IN THE SUPREME COURT OF NEW ZEALAND

SC 26/2007
[2007] NZSC 53

BETWEEN	VINCENT SIEMER Applicant
AND	MICHAEL STIASSNY AND FERRIER HODGSON Respondents

Court: Tipping and McGrath JJ

Counsel: Appellant in Person
J G Miles QC and M A Flynn for Respondents

Judgment: 12 July 2007

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed with costs of $2,500 to the respondents.

[1] Mr Siemer applies for leave to appeal against a judgment of the Court of Appeal upholding findings made by the High Court that he had committed contempt of court by acting in breach of interim injunctions. In the High Court Potter J had fined Mr Siemer $15,000 and ordered that he pay costs and disbursements on a solicitor and client basis, which she fixed at a total of $183,568.78. The Court of Appeal dismissed Mr Siemer's appeal against the High Court judgments.

[2] In his application for leave to appeal and supporting written submissions, Mr Siemer takes issue with the Court of Appeal judgment in relation to a number of procedural and factual matters. He alleges bias on the part of the High Court Judge and Judges of the Court of Appeal. He also challenges the fine and award of costs and disbursements against him. We have considered all points made by Mr Siemer

in his written submissions. We are satisfied that we would not be assisted by having an oral hearing on the application for leave to appeal. The application to this Court plainly fails to meet the criteria for granting leave under s 13 of the Supreme Court Act 2003 and must be dismissed. In giving our reasons we address those of the points made by Mr Siemer that might conceivably be the basis for granting leave to appeal.

[3] On 8 April 2005 a billboard was erected on a car parking building in downtown Auckland on the instructions of Mr Siemer. It referred to a website containing the words "Michael Stiassny – a true story". The website concerned contained material relating to a company in which Mr Siemer had been a shareholder and of which, for a period, Mr Stiassny, one of the respondents, had been appointed receiver. The material on the website was highly critical of Mr Stiassny. The same day Mr Stiassny applied for and obtained an interim injunction from the High Court. This required Mr Siemer and another defendant to remove the billboard and Mr Siemer to remove all material on the website that in any way related to Mr Stiassny. Mr Siemer was also ordered not to publish any further information relating to Mr Stiassny, this later being confined to information associated with the receivership.

[4] The respondents subsequently sought orders for committal of Mr Siemer on the grounds that he had acted in breach of the injunctions. Potter J's judgments followed a hearing of that application.

[5] In this Court Mr Siemer first seeks to challenge the High Court's decision, upheld by the Court of Appeal, to deal with the matter as an interlocutory application in a substantive proceeding involving a question of civil contempt. As the proceeding was interlocutory, evidence was by affidavit with cross-examination permitted only by leave. Mr Siemer wishes to challenge the Court of Appeal's endorsement of this approach to the application. It is well established that disobedience of a court order by a person involved in litigation is treated as civil contempt, even though the conduct may have a criminal character and the court's

orders may be punitive in their effect.[1] The contempt application was interlocutory as it arose from alleged disobedience of an interim injunction which had been issued in and formed part of a substantive proceeding brought by the respondents against Mr Siemer. It follows that evidence was properly given by affidavit subject to the Court's discretion to allow oral evidence and cross-examination in special cases.[2] None of these findings can in our view form the basis of an arguable point on appeal to this Court.

[6] Mr Siemer complains that the High Court Judge did not permit him to cross-examine deponents whose affidavits had been filed by the respondent plaintiffs, nor insist on cross-examination of a deponent, Mr Tunney, who had filed an affidavit in support of Mr Siemer. We are, however, satisfied that the procedural decisions made by the Judge in relation to those matters, which have been upheld by the Court of Appeal, do not raise any issue of principle that could be the basis of an appeal to this Court.

[7] Mr Siemer also takes issue with Potter J's direction that he be cross-examined, contending that this was in breach of his right in relation to self-incrimination. The Court of Appeal's conclusion that it was appropriate to give leave to cross-examine in a contempt case, where the respondent had elected to rely on affidavits he had put in evidence, is an entirely orthodox one and raises no question on which this Court should give leave to bring a second appeal. There are various other criticisms made of the way that the Judge conducted the hearing, none of which causes us to be concerned that there may have been a miscarriage of justice in this case.

[8] We emphasise that, although treating the matter as one of civil contempt, the trial Judge applied the criminal standard of proof throughout in determining whether, on the evidence, a case of contempt had been made out against Mr Siemer.

[9] Mr Siemer also wishes to revisit before us a number of challenges he made in the Court of Appeal to findings of fact made by the High Court. The focus of this

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1 *Arlidge, Eady and Smith on Contempt* at paras (3ed 2005) [3-1] and [3-17].
2 Rules 241 and 253 High Court Rules.

part of his application is on his complaint concerning hearsay evidence. However, as the Court of Appeal judgment demonstrates, the finding that Mr Siemer was in contempt in relation to the continuing intermittent operation and updating of his website, and transferring it to a third party, was based on direct rather than hearsay evidence. This was also the case with the Judge's findings concerning Mr Siemer's distribution of stickers promoting the website on one of the days on which it was reactivated. The complaint about hearsay was mainly relevant to letters to trustees but there is nothing in the Court of Appeal judgment on this point which would raise an issue of principle capable of amounting to a ground for a second appeal to this Court. Nor do Mr Siemer's criticisms of the credibility of witnesses raise an issue on which this Court should give leave to appeal.

[10] There is no basis for Mr Siemer's claims of bias by the High Court Judge nor for his similar claims concerning the Judges of the Court of Appeal.

[11] The final matter concerns the award of costs. Mr Siemer contends he was not given a chance to be heard on the costs point in either Court. It appears that he did not raise costs in his oral submissions to the Court of Appeal, even though he had been given an opportunity to address the Court on that issue. The Court said in its judgment that it saw no basis for interference with the High Court's decision. We have considered the material put before Potter J, which included a memorandum concerning costs from the respondent and a response from Mr Siemer. One of his points was that "the plaintiffs' counsel costs as submitted to the Court are exorbitant and incommensurate with the proceedings and they lack sufficient support." The Judge then ordered Mr Stiassny to file a further memorandum with more detail concerning costs. After receiving that memorandum, the Judge delivered her second judgment on 2 June 2006 in which she fixed the amounts to be paid. The award was a substantial one but there is nothing which indicates that the Judge departed from established principles in any way. She clearly considered what Mr Siemer put to her. We see no arguable basis on which this discretionary decision could be set aside.

[12] We record that the respondents chose not to raise any issue concerning whether an appeal to this Court was barred by s 8(c) of the Supreme Court Act 2003

as it concerned an interlocutory decision. In those circumstances we have not considered that issue.

[13] The application for leave to appeal is dismissed with costs of $2,500 to the respondents.

Solicitors:
McElroys, Auckland for the Respondents