms Wootton which would be available to respond to any loss which the respondent might suffer flowing from the retention of the caveats on the titles of the relevant properties.

[19] Weighing these several considerations I consider that this is not an appropriate case for the grant of a stay of Ms Wootton's application to sustain caveats. The balance of convenience lies strongly in favour of the respondent.

[7] Leave to appeal to this Court could be granted only if the Court was satisfied that a matter of general or public importance arises or a substantial miscarriage of justice may occur unless the appeal is heard.⁴ As the proposed appeal to this Court is against an interlocutory decision of the Court of Appeal, this Court would also need to be satisfied that it is in the interests of justice to hear and determine the appeal before the proceeding is concluded.⁵ On the material before us, we assess the likelihood of those criteria being met as low.

[8] If we were to grant the stay sought by the applicant, the practical effect would be that the decision of the Court of Appeal refusing a stay would be reversed. So she would achieve, by a sidewind, the same result as would follow from a successful

⁴ Senior Courts Act, s 74(2).

⁵ Section 74(4).

application for leave to appeal to this Court followed by a successful appeal. That outcome leads us to view the application for a stay with some caution.

[9] On the material before us, we see no basis to question the essential reasoning founding the Court of Appeal's decision to refuse a stay. We are not therefore satisfied that the applicant has made the case for a stay to be granted by this Court.

[10] The application for a stay is dismissed.

[11] The respondent filed a brief and conclusory submission in opposition but in the circumstances we do not consider an award of costs in his favour is justified. We make no such award.

Solicitors:
Collins & May Law Ltd, Lower Hutt for Respondent