

**IN THE SUPREME COURT OF NEW ZEALAND**

**I TE KŌTI MANA NUI**

**SC 55/2020  
[2020] NZSC 114**

BETWEEN                      JEREMY JAMES MCGUIRE  
   Applicant  
  
AND                              NEW ZEALAND LAW SOCIETY  
   Respondent

Court:                      Glazebrook, Ellen France and Williams JJ  
  
Counsel:                      Applicant in person  
   P N Collins for Respondent  
  
Judgment:                      20 October 2020

---

**JUDGMENT OF THE COURT**

---

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

**REASONS**

**Introduction**

[1] Mr McGuire seeks leave to appeal from a judgment of Courtney J in the Court of Appeal declining a review of the Deputy Registrar's decision.<sup>1</sup> The Deputy Registrar declined to deal with Mr McGuire's application to dispense with security for costs on the basis there was no jurisdiction to do so.

---

<sup>1</sup> *McGuire v New Zealand Law Society* [2020] NZCA 271 [CA judgment].

## Background

[2] The present application has its genesis in a decision of the Central Standards Committee 3 of the New Zealand Law Society to censure Mr McGuire for non-payment of a barrister's invoice in relation to an opinion provided by the barrister. Mr McGuire's application for judicial review against that decision was dismissed by Clark J in the High Court.<sup>2</sup> Essentially, the High Court considered the case turned on whether, in accordance with r 10.7 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, Mr McGuire and the barrister concerned had reached an agreement contrary to the usual position under which a lawyer who instructs another lawyer must pay the other lawyer's account promptly and in full.<sup>3</sup> The Judge found there was no agreement to the contrary and Mr McGuire had unequivocally told the barrister that the barrister would be paid promptly and in full on provision of the opinion.

[3] Mr McGuire filed a notice of appeal to the Court of Appeal. This was filed a day out of time but time for filing was extended to 27 November 2019. Security for costs was fixed at \$7,060. Under r 35(2) and (3) of the Court of Appeal (Civil) Rules 2005, security for costs was required to be paid within 20 working days after the notice of appeal was filed. By consent, the deadline for payment of security for costs was extended by two months. Mr McGuire did not pay but filed an application for waiver of fees along with a letter. These documents made it clear Mr McGuire sought to be relieved of paying security for costs on the ground his appeal raised issues of public importance. He asked that the letter be treated as an application for dispensation.

[4] Under r 35(7)(a), the application for dispensation also had to be made within 20 working days after the date of filing the notice of appeal, as Mr McGuire was advised by the Registry. Mr McGuire's application was not filed within that time. He could have sought an extension of time to file the dispensation application under

---

<sup>2</sup> *McGuire v New Zealand Law Society* [2019] NZHC 2748.

<sup>3</sup> Mr McGuire's client paid the agreed fee for the barrister's opinion into Mr McGuire's trust account. The barrister was insistent on knowing the money was there and that he would be paid on the day the opinion was provided. Mr McGuire did not think the opinion was sufficient and refused to pay. The Standards Committee considered that if he was unhappy with the opinion he had to dispute it through the "proper professional channels".

r 35(10) as the Deputy Registrar asked him to do, but he refused. The Deputy Registrar accordingly took the view there was no jurisdiction to consider the application to dispense with security for costs. Nonetheless, the Deputy Registrar considered the question of dispensation on a hypothetical basis and said dispensation would not be granted.

[5] Courtney J upheld the Deputy Registrar’s decision as to jurisdiction and also considered dispensation would not be granted. The Judge took the view that the issues Mr McGuire sought to raise on his substantive appeal were “entirely hypothetical” given the High Court Judge’s factual finding that there had been an unequivocal confirmation Mr McGuire would comply with r 10.7.<sup>4</sup>

[6] The position is complicated by the fact Mr McGuire sought and was granted deferrals of the dates for payment of security, for filing the case on appeal and for seeking the allocation of a hearing date. Those deferred dates have now passed and the appeal has reached the point where it is deemed to be abandoned under r 43 of the Court of Appeal (Civil) Rules.

### **The proposed appeal**

[7] On the proposed appeal to this Court, Mr McGuire says the fact he has engaged r 35(6) (the ability of the registrar on application to increase, reduce or dispense with security or defer the date of payment) and the deferral of the dates of payment mean r 35(6) and (7) are sidelined and rr 37 and 43 are effectively deemed to have been consequentially amended. He says that there is a public interest in clarifying the application of these regularly used rules. He also seeks to argue this Court should reconsider the approach to security for costs in *Reekie v Attorney-General*.<sup>5</sup>

[8] The respondent says the fact the appeal is now deemed abandoned is the end of the matter but, in any event, the criteria for leave are not met.

---

<sup>4</sup> CA judgment, above n 1, at [22].

<sup>5</sup> *Reekie v Attorney-General* [2014] NZSC 63, [2014] 1 NZLR 737.

## **Our assessment**

[9] We are satisfied that the criteria for leave to appeal are not met.<sup>6</sup> The proposed appeal would turn on what is a fairly commonplace application of the Court of Appeal (Civil) Rules to a particular fact situation. Nor does anything raised by Mr McGuire suggest this Court should revisit its recent consideration of the approach to security for costs in *Reekie*. No question of general or public importance accordingly arises.<sup>7</sup> Further, while of the view there was no jurisdiction to do so, both the Judge and the Deputy Registrar addressed the merits of Mr McGuire's application for dispensation of security for costs. Mr McGuire does not point to anything in that analysis that would give rise to the appearance of a miscarriage of justice as that term is understood in civil appeals.<sup>8</sup>

## **Result**

[10] The application for leave to appeal is accordingly dismissed. We make an order that the applicant pay costs of \$2,500 to the respondent.

Solicitors:

G D Smith, New Zealand Law Society, Wellington for Respondent

---

<sup>6</sup> Senior Courts Act 2016, s 74(2).

<sup>7</sup> We also do not consider this is an appropriate case to consider broader questions (if any) about the relationship between this Court's decision in *Lai v Chamberlains* [2006] NZSC 70, [2007] 2 NZLR 7 and changes to the intervention rule in 2015; and fairness issues in relation to the current practice as to costs.

<sup>8</sup> *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369.