

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 86/2024
[2024] NZSC 135

BETWEEN GRANT NICOLSON
Applicant

AND ISAAC LOWTHER
First Respondent

STEVEN KHOV
Second Respondent

KIERAN JONES
Third Respondent

Court: Ellen France, Williams and Kós JJ

Counsel: Applicant in person
K D Puddle and N F Duncan for Respondents

Judgment: 8 October 2024

JUDGMENT OF THE COURT

- A The application for an extension of time to apply for leave to appeal is granted.**
- B The application for leave to appeal is dismissed.**
- C The applicant must pay the respondents one set of costs of \$2,500.**
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REASONS

Introduction

[1] The applicant, Grant Nicolson, seeks leave to appeal to this Court from a decision of the Court of Appeal.¹ The Court of Appeal dismissed Mr Nicolson's

¹ *Nicolson v Lowther* [2024] NZCA 164 (Wylie J).

application for a review of the Deputy Registrar’s decision not to accept for filing an application for leave to appeal to the Court of Appeal from a decision of the High Court (the High Court decision). In the High Court decision, it had been determined that it was neither appropriate nor in the interests of justice to proceed on a without notice basis under s 250 of the Companies Act 1993 to terminate the liquidation of a company with which Mr Nicolson is associated.

Background

[2] The application for leave to appeal to the Court of Appeal was rejected for filing by the Deputy Registrar of the Court of Appeal (the Deputy Registrar’s decision). This was on the basis Mr Nicolson had earlier applied to the High Court for leave to appeal from the High Court decision, and the application for leave had not yet been determined by that Court. That meant, in the Deputy Registrar’s view, there was no jurisdiction for the Court of Appeal to consider the leave application. Mr Nicolson sought a review of the Deputy Registrar’s decision.

[3] On review, the Court of Appeal said the Deputy Registrar was right to reject the application (the Court of Appeal review decision). The Court observed that the jurisdiction of the Court of Appeal is set out in s 56 of the Senior Courts Act 2016. The jurisdiction to hear and determine appeals from, relevantly, an order of the High Court, is constrained.² The relevant constraint here is that in s 56(3), which states that there is no appeal from an interlocutory application in civil proceedings unless the High Court grants leave to appeal to the Court of Appeal. The High Court decision Mr Nicolson sought to appeal was such an interlocutory application.

[4] The Court noted that if the High Court granted leave, Mr Nicolson could file his appeal and have it dealt with. If the High Court refused leave, the Court of Appeal could then decide to grant leave. But the requirement for the High Court to first make a determination on leave could not be bypassed as Mr Nicolson was attempting to do. As the Court of Appeal lacked jurisdiction, the Deputy Registrar was able to decline to accept the application for filing under r 5A(1)(b)(ii) of the Court of Appeal (Civil) Rules 2005.

² Senior Courts Act 2016, s 56(1).

The proposed appeal

[5] Mr Nicolson maintains the Court of Appeal review decision breached his rights to natural justice under s 27(3) of the New Zealand Bill of Rights Act 1990. Various other matters are raised about several procedural issues such as the alleged failure of the High Court to provide reasons for the High Court decision, an inconsistency in approach said to have been adopted by the High Court, and allegations of a conflict of interest between the High Court and the second and third respondents.

[6] The matters Mr Nicolson wishes to advance are not directed to the jurisdictional issue identified by the Court of Appeal and nothing advanced gives rise to an appearance of error in the approach adopted by that Court. The proposed appeal has insufficient prospects of success to warrant an appeal to this Court. In those circumstances, it is not in the interests of justice for this Court to hear and determine the proposed appeal.³

[7] The respondents have been put to the cost of filing submissions on the application. An award of costs is appropriate.

Result

[8] The application for leave to appeal is out of time, but the delay is minimal. The application for an extension of time to apply for leave to appeal is granted.

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

[10] The applicant must pay the respondents one set of costs of \$2,500.

Solicitors:
TWA Legal Ltd, Auckland for Respondents

³ Senior Courts Act, s 74(1).

