

IN THE SUPREME COURT OF NEW ZEALAND

**SC 47/2007
[2007] NZSC 75**

BETWEEN NEVILLE JAMES GIBSON
 Applicant

AND MINTER ELLISON RUDD WATTS
 Respondent

Court: Blanchard, Tipping and McGrath JJ

Counsel: Applicant in person
 P J L Hunt and R J Scott for Respondent

Judgment: 14 September 2007

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B The applicant is to pay costs of \$2500 together with reasonable disbursements to be fixed if necessary by the Registrar.**

REASONS

[1] On 20 June 2007 the Court of Appeal dismissed an interlocutory application brought by Mr Gibson in relation to appeals he has brought against two judgments of the High Court. Mr Gibson now seeks leave to appeal against the Court of Appeal judgment on the interlocutory application.

[2] The proposed appeal would concern two of the matters that were addressed by the Court of Appeal. The first is Mr Gibson's application to amend his grounds

of appeal. The second is his wish to call new evidence at the substantive hearing of his appeals.

[3] The proposed amended grounds of appeal considered by the Court of Appeal were largely a recasting of existing grounds. The additional grounds of appeal, which Mr Gibson has highlighted in an affidavit filed in support of his application for leave to appeal, are first concerned with adequacy of discovery by the respondent firm of solicitors, including discovery of electronically held records. Secondly, there are findings concerning evidence given by his accountant that Mr Gibson wishes to challenge. Thirdly, there are issues concerning legal aid for the proceedings he has been involved in and actions of the respondent said to have impeded his getting legal aid. The new evidence is concerned with the views that advisers to the Legal Services Agency expressed concerning Mr Gibson's litigation.

[4] As Mr Gibson's appeals had been allocated a hearing date by the time of his application to the Court of Appeal, he needed to obtain that Court's leave to amend his grounds of appeal. The existing grounds had already been amended several times by Mr Gibson. The Court of Appeal had a discretion as to whether or not it would permit further amendment, which it exercised against granting him leave. It is clear that the Court of Appeal concluded that existing grounds of appeal raise the core matters. The Court was not persuaded that there were any new issues raised by the applicant which should be added to the grounds of appeal. We agree with that conclusion.

[5] In relation to the application to admit new evidence, the Court was satisfied the material concerned lacked cogency in relation to the issues in the appeal. It accordingly did not meet established tests for admission of fresh evidence on appeal.

[6] In a second affidavit, filed after the submissions of the respondent in opposition to granting leave had been received, Mr Gibson expands on the reason why he seeks to have evidence of the reports of legal aid advisers admitted. The matters he has raised go to a dispute he has concerning legal aid matters which do not form part of the issues decided by the High Court. Accordingly, we have not thought it necessary to invite the respondent to respond to them.

[7] It has not been shown that the Court of Appeal was arguably wrong in making any of its discretionary decisions in its interlocutory judgment and we are satisfied that there is no basis on which we can conclude that it is necessary in the interests of justice for this Court to hear and determine the proposed appeal. In those circumstances we decline leave to appeal.

[8] The application is accordingly dismissed. Mr Gibson must pay costs of \$2500 to the respondent, together with reasonable disbursements to be fixed if necessary by the Registrar.

Solicitors:
McElroys, Auckland for Respondent