

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 38/2024
[2024] NZSC 100

BETWEEN BODY CORPORATE 207650
Applicant

AND CHERYL SITARA SINGH
Respondent

Court: Ellen France, Kós and Miller JJ

Counsel: J B Orpin-Dowell and T J G Allan for Applicant
S P Bryers for Respondent

Judgment: 15 August 2024

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B The applicant must pay the respondent costs of \$2,500.

REASONS

Introduction

[1] The applicant, who is the Body Corporate in relation to Richmond Terraces, a unit title development in South Auckland, has filed an application for leave to appeal from a decision of the Court of Appeal.¹ The Court in that decision lifted a stay of a proceeding brought by the respondent, Ms Singh, challenging the failure of the Body Corporate to supply her with adequate reports about a scheme of arrangement approved under s 74 of the Unit Titles Act 2010 (the stayed proceeding).

¹ *Singh v Body Corporate 207650* [2024] NZCA 85 (Courtney, Wylie and Edwards JJ) [CA judgment].

Background

[2] Ms Singh had been an owner of a unit in Richmond Terraces. She was bankrupted on application by the Body Corporate following non-payment of levies to cover additional costs relating to repairs for weathertightness issues discovered in the development in 2009. The stay was imposed following Ms Singh's bankruptcy, which has since been annulled. To put these events in context, we note the following.

[3] Ms Singh had paid the initial levy in November 2015, but refused to pay other levies which were raised after the Body Corporate subsequently became aware that repairs were going to cost more than initially estimated.

[4] The Body Corporate's scheme of repair was approved by the High Court in August 2016² under s 74 of the Unit Titles Act, and a subsequent challenge to the validity of the levies under s 74 was dismissed by the High Court.³ Further levies continued to be imposed, which Ms Singh refused to pay. The Body Corporate sought summary judgment in the District Court against Ms Singh (and others) for unpaid levies.⁴ Summary judgment was granted, and an appeal against that decision was subsequently dismissed.⁵

[5] Ms Singh commenced the stayed proceeding in February 2018, filing an amended statement of claim on 1 February 2019 which contained three causes of action: an alleged failure by the Body Corporate to supply adequate information and reports regarding the remedial work as required under s 74 of the Unit Titles Act (the reports), and two causes of action in negligence in respect of the Body Corporate's management of the remedial work. The two causes of action in negligence were struck out.⁶ At this time, Ms Singh was bankrupt. Her proceeding was adjourned for six months to ascertain whether the bankruptcy would be eventually annulled.

² *Body Corporate 207650 v Speck* [2016] NZHC 1826.

³ *Body Corporate 207650 v Speck* [2017] NZHC 966, (2017) 18 NZCPR 742.

⁴ *Body Corporate 207650 v Singh* [2017] NZDC 29041.

⁵ *Singh v Body Corporate 207650* [2018] NZHC 1932.

⁶ *Singh v Boutique Body Corporates Ltd* [2019] NZHC 1707, (2019) 20 NZCPR 297 (Associate Judge Bell).

[6] When administration of the bankruptcy experienced unexpected delay, a stay of proceedings was issued on 28 February 2020. The stay was deemed preferable to adjourning the case from one list to another. Then, on 28 July 2021, the Official Assignee reported to the High Court on Ms Singh’s bankruptcy, admitting the Body Corporate’s claim in a reduced amount. The bankruptcy was annulled in August 2021.

[7] Ms Singh subsequently applied to have the stay of proceedings lifted, on the basis that she wished to continue with the stayed proceeding to obtain the reports from the Body Corporate, so she could reconcile her account with them. Ms Singh’s case is that the cost of remedial work became excessive because of mismanagement by the Body Corporate.

Lower court judgments

The High Court

[8] The High Court decided that the stay should not be lifted.⁷ Essentially, the Court took the view that the only practical purpose for lifting the stay was to allow Ms Singh to pursue proceedings to challenge the quantum of the levies.⁸ As Ms Singh had no remaining right to challenge the quantum of the levies as reflected in the summary judgment order, the refusal to lift the stay would not “cause an injustice to Ms Singh when she [was] not able to challenge those levies”.⁹

[9] The High Court also found that Ms Singh had no remaining right to challenge the quantification of the post-summary judgment levies paid by the Official Assignee. Ms Singh did not exercise her statutory rights to appeal the Official Assignee’s decision to accept and pay the Body Corporate’s levies, and thus was “treated as having made the payment of the post summary judgment levies herself”.¹⁰

⁷ *Singh v Body Corporate 207650* [2023] NZHC 609 (Associate Judge Lester) [HC judgment] at [35].

