IN THE SUPREME COURT OF NEW ZEALAND

SC 8/2015
[2015] NZSC 41

BETWEEN	VINCENT ROSS SIEMER AND JANE DINSDALE SIEMER Applicants
AND	KEVIN STANLEY BROWN First Respondent
	M PALMA Second Respondent
	A LOVELOCK Third Respondent
	JANE THEW Fourth Respondent
	REECE SIRL Fifth Respondent
	JULIE FOSTER Sixth Respondent
	JOHN MILLER Seventh Respondent

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Court:	Glazebrook, Arnold and O'Regan JJ
Counsel:	V R Siemer in person A M Powell and E J Devine for First to Fourteenth Respondents V E Casey for Fifteenth Respondent
Judgment:	20 April 2015

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

DAVID THOMAS
Eighth Respondent

BRETT OTTO
Ninth Respondent

TREVOR FRANKLIN
Tenth Respondent

JOHN TAYLOR
Eleventh Respondent

JUERGEN ARNDT
Twelfth Respondent

KERWIN STEWART
Thirteenth Respondent

THE ATTORNEY-GENERAL OF NEW ZEALAND
Fourteenth Respondent

B J REID
Fifteenth Respondent

REASONS

[1] The applicants seek leave to appeal directly to this Court against a decision of Toogood J in the High Court in which Toogood J dismissed the applicants' claims against the respondents relating to a search of the applicants' home.[1] The subject of the proposed appeal is the refusal by Toogood J to recuse himself from the proceeding.

[2] Under s 14 of the Supreme Court Act 2003, this Court must not give leave to appeal directly to it against a decision made in a proceeding in a court other than the Court of Appeal unless (in addition to being satisfied that it is necessary in the interests of justice for the Court to hear and determine the proposed appeal) it is satisfied that there are exceptional circumstances that justify taking the proposed appeal directly to the Supreme Court.

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1 *Siemer v Brown* [2014] NZHC 3175.

[3] Toogood J applied the settled law relating to recusal as set out in this Court's decision in *Saxmere Company Ltd v Wool Disestablishment Company Limited*.[2] The proposed appeal relates to the way the Judge applied the *Saxmere* test to the facts of the case. There is no challenge to *Saxmere* itself and no basis for such a challenge. So the proposed appeal seeks the correction of what the applicants say was an error in the application of *Saxmere* to the facts of the case. No matter of general or public importance therefore arises.

[4] The applicants say leave should be given for a direct appeal to this Court because if they appeal to the Court of Appeal, they will be required to pay security for costs and this would, in practice, prevent access to that Court. They say the power to dispense with the requirement to pay security for costs will not be exercised in their favour, as it has not been exercised in any case in recent times.

[5] The applicants have, in fact, appealed (as of right) to the Court of Appeal in the present case. They applied for dispensation from the requirement to pay security for costs and their application was declined by the Registrar. The Registrar's decision was the subject of an unsuccessful review to a Judge of the Court of Appeal.[3] The review application failed because Wild J determined that the proposed appeal to the Court of Appeal was not an appeal which a solvent appellant would wish to pursue.[4] That was an application of the criteria set out in this Court's decision in *Reekie v Attorney-General*.[5] The applicants have sought leave to appeal to this Court against that decision.

[6] We do not consider the requirement to pay security for costs is a barrier to access to the Court of Appeal. If there were a proper basis for dispensation from that requirement, applying the *Reekie* test, dispensation would be allowed. If not, there is no proper basis for subjecting the respondents to the costs of conducting an appeal in either the Court of Appeal or this Court without the protection provided to them by the security of costs regimes in the Court of Appeal (Civil) Rules 2005 and the

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2 *Saxmere Company Ltd v Wool Disestablishment Company Limited* [2009] NZSC 72, [2010] 1 NZLR 35.
3 *Siemer v Brown* [2015] NZCA 69 (Wild J).
4 At [11].
5 *Reekie v Attorney-General* [2014] NZSC 63, [2014] 1 NZLR 737.

Supreme Court Rules 2004. If dispensation was wrongly refused in the present case, that can be addressed when the applicants' application for leave to appeal against the decision of Wild J upholding the refusal to grant dispensation comes before this Court for decision. It is not appropriate to allow a leapfrog appeal to this Court to circumvent the application of the rules applying to appeals to the Court of Appeal, in particular, the requirement to pay security for costs.[6] The exceptional circumstances test set out in s 14 of the Supreme Court Act is not met.

[7] In those circumstances the application for leave to appeal is dismissed.

Solicitors:
Crown Law Office, Wellington for Respondents

[6] If leave to appeal to this Court were granted, security for costs would be required in any event under either r 31 of the Supreme Court Rules 2004 or as a condition of leave under r 26(2) of those Rules.