

**IN THE DISTRICT COURT
AT WAITAKERE**

**I TE KŌTI-Ā-ROHE
KI WAITĀKERE**

**CIV 2017-090-1888
[2019] NZDC 4080**

BETWEEN

AN LI TAO, HWA XI & NAIZUO TAO &
WEI YI LIN
Appellants

AND

BODY CORPORATE 198693
Respondent

Hearing: 1 March 2019

Appearances: Ms Tao in Person
Mr P Muir for Respondent

Judgment: 7 March 2019

DECISION OF JUDGE G M HARRISON

[1] Despite only one Court reference number being allocated, there are in fact three appeals in this proceeding. The first is an appeal filed on 11 August 2017 against the decision of the Tenancy Tribunal of 3 August 2017. That decision was followed by a decision of the Tribunal awarding costs of 22 December 2017 which attracted two further appeals by Ms Tao and her parents Hwa Xi and Naizuo Tao. There is also an appeal by Mr Lin which is in the same terms as the Tao appeal but appears to be in respect of the award of costs only.

[2] Ms Tao was adjudicated bankrupt on 29 January 2019.

[3] All appeals were set down for hearing before me today. Ms Tao announced that she appeared for her parents on their appeals and Mr Lin on his appeal.

[4] She confirmed that she had been adjudicated bankrupt, and also that she had relinquished any proprietary interest she held in [Unit R 8 — address deleted] which was the subject of the decision of the Tenancy Tribunal when it upheld levies raised by the Body Corporate in respect of the individual units at that address of which I was advised there are 36.

[5] Mr Muir opposed the appearance of Ms Tao on the basis that she had been adjudicated bankrupt, but also because she did not meet the requirements of s 107 of the District Court Act 2016.

[6] Section 76 Insolvency Act 2006 provides –

(1) on adjudication, all proceedings to recover any debt provable in the bankruptcy are halted.

(2) However, on the application by any creditor or other person interested in the bankruptcy, the Court may allow proceedings that had already begun before the date of adjudication to continue on the terms and conditions that the Court thinks appropriate.

[7] My interpretation of that section is that it would not preclude Ms Tao from appearing on her own behalf in this appeal. Leaving that to one side however, it is necessary to consider the provisions of s 107 of the District Court Act.

[8] As relevant that provides –

107 right to appear

(3) In special circumstances and with the permission of the Court, a person (P), whether a natural person or a corporation, may be represented –

(a) by an agent authorised in writing by P, if P is in New Zealand or carries on business in New Zealand; or

(b) if P is not in New Zealand or does not carry on business in New Zealand, by an agent authorised by a person holding P's power of attorney to become a party to the proceeding in P's name.

[9] As noted Ms Tao has relinquished any proprietary interest in the unit in question and so does not have any personal interest that would justify her appearance as a litigant in person.

[10] That seems to be accepted by Ms Tao because on 26 June 2018 an interlocutory application as filed seeking the variation of a charging order registered against the title to the unit. That application was filed by Hwa Xi and Naizuo Tao, but there is no mention of Ms An Li Tao in the intituling.

[11] It is therefore incumbent on the remaining appellants to establish special circumstances which would result in the permission of the Court for Ms Tao to appear in the role of counsel at the hearing of the appeal.

[12] The only ground advanced is the poor health of Ms Tao's parents. Many litigants in person suffer from poor health and the Court will from time to time make directions to accommodate their inability to attend a particular hearing through ill health. In the course of submissions before me, Ms Tao acknowledged that her parents could have briefed counsel, and I note that the original appeal was filed in August 2017 and clearly there has been sufficient time for legal counsel to have been engaged. No reason was given for the appellants not doing so.

[13] Furthermore, no reason whatsoever was given which might constitute special circumstances which would permit Ms Tao to appear for Mr Li.

[14] I indicated to Ms Tao at the hearing that I would not approve her appearance on behalf of her parents. That was because not only were no special circumstances identified, but to permit that would create a precedent whereby any adult child could seek to represent a parent or parents in the role of counsel which is plainly not contemplated by s 107.

[15] Having given that indication, I then invited Ms Tao to make submissions as to whether or not the Tenancy Tribunal heard erred in its decision. On reflection there was little point in doing so because to deny Ms Tao the right of representation would require that the appeal then be adjourned to a further case management conference to ascertain if it was to proceed either by the three appellants appearing in person or by counsel.

[16] Accordingly, none of the appellants may be represented by Ms Tao.

[17] The proceedings are adjourned for a two hour fixture for the hearing of the appeal. The appellants are to file submissions in support of the appeal ten days prior to the date allocated. Any submissions from the respondent are to be filed five days before that date.

[18] Because Ms Tao is bankrupt, costs on the hearing today are reserved in the event that the respondent seeks an order which could then be approved in her bankruptcy through the Official Assignee.

G M Harrison
District Court Judge