

IN THE SUPREME COURT OF NEW ZEALAND

SC 92/2013
[2013] NZSC 115

BETWEEN VINCENT ROSS SIEMER
 Applicant

AND MICHAEL PETER STIASSNY & ANOR
 Respondents

Court: McGrath, William Young and Glazebrook JJ

Counsel: Applicant in person
 P J L Hunt and J E Tomlinson for Respondents

Judgment: 14 November 2013

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B The applicant is to pay costs of \$2,500 plus all reasonable disbursements (as fixed, if necessary, by the Registrar) to the respondents.**
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REASONS

[1] Mr Siemer applies for leave to appeal against the decision of Harrison J dated 22 August 2013 upholding the Court of Appeal Registrar’s decision declining to dispense with security for costs.¹

Background

[2] On 26 February 2013 Mr Siemer filed an appeal against a decision delivered by Toogood J in the High Court on 22 February 2013.² On 25 March 2013 the Court

¹ *Siemer v Stiassny* [2013] NZCA 390.

of Appeal Registrar ordered Mr Siemer to pay \$5,880 security for costs in relation to that appeal.

[3] On 26 April 2013 Mr Siemer applied, under r 35(7) of the Court of Appeal (Civil) Rules 2005, for a dispensation from or a reduction in security for costs.

[4] On 24 June 2013 Mr Siemer applied for a direction from a judge of the Court of Appeal, allegedly under s 61A(1) of the Judicature Act 1908 or r 7(2) of the Court of Appeal (Civil) Rules 2005, on the basis that the Registrar had failed to address his application to reduce or dispense with security.

[5] On 29 July 2013 the Registrar wrote to Mr Siemer advising that she had declined his request to dispense with security.

[6] On 22 August 2013 Harrison J released the decision referred at [1] above.

Grounds of application

[7] The grounds of Mr Siemer's application for leave are that:³

- (a) he made no application for review of the Registrar's decision of 29 July 2013 declining to dispense with security for costs;
- (b) Harrison J failed to consider his application for an order under s 61A(1) of the Judicature Act dispensing with security; and
- (c) Harrison J erred in concluding that security for costs should not be dispensed with.

² *Stiassny v Siemer* [2013] NZHC 301. In that decision, Toogood J dismissed as an abuse of process and application for recall of a decision of Cooper J in which Cooper J had ruled against Mr Siemer.

³ Mr Siemer made other arguments. These necessarily fail in light of our conclusions on the main issues.

Our assessment

[8] The proper procedure for applying to dispense with or vary security for costs is, as occurred in this case, for Mr Siemer to apply to the Registrar under r 35(7) of the Court of Appeal (Civil) Rules. The Registrar dealt with that application on 29 July 2013.

[9] Once that occurred, the only avenue for review of that decision is by a single judge under s 61A(3) of the Judicature Act.⁴ This means that Harrison J was not able to consider Mr Siemer's application for an order under s 61A(1) of the Judicature Act.⁵

[10] In his decision of 22 August 2013, Harrison J dealt with Mr Siemer's application of 24 June 2013 as if it were an application under s 61A(3) for review of the Registrar's decision of 29 July 2013. In the circumstances, this was a sensible course to take.⁶

[11] As to Harrison J's actual decision on security for costs, this was made on settled principles and therefore no issue of general or public importance arises. Further, nothing Mr Siemer has put forward indicates that there is a risk of a substantial miscarriage of justice.

Result

[12] The application for leave to appeal is dismissed.

[13] The applicant is to pay costs of \$2,500 plus all reasonable disbursements (as fixed, if necessary, by the Registrar) to the respondents.

Solicitors:
McElroys for Respondents

⁴ We acknowledge that there may be jurisdiction for a single judge to vary a security for costs order under s 61A(1) of the Judicature Act 1908 in circumstances where there has been no application to or decision by the Registrar. Even if there is jurisdiction under s 61A(1), however, this does not give an appellant the right to apply for an order under s 61A(1). The Court of Appeal is entitled to require that applications relating to security for costs be made to the Registrar in accordance with r 35(7) of the Court of Appeal (Civil) Rules 2005.

⁵ Mr Siemer's ground of appeal summarised at [7](b) above therefore fails.

⁶ Accordingly, Mr Siemer's ground of appeal set out at [7](a) also fails.

