

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 41/2024
[2024] NZSC 94

BETWEEN FRANCISC CATALIN DELIU
Applicant
AND MARK HARBOROW
NICK FLANAGAN
Respondents

Court: Glazebrook, Ellen France and Kós JJ
Counsel: Applicant in person
N F Flanagan for respondents
Judgment: 5 August 2024

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
B The applicant must pay the respondents costs of \$2,500.
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REASONS

Introduction

[1] Mr Deliu seeks leave to appeal against a decision of the Court of Appeal that funds held in trust in the High Court in unrelated proceedings be released to the respondents to satisfy costs orders made against him.¹

¹ *Harborow v Deliu* [2024] NZCA 138 (Courtney, Venning and Dunningham JJ) [CA judgment], allowing an appeal from *Deliu v Johnstone* [2022] NZHC 467 (Harland J) [HC judgment].

The grounds of appeal

[2] Mr Deliu first submits that the replacement of Moore J by Venning J on the panel to hear the appeal did not follow the proper process under the Court of Appeal recusal guidelines and there is no evidence that the President of the Court of Appeal was involved as required by the gazetted procedure.

[3] Mr Deliu's next ground of appeal is that the Court of Appeal erred in its analysis of r 7.48 of the High Court Rules 2016. He also says that the Court of Appeal used the wrong standard of review of a discretionary decision. Finally, he says that there were non sequiturs in key passages of the Court of Appeal judgment.

Our assessment

[4] With regard to the first ground of appeal, Mr Deliu accepts that Venning J was eligible to sit on the appeal under s 52 of the Senior Courts Act 2016. Mr Deliu has not suggested that any of the judges who did sit on his appeal had a conflict of interest, or were biased, or that there was any appearance of bias. We note too that Mr Deliu had objected to the presence of Moore J on the panel. In these circumstances, this ground of appeal does not have sufficient prospects of success to warrant leave being granted.

[5] With regard to the other grounds of appeal, they arise on the particular facts of this case and raise no point of general or public importance.² In addition, nothing raised by Mr Deliu suggests that the Court of Appeal may have been wrong and there is thus no risk of a miscarriage of justice.³ It is therefore not in the interests of justice to grant the application for leave.

Interlocutory matters

[6] Mr Deliu made an interlocutory application for a report into the appointment of the panel in the Court of Appeal, for an extension of the page limit for his leave submissions to 15 pages and for leave to file reply submissions. These applications

² Senior Courts Act 2016, s 74(2)(a).

³ Section 74(2)(b). For the standard required in civil cases, see *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].

were dismissed by minute of 30 May 2024 for reasons to be provided in our judgment on the leave application.⁴ We now provide those reasons.

[7] In the circumstances of this case, we did not consider the Court would be assisted by a report and there was nothing to suggest that this application was different from the usual leave applications dealt with by this Court so as to justify an expanded page limit or to require reply submissions.

[8] In his interlocutory application Mr Deliu also asked for an oral hearing of the leave application. The minute said that this application could be renewed in his submissions on the leave application. It was not. In any event, we do not consider we would have been assisted by oral submissions.

Result and costs

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

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

Solicitors:
Meredith Connell, Auckland for Respondents

⁴ *Deliu v Harborow* SC 41/2024, 30 May 2024.