

IN THE SUPREME COURT OF NEW ZEALAND

SC 138/2013  
[2014] NZSC 35

BETWEEN                      VINCENT ROSS SIEMER  
   Applicant

AND                              MICHAEL RICHARD HERON  
   First Respondent

   MICHAEL STIASSNY  
   Second Respondent

   RUSSELL McVEAGH  
   Third Respondent

   SIONE TANAKI  
   Fourth Respondent

   PIO SAMI  
   Fifth Respondent

Court:                      William Young, Glazebrook and Arnold JJ

Counsel:                      Applicant in person  
   M Heard and D Nilsson for Second Respondent

Judgment:                      4 April 2014

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**JUDGMENT OF THE COURT**

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- A    The application for leave to appeal is dismissed.**
- B    The applicant is to pay costs of \$2,500 to the second respondent.**
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**REASONS**

## **Introduction**

[1] Mr Siemer seeks leave to appeal against a judgment dated 29 November 2013 in which the Court of Appeal dismissed his appeal against the decision of Associate Judge Sargisson for want of jurisdiction.<sup>1</sup>

[2] In the judgment under appeal to the Court of Appeal, the Associate Judge had struck out a statement of claim filed by Mr Siemer as an abuse of process.<sup>2</sup> At the beginning of her judgment, the Associate Judge recorded:

[4] At the commencement of the hearing, Mr Siemer raised as a preliminary issue that the defendants' strike out applications should be heard in open court and not in chambers to allow members of the public to attend should they so choose.

[5] After discussion with Mr Siemer and counsel I directed that the hearing proceed in open court for chambers to accommodate, as far as I am able within the limits of an Associate Judge's jurisdiction, Mr Siemer's request that the hearing be in open court. The direction was made with the consent of all of the defendants' counsel.

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[7] It is also appropriate to record that I am exercising the court's chambers' jurisdiction in dealing with the present applications. The parties' rights of review are not therefore intended to be affected.

[3] Mr Siemer now seeks leave to appeal to this Court. He has two main grounds: first, that the Court of Appeal erred in dismissing the appeal for want of jurisdiction and secondly, that two of the three Court of Appeal judges had a conflict of interest and apparent bias.

## **First Ground of Appeal**

[4] As noted by the Court of Appeal, s 26P of the Judicature Act 1908 provides the mechanism and the path for reviews of, or appeals against, decisions of Associate Judges of the High Court. In accordance with s 26P(1) there is a right to apply to the High Court to review a decision by an Associate Judge made in chambers. It is only

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<sup>1</sup> *Siemer v Heron* [2013] NZCA 599 (Wild, French and Miller JJ).

<sup>2</sup> *Siemer v Heron* [2013] NZHC 1604.

where there is a decision other than in chambers that there is a right to appeal to the Court of Appeal under s 26P(2).

[5] An Associate Judge does not have jurisdiction to hear an interlocutory application in open court.<sup>3</sup> Under r 1.3 of the High Court Rules an interlocutory application includes “an order striking out the whole or part of a pleading”. Contrary to Mr Siemer’s submissions, s 26I does not grant Associate Judges the power to strike out such applications in open court.<sup>4</sup> The same applies to s 26IA.<sup>5</sup> Further, as noted by the Court of Appeal, s 26J and the associated s 26P rights are not altered by the fact that the Associate Judge allowed public access to the courtroom.<sup>6</sup>

[6] In any event, there is no factual basis to support the contention that the strike out application was heard in open court. To the contrary, it was held in “open court for chambers”. As the Court of Appeal rightly points out, that term, although seldom heard nowadays, is a “precise description of a court exercising its chambers jurisdiction, but doing so in a courtroom which the court has directed be open to members of the public.”<sup>7</sup>

[7] Given that the hearing was in chambers, there is no right to appeal to the Court of Appeal under s 26P(2). Therefore, the Court of Appeal was correct in holding that it did not have jurisdiction to hear the appeal. If he wishes to challenge the decision, Mr Siemer must apply to the High Court under s 26P(1) for a review of the Associate Judge’s decision.<sup>8</sup>

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<sup>3</sup> *Mu v Body Corporate 31241* [2012] NZHC 22 at [4], referred to with approval by the Court of Appeal, *Siemer v Heron*, above n 1, at [13].

<sup>4</sup> Section 26J grants Associate Judges in chambers jurisdiction and s 26I(1) applies only in very limited certain circumstances. The hearing of a strike out application is not one of the circumstances in which an Associate Judge is granted the full powers of the Court under s 26I(1).

<sup>5</sup> *Young v Police* [2007] NZAR 92 at [12].

<sup>6</sup> At [14].

<sup>7</sup> *Siemer v Heron*, above n 1, at [15].

<sup>8</sup> Mr Siemer has in fact already applied for a review but, as noted by the Court of Appeal, above n 1, at fn 3, that application stands adjourned awaiting the result of this application.

## **Second Ground of Appeal**

[8] With regard to the allegations of apparent bias, there is no point of general or public importance as the law in this area has been settled by this Court in *Saxmere*.<sup>9</sup> In any event the grounds put forward by Mr Siemer for alleging a conflict of interest and apparent bias (decisions unfavourable to him in previous proceedings) clearly do not meet the test set out in *Saxmere*.

## **Result**

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

[10] The applicant is to pay costs of \$2,500 to the second respondent.

Solicitors:  
LeeSalmonLong, Auckland for Second Respondent

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<sup>9</sup> *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd* [2009] NZSC 72, [2010] 1 NZLR 35.