

IN THE SUPREME COURT OF NEW ZEALAND

SC 1/2014
[2014] NZSC 53

BETWEEN PETER GERARD STOCKMAN
Applicant

AND NEW ZEALAND ASSOCIATION OF
COUNSELLORS INCORPORATED
Respondent

Court: Elias CJ and William Young J

Counsel: Applicant in Person
E J Horner for Respondent

Judgment: 6 May 2014

JUDGMENT OF THE COURT

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

[1] The applicant, Mr Stockman, seeks leave to appeal against a judgment of French J in the Court of Appeal¹ declining to dispense with security for costs (on review of a decision of the Registrar) for an appeal to the Court of Appeal. The appeal is brought in the Court of Appeal against a determination of the High Court that Mr Stockman was not entitled to costs on a successful application for judicial review because he was self-represented. Mr Stockman also seeks leave to appeal from an order made in the Court of Appeal that his appeal concerning costs be heard together with an appeal by the respondent against the substantive determination in the High Court in the judicial review proceedings,² by which the respondent

¹ *Stockman v New Zealand Association of Counsellors Inc* [2013] NZCA 647.

² *Stockman v New Zealand Association of Counsellors Inc* [2013] NZHC 2267, [2013] NZAR 1233.

Association's decision to exclude evidence filed in support of Mr Stockman's complaint to it was set aside.

[2] The applicant acknowledges that he is in a position to pay security for costs of \$5,880 as ordered but says that the Registrar of the Court of Appeal and French J on review ought to have dispensed with such security under r 35(6)(c) of the Court of Appeal (Civil) Rules 2005 on the basis that the appeal raises a matter of public importance. The matter of public importance raised is that authority that denies a successful litigant costs (while permitting disbursements) unless the circumstances are "exceptional" discriminates against the poor and underprivileged. Mr Stockman advised French J that he did not intend to obtain judgment for costs against the respondent, so that there was no need for the respondent to appear and incur costs and therefore no need for security for such costs to be given. He said that he was bringing the appeal out of a sense of social justice and not for his own benefit. He indicated to French J that he would be prepared to provide security for any "exceptional" costs that might be incurred by the Court, in apparent reference to the possible need to instruct an amicus to appear to take the contrary view if the appeal was to go ahead in the absence of the respondent.

[3] The Registrar had declined to dispense with security on the basis that there was nothing in the appeal of public importance or significance and that the circumstances were not exceptional. French J, in reviewing that decision, held rather that if the respondent did not seek to obtain judgment against the respondent, the appeal should be struck out as moot. If however he did seek judgment (so that the respondent was entitled to security for its costs), then there was no basis to depart from the normal rule as to payment of security in circumstances where the appellant "is not impecunious and the merits of his appeal are highly debatable." The Judge accordingly dismissed the application for review of the Registrar's decision and ordered that the applicant pay security for costs in the sum of \$5,880 within 20 working days.

[4] The question whether a successful litigant in person is entitled to costs in circumstances not properly characterised as "exceptional" may be one of some public importance it would be appropriate for this Court to consider in an appropriate

case. Public importance is however one relevant factor only in considering whether security for costs on such an appeal ought to be waived. There is no suggestion here that the appellant's right of appeal will be denied if security is not dispensed with. In those circumstances no question of general or public importance relating to security for costs is raised by the proposed appeal and there is no question of miscarriage of justice. The proposed appeal from the refusal to dispense with security for costs does not therefore qualify for leave under s 13 of the Supreme Court Act 2003.

[5] The direction given by French J that the appeal by Mr Stockman be heard together with the respondent's appeal is a procedural direction that raises no point of general importance suitable for leave in this Court.

Solicitors:
Morrison Kent, Wellington for Respondent