

**IN THE SUPREME COURT OF NEW ZEALAND**

**I TE KŌTI MANA NUI**

**SC 77/2020  
[2020] NZSC 124**

BETWEEN

CLARENCE JOHN FALOOON  
First Applicant

CLARENCE JOHN FALOOON, SUING IN A  
REPRESENTATIVE CAPACITY  
Second Applicant

AND

THE PLANNING TRIBUNAL AT  
WELLINGTON  
First Respondent

THE ATTORNEY-GENERAL SUED ON  
BEHALF OF PALMERSTON NORTH  
JOINT VENTURE AIRPORT  
Second Respondent

THE ATTORNEY-GENERAL SUED ON  
BEHALF OF THE MINISTER OF LANDS  
Third Respondent

THE CLERK OF THE HOUSE OF  
REPRESENTATIVES SUED ON BEHALF  
OF THE CLERK OF THE EXECUTIVE  
COUNCIL  
Fourth Respondent

THE HIGH COURT OF NEW ZEALAND  
(TAURANGA REGISTRY)  
Fifth Respondent

THE ATTORNEY-GENERAL SUED ON  
BEHALF OF THE COMMISSIONER OF  
INLAND REVENUE  
Sixth Respondent

AND

THE REGISTRAR-GENERAL OF LAND  
Seventh Respondent

Court: Glazebrook, Ellen France and Williams JJ

Counsel: Applicant in person  
V McCall and A P Lawson for Third and Sixth Respondents

Judgment: 16 November 2020

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## JUDGMENT OF THE COURT

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- A** The application for an extension of time for leave to appeal (*Faloon v The Planning Tribunal at Wellington* [2020] NZCA 170) is dismissed.
- B** The application for leave to appeal (*Faloon v The Planning Tribunal at Wellington* [2020] NZCA 361) is dismissed.
- C** The applicant must pay the respondent costs of \$2,500.
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## REASONS

### Introduction

[1] Mr Faloon has been engaged in litigation against the Crown for some 30 years. He has filed 19 proceedings giving rise to some 60 judgments.<sup>1</sup> Eleven of these proceedings related to an interest he claims in land adjoining Palmerston North Airport.<sup>2</sup>

[2] In 2018 Mr Faloon presented a further statement of claim for filing in the High Court. This was struck out and the High Court issued a civil restraint order under s 166 of the Senior Courts Act 2016.<sup>3</sup> Mr Faloon's appeal to the Court of Appeal was dismissed (CA decision).<sup>4</sup> Mr Faloon's subsequent application to have this judgment recalled was also dismissed (Recall decision).<sup>5</sup>

[3] Mr Faloon applies for leave to appeal against both the CA decision and the Recall decision. The application for leave to appeal against the appeal decision is out

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<sup>1</sup> As detailed in the Court of Appeal judgment, which annexed a table of Mr Faloon's proceedings: *Faloon v The Planning Tribunal at Wellington* [2020] NZCA 170 (Kós P, Clifford and Courtney JJ) [CA decision] at [4].

<sup>2</sup> At [5]. Five of the proceedings were directly (and six indirectly) related to this claimed interest.

<sup>3</sup> *Faloon v Planning Tribunal* [2018] NZHC 2420 (Dobson J) [HC decision].

<sup>4</sup> CA decision, above n 1.

<sup>5</sup> *Faloon v The Planning Tribunal at Wellington* [2020] NZCA 361 (Kós P, Clifford and Courtney JJ) [Recall decision].

of time. We will treat that application as also encompassing an application for an extension of time to file the leave application.

## **Background**

[4] The 2018 proceedings Mr Faloon filed in the High Court sought judicial review of a decision adjudicating him bankrupt and of various other decisions of the Planning Tribunal and the courts relating to the Palmerston North land.

[5] The High Court held these to be an abuse of process on the basis that:

- (a) judicial review of the bankruptcy decision was not available and in any event was without merit;<sup>6</sup> and
- (b) the other matters raised were effectively collateral attacks on matters already determined by the Planning Tribunal and the courts.<sup>7</sup>

[6] The High Court issued a civil restraint order against Mr Faloon, restraining him from commencing any civil proceedings that relate to his “adjudication as a bankrupt, or to claimed interests in, or rights arising from, former ownership of land adjoining Palmerston North airport by Trade Lines”,<sup>8</sup> for a period of five years.<sup>9</sup> This order was made on the basis that:

- (a) at least two of Mr Faloon’s previous proceedings had been totally without merit;<sup>10</sup>
- (b) the effect of numerous High Court judgments had been that Mr Faloon was pursuing untenable causes of action and often was asserting a claim for which he did not have standing;<sup>11</sup> and

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<sup>6</sup> HC decision, above n 3, at [5]–[6].

<sup>7</sup> At [7]–[17].

<sup>8</sup> Trade Lines Ltd was a Faloon family company and Mr Faloon was one of the directors.

<sup>9</sup> HC decision, above n 3, at [24]–[25].

<sup>10</sup> At [19].

<sup>11</sup> At [21].

- (c) Mr Faloon’s litigation in two Court of Appeal judgments had been described as “hopeless”, or “hopeless” and “an abuse of the process of the Court”.<sup>12</sup>

[7] As noted above, the strike-out decision was upheld by the Court of Appeal. That Court said, among other things, that the 2018 claim breached the principle of finality.<sup>13</sup> The Court also considered that the civil restraint order was correctly issued. It said:

[24] The degree of abuse of process, refiling proceedings raising issues already determined and otherwise which ought to have been incorporated in those earlier proceedings, is profound. It is as bad a case as this Court has seen.

[8] The Court said that the right to natural justice engaged when a court considers making a s 166 order usually required notice or a hearing. But it was open to the Judge to hold that notice or a hearing was not required in Mr Faloon’s case because he had sought repeatedly to reopen matters already finally determined.<sup>14</sup>

### **The issues**

[9] Mr Faloon’s application for leave to appeal and accompanying submissions attempt to raise issues relating to the substance of the proceeding that the High Court struck out. We accept the Crown’s submission that leave could only be granted to examine the following issues:

- (a) whether Mr Faloon’s proceeding in the High Court was properly struck out under r 5.35B of the High Court Rules 2016; and
- (b) whether the civil restraint order was properly made against Mr Faloon.

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<sup>12</sup> At [20], citing *Faloon v Commissioner of Inland Revenue* [2016] NZCA 537, (2016) 27 NZTC ¶22-077; and *Faloon v Attorney-General* CA255/00, 23 July 2001.

<sup>13</sup> CA decision, above n 1, at [15]–[18].

<sup>14</sup> At [25], relying on *Genge v Visiting Justice at Christchurch Men’s Prison* [2019] NZCA 583, (2019) 24 PRNZ 695.

## **Our assessment**

[10] As noted above, the application for leave to appeal against the CA decision is out of time. The criteria for leave are in any event not met.<sup>15</sup> This applies both to the CA decision and the Recall decision. The principles to be applied to strike-out decisions are well settled. With regard to the civil restraint order, the issue is whether the order was correctly made in the particular circumstances of this case. No matter of general or public importance arises. Further, nothing raised by Mr Faloon suggests any risk of a miscarriage of justice.

## **Result**

[11] The application for an extension of time to appeal against the CA decision is dismissed.

[12] The application for leave to appeal against the Recall decision is dismissed.

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

Solicitors:  
Crown Law Office, Wellington for Respondent

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<sup>15</sup> Senior Courts Act 2016, s 74(2).