

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

**SC 33/2024
[2024] NZSC 68**

BETWEEN

LISA ROCHELLE LEWIS
Applicant

AND

HAMILTON COSMOPOLITAN CLUB
INCORPORATED
Respondent

Court: Glazebrook, Ellen France and Kós JJ

Counsel: Applicant in person
T C Tran for Respondent

Judgment: 18 June 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.**
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REASONS

Introduction

[1] Ms Lewis brought proceedings in the District Court for nuisance against her neighbour, the Hamilton Cosmopolitan Club Incorporated (the Club). She succeeded in part and was awarded damages of \$10,000.¹

¹ *Lewis v Hamilton Cosmopolitan Club Inc* [2022] NZDC 1569 (Judge Cameron) at [23].

[2] The Club's appeal to the High Court was allowed. The judgment in favour of Ms Lewis was quashed and the Club's counterclaim against Ms Lewis for trespass was granted.² The High Court dismissed Ms Lewis' subsequent application for leave to appeal against its decision.³

[3] The Court of Appeal dismissed Ms Lewis' application to bring a second appeal.⁴ It declined an application for recall of that decision.⁵

[4] Ms Lewis then filed an application for leave to appeal to this Court. This was accepted by the Registry as an application for leave to appeal against the decision of the High Court.

Background

[5] Ms Lewis rents a property next to the Club's car park.⁶ Vehicular access to her property is only possible through that car park. Until 2017 the Club allowed Ms Lewis to access the property, but the relationship between the parties deteriorated. Various incidents and complaints followed.

[6] The Club served a trespass notice on Ms Lewis in September 2020 and in November 2020 erected a large metal fence preventing her from accessing her property. The Police brokered an agreement so that Ms Lewis could access her property through a slightly different route to before but still involving the car park.

[7] Relations between the parties continued to deteriorate, however, resulting in the District Court proceedings.

Our assessment

[8] Under s 75 of the Senior Courts Act 2016, this Court must not give leave to appeal directly to it against a decision made by a court other than the Court of Appeal

² *Hamilton Cosmopolitan Club Inc v Lewis* [2022] NZHC 2555 (Brewer J) at [84]–[86].

³ *Lewis v Hamilton Cosmopolitan Club Inc* [2023] NZHC 154 (Brewer J) at [11].

⁴ *Lewis v Hamilton Cosmopolitan Club Inc* [2023] NZCA 484 (French and Brown JJ) at [27].

⁵ *Lewis v Hamilton Cosmopolitan Club Inc* [2024] NZCA 82 (French and Ellis JJ) at [6].

⁶ The Hamilton Cosmopolitan Club Incorporated used to own the property Ms Lewis rents but it was subdivided and sold. Ms Lewis has occupied the rental property since 2013.

unless the leave criteria in s 74 are met and there are exceptional circumstances that justify taking the proposed appeal directly.⁷

[9] We do not consider that the leave criteria in s 74 are met.⁸ The proposed appeal relates to the particular and unusual circumstances of this case and therefore does not raise issues of general or public importance.⁹ Nor is there a risk of a miscarriage of justice.¹⁰ In addition, nothing raised by Ms Lewis meets the threshold of exceptional circumstances needed for a leapfrog appeal directly to this Court.

Result

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

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

Solicitors:
Webb Gould Law, Hamilton for Respondent

⁷ See also the comments of this Court in *Burke v Western Bay of Plenty District Council* [2005] NZSC 46 at [4]; *Clarke v R* [2005] NZSC 60 at [3]; *White v Auckland District Health Board* [2007] NZSC 64, (2007) 18 PRNZ 698 at [5]; and *Cook v Housing New Zealand Corp* [2018] NZSC 42 at [9].

⁸ The overriding question is whether it is necessary in the interests of justice to allow the leave application: Senior Courts Act 2016, s 74(1).

⁹ Section 74(2)(a).

¹⁰ Section 74(2)(b). See *Junior Farms Ltd v Hampton Securities Ltd (in lig)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5] for a discussion of miscarriages of justice in civil cases.