

IN THE SUPREME COURT OF NEW ZEALAND

**SC 93/2007
[2008] NZSC 9**

BETWEEN VINCENT SIEMER
 Applicant

AND KATE FARDELL EXECUTRIX FOR
 ROBERT FARDELL, DECEASED
 Respondent

Court: Blanchard, Tipping and McGrath JJ

Counsel: Applicant in person
 A A Lusk QC for Respondent

Judgment: 28 February 2008

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed with costs of \$1,500 to the respondent.

REASONS

[1] The applicant and his wife, together with Paragon Services Ltd, a company controlled by them, are suing the estate of the late Robert Fardell QC for professional negligence and breach of fiduciary duty by Mr Fardell who acted for those plaintiffs in a matter relating to the receivership of Paragon.

[2] An issue has arisen concerning whether the trial of the proceeding against the estate should be by Judge and jury or, as the Courts below have held, by Judge alone.

[3] The applicant seeks leave for a further appeal to this Court concerning that issue.

[4] The application plainly does not meet the criteria prescribed in s 13 of the Supreme Court Act 2003. The legal principles are well settled, including the rejection by the House of Lords of the proposition that the decision on mode of trial should be influenced by one party's belief that Judges as a class are likely to be biased against that party or in favour of the other party.¹ No question of general or public importance arises nor, when the issue is considered objectively as it must be, is there any appearance of miscarriage of justice arising from the decision concerning mode of trial. There has been an entirely orthodox exercise of discretion by the High Court.

Solicitors:
Gilbert Walker, Auckland for Respondent

¹ *Williams v Beesley* [1973] 1 WLR 1299.