

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

No. M.691/84

1600

BETWEEN STEPHEN FORBES McINTYRE
and CELIA CARRE TARLTON

Appellant

A N D PROVINCIAL ESTATES
LIMITED

Respondent

In Chambers: 14 December 1984

Counsel: M.J. Knowles for Appellants
 G.D. Horne for Respondent

Judgment: 14 December 1984

ORAL JUDGMENT OF HOLLAND, J.

This is an application for leave to appeal from a decision of the District Court. Judgment was entered against the appellants on 15 October 1984. Under section 73 of the District Courts Act 1947 an appeal was required to be filed within 21 days, namely on 5 November 1984. No such notice of appeal was given, nor has it yet been given. A notice of application for leave to appeal out of time was filed in this Court on 26 November 1984, some 21 days later but within the extra month allowed by section 73 of the Act.

The only matters advanced in support of the application are that one of the appellants was requested by her

solicitor after the judgment to communicate with the Department of Social Welfare in relation to an application for legal aid in support of the appeal. She did not do so within the appropriate time, or if she did do so she did not advise her solicitor that this had been done so as to enable him to file a notice of appeal. He had not been paid for the earlier hearing and had indicated he was not willing to act in respect of an appeal unless he was paid or legal aid was granted. Neither event occurred. Notwithstanding this, he has now accepted instructions to apply for leave to appeal out of time.

I made enquiries as to the nature of the claim. It was a claim brought against the appellants for something just over \$700 by way of damages in respect of their occupation of premises owned by the respondent. Judgment was for \$394. As the claim was in excess of \$500 it appears that the appellants would have had a claim as of right had they applied in time. The point on appeal does not go to liability. Damage is admitted. It is, however, submitted that the finding of \$394 is a higher sum than was warranted on the evidence.

I am not satisfied in this case that justice requires or supports the granting of the application. Time limits are imposed with a purpose to bring litigation to an end. Had the appellants seriously wished to appeal one would have thought they either themselves, or through their solicitor, or through another solicitor, could have arranged for a notice of appeal to be given in time. The facts advanced as to the explanation for the delay are not sufficient reason for granting leave. There is nothing in the surrounding circumstances which supports the application.

3.

The appeal for extension of time for filing the appeal is accordingly dismissed.

C. T. Hendry