

IN THE SUPREME COURT OF NEW ZEALAND

[2007] NZSC 4

IN THE MATTER OF	An application by ROBERT ERWOOD for a review of the decision of the Registrar declining to accept for filing an application for leave to appeal
BETWEEN	ROBERT ERWOOD Applicant
AND	GLASGOW HARLEY First Respondent
AND	RAYLEE PATRICIA HARLEY Second Respondent

Court: Tipping, McGrath and Anderson JJ

Judgment: 15 February 2007

JUDGMENT OF THE COURT

The Registrar's decision is confirmed.

REASONS

(Given by Tipping J)

[1] On 11 December 2006 the Court of Appeal dismissed Mr Erwood's application for special leave to appeal from a decision of the High Court. Special leave was required because the time for appealing as of right had expired. The application to the Court of Appeal was made under r 29(4) of the Court of Appeal (Civil) Rules 2005. Mr Erwood lodged with the Registrar of this Court an application dated 15 January 2007 for leave to appeal from the Court of Appeal's dismissal of his application for special leave.

[2] By letter of 18 January 2007 the Registrar returned the application to Mr Erwood on the basis that he had no jurisdiction to accept it because s 7(b) of the Supreme Court Act 2003 precluded this court from hearing an appeal from the Court of Appeal in these circumstances. Mr Erwood has filed a memorandum seeking to have the court review the Registrar's decision and direct him to accept the application. We are issuing this judgment pursuant to rr 5 and 7 of the Supreme Court Rules 2004.

[3] Section 7(b) provides that this court may hear and determine an appeal by a party to a civil proceeding in the Court of Appeal against any decision made in the proceeding unless the decision is a refusal to give leave or special leave to appeal to the Court of Appeal. Plainly the decision of the Court of Appeal, which Mr Erwood seeks to challenge in this court, constitutes a refusal by the Court of Appeal to give special leave to appeal to the Court of Appeal.

[4] The case exactly fits the embargo against appeals to this court constituted by s 7(b). We do not find the points made in Mr Erwood's memorandum of 24 January 2007 sufficient to overcome the plain terms of s 7(b). That provision covers both the refusal of leave and the refusal of special leave. It must clearly have been designed to cover all circumstances where leave or special leave was required to appeal to the Court of Appeal. No logical distinction can be made between cases where leave or special leave is required on a substantive basis and cases where leave or special leave is required for time reasons.

[5] The case of *Simes v Tennant* (2005) 17 PRNZ 684 does not assist Mr Erwood to overcome the plain terms of s 7(b) as it was concerned with different legislation; nor does s 27 of the New Zealand Bill of Rights Act 1990. Section 7(b) represents a clear decision by Parliament as to what appeals may and may not be heard and determined by this court. It must be respected.

[6] The Registrar's decision was correct and is confirmed. We direct that Mr Erwood's application was rightly rejected for want of jurisdiction in this Court to consider it.