

IN THE SUPREME COURT OF NEW ZEALAND

**SC 17/2010
[2010] NZSC 42**

BETWEEN KIMBERLY BIRKENFELD
 Applicant

AND ANTHONY BRUCE KENDALL
 First Respondent

AND YACHTING NEW ZEALAND
 INCORPORATED
 Second Respondent

Court: Elias CJ, McGrath and Wilson JJ

Counsel: Applicant in person

Judgment: 21 April 2010

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed with no order for costs.

REASONS

[1] This is an appeal against an interlocutory order of the Court of Appeal dismissing an application for a stay.¹

[2] The applicant has appealed to the Court of Appeal against judgments or rulings of Randerson J in the High Court as follows:

- (i) ruling that he was not disqualified from dealing with issues remaining from an earlier judgment dated 27 September 2007;²

¹ *Birkenfeld v Kendall* [2009] NZCA 619.

² *Birkenfeld v Kendall* HC Wellington CIV-2004-485-1657, 27 September 2007.

- (ii) staying the applicant's proceedings against the abovenamed respondents;
- (iii) rejecting an application to recall a judgment delivered on 7 December 2009.

[3] On 22 December 2009 the Court of Appeal dismissed an application for a stay in respect of the orders challenged until the appeal is determined. The Court of Appeal pointed out that the judgment of 7 December 2009 is simply consequential on the 27 September 2007 judgment in respect of which rights of appeal have been exhausted (other than in relation to terms on which the Public Trustee holds the limitation fund representing the maximum liability of the respondents). Accordingly, she had not established that the interim order was necessary to protect her position.

[4] The submissions in support of the present application are addressed to whether rules of court in relation to public access to documents on a court file are valid. It is argued that lack of a right to public access to court records deprives the applicant of her right to a fair and public hearing.

[5] We are not persuaded that it is arguable that the regulations concerned are invalid for the reasons advanced. Nor are we persuaded that it is arguable that they had a prejudicial effect on the preparation of the applicant's case in any event.

[6] In those circumstances, we do not need to hear from the respondents. The application must be dismissed. There will be no order for costs.

Solicitors:
Phillips Fox, Auckland for second respondent