

BETWEEN	EVGENY ORLOV Applicant
AND	ANZA DISTRIBUTING NEW ZEALAND LIMITED (IN LIQUIDATION) First Respondent
AND	USG INTERIORS PACIFIC LIMITED Second Respondent

Judgment: 3 February 2011

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**JUDGMENT OF McGRATH J**

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**The decision of the Registrar refusing to waive the filing fee is confirmed.**

**REASONS**

[1] Mr Orlov has applied for a review of the decision of the Registrar refusing to waive the filing fee on Mr Orlov's application for leave to appeal against a judgment of the Court of Appeal.

[2] Orders for costs were made against Mr Orlov, in relation to litigation in which he was acting in the High Court. Mr Orlov appealed to the Court of Appeal. The wider litigation was then settled, the terms of settlement encompassing all costs liability under the High Court orders. Mr Orlov, however, wished to maintain his appeal because of a concern over the effect on his reputation of the costs orders. The respondents agreed that he could do so, on the basis that their position under the settlement would not be affected and that they would not have to participate in the appeal.

[3] Because of the settlement, however, there was no longer a live controversy between the parties requiring adjudication in an appeal. In those circumstances an

appellate court will generally, but not invariably, refuse to hear an appeal.<sup>1</sup> The Court of Appeal indicated to Mr Orlov that the Court was prepared to hear his appeal on the basis that counsel would be appointed by the Court, at his expense, to contradict Mr Orlov's arguments. When Mr Orlov indicated that he did not accept that requirement, the Court of Appeal struck out his appeal.

[4] Mr Orlov then applied to this Court for leave to appeal against the strike-out order, at the same time seeking waiver of the filing fee under reg 5 of the Supreme Court Fees Regulations which provides:

**5 Power to waive fees**

- (1) A person (the applicant) otherwise responsible for the payment of a fee required in connection with an appeal or an intended appeal may apply to the Registrar for a waiver of the fee.
- (2) The Registrar may waive the fee payable by the applicant if satisfied,—
  - (a) ...
  - (b) that the appeal,—
    - (i) on the basis of one of the criteria specified in subclause (4), concerns a matter of genuine public interest; and
    - (ii) is unlikely to be commenced or continued unless the fee is waived.
- (3) ...
- (4) For the purposes of these regulations, an appeal that concerns a matter of genuine public interest is—
  - (b) an appeal that—
    - (i) raises issues of significant interest to the public or to a substantial section of the public; and
    - (ii) is against a judgment, decree, or order given or made in a proceeding commenced by an organisation that, by its governing enactment, constitution, or rules, is expressly or by necessary implication required to promote matters in the public interest.

[5] The Registrar's power to waive a fee under reg 5(2)(b) only arises if the Registrar is satisfied that two requirements are met. First, the appeal must concern a

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<sup>1</sup> *R v Gordon-Smith* [2009] 1 NZLR 721 (SC).

matter of genuine public interest in terms of reg 5(4). Secondly it must be unlikely that the appeal will be commenced or continued unless the fee is waived. The Registrar refused to waive the filing fee. He took the view that there was no question of law of significant public interest arising from the Court of Appeal judgment which he concluded concerned a set of facts relating solely to Mr Orlov.

[6] Mr Orlov now submits that, contrary to the Registrar's reasoning, it is a matter of genuine public interest whether the Court of Appeal can impose on him a condition that he agree to pay the costs of an amicus before it will hear a moot appeal. He emphasises the barrier which that cost, estimated to be over \$40,000.00, presents to him.

[7] It is not, however, necessary to resolve the difference between Mr Orlov and the Registrar over whether or not his intended appeal involves a matter of genuine public interest. As indicated, reg 5(2)(b) requires that Mr Orlov also satisfy the Registrar that his appeal to this Court is unlikely to be continued unless the fee is waived. Mr Orlov, unsurprisingly, has not at any stage contended that this Court's filing fee of \$920.00 (inclusive of GST) presents any barrier to his intended appeal. Indeed, he expressly acknowledged in his waiver application that he will continue with the proceeding, that is the application for leave to appeal to this Court, if his application for the filing fee to be waived is refused. It follows that the requirements of reg 5(2)(b)(ii) of the Fees Regulations are not met. The Registrar consequently has no power to waive the fee.

[8] For these reasons the Registrar's decision to refuse the application is confirmed.