

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 86/2020
[2020] NZSC 142

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: 11 December 2020

JUDGMENT OF THE COURT

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

[1] The applicant applied to the Court of Appeal for leave to appeal against a decision of the High Court on certain interlocutory applications made by her.¹ The applicant also applied to the Court of Appeal under r 12(3)(a) of the Court of Appeal (Civil) Rules 2005 for an order staying the High Court proceedings between the applicant and the respondent pending the determination of her application for leave to appeal.

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).

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

[3] The applicant now seeks leave from this Court to appeal against the decision of Brown J. She also sought a stay of proceedings pending determination of that application for leave, but her application for a stay was dismissed by this Court on 29 October 2020.³

[4] The background to the case and the essential reasoning of Brown J is set out in some detail in the stay judgment, but for ease of reference we repeat it here:⁴

[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] NZSC 117.

⁴ *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.

...

[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.

[5] Because the proposed appeal to this Court is against an order made by the Court of Appeal on an interlocutory application, the Court must not grant leave unless it is satisfied that both the criteria for leave to appeal set out in s 74(1) and (2)⁵ of the Senior Courts Act 2016 and the additional requirement in relation to interlocutory appeals in s 74(4)⁶ are satisfied.

[6] The applicant argues that a stay of proceedings is crucial to avoid a substantial miscarriage of justice and that a matter of public importance arises in relation to the circumstances in which the High Court should exercise jurisdiction over officers of the Court when complaints before the Law Society are extant. We do not consider that either of these grounds is established. The decision of Brown J to refuse a stay was an orthodox decision based on well-established criteria. We do not consider that any matter of public importance arises. Nor are we satisfied that the test for a substantial

⁵ That it is in the interests of justice to grant leave.

⁶ That it is in the interests of justice for this Court to hear and determine the proposed appeal before the proceeding is concluded.

miscarriage of justice is met in this case.⁷ Even if we were satisfied that one or more of the grounds under s 74(2) of the Senior Courts Act was made out, we would not have given leave because, in our view, there is no need for the issue to be resolved now, before the Court of Appeal has even determined whether it will give the applicant leave to appeal against the decision of Edwards J.

[7] The application for leave to appeal is dismissed. The applicant must pay the respondent costs of \$2,500.

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

⁷ In civil proceedings, the miscarriage of justice ground is limited to cases in which there is a sufficiently apparent error, made or left uncorrected by the Court of Appeal, of such a substantial character that it would be repugnant to justice to allow it to go uncorrected: *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].