

IN THE SUPREME COURT OF NEW ZEALAND

SC 52/2014  
[2014] NZSC 90

BETWEEN MALCOLM EDWARD RABSON  
Applicant  
AND WAYNE SEYMOUR CHAPMAN  
Respondent

Court: William Young, Glazebrook and Arnold JJ  
Counsel: Applicant in person  
S A Barker for the Respondent  
Judgment: 14 July 2014

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**JUDGMENT OF THE COURT**

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**The application for review is declined.**

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**REASONS**

[1] On 13 May 2014 Mr Rabson applied for leave to appeal against a decision of the Court of Appeal striking out his appeal against a decision of Kos J.<sup>1</sup>

[2] One of Mr Rabson's arguments is that an order striking out the appeal could not be made because his appeal had already been deemed abandoned under r 43 of the Court of Appeal (Civil) Rules 2005. He had not applied for a hearing date or filed the Case on Appeal within the time frame set out in r 43(1).<sup>2</sup> In addition, the three month period, under r 43(3), for applying for an extension of time had passed. In Mr Rabson's submission there was therefore no appeal to strike out.

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<sup>1</sup> *Rabson v Chapman* [2014] NZCA 158. Mr Rabson's submissions in support of his application for leave were received on 11 June 2014. The respondent's submissions were received on 30 June 2014.

<sup>2</sup> He was unable to do so because he had not paid security for costs: r 37(2).

[3] On 8 July 2014 Glazebrook J issued a minute indicating that the Court of Appeal, in striking out his appeal, may have overlooked the fact that his appeal had already been deemed abandoned. In the circumstances, the minute suggested that the better course would be for Mr Rabson to apply for a recall of the Court of Appeal's judgment. In the meantime, Glazebrook J adjourned Mr Rabson's application for leave to appeal to this Court.

[4] Mr Rabson applies for a review of Glazebrook J's adjournment decision under s 28(3) of the Supreme Court Act.<sup>3</sup>

[5] The course suggested to Mr Rabson in Glazebrook J's minute was the sensible course and likely to be the most expeditious.

[6] The application for review is declined.

Solicitors:  
Buddle Findlay, Wellington for the Respondent

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<sup>3</sup> We are assuming that s 28(3) applies to an application for leave to appeal. The Court conducting the review is the Court which was set down to decide the leave application. As we note in *Siemer v Stiassny* [2014] NZSC 80 at [4] and [6], section 28(3) requires the participation of Glazebrook J in the Court deciding the review.