

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 110/2020
[2021] NZSC 19

BETWEEN YAN ZHANG
 Applicant

AND TELCO ASSET MANAGEMENT
 LIMITED
 Respondent

Court: William Young, Glazebrook and O'Regan JJ

Counsel: Applicant in person
 T P Cleary for Respondent

Judgment: 9 March 2021

JUDGMENT OF THE COURT

- A The application for an extension of time to apply for leave to appeal is granted.**
 - B The application for leave to file further submissions is dismissed.**
 - C The application for leave to appeal is dismissed.**
 - D The applicant must pay the respondent costs of \$2,500.**
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REASONS

[1] The applicant applied for leave to appeal to the Court of Appeal (and an extension of time to do so) against two judgments of the Employment Court, one upholding in part his challenge to a decision of the Employment Relations Authority,¹

¹ *Zhang v Telco Asset Management Ltd* [2019] NZEmpC 151.

and the second awarding him costs in respect of that challenge.² His application for an extension of time was granted but leave to appeal was declined.³

[2] In the submissions it filed in relation to leave, the respondent had sought costs. But the judgment of the Court of Appeal dismissing the application for leave to appeal did not address costs one way or the other. The respondent then applied for costs and, in a judgment delivered on 1 September 2020, the Court of Appeal ordered the applicant to pay \$6,214 and \$3,346 (a total of \$9,560) for the two applications for leave.⁴ The applicant applied unsuccessfully to the Court of Appeal for the recall of this judgment.⁵

[3] The applicant now seeks leave to appeal to this Court against the award of costs against him and an extension of time to do so.

[4] The applicant has advanced a substantial number of possible grounds of appeal, including the contention that the award of costs is inconsistent with usual practice, the suggestion that by not addressing costs in the leave judgment the Court of Appeal is to be taken to have rejected the respondent's application, a complaint that his name was misspelt ("Jan" instead of "Yan") on one of the relevant documents, a challenge to the accuracy of an assertion made in a document filed by the respondent, other complaints about the procedures followed by the respondent, a contention that the Court of Appeal order included costs in respect of the application for an extension of time, the failure of the Court of Appeal registry to refer on to the panel a submission from the applicant received outside of the submissions timetable but before the costs judgment was delivered and general unfairness in making an order against him.

[5] Of the issues raised, three only warrant detailed mention. The Court of Appeal judgment as to costs is ambiguous in that it could be read as including an additional \$1,673 in relation to the application for an extension of time (in respect of which the applicant was successful). This issue, however, has fallen away as the respondent accepts that the judgment should be construed as awarding costs only in respect of the

² *Zhang v Telco Asset Management Ltd* [2020] NZEmpC 9.

³ *Zhang v Telco Asset Management Ltd* [2020] NZCA 223.

⁴ *Zhang v Telco Asset Management Ltd* [2020] NZCA 380 (Kós P and Courtney J).

⁵ *Zhang v Telco Asset Management Ltd* [2020] NZCA 516.

two unsuccessful leave applications. The second is that the applicant's concerns in relation to his late submission not being referred to the panel have been satisfactorily dealt with by the Court of Appeal in its recall decision. The third concerns the appropriateness and level of the costs awards. In this respect it is sufficient to say that the awards of costs were orthodox and consistent with the principle that costs follow the event. We see nothing of merit in the other issues raised by the applicant.

[6] There is no appearance of a miscarriage of justice and the proposed appeal does not involve any question of general or public importance.⁶

[7] We note that the applicant was notified yesterday (8 March 2021) that judgment would be delivered today and that he has today applied for leave to file further submissions addressed to whether his proposed appeal raises matters of general or public importance. The application for leave to file further submissions is in very general terms and provides no basis for considering that anything further of substantial materiality will be filed. In those circumstances, we have decided to release the judgment today.

[8] An extension of time is granted but the applications for leave to file further submissions and for leave to appeal are dismissed. The applicant must pay the respondent costs of \$2,500.

Solicitors:
Charles McGuinness Barrister and Solicitor Ltd, Wellington for Respondent

⁶ Senior Courts Act 2016, s 74(2)(a)–(b).