IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA510/2024
[2025] NZCA 10

BETWEEN	MADHAV HARI KARMARKAR Applicant
AND	KAJOL ENTERPRISES LIMITED Respondent

Court:	Thomas and Ellis JJ
Counsel:	Applicant in person No appearance for Respondent
Judgment: (On the papers)	14 February 2025 at 10.00 am

JUDGMENT OF THE COURT

The application for special leave to bring a second appeal is declined.

REASONS OF THE COURT

(Given by Ellis J)

[1] Mr Karmarkar seeks special leave to appeal from a decision of Robinson J in the High Court, dismissing his appeal from a decision of the District Court striking out his statement of claim.[1] Leave to appeal has been declined by the High Court Judge.[2]

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1 *Karmarkar v Kajol Enterprises Ltd* [2024] NZHC 683 [High Court appeal judgment]; and *Karmarkar v Kajol Enterprises Ltd* [2023] NZDC 14958 [District Court judgment]. Leave to appeal is sought under s 60(2) of the Senior Courts Act 2016.

2 *Karmarkar v Kajol Enterprises Ltd* [2024] NZHC 1949 [High Court leave judgment].

[2] Although represented in both the District Court and the High Court, Kajol Enterprises Ltd (Kajol) has taken no steps in relation to the application for special leave. On 30 August 2024, Cooke J declined to grant special leave to appeal under r 19B(1) of the Court of Appeal (Civil) Rules 2005,[3] and directed the Registry to timetable submissions and allocate a hearing on the papers.

What is the case about?

[3] In the High Court leave judgment, the High Court Judge summarised the relevant background as follows:[4]

> [3] Mr Karmarkar owns a property at 34 White Swan Road, Mount Roskill, Auckland. The respondent, Kajol Enterprises Limited (Kajol), owns 34B and 34C White Swan Road. The parties share a right of way (ROW) over a long driveway which runs from their properties down onto White Swan Road.
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> [4] In 2018, Kajol applied for and received resource consent from Auckland Council (the Council) to subdivide its property. Conditions of that consent were that Kajol obtain an easement from another neighbour, Vector Limited, and construct a passing bay on the servient land adjacent to and accessible from the existing ROW.
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> [5] Mr Karmarkar also wishes to subdivide his property. He says that both the Council and Kajol have breached their obligations to him and have caused him loss. His essential complaint is that he does not have the benefit of the easement Council required Kajol to obtain from Vector, with the right to use the passing bay.
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> [6] In separate proceedings he alleged that the Council breached its obligations to him by not requiring Kajol to provide him with the benefit of the easement. On 22 October 2022 Judge D Clark struck out Mr Karmarkar's claim against the Council. Judge Clark held that the Council did not owe Mr Karmarkar a duty of care when it issued his neighbour Kajol's recourse consent.
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> [7] On 3 July 2023, Mr Karmarkar issued separate District Court proceedings against Kajol. He alleges nuisance and seeks $348,000 in damages. On 20 July 2023, Judge Davenport granted Kajol's application to strike out Mr Karmarkar's statement of claim on the basis that it did not disclose any arguable cause of action: "No nuisance has been committed nor is it arguable ... there is no prospect of the nuisance claim succeeding on the facts or the law". Her Honour did not consider repleading could save the claim: "The bald truth is that there are no facts which could support a claim".

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3 Rule 19B of the Court of Appeal (Civil) Rules 2005 provides that a Judge may grant leave to appeal if the respondent has not responded to the application within 10 working days of service.

4 High Court leave judgment, above n 2 (footnotes omitted).

[4] The Judge then summarised his earlier judgment dismissing Mr Karmarkar's appeal from Judge Davenport KC's decision, in which he held:[5]

> (a) The tort of nuisance does not require a neighbour to develop its land (or apply for resource consent to develop its land) in a way that best suits its neighbours.
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> (b) It is a fundamental requirement of the tort of nuisance that a defendant is interfering with the reasonable use of the plaintiff's land, but Mr Karmarkar remains free to use his land and the ROW as he pleases.
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> (c) The tort of nuisance does not require a party to apply for resource consents in a way that will best suit its neighbours. The Resource Management Act 1991 (RMA), Schedule 4, clause 7(1) does not impose a duty of care on neighbours and the council to ensure that development and subdivision of land benefits its neighbours.

