IN THE SUPREME COURT OF NEW ZEALAND

SC 129/2015
[2016] NZSC 9

BETWEEN		MALCOLM EDWARD RABSON Applicant
AND		TRANSPARENCY INTERNATIONAL NEW ZEALAND INCORPORATED Respondent

Court: William Young, Arnold and O'Regan JJ

Counsel: Applicant in person
D R Kalderimis and K E Yesberg for Respondent

Judgment: 16 February 2016

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B The applicant is to pay the respondent costs of $2,500.

REASONS

[1] By a judgment delivered on 12 November 2015, the Court of Appeal struck out an appeal by the applicant and Mr Creser against Transparency International New Zealand Incorporated and ordered them to pay costs.[1]

[2] Mr Rabson seeks leave to appeal against that decision. The primary contention he wishes to advance is that by 12 November, the appeal was already abandoned pursuant to r 43 of the Court of Appeal (Civil) Rules 2005. He complains that the Court of Appeal wrongly "resurrected" the appeal for the purposes of striking it out and imposing costs.

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[1] *Rabson v Transparency International New Zealand Inc* [2015] NZCA 543 (Wild, Miller and Cooper JJ).

[3] Mr Rabson had made a timely r 43(2) application for an extension of time which was addressed by Wild J in a minute of 4 August 2015 but not, at least as we read the minute, finally determined. On this basis, the application for an extension of time was still current in November 2015. In those circumstances, it is at least open to question whether the effect of r 43(1) was that the appeal was to be treated as abandoned so as to obviate the need for, or appropriateness of, an order striking it out. If Mr Rabson and Mr Creser considered the appeal to have already been abandoned they could have told the Court they would not pay the security for costs and abandoned their application for an extension of time. They could also have notified the respondent that the strike out application was unnecessary as they did not intend to pursue the appeal further. The strike out application could then have been avoided or, if already made, granted by consent. That would have avoided the incurring of costs by the respondent in relation to the strike out application. They chose not to do any of this.

[4] Accordingly, we see no point of law of general or public importance in the proposed appeal and no appearance of a miscarriage of justice.

Solicitors:
Chapman Tripp, Wellington for Respondent