

IN THE SUPREME COURT OF NEW ZEALAND

SC 81/2014
[2014] NZSC 141

BETWEEN GARY OWEN BURGESS
 Applicant

AND TSB BANK LIMITED
 Respondent

Court: Elias CJ, McGrath and Glazebrook JJ

Counsel: Applicant in Person
 N Davidson QC for Respondent

Judgment: 10 October 2014

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B The applicant must pay to the respondent costs on the application of \$1,000 together with disbursements to be fixed if necessary by the Registrar.**
-

REASONS

[1] The applicant seeks leave to appeal against the judgment of White J in the Court of Appeal dismissing an application made out of time to review a decision of the Registrar which refused to reduce or waive security for costs.¹ That decision related to an appeal against the High Court's refusal to recall a substantive judgment it had given against the applicant.²

[2] Earlier the applicant had appealed to the Court of Appeal against the High Court judgment that was the subject of the application for recall.³ In relation to this

¹ *Burgess v TSB Bank Ltd* [2014] NZCA 334.

² *TSB Bank Ltd v Burgess* [2014] NZHC 204.

³ *TSB Bank Ltd v Burgess* [2013] NZHC 3291.

first appeal, he complied with an order that he give security for costs in the sum of \$10,000 in that appeal, which will proceed to an oral hearing.

[3] After the applicant filed his appeal against the recall judgment, the Registrar made an order for security for costs. The applicant did not apply for an order reducing or waiving security for costs within the time period prescribed in the Court of Appeal (Civil) Rules 2005. Two weeks after that period expired, he filed an application seeking orders including for consolidation of his two appeals, an extension of time for filing a combined case on appeal, and that the \$10,000 sum already paid be considered security for costs for both appeals or that an extension of time be granted for an application to reduce or waive security for costs for the second appeal.

[4] White J directed that the appeals be consolidated and an extension of time be granted for filing the case on appeal. He referred the security for costs issue to the Registrar. The Registrar determined that the application to reduce security for costs was out of time, and advised that she had no discretion to grant an extension of time. The applicant sought review of this decision.

[5] White J confirmed that the Registrar had no discretion to extend the time for an application to reduce or waive security for costs.⁴ He declined to grant an extension of time because the applicant had not given any satisfactory explanation for the delays in making the application. White J also pointed out in his judgment that the applicant would be able in the first appeal to raise the same alleged errors in the substantive High Court judgment that he contended justified its recall, so that there would be no real prejudice if the second appeal did not proceed.⁵

[6] Nevertheless, the applicant has persisted with his challenge to the Registrar's decision by bringing this application for leave to appeal. The principal basis for his application is breach of natural justice in the process by which the Court of Appeal determined his various applications.

⁴ *Burgess v TSB Bank Ltd*, above n 1, at [16].

⁵ At [17].

[7] Section 13 of the Supreme Court Act 2003 directs this Court not to give leave to appeal unless satisfied it is necessary, in the interests of justice, for the Court to hear and determine a proposed appeal. The present application raises no question of general or public importance as White J applied settled legal principle and was entitled to exercise his discretion to refuse an extension of time for the application to reduce security for costs. Nor is there any risk of a substantial miscarriage of justice as all issues concerning the correctness of the substantive High Court judgment, including those relied on as grounds for appeal, can be raised in the first appeal for which security for costs has been paid.

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

Solicitors:
Clendons, Auckland for Respondent