

IN THE COURT OF APPEAL OF NEW ZEALAND

**CA670/2010
[2011] NZCA 31**

BETWEEN	ROBERT ALEXANDER MOODIE Applicant
AND	ELIZABETH GRACE STRACHAN Respondent
AND	APN SPECIALIST PUBLICATIONS NZ LIMITED Cross-Respondent

Court: Glazebrook, Arnold and Harrison JJ

Counsel: Dr Moodie in person
J O Upton QC for Respondent
A L Ringwood for Cross-Respondent

Judgment: 22 February 2011 at 11 am
(On the papers)

JUDGMENT OF THE COURT

A The application for leave to appeal is granted.

B Costs are reserved.

REASONS OF THE COURT

(Given by Glazebrook J)

[1] Mr Moodie filed a notice of appeal against an interlocutory judgment of Wild J on 27 September 2010.¹ The appeal period expired on 23 September 2010.

¹ He maintains it was 24 September 2010. We have taken the later date as this accords with the Court's records.

[2] Mr Moodie applies for an extension of time to appeal.² The respondent consents to the application. The cross-respondent opposes it.³ This means that the application is treated as an application for leave to appeal. The parties are agreed that the application can be dealt with on the papers.

[3] The cross-respondent opposes the application on the basis of prejudice, lack of merit in the appeal, the fact that there is no issue of public importance and the intending appellant's conduct in the proceedings.⁴

[4] The delay in filing the appeal is short. It arose through inadvertence (and it appears at a time the intending appellant was on prescription drugs). Absent significant prejudice or a hopeless appeal, the Court will normally grant leave if there is a short delay with an adequate explanation.⁵

[5] In this case, the prejudice the cross-respondent points to is prejudice in being involved in the proceedings and not prejudice caused by the delay in filing the notice of appeal. We are not inclined to brand the appeal without merit at this stage, particularly in light of the respondent's consent to the extension of time.

[6] Further, the issues involved in the proposed appeal, while relating to a private settlement, could have wider ramifications. The conduct of the intending appellant in the wider proceedings again is not related to the delay in filing the appeal.

Result and costs

[7] The application for leave to appeal is granted.

² See r 29A(1) of the Court of Appeal (Civil) Rules 2005 (the Rules).

³ See r 29A(5) of the Rules.

⁴ For example, having filed six statements of claim but the pleadings not yet being settled.

⁵ See *Robertson v Gilbert* [2010] NZCA 429, *Grey v Elders Pastoral Holdings Ltd* (1999) 13 PRNZ 353 (CA) at [13], and Andrew Beck and others *McGechan on Procedure* (online looseleaf ed, Brookers) at [CR29A.02(3)(b)].

[8] Costs are reserved.

Solicitors:

Moodie & Co, Fielding for Appellant

Rainey Collins, Wellington for Respondent

Bell Gully, Auckland for Cross-Respondent