

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 27/2024
[2024] NZSC 99

BETWEEN ALAN MCQUADE
Applicant

AND COMMISSIONER OF POLICE
Respondent

Court: Glazebrook, Kós and Miller JJ

Counsel: K E Hogan for Applicant
J N Hamilton for Respondent

Judgment: 13 August 2024

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B There is no order as to costs.

REASONS

[1] The applicant, Mr McQuade, owns a 2013 Holden HSV Clubsport R8 which has been restrained since 2020 under the Criminal Proceeds (Recovery) Act 2009 (CPRA). The restraining order arose in connection to the applicant's involvement in a large-scale methamphetamine manufacturing and distribution operation, for which he was later sentenced to five years and three months' imprisonment.¹ The Commissioner has applied for a profit forfeiture order in the sum of \$953,134.93. Due to delays in examining the applicant (attributable to a combination of COVID-19

¹ *R v McQuade* [2022] NZHC 559.

restrictions, prison administration, the Christmas break and changes in the applicant's counsel) that will not be set down for hearing before 2025.²

[2] The Commissioner of Police applied for an order to sell the vehicle (along with certain other restrained vehicles), under s 35(e)(v) of the CPRA. That order was granted by the High Court.³ It rejected the applicant's argument that his personal attachment to the vehicle should preclude sale, finding that there was "nothing particularly unique" about the vehicle.⁴ Although the Judge "assumed" the applicant's claim that "some of" his father's ashes were in the car was correct, the evidence on that point was unclear and no ashes had been found when it was seized. In any event, sentimental attachment did not stand in the way of a sale order.⁵ The vehicle had been damaged and it would be uneconomic to restore it. Further, the applicant had it in storage and had not been using it before it was restrained.⁶

[3] That order was upheld by the Court of Appeal. The Court found the evidence (which was filed by the applicant's partner on his behalf) unpersuasive. The claim regarding his father's ashes was unsubstantiated and had never been raised by the applicant himself,⁷ and the expert evidence showed the vehicle was not in particularly good condition and was not a collector's item.⁸ Finally, the valuation evidence adduced by the Commissioner demonstrated the vehicle was depreciating and the applicant submitted no reliable evidence to contradict this.⁹

[4] The applicant now seeks leave to challenge the order in a second appeal. He wishes to contend that the lower Courts were wrong to hold the risk of the vehicle depreciating (via storage costs and market factors) prevailed over the applicant's personal connection to it; that the risk of the vehicle depreciating (via storage costs and market factors) was in part attributable to the Commissioner's delay in the proceeding, and/or was insufficiently proven and/or could be mitigated; and that any

² *McQuade v Commissioner of Police* [2024] NZCA 46 (Wylie, Fitzgerald and Edwards JJ) [CA judgment] at [5].

³ *Commissioner of Police v McQuade* [2023] NZHC 798 (Woolford J) [HC judgment].

⁴ HC judgment, above n 3, at [32].

⁵ At [30] citing *Commissioner of Police v Drummond* [2018] NZHC 1730.

⁶ HC judgment, above n 3, at [32].

⁷ CA judgment, above n 2, at [36].

⁸ At [39]–[40].

⁹ At [41]–[44].

sale orders made should have given the applicant a “voice” in terms of vendor, market and price.

[5] The respondent notes the concurrent findings of fact in the lower courts regarding delay, the condition and personal value of the vehicle, and depreciation, submitting that any appeal would ultimately turn on its own facts.

Our assessment

[6] We accept the respondent’s submission that the proposed appeal would turn on its particular facts and raises no question of public or general importance.¹⁰ The power to make further orders is broad and discretionary, and appears properly exercised here to retain the value of an asset which was depreciating, pending substantive forfeiture proceedings. The arguments advanced in the proposed appeal essentially reprise those made below. In neither decision below is there any “apparent error ... of such a substantial character that it would be repugnant to justice to allow it to go uncorrected”.¹¹ There is accordingly no evident risk of a substantial miscarriage of justice as that term is used in the civil context.¹²

Result

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

[8] We are advised the applicant is in receipt of legal aid. Accordingly, there is no order as to costs.

Solicitors:
Hamilton Legal, Hamilton for Respondent

¹⁰ Senior Courts Act 2016, s 74(2)(a).

¹¹ *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].

¹² Senior Courts Act, s 74(2)(b).