

**IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA  
TĀMAKI MAKĀURAU ROHE**

**CIV-2017-404-000216  
[2017] NZHC 2405**

BETWEEN

DESMOND WILLIAM COOK  
Appellant

AND

HOUSING NEW ZEALAND  
CORPORATION  
Respondent

Hearing: On the papers

Judgment: 3 October 2017

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**JUDGMENT OF DOWNS J  
(Application for leave to appeal)**

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*This judgment was delivered by me on Tuesday, 3 October 2017 at 1 pm  
pursuant to r 11.5 of the High Court Rules.*

*Registrar/Deputy Registrar*

Solicitors:  
Meredith Connell, Auckland.  
Fortune Manning, Auckland.

Copy to: Appellant

[1] On 17 January 2017, Judge Hinton struck out a civil claim brought by Mr Cook against Housing New Zealand Corporation, or more easily Housing New Zealand.<sup>1</sup> Mr Cook appealed. On 31 July 2017 I dismissed that appeal.<sup>2</sup> Mr Cook seeks leave to bring a second appeal to the Court of Appeal.<sup>3</sup> Housing New Zealand opposes the application.

[2] My judgment contains the background, which I do not repeat.

[3] Mr Cook's proposed appeal grounds relate to the appeal hearing. Mr Cook considers the hearing was hurried in that whereas a full day had been allocated for the appeal, I concluded a half day would be sufficient. Mr Cook contends I did not "trust" his submissions or consider relevant observations made by other Judges in connection with his not inconsiderable litigation with Housing New Zealand. Mr Cook contends I wrongly precluded him from playing a recorded conversation or conversations at the hearing, and I erred in declining to release a transcript of the appeal hearing.

[4] I continued Mr Khan's appointment as amicus curiae for the purpose of this application. Mr Khan contends a serious question of law arises as to whether the Residential Tenancies Act "is the correct legislation to define [Mr Cook's] relationship with [Housing New Zealand]".

[5] Principle is clear and uncontroversial. The appeal must raise some question of law or fact capable of bona fide and serious argument in a case involving some interest, public or private, of sufficient importance to outweigh the costs and delay of a further appeal. Not every alleged error of law is of such importance, either generally or to the parties, as to justify further pursuit of litigation already twice considered and ruled upon by a Court, so the test is a restrictive one. The scarce time and resources of the Court of Appeal are not to be wasted, or additional expense for the parties incurred "without realistic hope of benefit".<sup>4</sup>

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<sup>1</sup> *Cook v Housing New Zealand Corporation* [2016] NZDC 676.

<sup>2</sup> *Cook v Housing New Zealand Corporation* [2017] NZHC 1781.

<sup>3</sup> Senior Courts Act 2016, s 60.

<sup>4</sup> *Snee v Snee* [2000] NZFLR 120, (1999) 3 PRNZ 609 (CA) at 125-126, 612-613; *Waller v Hider* [1998] 1 NZLR 412 (CA) at 413.

[6] Mr Cook’s proposed grounds of appeal raise no question of law. Nor could they sustain serious argument. Mr Cook’s appeal was ventilated with the benefit of full oral argument and the assistance of amicus curiae. Mr Cook was not disadvantaged by the determination he was not to play audio or video recordings as the appeal was from a strike-out decision; hence in circumstances in which pleaded facts are assumed to be true. Observations of other Judges about Mr Cook’s Housing New Zealand accommodation had little relevance on appeal.

[7] The ground of appeal identified by Mr Khan does not satisfy the test for a second appeal as my judgment does not purport to define the relationship between Mr Cook and Housing New Zealand.

[8] Mr Cook observes he will seek the Court of Appeal’s leave for a second appeal if I decline this application. That is a matter for the Court of Appeal. The application is dismissed.

[9] I thank Mr Khan for all his assistance with the case.

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**Downs J**