

IN THE SUPREME COURT OF NEW ZEALAND

SC 108/2017
[2017] NZSC 186

BETWEEN ANTHONY HARRY DE VRIES
Applicant

AND BARTERCARD EXCHANGE LIMITED
Respondent

Court: Glazebrook, O'Regan and Ellen France JJ

Counsel: Applicant in person
M W Anderson for Respondent

Judgment: 11 December 2017

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B The applicant must pay costs of \$2,500 to the respondent.**
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REASONS

[1] The applicant appealed to the Court of Appeal against the refusal to set aside a bankruptcy notice by Associate Judge Smith in the High Court.¹ He applied for a dispensation with security for costs in relation to the appeal. The Deputy Registrar of the Court of Appeal declined the application.² The applicant then sought a review of the Deputy Registrar's decision. That application was dismissed by Miller J.³ As a result security for costs remained fixed at \$6,600 to be paid by 26 May 2017.⁴

¹ *de Vries v Bartercard Exchange Ltd* [2016] NZHC 2874.

² The Deputy Registrar also declined to waive the filing fee on the appeal.

³ *de Vries v Bartercard Exchange Ltd* [2017] NZCA 142.

⁴ At [13].

[2] The applicant subsequently sought a review of Miller J's decision by the Court of Appeal. Asher J issued a minute on 6 September 2017 in relation to that application in which the Judge said there was no jurisdiction for the Court to revisit Miller J's decision.⁵ Asher J noted that the only avenue to challenge the decision of Miller J was by way of application for leave to appeal to this Court. The Registry was accordingly directed to refuse to accept the application for review for want of jurisdiction.

[3] The applicant's appeal to the Court of Appeal was subsequently deemed to be abandoned in accordance with r 43 of the Court of Appeal (Civil) Rules 2005, neither the filing fee nor security for costs having been paid.⁶

[4] The applicant seeks leave to appeal from the decision of Asher J on a number of grounds. These grounds include what the applicant describes as the failure of Asher J to deliver his decision in a judgment and what are said to be conflicting messages from the Court of Appeal about his case with resultant prejudice to him. The applicant also seeks to challenge the correctness of the decision as to jurisdiction.

[5] None of the proposed grounds meet the criteria for leave to appeal. The proposed appeal would turn on the particular facts of the applicant's case. No question of any general or public importance arises. Nor is there any risk of a miscarriage. In determining there was no jurisdiction, Asher J applied *Reekie v Attorney-General*.⁷

[6] As the respondent submits, the thrust of the proposed appeal would seek to revisit whether the applicant should pay security for costs (and the filing fee). On that aspect, Miller J applied the principles set out in *Reekie*. No point of public importance arises and nor is there any appearance of miscarriage.

[7] The application for leave to appeal is therefore dismissed.

[8] The applicant must pay costs of \$2,500 to the respondent.

⁵ Citing *Reekie v Attorney-General* [2014] NZSC 63, [2014] 1 NZLR 737 at [26].

⁶ Rule 43 deals with abandonment for failure to apply for the allocation of a hearing date and to file the case on appeal within three months after the appeal is brought.

⁷ *Reekie*, above n 5. See also the Senior Courts Act 2016, s 49(4) and (6) and s 151(4).

Solicitors:
Thomas Dewar Sziranyi Letts, Lower Hutt for Respondent