NOTE: LOWER COURT ORDERS PROHIBITING PUBLICATION OF NAMES OR IDENTIFYING PARTICULARS OF THE APPLICANT AND THE FIRST RESPONDENT PURSUANT TO S 39 OF THE HARASSMENT ACT 1997 REMAIN IN FORCE.

IN THE SUPREME COURT OF NEW ZEALAND

SC 77/2014
[2014] NZSC 189

BETWEEN	N Applicant
AND	M First Respondent
	JACKSON RUSSELL Second Respondent
	RICHARD KEITH McLEOD HAWK Third Respondent
	SARAH PIERCE FITCHETT Fouth Respondent

SC 120/2014

BETWEEN	N Applicant
AND	DISTRICT COURT AT AUCKLAND First Respondent
	MR Second Respondent

SC 125/2014

BETWEEN	NR Applicant
AND	M First Respondent
	JACKSON RUSSELL Second Respondent

RICHARD KEITH McLEOD HAWK
Third respondent

SARAH PIERCE FITCHETT
Fourth Respondent

Court: McGrath, William Young and Glazebrook JJ

Counsel: Applicant in person
R J Hollyman and A J B Holmes for the First Respondent

Judgment: 19 December 2014

JUDGMENT OF THE COURT

A The application to file further submissions is declined.

B The interlocutory application of 1 December 2014 is dismissed.

C Costs of $2,500 are to be paid by the applicant to Ms M.

REASONS

[1] Mr N has applied for leave to appeal against a number of decisions of the Court of Appeal.

[2] In SC 120/2014, Mr N seeks leave to appeal against a judgment of Wild J in which he upheld the Court of Appeal Registrar's decision not to supply requested information to Mr N.[1] The decision under appeal relates to one of a number of proceedings that have arisen from civil proceedings brought against Mr N in the District Court under the Harassment Act 1997. There are now appeals, and applications for leave to appeal, before the Court of Appeal in which both Mr N and

1 *NR v District Court at Auckland* [2014] NZCA 514.

Ms M challenge certain aspects of the judicial review of all the District Court decisions in the High Court.[2]

[3] In SC 125/2014, Mr N seeks leave to appeal against a judgment of the Court of Appeal[3] dismissing an appeal against a judgment of Woodhouse J, which struck out Mr N's proceedings for contempt.[4] In SC 77/2014, Mr N seeks leave to appeal against a pre-hearing direction by the Court of Appeal in that appeal.

[4] This judgment concerns an interlocutory application filed by Mr N on 1 December 2014 for orders directing disclosure of litigation funding arrangements and debarring the lawyers for Ms M from acting.

Preliminary matter

[5] The application filed by Mr N on 1 December 2014 was accompanied by a detailed memorandum in an appendix. An affidavit was also attached. Both these documents set out the reasons for his application.

[6] On 5 December 2014, the Court issued a minute asking for brief submissions in reply from the respondents on or before 10 December 2014. Mr N was given until 12 December 2014 to file further submissions in reply to the respondents' submissions.

[7] In his further reply submissions Mr N complains that he has not been given a proper opportunity to file submissions in support of his application and in particular to seek legal advice on the submissions. He seeks an extension of time until 24 December 2014 "to file proper submissions on my application".[5]

[8] Mr N did not raise any such concerns at the time the minute of 5 December 2014 was issued and, in any event, as indicated above, had already filed extensive material with his application. He had the opportunity to seek legal advice (if he wished to do so) at the time of filing that application.

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2 *NR v District Court at Auckland* [2014] NZHC 1767 (Duffy J).
3 *NR v M* [2014] NZCA 526 (Harrison, Goddard and Cooper JJ).
4 *N v M* [2014] NZHC 239.
5 This application was renewed by memorandum of 18 December 2014.

[9] The application to file further submissions is declined.

[10] Mr N, also in a memorandum of 18 December 2014, requests an oral hearing of his application, "based on the principle of orality". We do not consider an oral hearing required and no particular reason has been advanced that would suggest that the Court would benefit from an oral hearing. The matter will be dealt with on the papers.

Parties' submissions

[11] On the litigation funding issue Mr N, in the appendix to his application and in his accompanying affidavit, submitted that he is entitled to know those details and that they are relevant to the proceedings. As to the debarring orders, Mr N alleges that Ms M's counsel and lawyers have breached both their duties to the Court and the Rules of Conduct and Client Care[6] in the respects outlined in his memorandum and affidavit.