⁸ Applying *Heenan v Alpers* HC Christchurch CIV-2001-409-842, 3 June 2009; and *Kidd v van Heeren* [2006] 1 NZLR 393 (HC).

⁹ HC judgment, above n 7, at [35].

¹⁰ At [34].

Court of Appeal

[10] In allowing Ms Singh’s appeal and lifting the stay, the Court of Appeal identified the stayed proceeding as comprising a single cause of action, namely, that the Body Corporate failed to supply Ms Singh with the reports to which she was entitled. The Court determined that the claim was “reasonably arguable” and there was nothing to suggest it was “so hopeless or without merit that it should be permanently stayed”.¹¹

[11] The Court also considered it relevant that the stay was not imposed in relation to the claim’s merits, but rather to avoid inconvenience stemming from the administration of Ms Singh’s bankruptcy. It was not intended to be permanent, and did not amount to a dismissal or strike out. The Court said that there should be no curtailment of Ms Singh’s right to pursue a reasonably arguable claim unless there was “very good reason to do so”.¹²

[12] The Court found that the merits of the potential claim to challenge the quantum of the levies, as focused on by the High Court, was not a sufficient reason to decline lifting the stay. That claim was not yet pleaded, and was contingent on Ms Singh’s receipt of the reports. It was too early to assess the merits. In any event, the Court took the view that the merits were not relevant to the decision to lift the stay. Rather, the important question was whether the claim being made in the stayed proceeding was reasonably arguable.¹³ The Court determined that it was. It was therefore in the interests of justice to lift the stay of proceedings.

The proposed appeal

[13] The applicant submits the proposed appeal raises two issues of general or public importance, specifically:

- (a) Whether the determination by an Official Assignee of a creditor’s claim under the Insolvency Act 2006 constitutes a final determination; and

¹¹ CA judgment, above n 1, at [34].

¹² At [36].

¹³ At [38]; see also [36].

- (b) If so, whether it is relevant to the lifting of a stay of proceedings that the party seeking to lift the stay does so for an abusive purpose, namely, to challenge a final determination.

[14] On the first issue, the applicant submits that, subject only to statutory appeal rights, the determination by the Official Assignee is final and cannot be reopened after bankruptcy is annulled. The applicant's argument relies on a number of facts, including that neither the Body Corporate nor Ms Singh exercised their statutory rights of appeal against the decision of the Official Assignee.¹⁴

[15] As to the second issue, the applicant says that Ms Singh has no continued right to the reports, because this was incidental to her ownership of the unit and vested in the Official Assignee upon bankruptcy. As the unit has now been sold, her rights to that information have not reverted in her on annulment. In the alternative, the applicant argues the Court of Appeal was wrong to suggest that the merits of her prospective claim challenging the quantum of the levies were irrelevant to determining whether to lift the stay. This is because, on the assumption that the Official Assignee's determination was final, Ms Singh could not challenge the quantum of the levies, and given that this was her stated purpose for obtaining the reports, continuance of the proceedings was for an abusive purpose. Because the Court has a duty to prevent an abuse of process, the stay of proceedings should not have been lifted.¹⁵

Our assessment

[16] There may be general questions about the finality of the determinations made here, and as to the inter-relationship between that issue and questions as to abuse of process. However, we do not consider this appeal provides an appropriate vehicle to consider those questions. Ms Singh's proceeding is not necessarily set in stone. Moreover, and in any event, the proposed appeal would turn on its particular facts and this Court would be asked to make findings on factual matters effectively as a court of first instance. The proposed appeal accordingly does not raise a question of general or public importance, or of general commercial significance.¹⁶

¹⁴ See Insolvency Act 2006, ss 226 and 239.

¹⁵ *Reid v New Zealand Trotting Conference* [1984] 1 NZLR 8 (CA) at 9–10.

¹⁶ Senior Courts Act 2016, s 74(2)(a) and (c).

[17] Nor does the Court of Appeal's approach give rise to the appearance of a miscarriage of justice as that term is used in the civil context.¹⁷ If Ms Singh pursues a challenge that raises issues as to the quantum of the levies, the High Court can address the factual and legal merits at that time, and the ordinary appeal rights will run from that decision.

Result

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

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

Solicitors:
Grove Darlow & Partners, Auckland for Applicant
Richard Wood, Auckland for Respondent

¹⁷ *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].