

IN THE COURT OF APPEAL OF NEW ZEALAND

CA79/2014
[2014] NZCA 352

BETWEEN KUNG WE CHEN
Applicant

AND DILWORTH TRUST BOARD
Respondent

Hearing: 21 July 2014

Court: Ellen France, French and Miller JJ

Counsel: Applicant in person
C E Harris for Respondent

Judgment: 28 July 2014 at 11.30 am

JUDGMENT OF THE COURT

A The application for an extension of time to appeal under r 29A of the Court of Appeal (Civil) Rules 2005 is dismissed.

B The applicant must pay the respondent's costs for a standard application on a band A basis and usual disbursements.

REASONS OF THE COURT

(Given by French J)

[1] Mr Chen wishes to appeal a High Court decision of Associate Judge Sargisson.¹

¹ *Dilworth Trust Board v Jack's Ventures Ltd* HC Auckland CIV-2011-404-3312, 20 March 2012. Mr Chen is not represented by counsel in this Court, but had the assistance of a McKenzie friend, Mr Lau, and an interpreter, Mr Chang, at the hearing.

[2] The time for filing an appeal expired on 17 April 2012. On 14 February 2014, Mr Chen applied for an extension of time to bring the appeal under r 29A of the Court of Appeal (Civil) Rules 2005.

[3] The application for an extension of time is declined for the following reasons.

[4] First, the length of the delay (approximately 22 months) is significant.

[5] Secondly, there is no satisfactory explanation for the delay. Mr Chen says that he was engaged in settlement negotiations which ultimately proved unsuccessful. However, settlement discussions would not have prevented him from filing an appeal.

[6] Thirdly, the proposed grounds of appeal lack merit.

[7] The decision Mr Chen wishes to appeal concerns his liability as guarantor under a deed of lease of commercial premises. The rent fell into arrears and the respondent lessor sought summary judgment. Mr Chen's main defence was that major roadwork undertaken by a local authority in the vicinity had adversely affected the premises and that the lessor was liable for the resulting losses. The Associate Judge rejected that defence. She held that under the terms of the lease the respondent lessor was under no obligation to ensure the business was uninterrupted by roadwork being undertaken by an unrelated third party.

[8] None of the proposed grounds of appeal address this pivotal finding.

[9] Mr Chen seeks to raise issues under the Fair Trading Act 1986 but, contrary to his submission, these issues were considered by the Associate Judge. Further, they have no evidential foundation. Mr Chen also seeks to raise issues regarding the assignment of the lease. But these too were addressed by the Associate Judge and are not sustainable because of the terms of the lease and the guarantee. A further argument he seeks to raise is that he was not aware the guarantee had been executed on his behalf by someone else pursuant to a power of attorney. This was not raised

in the High Court and in any event the validity of the power of attorney is not challenged.

[10] We are satisfied that in all the circumstances it would not be in the interests of justice for an extension of time to be granted. The application is accordingly dismissed.

[11] As regards costs, there is in our view no reason why costs should not follow the event. We accordingly order the applicant to pay the respondent's costs for a standard application on a band A basis and usual disbursements.

Solicitors:
Jackson Russell, Auckland for Respondent