

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA808/2023
[2024] NZCA 158**

BETWEEN PETER MORRISON STRANGE AKA
PETER MORRISON PETRYSZICK
Applicant

AND CASEY FARMS LIMITED
First Respondent

BROSNA FARMS LIMITED
Second Respondent

JOTAC LIMITED
Third Respondent

W G BROADBENT & CO TRUSTEES
LIMITED
Fourth Respondent

PB AND BL CASEY PARTNERSHIP
Fifth Respondent

Court: Courtney and Thomas JJ

Counsel: Applicant in Person
G N E Bradford for Second, Third and Fifth Respondents
B R Webster and R J Ropati for Fourth Respondent

Judgment: 10 May 2024 at 10.30 am
(On the papers)

JUDGMENT OF THE COURT

- A The application for an extension of time is declined.**
- B The applicant must pay the respondents one set of costs calculated for a standard interlocutory application on a band A basis and usual disbursements.**
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REASONS OF THE COURT

(Given by Thomas J)

[1] The applicant, Peter Strange, has applied for an extension of time to appeal against the judgment of Associate Judge Brittain dated 31 October 2023 which struck out in its entirety his claim against the respondents (the substantive judgment).¹

[2] The applicant has also purported to file in this Court an application for discovery.

[3] Both applications are opposed by the second, third, fourth, and fifth respondents.²

The substantive judgment

[4] The applicant had sought to impugn a property transaction between his father, Hugh Strange, and the PB and BL Casey Partnership, the fifth respondent. The applicant had alleged that the transaction was unconscionable. The Judge described the applicant's main contention as appearing to be that the property was sold at an undervalue.³

[5] The second, third, fourth and fifth respondents applied for an order striking out the claim.

[6] The Judge described the applicant's claim as prolix, including a significant narration of events that had no relevance to the central allegation.⁴ He said the claim did not contain any discernible pleading of a distinct cause of action against any of the respondents. It contained significant speculation about events of which the applicant had no knowledge and pejorative allegations.⁵

¹ *Strange v Casey Farms Ltd* [2023] NZHC 3054 [Substantive judgment].

² The first respondent is a company that has been struck off the Companies Register and the claim against a further defendant was struck out in the High Court. For ease of reference, throughout this decision the parties have been referred to in the manner in which they are described in the intituling of this judgment.

³ Substantive judgment, above n 1, at [4].

⁴ At [16].

⁵ At [17].

[7] The Judge said the form of the claim was so defective as to justify an order striking out the pleading on that basis alone but, more fundamentally, the applicant did not have standing to bring a proceeding challenging the transaction.⁶

[8] In respect of the claim against the second and fifth respondents of an unconscionable bargain, the Judge found that there was no basis for the applicant to bring such a claim, given he had no standing.⁷

[9] The cause of action against the fourth respondent (a law firm) was based on speculation that it acted for the applicant's father and/or the partnership in respect of the transaction. The Judge concluded that, even if the law firm had acted, there was no basis for a claim in tort or equity by the applicant because he was not party to the transaction and had no interest in it.⁸

[10] The Judge could not discern any claim of any nature by the applicant against the third respondent relating to the transaction.⁹

[11] Although the applicant had mentioned defamation in the claim, there was no discrete pleading or cause of action in relation thereto. The Judge said the pleading did not disclose a reasonably arguable cause of action in defamation.¹⁰

[12] The Judge concluded that the claim did not disclose a reasonably arguable cause of action against any of the respondents and the proceedings were struck out.¹¹ Costs were awarded against the applicant.¹²

[13] Before determining the strikeout application, the Judge had refused to order the respondents to provide particular discovery of the agreement for sale and purchase that was the basis of the challenged transaction.¹³

⁶ At [18].

⁷ At [27].

⁸ At [29].

⁹ At [30]–[31].

¹⁰ At [32].

¹¹ At [33]–[34].

¹² *Strange v Casey Farms Ltd* [2023] NZHC 3319 [Costs judgment]. The applicant has appealed this decision.

¹³ Substantive judgment, above n 1, at [9].

[14] The Judge had also declined to recuse himself, an application made by the applicant apparently on the ground that the Judge had refused to order the particular discovery the applicant requested.¹⁴

[15] On 17 November 2023, the applicant applied to the High Court for leave to appeal against the substantive judgment and for a stay of the costs decision. The Judge noted that leave was not required to appeal against the substantive judgment.¹⁵ It seemed that the substance of the applicant's application was directed at the two interlocutory decisions concerning discovery and recusal, and, as they were interlocutory decisions, leave to appeal was required.¹⁶ The Judge refused to grant leave but noted that the issues could be raised in the appeal against the substantive judgment.¹⁷ The Judge also declined to order a stay of the costs judgment.¹⁸

Proceedings in this Court

[16] The applicant's notice of appeal against the substantive judgment was filed approximately 18 days out of time.¹⁹

[17] The applicant also applied for discovery in respect of the same documents covered by his application in the High Court. His grounds of appeal also appear to take issue with the recusal decision. As the Judge noted, if the appeal proceeds, these two issues could be raised in the appeal against the substantive judgment.²⁰

[18] The sole question for this decision therefore is whether the time for leave to appeal against the substantive judgment should be extended.