[5] Citing *Waller v Hider*, the Judge's view was that Mr Karmarkar's proposed second appeal against the District Court decision raised no question of law or fact capable of serious argument and did not involve a matter of such public or private importance as to outweigh the cost and delay of another appeal.[6] He said:[7]

> [14] As this Court previously noted the tort of nuisance requires an unreasonable interference with a person's right to use or enjoy an interest in land, and the remedy of damages requires proof of actual imminent harm. However, Mr Karmarkar's complaint is not that he is being deprived of the enjoyment of his own land, but that Kajol did not provide him with the benefit of the easement over Vector's land. The damages he seeks include $150,000 to enable him to secure an easement from Vector; $100,000 to secure an easement from Vector to create a bigger vehicle crossing; $15,000 for traffic reports, $25,000 to be paid to Auckland Council for various charges and $8,000 for mental stress.
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> [15] Regardless of how Mr Karmarkar characterises his submission in respect of sch 4 of the RMA, whether in terms of a duty of care or mandatory considerations, it does not support his claim in nuisance against Kajol. As previously noted, Mr Karmarkar remains free to enjoy his land and the ROW precisely as he did before.
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> [16] Nor is there merit in Mr Karmarkar's submission that this Court's judgment will open a floodgate of cases where resource consent applicants and councils will disregard any nuisance on neighbours that is not physical. The District Court and High Court judgments are orthodox applications of well-established principles. There is nothing in the judgment that limits the statutory and other obligations of councils or applicants for resource consents under the RMA or otherwise.

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5 At [8] (footnotes omitted).
6 At [12], citing *Waller v Hider* [1998] 1 NZLR 412 (CA) at 413.
7 High Court leave judgment, above n 2 (footnotes omitted).

Applications for special leave: approach

[6] In order for special leave to appeal to be granted, Mr Karmarkar's proposed appeal must raise some question of law or fact capable of bona fide and serious argument, which is of sufficient importance to outweigh the costs and delay of a further appeal.[8] On such an appeal, this Court is not engaged in general error correction — its primary function is "to clarify the law and to determine whether it has been properly construed and applied by the Court below".[9] It is not every error of law that is of such importance as to justify further pursuit of litigation which has already been examined and decided by a court on two occasions.[10]

The application in this case

[7] Although extremely lengthy, Mr Karmarkar's application for special leave does not address the criteria to which we have just referred. Rather, he sets out the numerous grounds he wishes to advance in his proposed substantive appeal. His submissions in support of his application for special leave largely replicate his application, although they are somewhat shorter.

[8] To the extent it is possible to distil Mr Karmarkar's concerns, they appear to be that the courts below have misunderstood the breadth of his nuisance claim and failed to address his claim that Kajol's application for a resource consent did not comply with the requirements of sch 4 to the Resource Management Act 1991. Mr Karmarkar says he has never claimed that Kajol and the council have a duty to ensure that Kajol's development "benefits its neighbours". He also says the District Court should have heard evidence (both from experts and from Mr Karmarkar himself) before making its determination.

Analysis

[9] As already noted, Mr Karmarkar has not addressed the criteria governing the grant of special leave and so we are unable to ascertain or address his position on them.

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8 *Waller v Hider*, above n 6, at 413.
9 At 413.
10 At 413.

[10] The short point is that any misunderstanding in the courts below as to the nature of Mr Karmarkar's claims only serves to demonstrate why the District Court was right to strike them out. As Judge Davenport's decision records, she made every effort to ascertain from Mr Karmarkar what his central concerns were, and as Mr Karmarkar himself observes, the law in this area is complex; legal advice may well have been of assistance. The courts (and respondents) cannot be expected substantively to address pleadings that are inchoate or unintelligible, nor to attempt to glean legal coherence or meaning from them where none is evident. Although we have, nonetheless, attempted to ascertain for ourselves whether there is some grain of merit that has somehow been missed so far, we are unable to discern one.

[11] It follows that the appeal does not raise some question of law or fact capable of bona fide and serious argument. Nor is this a case involving some interest, public or private, of sufficient importance to outweigh the cost and delay of a further appeal.

Result

[12] The application for special leave to bring a second appeal is declined.