

**IN THE COURT OF APPEAL OF NEW ZEALAND**

**I TE KŌTI PĪRA O AOTEAROA**

**CA669/2020  
[2021] NZCA 67**

BETWEEN	JOHN GOODWIN SMITH Appellant
AND	ELECTRIX LIMITED First Respondent
	THE FLETCHER CONSTRUCTION COMPANY LIMITED Second Respondent

Court: Courtney and Goddard JJ

Counsel: Appellant in Person  
K M Quinn and AHH Choi for First Respondent  
M N Rathod for Second Respondent

Judgment: 15 March 2021 at 3.30 pm  
(On the papers)

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**JUDGMENT OF THE COURT**

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**The application for extension of time to appeal is declined.**

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**REASONS OF THE COURT**

(Given by Courtney J)

[1] Mr Smith was granted access to a court file for the purposes of writing a paper about the construction of the Justice and Emergency Precinct in Christchurch. He made a further application for a large number of documents referred to by witnesses in the case. In a decision dated 9 September 2020, Palmer J declined the request on

the basis that the documents contained commercially sensitive information and did not warrant the time and cost of the parties in providing them.<sup>1</sup>

[2] Mr Smith did not appeal the September decision but instead made a further request to access a much smaller subset of the same documents. This request would, on his view, not have been objectionable by reason of commercial sensitivity or cost. However, in a minute dated 5 October 2020 Palmer J declined the request for access on the basis that it was essentially the same request as he had determined previously.<sup>2</sup> There was a delay in releasing the Judge's minute of 5 October 2020 with the result that Mr Smith did not receive it until 5 November 2020. By then the time to appeal had expired.

[3] Mr Smith has applied for an extension of time to appeal the October 2020 decision.<sup>3</sup> The respondents oppose the application; they point to Mr Smith's failure to appeal the 9 September 2020 decision and say that the request that was the subject of the 5 October 2020 minute was an abuse of process and the proposed appeal has no merit.

[4] In considering an application for an extension of time to appeal under r 29A of the Court of Appeal (Civil) Rules 2005, the relevant factors include the length of and reasons for the delay, the conduct of the parties (especially the applicant), prejudice to other parties and the significance of any issue raised in the proposed appeal. Ultimately, however, the ultimate question is what the interests of justice require.<sup>4</sup>

[5] It is accepted that the delay in applying for the extension was not long and was not in any way Mr Smith's fault. We also accept that his decision not to appeal the 9 September 2020 decision most likely reflects the lack of understanding by a lay litigant as to the appropriate response. The major barrier for Mr Smith is that Palmer J was clearly correct in viewing the request as essentially the same as the request he had already refused in the 9 September 2020 decision. The subsequent request was

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<sup>1</sup> *Electrix Ltd v The Fletcher Construction Co Ltd* [2020] NZHC 2348.

<sup>2</sup> *Electrix Ltd v The Fletcher Construction Co Ltd* HC Auckland CIV-2018-404-378, 5 October 2020 (Minute of Palmer J).

<sup>3</sup> Court of Appeal (Civil) Rules 2005, r 29A.

<sup>4</sup> *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801 at [38].

therefore an abuse of process and could not have succeeded.<sup>5</sup> For the same reason, any appeal against the October 2020 minute would be hopeless. The interests of justice require that the application be declined. Mr Smith is, of course, still entitled to apply under r 29A for an extension of time to appeal the 9 September 2020 decision. That observation obviously says nothing about the likely outcome of such an application.

[6] The application for an extension of time to appeal is declined.

Solicitors:

Burton Partners, Auckland for First Respondent

Craig Griffin & Lord, Auckland for Second Respondent

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<sup>5</sup> See, for example, *Lu v Industrial and Commercial Bank of China (New Zealand) Ltd* [2020] NZCA 538 at [21].