The applicant's submissions

[19] The applicant has explained the delay in filing his notice of appeal against the substantive judgment as being caused by:

¹⁴ *Strange v Casey Farms Ltd* [2023] NZHC 3596 [Leave judgment] at [17].

¹⁵ At [10], citing Senior Courts Act 2016, s 56(4).

¹⁶ At [7] and [11].

¹⁷ At [20].

¹⁸ At [26].

¹⁹ The notice of appeal was filed with the High Court within time, however as noted in the Leave judgment, above n 14, the correct Court for filing was the Court of Appeal.

²⁰ Senior Courts Act, s 56(6).

- (a) additional time taken in preparing documents because he is self-represented;
- (b) not being aware of the requirement to file the notice of appeal with this Court until the High Court leave decision was released (dated 8 December 2023); and
- (c) he was incorrectly advised that he required leave to appeal.

[20] The applicant submits that the proposed appeal is of public importance because it exposes flaws in the legal system and the judiciary.

The respondents' submissions

[21] The second, third, and fifth respondents oppose the application on the following grounds:

- (a) the applicant has no standing to bring the applications;
- (b) the applications are time barred;
- (c) the applicant has failed to pay security for costs ordered in the High Court;
- (d) the High Court refused leave to appeal;
- (e) the applicant is trying to relitigate matters finally decided in the High Court; and
- (f) the proposed appeal is a “meritless campaign”.

[22] The fourth respondent also opposes the application for an extension of time. The fourth respondent notes that, although the applicant filed his application for leave to appeal the substantive judgment in the High Court within the statutory time frame, after being made aware that the notice of appeal needed to be filed in this Court, he

took at least another nine days to file his notice of appeal. The fourth respondent submits that the proposed appeal is so meritless as to warrant declining the application for an extension of time. The applicant’s purported basis for bringing the appeal — “to test whether judicial corruption has improved” — is an abuse of process.

Analysis

[23] An application for an extension of time is governed by r 29A of the Court of Appeal (Civil) Rules 2005 (Rules).

[24] The relevant principles were summarised by the Supreme Court decision *Almond v Read*.²¹ The ultimate question when considering whether an extension of time should be granted is what the interests of justice require.²² The circumstances of each case must be assessed. As set out in *Almond v Read*, relevant considerations include:²³

- (a) the length of the delay;
- (b) the reasons for the delay;
- (c) the conduct of the parties, particularly the applicant;
- (d) any prejudice or hardship to the respondent or to others with a legitimate interest in the outcome; and
- (e) the significance of the issues raised by the proposed appeal, both to the parties and more generally.

[25] The merits of an appeal may, in principle, be relevant but a decision to refuse an extension of time based substantially on that ground should be made only where the appeal is clearly hopeless.²⁴ There will be occasions on which a court will risk

²¹ *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801.

²² At [38].

²³ At [38].

²⁴ At [39] and [39(c)].

facilitating unjustifiable delaying tactics by litigants if the merits are not considered.²⁵ Consideration of the merits must, however, be relatively superficial.²⁶

[26] The applicant filed his initial application for leave to appeal within time in the High Court. Once he was advised of the proper procedure, the delay to file his notice of appeal in this Court was relatively short and explained by the applicant's unfamiliarity with Court procedures. This is generally the type of delay where the Court would grant some leniency to a self-represented litigant.

[27] However, the merits of the applicant's appeal against the substantive judgment are relevant here. The appeal is one that is clearly hopeless. The appeal cannot succeed because the applicant had no standing to bring the claim, meaning his claim was fundamentally flawed. Accordingly, it is not in the interests of justice to grant an extension of time.

Costs

[28] The fourth respondent seeks indemnity costs on the application, saying the applicant has acted vexatiously in commencing an appeal that no reasonably solvent litigant would pursue, putting the respondents to significant expense.

[29] Rule 53E of the Rules specifies the circumstances in which this Court may order a party to pay indemnity costs. We do not consider that the applicant's conduct in seeking an extension of time to appeal meets the test for an order for indemnity costs.²⁷ One set of costs for a standard appeal is awarded to the respondents.

Result

[30] The application for an extension of time is declined.

²⁵ At [39].

²⁶ At [39(c)].

²⁷ For example, the applicant's conduct is not to the level of vexatiousness in *LFDB v SM* [2013] NZCA 481, where indemnity costs were ordered due to the vexatious conduct of the applicant in applying for an extension of time to appeal.

[31] The applicant must pay the respondents one set of costs calculated for a standard interlocutory application on a band A basis and usual disbursements.

Solicitors:

Mike Walmsley, Paeroa for Second, Third and Fifth Respondents

Morgan Coakle, Auckland for Fourth Respondent