

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 94/2024
[2024] NZSC 170

BETWEEN HARRY MEMELINK
Applicant

AND BODY CORPORATE 68792
Respondent

Court: Glazebrook, Ellen France and Williams JJ

Counsel: Applicant in person
D G Dewar for Respondent

Judgment: 6 December 2024

JUDGMENT OF THE COURT

- A The application for leave to file submissions in reply is dismissed.**
- B The application for leave to file a bundle of exhibits 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 Memelink has filed an application for leave to appeal from a decision of the Court of Appeal.¹ In that decision, the Court of Appeal dismissed an application for review of the decision of the Deputy Registrar declining Mr Memelink's

¹ *Memelink v Body Corporate 68792* [2024] NZCA 352 (Thomas J) [CA judgment].

application to dispense with security for costs. The question of security for costs arose in the context of Mr Memelink's appeal to the Court of Appeal from a decision of the High Court granting an extended order restraining Mr Memelink from commencing or continuing civil proceedings relating to the respondent, Body Corporate 68792.² The order was made under s 166 of the Senior Courts Act 2016 and applies for three years from the date of the judgment.³

Background

[2] The background is set out in the Court of Appeal judgment.⁴ As the Court of Appeal noted, Mr Memelink has been involved in disputes with the respondent since around 2005.⁵ The Court continued:⁶

[3] The administrator has been cooperating with the receivers of Mr Memelink's family trust, the Link Trust No 1 (the Trust) which was the majority unit owner and shareholder in the Body Corporate. Disputes arose concerning the failure of the Trust to pay Body Corporate levies, Mr Memelink claiming that monies were owing to him and the Trust. The Trust's claims were struck out by the High Court in April 2021.

[4] Mr Memelink was adjudicated bankrupt on 28 August 2018, with effect from 6 September 2022. Despite various challenges, he remains bankrupt. The business affairs of Mr Memelink and his Trust are inextricably linked, significantly hampering the Official Assignee in progressing the administration of Mr Memelink's estate.

[5] Receivers were appointed by the Court to the Trust to realise the assets on behalf of the creditors on 31 May 2022. Mr Memelink unsuccessfully appealed to this Court against the appointment of the receivers and has filed various applications seeking orders to remove or replace them. The judgment appointing receivers refers to concerns about the solvency of the Trust, largely caused by Mr Memelink's failure to pay overdue levies and other debts, observing that Mr Memelink's behaviour and disruptive conduct was causing the Body Corporate to be dysfunctional.

[3] Against this background, the Body Corporate administrator sought an extended order under s 166(1) of the Senior Courts Act restraining Mr Memelink from continuing civil proceedings concerning the conduct or affairs of the Body Corporate.⁷

² *Body Corporate 68792 v Memelink* [2023] NZHC 3850 (Grice J) [HC judgment].

³ Senior Courts Act 2016, s 168(2).

⁴ CA judgment, above n 1, at [2]–[11].

⁵ The Body Corporate is now in administration: see at [2].

⁶ Footnotes omitted.

⁷ See also s 166(2)(b) and (4).

[4] The Body Corporate’s application was granted by Grice J. Her Honour was satisfied the threshold requirement for the making of an extended order was met.⁸ That is, the Court found that there were at least two proceedings brought by Mr Memelink that were totally without merit. The Judge was also satisfied the manner in which Mr Memelink carried out the litigation for a number of years bore “all the hallmarks of vexatious litigation”.⁹ In the circumstances, the Judge was satisfied that an extended order should be made.

[5] As we have indicated, Mr Memelink filed an appeal against the decision of the High Court in the Court of Appeal. Security for costs was set at \$7,060.00 under r 35 of the Court of Appeal (Civil) Rules 2005 (the Rules). Mr Memelink sought an order dispensing with security for costs. The Deputy Registrar declined to dispense with security on the basis the appeal had no realistic prospect of success and therefore a reasonable and solvent litigant would not proceed with it.

[6] The Court of Appeal, on review of the decision of the Deputy Registrar, concluded the decision to decline to dispense with security was correct. The Court made an order that security for costs in the sum of \$7,060.00 was to be paid by the specified date and, if not, that the appeal would be struck out under r 37(1) of the Rules. In dismissing the application for review, the Court noted that Mr Memelink’s notice of appeal did not challenge the finding that the threshold for making an order under s 166 was met. Rather, his challenge was to the decision to then make the order. The Court of Appeal saw the factors supporting the making of an order as “overwhelming”, such that the appeal had no merit or prospect of success.¹⁰

The proposed appeal

[7] Mr Memelink’s underlying complaint is that the restraining order of the High Court was fraudulently obtained. He says that unless the appeal is heard, a substantial miscarriage of justice may have occurred.¹¹ He also argues that the appeal involves a matter of general or public importance as it is the first case of significance involving

⁸ Senior Courts Act, ss 166(2)(b) and 167(2).

⁹ HC judgment, above n 2, at [129]; and see at [115].

¹⁰ CA judgment, above n 1, at [27].

¹¹ Senior Courts Act 2016, s 74(2)(b).

the management and responsibilities of body corporates, and is a matter of general commercial significance.¹² Mr Memelink refers in the latter respect to the financial impact on him in the context of his bankruptcy.

[8] In dismissing the application for review, the Court of Appeal applied this Court's decision concerning the dispensation of security for costs in *Reekie v Attorney-General*.¹³ The proposed appeal to this Court would turn on the application of those settled principles to the specific facts of this case. No question of general or public importance or of commercial significance accordingly arises.

[9] Nor do we see any appearance of a miscarriage of justice, as that term is used in the context of civil proceedings, in the application of the relevant principles to the facts of the case by the Court of Appeal.¹⁴ Given Mr Memelink accepted the threshold for making an order under s 166 was met, the matters he wishes to argue in this Court do not provide a basis for challenging the conclusion that his appeal was lacking in merit. Rather, his submissions reflect his assertion that he is subject to a "false bankruptcy", which the Court of Appeal considered simply illustrated "a continued refusal to accept and abide multiple judgments in which he has sought to challenge the bankruptcy".¹⁵ We add that the Court of Appeal appropriately recognised the need for caution in the context of a decision relating to the imposition of security for costs where "an applicant is appealing against a s 166 order" but "in the particular circumstances" of the case considered "the Deputy Registrar was correct".¹⁶

[10] Mr Memelink also sought leave to file submissions in reply to those of the respondent. The respondent opposed the grant of leave. The submissions do not add in any material way to the initial submissions filed in support of the leave application. In that circumstance, we see no point in granting leave to file this further material. Nor, for the same reason, do we see any need to grant leave for Mr Memelink to file a bundle of exhibits.

¹² Subsections 74(2)(a) and (c).

¹³ *Reekie v Attorney-General* [2014] NZSC 63, [2014] 1 NZLR 737.

¹⁴ *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].

¹⁵ CA judgment, above n 1, at [26].

¹⁶ At [27].

Result

[11] The application for leave to file submissions in reply is dismissed.

[12] The application for leave to file a bundle of exhibits is dismissed.

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

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

Solicitors:

Thomas Dewar Sziranyi Letts, Lower Hutt for Respondent