

IN THE SUPREME COURT OF NEW ZEALAND

[2014] NZSC 70

BETWEEN

VINCENT ROSS SIEMER
Applicant

AND

MICHAEL PETER STIASSNY & ANOR
Respondent

Court: Elias CJ, McGrath, William Young, Glazebrook and Arnold JJ

Counsel: Applicant in person

Judgment: 13 June 2014

JUDGMENT OF THE COURT

The application for review is dismissed.

REASONS

[1] In September 2013, Mr Siemer presented for filing two applications for leave to appeal to this Court against two decisions of the Registrar of the Court of Appeal.

[2] In the case of both Mr Siemer's applications for leave, the Registrar of the Court of Appeal had refused to accept applications for a direct ruling by a judge of that Court (under s 61A(1) of the Judicature Act 1908) to dispense with security for costs.¹ The Registrar's refusal was on the basis that there is no provision for a party to bypass the procedure in the Court of Appeal (Civil) Rules 2005 relating to security for costs.

¹ The decisions of the Registrar of the Court of Appeal were related to applications in the appeals in *Siemer v Stiassny* CA 429/2013; and *Siemer v Judicial Conduct Commissioner* CA 452/2013.

[3] Mr Siemer's applications for leave to appeal to this Court against the decisions of the Registrar of the Court of Appeal were rejected by the Registrar of this Court for want of jurisdiction on 6 September 2013. The Registrar indicated that his view had been endorsed by Arnold J.

[4] The application for review of the Supreme Court Registrar's decision was dismissed by Glazebrook J under s 28(2) of the Supreme Court Act 2003.²

[5] Mr Siemer now makes a further application, pursuant to 28(3) of the Supreme Court Act, for a review of Glazebrook J's decision with regard to one of Mr Siemer's applications: *Siemer v Stiassny*.³

Our assessment

[6] The principles relating to the issue of dispensing with security for costs in the Court of Appeal have been set out in the judgment of this Court in *Reekie v Attorney-General*.⁴ As that judgment explains, the function of dispensing with security for costs has been, under the Court of Appeal Rules, given to the Registrar of the Court of Appeal.⁵ Section 61A(3) of the Judicature Act confers on single judges of the Court of Appeal the power to review dispensation decisions.⁶

[7] Given the above, the Court of Appeal is entitled to require the procedure in the Rules to be followed by any applicant for dispensation. The Registrar of that Court is entitled to require that any application for dispensation be made to her, in accordance with the Rules. This applies whether or not a single judge of the Court of Appeal has jurisdiction under s 61A(1) of the Judicature Act to dispense with security for costs.⁷

² *Siemer v Stiassny* [2013] NZSC 110.

³ Glazebrook and Arnold JJ are members of the panel to decide this application in terms of *Howard v Accident Compensation Corporation* [2014] NZSC 31 at [3]. As in *Howard* we are assuming, without deciding, that s 28(3) of the Supreme Court Act applies in this case.

⁴ *Reekie v Attorney-General* [2014] NZSC 63.

⁵ At [17](a). The relevant rule is r 35(7).

⁶ At [17](b).

⁷ See *Siemer v Official Assignee* [2014] NZSC 42. That decision at [5] notes that a judge of the Court of Appeal is most unlikely to assume or exercise jurisdiction to dispense with security under s 61A of the Judicature Act when the Rules specifically provide that applications for dispensation are to be dealt with by the Registrar.

[8] This means that the Registrar of the Court of Appeal was entitled to refuse Mr Siemer's applications and require the process in the Court of Appeal Rules to be followed.

[9] At the time Mr Siemer applied for leave to appeal to this Court, the correct process with regard to applications for dispensing with security for costs had not been completed in the Court of Appeal. If an application by Mr Siemer to the Registrar of the Court of Appeal to dispense with security had been made and had been unsuccessful, there would then have been a right to seek review by a single judge of the Court of Appeal under s 61A(3) of the Judicature Act.⁸

[10] As noted in *Harrison v Auckland District Health Board*, Parliament cannot have envisaged that this Court's jurisdiction under s 7 of the Supreme Court Act would extend to decisions by the Court of Appeal Registrar which are reviewable by, and subsumed in the decision of, a Court of Appeal Judge.⁹

[11] This means that the applications for leave to appeal against the decisions of the Registrar of the Court of Appeal were rightly rejected by the Registrar of this Court.

Result

[12] Mr Siemer's application for review of Glazebrook J's decision is dismissed.

[13] A copy of this judgment is to be sent to all counsel for the respondents in CA 429/2013 and CA 452/2013.

⁸ *Reekie v Attorney-General*, above n 4, at [23].

⁹ *Harrison v Auckland District Health Board* [2013] NZSC 98 at [6].