

IN THE SUPREME COURT OF NEW ZEALAND

**SC 2/2008
[2008] NZSC 22**

BETWEEN

JOHN BEVAN-SMITH
Applicant

AND

RAUPO PUBLISHING (NZ) LTD
Respondent

Court: Elias CJ, Anderson and Wilson JJ

Counsel: Applicant in Person
D A Wood for Respondent

Judgment: 9 April 2008

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed with costs of \$1,500 to Raupo Publishing (NZ) Ltd.

REASONS

[1] The applicant seeks leave to appeal from a judgment of the Court of Appeal on an application made to it under r 43(2) of the Court of Appeal (Civil) Rules 2005. By virtue of r 43(1) Mr Bevan-Smith's appeal to that Court from a decision of the High Court was required, subject to r 43(2), to be treated as abandoned because he had not filed the case on appeal within six months of his notice of appeal.

[2] Rule 43(2) provides:

The Court, on application, may —

- (a) grant an extension of the period referred to in subclause (1); and
- (b) grant 1 or more further extensions of any extended period.

[3] Mr Bevan-Smith applied for an extension within the three month period permitted by r 43(3). He twice sought further extensions, the later of which was the subject of the judgment now in issue. In dealing with the application, the Court of Appeal referred to the well-established principles identified in cases such as *Airwork (NZ) Ltd v Vertical Flight Management Ltd*,¹ *Harlow v Gemmell*,² *Erwood v Maxted*³ and *Scenic Developments Ltd v Kaimarna Properties Ltd*⁴.

[4] The Court of Appeal's approach in the present case does not indicate any departure from settled principles. Therefore Mr Bevan-Smith has to persuade this Court that the application of those principles in his particular case was such as to meet the criteria for leave stipulated in s 13 of the Supreme Court Act 2003. The relevant provisions are:

13 Criteria for leave to appeal

- (1) The Supreme Court must not give leave to appeal to it unless it is satisfied that it is necessary in the interests of justice for the Court to hear and determine the proposed appeal.
- (2) It is necessary in the interests of justice for the Supreme Court to hear and determine a proposed appeal if —
 - (a) the appeal involves a matter of general or public importance; or
 - (b) a substantial miscarriage of justice may have occurred, or may occur unless the appeal is heard; or
 - (c) the appeal involves a matter of general commercial significance.

[5] The Court of Appeal declined to grant a further extension of time to Mr Bevan-Smith because, looking at the matter overall, it was satisfied that the indulgence was not justified. In reaching that view the Court was influenced by submissions on behalf of the respondent, Raupo Publishing (NZ) Ltd, concerning Mr Bevan-Smith's conduct in relation to the High Court trial. In that Court, there were several applications for adjournment of fixtures and breaches of timetable directions concerning the exchange of witness statements. Those issues, it was

¹ [1999] 1 NZLR 29.

² [2007] NZCA 101 at para [12].

³ [2007] NZCA 161.

⁴ (2004) 17 PRNZ 489.

submitted, lengthened the trial considerably. Also, the damages the trial Judge said he would have awarded if Mr Bevan-Smith had proved liability were only a little over \$8,000. As a matter of record, the trial lasted 25 hearing days. The inference is that Mr Bevan-Smith's claim was relatively trivial, notwithstanding the enormous cost and trouble it had caused the defendants. The Court of Appeal noted, disapprovingly, the attempts by Mr Bevan-Smith to bring Mr Alan Leslie Smith back into the proceedings, notwithstanding that he had formally discontinued his action against that party,⁵ and the application to the Court of Appeal for discovery of documents and also for an extradition order against a former employee of Raupo.

[6] It is time this litigation is brought to finality. Although r 20(1) of the Supreme Court Rules stipulates that written submissions by a party in support of an application for leave to appeal may not exceed 10 pages, Mr Bevan-Smith has filed more than 70 pages of submissions together with dozens of pages of additional documents. Most of Mr Bevan-Smith's submissions, which have no real relevance to the issue of leave, are bare assertions of misfeasance against various persons. This, together with the disproportionate length of trial in light of the realistic amount at stake and the seeming revival of Mr Alan Smith's involvement, raises real issues of fairness to the respondent (or respondents, as the case may be).

[7] This Court will not readily interfere with the Court of Appeal's discretionary decision on an interlocutory application - not least because, absent a serious departure from established and unchallenged principles, the s 13 criteria are highly unlikely to be met. We are not persuaded to interfere in this case.

[8] The application for leave to appeal is dismissed with costs of \$1,500 to Raupo Publishing (NZ) Ltd.

Solicitors:
Lovegroves, Auckland for Respondent

⁵ We note that, undeterred by the Court of Appeal's comments, Mr Bevan-Smith has included Mr Alan Smith in the intituling of his documents in this Court.