

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 49/2020  
[2020] NZSC 88

BETWEEN FREDRICK HILL  
Applicant

AND MĀORI TRUSTEE  
Respondent

Court: Glazebrook, Ellen France and Williams JJ

Counsel: Applicant in person  
I R Millard QC for Respondent

Judgment: 1 September 2020

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JUDGMENT OF THE COURT

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- A The application for an oral hearing is dismissed.**
  - B The application to adduce further evidence is dismissed.**
  - C The application for leave to appeal is dismissed.**
  - D The applicant must pay the respondent costs of \$2,500.**
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REASONS

**Introduction**

[1] Mr Hill seeks leave to appeal against a judgment of the Court of Appeal striking out his appeal under r 37(1) of the Court of Appeal (Civil) Rules 2005.<sup>1</sup> Mr Hill's appeal to the Court of Appeal was against an order adjudicating him bankrupt on 10 September 2019.<sup>2</sup>

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<sup>1</sup> *Hill v Māori Trustee* [2020] NZCA 219 (French and Courtney JJ) [CA judgment].

<sup>2</sup> *Māori Trustee v Hill* [2019] NZHC 2250 (Associate Judge Johnston) [HC judgment].

[2] Mr Hill failed to pay security for costs in relation to his appeal. He had not applied for security for costs to be dispensed with. Nor did he file a case on appeal within time. His appeal, as a result, was deemed abandoned in January 2020.<sup>3</sup>

[3] The Māori Trustee had, before that date, filed an application to strike out the appeal on the basis that security for costs had not been paid and it wished this application to be dealt with, rather than the appeal being deemed abandoned. The Court of Appeal therefore dealt with the strike-out application in the judgment that is the subject of this application for leave.

### **Court of Appeal judgment**

[4] The Court said that an application under r 37(1) will be granted where the appellant has failed to provide security for costs and the appeal has no realistic prospect of success.<sup>4</sup> In the Court's view, Mr Hill's complaints related to the underlying judgment debt on which the bankruptcy proceedings were founded.<sup>5</sup> This debt was associated with a lease terminated by the Māori Trustee.

[5] The Court held that it was plain from the history of the litigation that all avenues of challenge of the underlying debt had been exhausted.<sup>6</sup> In summary, following the entry of the judgment debt in February 2015:

- (a) Mr Hill applied unsuccessfully for a retrial of the District Court proceeding;<sup>7</sup>
- (b) Mr Hill appealed unsuccessfully from the District Court's substantive judgment;<sup>8</sup>

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<sup>3</sup> Court of Appeal (Civil) Rules 2005, r 43.

<sup>4</sup> CA judgment, above n 1, at [5], citing *Turner v Davis* [2012] NZCA 576 at [15]; and *Riccarton Construction Ltd v Coljon Ltd* [2010] NZCA 430 at [8].

<sup>5</sup> At [7].

<sup>6</sup> At [9].

<sup>7</sup> *Māori Trustee v Hill* [2015] NZDC 10506 (Judge Bouchier).

<sup>8</sup> *Hill v Māori Trustee* [2016] NZHC 364 (Dobson J).

- (c) the Māori Trustee served a bankruptcy notice on Mr Hill on 29 October 2016, which Mr Hill unsuccessfully applied to set aside;<sup>9</sup>
- (d) Mr Hill's appeal against the refusal to set aside the bankruptcy notice was struck out by the Court of Appeal for non-payment of security for costs.<sup>10</sup> His application to recall that decision was declined on 22 August 2019;<sup>11</sup>
- (e) this Court refused Mr Hill's application for leave to appeal against the Court of Appeal's judgment;<sup>12</sup> and
- (f) Mr Hill filed new proceedings in the High Court against the Māori Trustee seeking damages. The Registrar was directed not to accept the proceedings for filing as they sought to relitigate matters already determined.

[6] Mr Hill had attempted to raise issues related to the judgment debt in the bankruptcy proceedings. The Associate Judge declined to reconsider these issues.<sup>13</sup> He noted that Mr Hill could not rely on the cross-claims and counter-claims because they had been available to him, and had been raised, in the underlying proceedings.<sup>14</sup> The Associate Judge concluded that all the issues that Mr Hill had identified had been the subject of careful scrutiny in the both the District Court and the High Court and that the parties were bound by those determinations. It was therefore inappropriate to revisit the issues.<sup>15</sup> Nor did the Associate Judge consider that that personal matters raised by Mr Hill precluded adjudication.<sup>16</sup>

[7] The Court of Appeal said that there was no apparent error in the Associate Judge's decision and that it was clear that Mr Hill's appeal has no merit.<sup>17</sup> The Court

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<sup>9</sup> *Māori Trustee v Hill* [2017] NZHC 2377 (Associate Judge Smith).

<sup>10</sup> *Hill v Māori Trustee* [2019] NZCA 243 (French, Miller and Wild JJ).

<sup>11</sup> *Hill v Māori Trustee* [2019] NZCA 381 (French, Miller and Wild JJ).

<sup>12</sup> *Hill v Māori Trustee* [2019] NZSC 89 (Glazebrook, O'Regan and Ellen France JJ) [SC judgment].

<sup>13</sup> HC judgment, above n 2, at [8].

<sup>14</sup> At [9]–[10].

<sup>15</sup> At [15].

<sup>16</sup> At [19]–[20].

<sup>17</sup> CA judgment, above n 1, at [11].

said the Māori Trustee should not be required to incur any further expense without the protection of security for costs. The strike-out application was granted.<sup>18</sup>

### **This application**

[8] Mr Hill asks for an oral hearing of this application. He also makes an application to file further evidence. He says that the Court of Appeal wrongly dealt with his application on a summary basis. Mr Hill says that the decisions related to the lease were based on factual errors and he should be given the opportunity to argue these issues.

### **Our assessment**

[9] The issues Mr Hill seeks to raise all relate to the particular circumstances of his case. No matter of general or public importance arises.<sup>19</sup>

[10] As the Court of Appeal noted, the issues relating to the lease have already been dealt with on a number of occasions by the courts. Nothing raised by Mr Hill suggests any risk of a miscarriage of justice.<sup>20</sup>

[11] Mr Hill's application to adduce further evidence relates to the underlying issue related to the lease. The application is therefore declined. In the circumstances, we see no need for an oral hearing.

### **Result**

[12] The application for an oral hearing is dismissed.

[13] The application to adduce further evidence is dismissed.

[14] The application for leave to appeal is dismissed.

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<sup>18</sup> At [12].

<sup>19</sup> Senior Courts Act 2016, s 74(2)(a).

<sup>20</sup> Senior Courts Act, s 74(2)(b); and *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [4]–[5]. Similar arguments have been raised before this Court previously by Mr Hill: SC judgment, above n 12, at [5]. See also *Hill v Māori Trustee* [2019] NZSC 3 (William Young, Glazebrook and Ellen France JJ).

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

Solicitors:  
Te Tumu Paeroa, Wellington for Respondent