

IN THE SUPREME COURT OF NEW ZEALAND

SC 1/2014
[2014] NZSC 57

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: 14 May 2014

JUDGMENT OF THE COURT

The application for recall of the judgment of 6 May 2014 is dismissed.

REASONS

[1] In a judgment of 6 May 2014,¹ the applicant was refused leave to appeal against a judgment of French J in the Court of Appeal declining to dispense with security for costs for an appeal to the Court of Appeal. The application for recall is made on the basis that recall is required to avoid an injustice (the third category discussed in *Horowhenua County v Nash (No 2)*).²

[2] Mr Stockman maintains that the central question for his application for leave to appeal to this Court was whether he was entitled to appeal to the Court for a prospective overruling of the case law that self-represented litigants are not entitled to costs. He says that this Court was in error in regarding his substantive appeal to the Court of Appeal as a “conventional appeal” seeking actual costs. He argues that

¹ *Stockman v New Zealand Association of Counsellors Inc* [2014] NZSC 53.

² *Horowhenua County v Nash (No 2)* [1968] NZLR 632 (SC).

the Court's leave decision on security for costs did not engage with the prospectivity of the ruling sought by him on the substantive appeal to the Court of Appeal which, he suggests, made security for costs unnecessary since there was no need for the respondent to appear on the appeal.

[3] Whether a prospective change to settled authority is an available response for the Court of Appeal on the substantive appeal is not a question that could affect the determination that there was no justification under s 13 of the Supreme Court Act 2003 for granting leave to appeal against the refusal to dispense with security for costs. The order for security for costs did not prevent Mr Stockman proceeding with the appeal to the Court of Appeal. He could in that appeal, if he wishes to do so, seek prospective overruling (a course the Court of Appeal might perhaps treat as indicating that the appeal against refusal of costs is moot). But his intention to seek prospective change to authorities under which he was refused costs did not itself remove the power of the Court of Appeal to order costs against him if it rejected his argument. His appeal, though sought to be characterised by him as one that was not a "conventional appeal," was an appeal against refusal of costs payable by the respondent and there is no impediment to the requirement of security for costs.

[4] Nothing put forward by the applicant raised an issue of public or general importance in the appeal against the judgment of French J. That was the conclusion which led this Court to decline leave to appeal. No proper basis for recall of the judgment of 6 May 2014 declining leave is made out. There is no appearance of miscarriage of justice for the reasons given in it.

Solicitors:
Morrison Kent, Wellington for Respondent