

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 100/2024  
[2024] NZSC 139

BETWEEN                      QUENTIN STOBART HAINES  
First Applicant

AND                              BPE TRUSTEES (NO 1) LIMITED  
Second Applicant

AND                              QUENTIN HAINES PROPERTIES  
LIMITED  
Third Applicant

AND                              HARRY MEMELINK AND CISCA  
FORSTER AS TRUSTEES OF THE LINK  
TRUST NO 1 (IN RECEIVERSHIP)  
Respondents

Court:                          Glazebrook, Ellen France and Williams JJ

Counsel:                      J P Dallas for Applicants  
J D Haig for Respondents

Judgment:                    16 October 2024

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**JUDGMENT OF THE COURT**

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- A        The application for stay is dismissed.**
- B        The applicants must pay the respondents one set of costs  
of \$2,500.**
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**REASONS**

[1]        The applicants have applied for leave to appeal to this Court against two decisions of the Court of Appeal.<sup>1</sup> They apply for a stay of this application for leave

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<sup>1</sup>        *Haines v Memelink* [2024] NZCA 245 (French and Mallon JJ); and *Haines v Memelink* [2024] NZCA 374 (French and Mallon JJ).

so they can pursue an application under r 7.51 of the High Court Rules 2016, with regard to the High Court decision of *Memelink v Haines*.<sup>2</sup> They say that, once their counsel became aware of r 7.51, they were advised to make an urgent application under that rule prior to the determination of the application for leave as, where there is a remedy in a lower court, that remedy should be pursued first.<sup>3</sup>

[2] The application for a stay is opposed by the court-appointed receivers of the Link Trust No 1 on the basis that:

- (a) There is no direct correlation between the foreshadowed r 7.51 High Court application and the applicants' present application for leave to appeal to this Court. The present application for leave to appeal arises from the Court of Appeal's two decisions.
- (b) The High Court judgment was a summary judgment liability decision. It was not an interlocutory order.<sup>4</sup> Rule 7.51 therefore would be inapplicable.
- (c) The applicants' memorandum provides no details or facts relied upon to justify any application under r 7.51. Unless something new and highly material has arisen (which is not disclosed) any such application will have a very low prospect of success. Further, the applicants will likely be estopped from raising anything in the High Court that they should (or could) have raised in the Court of Appeal.<sup>5</sup>
- (d) A stay of the application for leave to appeal will detrimentally affect the orderly progress of the trust's court-appointed receivership.

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<sup>2</sup> *Memelink v Haines* [2021] NZHC 1992 (Grice J).

<sup>3</sup> The applicants seek various subsidiary orders if the stay is granted, including requiring them to pursue the application under r 7.51 urgently.

<sup>4</sup> They submit that it does not fall within the definition of interlocutory order under High Court Rules 2016, r 1.3.

<sup>5</sup> For example, based on principles of res judicata or the rule in *Henderson v Henderson* (1843) 3 Hare 100, 67 ER 313 (Ch).

## **Our assessment**

[3] We accept the submission of the receivers that there is no direct correlation between the application under r 7.51 and the proposed appeal to this Court. We also accept the submission that the applicants have provided no details of any matters relied on to justify any application under r 7.51.<sup>6</sup> In these circumstances a stay is not justified.

## **Timetable for submissions**

[4] The applicants have now filed submissions in relation to the application for leave. The submissions for the respondents are to be filed on or before 4 pm, 24 October 2024.

## **Result**

[5] The application for stay is dismissed.

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

Solicitors:  
J P Dallas, Wellington for Applicants  
Gibson Sheat, Wellington for Respondents

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<sup>6</sup> We do not need to comment on the other matters raised by the receivers.