

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA201/2023
[2023] NZCA 515**

BETWEEN GRAHAM HERBERT TAYLOR
 Applicant

AND COMMISSIONER OF INLAND
 REVENUE
 Respondent

Court: French and Wylie JJ

Counsel: Applicant in person
 A B Goosen for Respondent

Judgment: 25 October 2023 at 11.00 am
(On the papers)

JUDGMENT OF THE COURT

- A The application under r 29A of the Court of Appeal (Civil) Rules 2005 for an extension of time to appeal is declined.**
- B There is no order as to costs.**
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REASONS OF THE COURT

(Given by French J)

Introduction

[1] Mr Taylor wishes to appeal a High Court judgment¹ which declined to grant him an extension of time for bringing an appeal in that Court against a District Court decision.² He has an appeal as of right to this Court. However, because he also filed

¹ *Taylor v Commissioner of Inland Revenue* [2023] NZHC 460 [High Court judgment].

² *Commissioner of Inland Revenue v Taylor* DC Auckland CIV-2016-004-2079, 24 February 2022.

his appeal in this Court out of time, he requires an extension of time under r 29A of the Court of Appeal (Civil) Rules 2005 in order to proceed with his appeal.³

Background

[2] In March 2020 the Commissioner of Inland Revenue obtained a judgment by default in the District Court against Mr Taylor for \$496,948.87. The debt related to unpaid tax.

[3] Mr Taylor, who lives in Australia, applied to have the judgment set aside on the ground he had not been served with the proceeding. He claimed to have been unaware of it and also said he had been experiencing health problems.

[4] The application was declined by Judge Harrison, prompting Mr Taylor to appeal to the High Court. He was out of time in filing his appeal by 23 working days. In declining to grant an extension of time, the High Court Judge, Venning J, did so on the ground that the proposed appeal was devoid of merit.⁴

[5] The appeal against Venning J's decision to this Court was five working days out of time. That is not a long delay and it has not occasioned any prejudice to the respondent. Mr Taylor has not provided any reason for the delay although we accept it may be the result of health difficulties.

[6] Those matters point towards an extension of time being granted. However, they are outweighed in our view by the fact the proposed appeal seeking to set aside the District Court's default judgment falls within the *Almond v Read* category of an appeal which is "clearly hopeless".⁵ It cannot possibly succeed. That is because of s 109 of the Tax Administration Act 1994. The effect of s 109 is that once a tax assessment has been made its correctness can only be challenged in proceedings under

³ The application filed was wrongly described as an application under r 16A, but by minute dated 30 June 2023 Brown J directed the application be treated as an application under r 29A.

⁴ High Court judgment, above n 1, at [13]–[17].

⁵ *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801 at [39(c)].

the Tax Administration Act.⁶ Mr Taylor had no defence to the claim in the District Court. That in turn means his application to set aside the default judgment was futile. It also means that even if Mr Taylor had filed a statement of defence to the Commissioner's claim for unpaid tax, he could never have succeeded in the District Court.

[7] In those circumstances, we consider it is not in the interests of justice for an extension of time to be granted.

[8] For completeness we should add that, as regards service of the Commissioner's proceeding, Court records show it was served pursuant to a valid order for substituted service.

Outcome

[9] The application under r 29A for an extension of time to appeal is declined.

[10] The respondent has not sought costs and we therefore make no award.

Solicitors:

Crown Law Office | Te Tari Ture o te Karauna, Wellington for Respondent

⁶ *Golden Bay Cement Co Ltd v Commissioner of Inland Revenue* [1996] 2 NZLR 665 (CA) at 670; *Tannadyce Investments Ltd v Commissioner of Inland Revenue* [2011] NZSC 158, [2012] 2 NZLR 153 at [53] per Blanchard, Tipping and Gault JJ; and *Smith v Commissioner of Inland Revenue* [2019] NZCA 521 at [21]–[22]. In limited circumstances, which do not apply in this case, judicial review proceedings in the High Court may be available: *Tannadyce* at [58]–[59] and [61] per Blanchard, Tipping and Gault JJ.