IN THE SUPREME COURT OF NEW ZEALAND

SC 105/2015
[2015] NZSC 194

BETWEEN	RICHARD JOHN CRESER Applicant
AND	JANINE MICHELLE CRESER AND MARION NGAIRE CRESER (AS TRUSTEES AND EXECUTORS OF THE ESTATE OF JESSE JOY CRESER) Respondents

Court: William Young, Glazebrook and Arnold JJ

Counsel: Applicant in person
J M Creser in person

Judgment: 18 December 2015

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] On 8 October 2003 the Court of Appeal dismissed an application by the current applicant for leave to appeal. Brief reasons ("the reasons for judgment") were given.[1] They identify the respondents as Janine Creser and Marion Creser as executors of the estate of Jesse Creser. An order for costs in the sum of $2,000 was made. Amongst the material which the applicant has supplied to this Court is a certificate to the Registrar of the High Court issued by the then Registrar of the Court of Appeal which records the judgment ("the certificate"). On the face of this certificate, the order for costs was in favour of Janine and Marion Creser in their capacities as executors which is consistent with the reasons for judgment delivered on 8 October 2003. There is also a sealed judgment of the Court of Appeal (dated

[1] *Creser v Creser* CA193/03, 8 October 2003.

14 October 2003). The parties listed in the intituling to this document are the present applicant as "appellant" and Janine Creser as "respondent". The order for costs is recorded as being in favour of the respondent, that is Janine Creser. We will refer to this document as "the sealed judgment".

[2] Shortly afterwards, Janine Creser issued a bankruptcy notice against the applicant which relied on, inter alia, the $2,000 order for costs. The applicant maintains that bankruptcy notice did not have attached to it, as required, a certified copy of the judgment. We do not know whether this is so. The applicant was subsequently bankrupted for non-compliance with that notice. Associated with this, there has been a good deal of litigation.

[3] In this year, the applicant attempted to file in the Court of Appeal an application that the Registrar amend the judgment of 8 October 2003 along with what was described on its face as a "Notice of Fraud Upon the Court". The relief sought in the latter document was primarily by way of challenge to (a) the bankruptcy notice and later proceedings and (b) the conduct of the respondent's solicitors in relation to the estate of Jesse Creser. These documents were rejected by the Registrar and an application to review that decision was dismissed by Harrison J.[2]

[4] The applicant now seeks leave to appeal against the decision of Harrison J.

[5] The rejection of documents is not specifically provided for in the Court of Appeal (Civil) Rules 2005. The Registrar, however, is entitled to reject documents if they seek to invoke a jurisdiction which the Court does not have. The decision of a Registrar to reject documents is reviewable by a Judge not pursuant to any power in the Rules but simply as part of the inherent jurisdiction of the Judges of the Court of Appeal. All of this is explained in *Slavich v R*,[3] by reference to the position of the Supreme Court, an explanation which applies equally to the Court of Appeal.

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2 *Creser v Creser* [2015] NZCA 416.
3 *Slavich v R* [2015] NZSC 195.

[6] No issue arises in relation to the "Notice of Fraud Upon the Court". It sought to invoke an originating jurisdiction which the Court of Appeal does not have. There was no reason for the Registrar to accept it. Somewhat more difficult, however, is the position as to the amendment of the judgment.

[7] Rule 51 of the Court of Appeal (Civil) Rules provides for the sealing of judgments. The "form" of the sealed judgment is to be "approved" by the Registrar.[4] Rule 8 provides for the correction of a judgment or order containing "a clerical mistake or an error arising from an accidental slip or omission"[5] with such correction to be made by the Registrar or the Court.[6] While Mr Creser maintains that the sealed judgment was a result of a fraud committed on the Court by the respondent's solicitor, the error which Mr Creser necessarily also attributes to the Registrar is within the scope of r 8. The Registrar thus had jurisdiction under r 8 to address his contention that the sealed judgment was inaccurate and, if appropriate, to correct the judgment. In any event we do not see r 8 as necessarily exhaustive of the jurisdiction of the Court of Appeal in relation to sealed orders.

[8] The application in issue was addressed to the sealed judgment. This is apparent from the way in which it was styled ("Interlocutory Application on Notice to Amend 14 October 2003 Judgment for Costs") and in some of its contents. Indeed, r 8 was invoked. It does, however, cover much of same ground as the "Notice of Fraud" document and, as well, contains an application for relief which largely mirrors that in the other document. It is therefore not entirely surprising that the Registrar rejected it.

[9] In the judgment under appeal Harrison J addressed this aspect of the case by saying:[7]

> … I record what is obvious: the Registrar has no power to amend or otherwise interfere with the formal decision of this Court made on 8 October 2003.

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4 Court of Appeal (Civil) Rules 2005, r 51(1).
5 Rule 8(1)(a).
6 Rule 8(2).
7 *Creser v Creser*, above n 2, at [3].

From this, it appears that the Judge thought that Mr Creser was challenging the orders made by the Court on 8 October 2003 and did not recognise that his actual challenge was to the form in which those orders were recorded in the sealed judgment dated 14 October 2003.

[10] All of this has now been largely over-taken by events as the Court of Appeal has heard a further application by the applicant seeking correction of the sealed order, an application which has now been dismissed.[8]

[11] We see no reason to grant leave to appeal. The jurisdictional issues involved have been determined by the judgment of this Court in *Slavich v R*.[9] There is no point of general or public importance involved. As well the miscarriage of justice ground is not satisfied. This is because Mr Creser's challenge to the sealed judgment has now been fully argued and determined by the Court of Appeal.

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8 *Creser v Creser* [2015] NZCA 579.
9 *Slavich v R*, above n 3.