[12] Counsel for Ms M in reply submits that the application is an abuse of process as it mirrors an application made in the Court of Appeal. Independent counsel was instructed by Ms M and the application was heard on 24 November 2014. Mr N should not be permitted to bring the same application in this Court, before his equivalent application in the Court of Appeal has been determined. The proper course is for Mr N to await the outcome of the application in the Court of Appeal, and seek leave to appeal to this Court in the event that he is dissatisfied with the outcome.

[13] Even ignoring that issue, it is submitted on behalf of Ms M that the application in relation to litigation funding is premature. The appropriate time for an application would be once leave to appeal to this Court is granted, as only then could it be considered in the context of the issues on which leave is granted.

[14] In any event, counsel for Ms M submits that there is no substantive basis for the orders sought. As to the disclosure of any funding arrangements, it is submitted

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6 Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.

that it is commercially implausible to suggest that Ms M is supported by third party professional litigation funders. Apart from an application for a restraining order, Ms M has been a defendant/respondent in all proceedings and, except for costs, has pursued no monetary claim against Mr N. Secondly, even if Jackson Russell had funded Ms M, this would be as a co-respondent, and therefore properly in protection of its own interests. In terms of conditional fee arrangements (if any), these are specifically permitted by the Lawyers and Conveyancers Act 2006. Thus it is submitted that any litigation funding arrangements are irrelevant to the application for leave to appeal, there is no duty to disclose and disclosure is not in the interests of justice.

[15] In his further reply submissions, Mr N submits that, if the Court of Appeal makes a debarment order, that will have no effect on the Supreme Court and thus a separate application is required. He also says that the disclosure of Ms M's litigation funding arrangements is required for him to be able to make adequate submissions on costs in this Court on this application and the leave application.

Discussion

[16] We accept Ms M's submission that it was inappropriate to make this interlocutory application while the Court of Appeal judgment on the disclosure and debarment issue was reserved.[7]

[17] If the application relating to debarment had succeeded, it would of course have been inappropriate for counsel to continue acting in this Court and so there was no necessity for a separate application. The Court of Appeal has, however, dismissed that application, describing it as "hopeless".[8]

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[7] The judgment dealing with these interlocutory applications has now been issued: *NR v MR* [2014] NZCA 623 (French, Miller and Cooper JJ). As to the issue of debarring Ms M's solicitors and counsel, the application was dismissed. The Court of Appeal also dismissed the application for disclosure of any litigation funding arrangements. French and Cooper JJ issued a separate judgment that, while accepting Miller J's reasoning as to the interlocutory applications, differed on the issue of increased costs. French and Cooper JJ awarded a 50 per cent uplift in costs on the basis that the applications were based on issues previously advanced and dismissed as meritless in the High Court: see at [48]–[54].

[8] At [36].

[18] We also accept the submission that the application as to the disclosure of any litigation funding arrangements is premature. The application may be renewed if any of Mr N's leave applications are allowed (and before costs on those applications are decided).[9]

[19] We accept that litigation funding arrangements may in some circumstances have relevance to costs orders. However, they can have no relevance in this case, at least insofar as any costs orders on this application and the leave applications are concerned in the event that Ms M succeeds in her opposition to those applications.

[20] Ms M is a respondent in all applications in this Court and almost all in the Court of Appeal.[10] In the first instance proceedings in SC 77/2014 and SC 125/2014, she was a defendant. While the application in SC 120/2014 relates to proceedings instituted by her in the District Court, she has pursued no monetary claim, other than for costs, against Mr N in those or any other proceedings.

[21] There may be exceptional circumstances where litigation funding arrangements could be relevant with regard to standard costs orders in favour of a defendant or respondent who succeeds in resisting an application, but this is not such a case.[11]

Result

[22] Accordingly, the interlocutory application of 1 December 2014 is dismissed.

[23] Costs of $2,500 are to be paid by the applicant to Ms M (as first respondent in SC 77/2014 and SC 125/2014 and second respondent in SC 120/2014).

Solicitors:
Wilson Harle, Auckland for the First Respondent in SC 77/2014 and SC 125/2014 and Second Respondent in SC 120/2014.

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9 We are not to be taken as expressing any view or whether the applications would or would not succeed at that point.

10 In the Court of Appeal, Ms M has sought leave to appeal against the High Court judgment on the basis it reduced the duration of the restraining order and the quantum of the District Court costs awards: see *NR v District Court at Auckland*, above n 2.

11 This is not a case of public interest litigation where other issues may arise: see *Environmental Defence Society Inc v The New Zealand King Salmon Company Ltd* [2014] NZSC 167.