

IN THE SUPREME COURT OF NEW ZEALAND

SC 18/2016
[2016] NZSC 45

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 Respondent
Judgment: 29 April 2016

JUDGMENT OF THE COURT

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

[1] This is an application for leave to appeal against a decision of the Court of Appeal¹ refusing to recall its decision of 24 April 2014,² in which it struck out an appeal brought by the applicant, Mr Rabson, against a judgment of Kós J awarding the respondent, Mr Chapman, vacant possession of a property.³ Mr Rabson has applied to this Court on two earlier occasions for leave to appeal against the judgment of the Court of Appeal that was the subject of his unsuccessful recall application. Both of Mr Rabson's applications to this Court were dismissed.⁴

¹ *Rabson v Chapman* [2016] NZCA 45 (Stevens, Wild and French JJ).

² *Rabson v Chapman* [2014] NZCA 158.

³ *Chapman v Rabson* [2012] NZHC 3322, [2013] NZFLR 222.

⁴ See *Rabson v Chapman* [2014] NZSC 112 and *Rabson v Chapman* [2016] NZSC 14.

[2] In addressing Mr Rabson’s application for recall, the Court of Appeal noted that Mr Rabson’s main concern appeared to be that a costs order was made against him when the Court of Appeal struck out his appeal.⁵ The Court identified the two arguments raised by Mr Rabson as being that (1) he lacked standing to be involved in the appeal because he was an undischarged bankrupt and (2) by the time the Court came to consider the strike out application, the appeal was “long dead” and ought not to have been “revived”.⁶ For his part, Mr Chapman argued that it made no difference in practical terms whether the appeal was struck out or deemed to be abandoned by virtue of r 43 of the Court of Appeal (Civil) Rules 2005 (because an award of costs could be made in either event).⁷

[3] The Court of Appeal addressed both arguments. As to the first, the Court said that, in its earlier decision, it was well aware of Mr Rabson’s status, but exercised its discretion nevertheless to make a costs order against him. The Court considered that this was not the type of issue that provided a basis for recall.⁸ As to the second ground, the Court held that r 43 was not engaged in this case. This was because a case on appeal had been filed and a fixture allocated before the expiry of the relevant date. Mr Rabson did not wish to proceed with his appeal on the day allocated and sought an adjournment. This was granted, but on the basis that Mr Chapman was free to apply to strike out the appeal if Mr Rabson did not pay security for costs.⁹

[4] Mr Rabson raises these same points in his application for leave to appeal against the recall judgment. We do not consider that either point raises any issue of general or public importance, or that there is any appearance of a substantial miscarriage of justice. The finding that a litigant has no standing does not insulate him or her against an award of costs. Moreover, we agree that s 43 was not engaged in this case, for the reasons given by the Court of Appeal.

⁵ *Rabson v Chapman*, above n 1, at [1].

⁶ At [7].

⁷ At [8].

⁸ At [12]–[13].

⁹ At [14]–[16].

[5] Accordingly, the application for leave to appeal is dismissed. The applicant must pay the respondent costs of \$2,500.

Solicitors:
Buddle Findlay, Wellington for Respondent