

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA534/2024
[2025] NZCA 405

BETWEEN	STUART JAMES LOBB First Applicant
	WAG TRUSTEES (2020) LIMITED Second Applicant
AND	VERENA COLLEEN RYAN First Respondent
	LOCKHART TRUSTEE SERVICES NO.56 LIMITED Second Respondent
	DIGBY JOHN NOYCE Third Respondent

Court:	Whata and Collins JJ
Counsel:	R J Latton and G R Grant for First and Second Applicants W M Patterson and L W Dixon for First Respondent No appearance for Second Respondent H L Thompson for Third Respondent
Judgment (On the papers):	19 August 2025 at 11.00 am

JUDGMENT OF THE COURT

A The application for extension of time to appeal is granted.
B We make no order as to costs.

REASONS OF THE COURT

(Given by Whata J)

[1] The applicants, Mr Stuart Lobb and WAG Trustees (2020) Ltd (WAG Trustees), apply for an extension of time to appeal a decision of the High Court apportioning costs of a court-appointed receiver.¹ The application is opposed by the first respondent, Ms Verena Ryan. The third respondent, Mr Digby Noyce (the court-appointed receiver), abides the decision of this Court.

Background

[2] The present matter is another step in a relationship property dispute between Mr Lobb and Ms Ryan.² At the time of separation in 2016, the majority of the relationship property had been transferred into a family trust, the Lothbury Trust. The principal asset of value was the family home (the Property). In 2017 Ms Ryan gave notice to the trustees requiring resettlement of half the trust assets into a new trust, the Verena Ryan Family Trust (as provided for in cl 2.5(3) of the trust deed upon separation). Mr Lobb opposed this request.

[3] In 2023, Hinton J directed the receiver to sell the Property, with 50 per cent of the proceeds (following the deduction of the costs of sale, receiver's costs and other payments) to be paid to the Verena Ryan Family Trust.³

[4] Following that judgment, Mr Lobb, his family members and other related entities sought to thwart the sale of the Property, including by lodging caveats and filing trespass notices. WAG Trustees, which had taken an assignment of the mortgage over the Property shortly after the receiver had been appointed, issued a defective Property Law Act 2007 (PLA) notice.⁴ Judgments were issued in the High Court preventing further action by Mr Lobb and his family.⁵ Edwards J discharged the WAG Trustees' mortgage on 19 June 2023.⁶ The Property eventually settled in December 2023.

¹ *Ryan v Lobb* [2024] NZHC 1997 [judgment under appeal].

² We adopt the summary of Gault J set out in the judgment under appeal.

³ *Ryan v Lobb* [2023] NZHC 689 [Hinton J judgment].

⁴ WAG Trustees (2020) Ltd is owned by Mr Lobb's father, Mr Warwick Lobb. Mr Warwick Lobb and Mr Blair Lobb (Mr Lobb's brother) are the directors of the company.

⁵ See *Ryan v Lobb* [2023] NZHC 2452; *Ryan v Lobb* [2023] NZHC 3595; and *Noyce v Pendrell Investments Ltd* [2023] NZHC 3778.

⁶ *Ryan v Lobb* [2023] NZHC 1518.

[5] Ms Ryan applied for apportionment of \$572,370 of the receiver's costs to Mr Lobb. On 19 July 2024, Gault J held that Mr Lobb was sufficiently involved in the actions of his family members and related entities, and it was therefore appropriate that the receiver's costs be apportioned to him.⁷ The costs were attributed to the residual share of the Lothbury Trust (after the distribution of 50 per cent to the Verena Ryan Family trust).

[6] On 21 August 2024, the applicants filed a notice of appeal to this Court three days outside of time. A key ground for their proposed appeal is that Gault J was wrong to rely on the judgments of Hinton and Edwards JJ when assessing whether Mr Lobb should be responsible for the actions of his family members. The Registry granted an extension of time and accepted the notice for filing.⁸ Ms Ryan and the receiver then notified the Court that they had not been served,⁹ and refused to consent to an extension of time. On 5 September 2024, the second respondent advised the Court it had never been served. On 21 November 2024, the appeal was deemed abandoned for non-compliance.¹⁰

[7] On 5 December 2024, Cooke J issued a minute directing the applicants to file a formal r 29A application. He invited the respondents to consider consenting to the appeal being brought out of time given:

The failures are technical, and not substantial, no prejudice seems to arise from delay, and my consideration of the High Court judgment suggests that there is a proper basis to bring an appeal, such that the grant of leave to pursue it out of time seems likely.

[8] Ms Ryan continues to oppose the application because:

- (a) the period during which the applicants were entitled to bring an appeal expired on 16 August 2024;

⁷ Judgment under appeal, above n 1, at [70]–[72]. The figure of \$572,370 was accepted by the Judge.

⁸ Court of Appeal (Civil) Rules 2005, r 5A.

⁹ As required by r 31(1)(b).

¹⁰ Rule 43.

- (b) the funds have been distributed by the receiver in accordance with the High Court judgment and have been applied to Ms Ryan's debts; and
- (c) the proposed appeal is a collateral attack on the decisions of Hinton and Edwards JJ and is therefore an abuse of process.

Threshold

[9] In *Almond v Read*, the Supreme Court summarised the principles guiding the discretion of the Court of Appeal to grant or decline an extension of time to appeal under r 29A.¹¹ The ultimate question is what the interests of justice require, in the particular circumstances of the case.¹² Relevant considerations include:¹³

- (a) the length of the delay;
- (b) the reason for the delay;
- (c) the conduct of the parties, particularly the applicant;
- (d) any prejudice to the respondents; and
- (e) the significance of the issues raised by the proposed appeal, both to the parties and more generally.

[10] The merits of the proposed appeal may also be relevant, but any consideration of the merits must be relatively superficial.¹⁴ There will be some instances in which the merits will be overwhelmed by other factors, such as the length of the delay and prejudice to the respondent, and so will not require consideration.¹⁵

¹¹ *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801 at [35]–[40].

¹² At [38].

¹³ At [38].

¹⁴ At [39(c)].

¹⁵ At [39(a)].

Assessment

[11] We echo the views of Cooke J. The delay, due to counsel error, was short: nine working days, including the period before the respondents were provided with a copy of the notice by the Registry. There is no real prejudice to the respondents. The appeal is not obviously meritless. These grounds justify an extension.

Costs

[12] We refuse to make an award of costs. The extension is an indulgence to Mr Lobb and WAG Trustees, but opposition to the extension was not reasonable.¹⁶ More heed should have been paid of Cooke J's suggestion.

Outcome

[13] The application for extension of time to appeal is granted.

[14] We make no order as to costs.

Solicitors:

Patterson Hopkins, Auckland for First Respondent

McMahon Butterworth Thompson, Auckland for Third Respondent

¹⁶ Court of Appeal (Civil) Rules, r 53G(2). See *Minister of Education v Ahead Buildings* [2011] NZCA 81 at [5]–[6].