

BETWEEN	RODERICK BRYAN TURNER Applicant
AND	ALLISTER JOHN DAVIS First Respondent
AND	CLARK BOYCE Second Respondent
AND	JAMES RAPLEY Third Respondent

Court: Chambers and Glazebrook JJ

Counsel: Applicant in person
A C Challis for First and Second Respondents
A J Nash for Third Respondent

Judgment: 12 April 2013

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B The applicant is to pay costs of \$2,500 to the first and second respondents and \$2,500 to the third respondent, in each case plus reasonable disbursements to be fixed if necessary by the Registrar.**
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REASONS

[1] In 2002 Mr Turner and his wife brought civil proceedings in the District Court against a real estate agent, Ms Sigglekow. Mr Davis and his firm (Clark Boyce) acted for Ms Sigglekow in that proceeding. Shortly before the proceedings were to be heard, Mr Davis found out that certain relevant documents

had been altered by Mr Turner. He alerted Mr Turner's barrister and made the Court aware of the situation before the hearing.

[2] In the District Court, Judge Somerville found in favour of Ms Sigglekow.¹ In the course of his judgment, he rejected Mr Turner's explanation for making the alterations. He also directed the Registrar to forward a transcript of the evidence and copies of the material exhibits to the police.

[3] The police brought charges against Mr Turner who was convicted on two counts of fraudulently altering a document. Mr Rapley was Mr Turner's counsel in those criminal proceedings and the subsequent appeal.² The jury by its verdict must have rejected Mr Turner's claims that he had altered the documents with an honest belief that he was merely tidying up his records.

[4] Mr Turner then brought proceedings against Mr Davis and his firm and against Mr Rapley. With regard to the former, he alleged that Mr Davis had instigated false charges against him in order to defeat his civil claim. With regard to Mr Rapley, Mr Turner's complaint is that Mr Rapley was negligent in performing his role in the criminal proceedings.

[5] On 1 May 2012, Whata J granted summary judgment in favour of the respondents.³ On 7 December 2012, Mr Turner's appeal against Whata J's judgment was struck out under r 37(1) of the Court of Appeal (Civil) Rules 2005 on the basis that Mr Turner had failed to pay security for costs on time and that the appeal had no reasonable prospect of success.⁴

[6] Mr Turner seeks leave to appeal against the decision of the Court of Appeal.

[7] Mr Turner does not challenge the principles upon which the Court of Appeal determined the r 37(1) applications. Rather, he seeks to relitigate whether he did fraudulently alter the documents. It is this "disputed material fact" which he wishes

¹ *R & M Turner trading as Ronal Developments v Rolle Ltd* DC Christchurch NP2108/01, 10 November 2003.

² *R v Turner* CA511/05, 11 August 2006.

³ *Turner v Davis* [2012] NZHC 841.

⁴ *Turner v Davis* [2012] NZCA 576 at [15].

to argue before this Court as, what he calls, “a question of mixed law and fact”. The respondents contend this is a collateral attack on findings in earlier proceedings. Whether it is or not, it is certainly not a question meeting the criteria of s 13 of the Supreme Court Act 2003. Mr Turner does not submit that the issue of whether he fraudulently altered the document is a question of “general or public importance”. He was right in not so submitting. And we are far from satisfied that a substantial miscarriage of justice will occur unless the appeal is heard. Accordingly, the leave application is dismissed.

[8] Mr Turner’s substantive claim against Mr Davis and Clark Boyce, the first and second respondents, was factually and conceptually distinct from the claim against Mr Rapley, the third respondent. The first and second respondents on the one hand and the third respondent on the other were both required to file detailed submissions in opposition to Mr Turner’s application for leave. In the circumstances, it is appropriate that both groups should receive costs in the standard amount of \$2,500.

Solicitors:
McElroys, Auckland for First and Second Respondents
Parker Cowan Lawyers, Queenstown for Third Respondent