

IN THE SUPREME COURT OF NEW ZEALAND

SC 66/2010
[2011] NZSC 78

BETWEEN	ROBERT ERWOOD Appellant
AND	JANET MAXTED AND ALEXANDER JAMES JEREMY GLASGOW AS TRUSTEES OF THE ESTATE OF EDWARD ERWOOD First Respondents
AND	THE OFFICIAL ASSIGNEE Second Respondent

Court: Elias CJ, Blanchard, Tipping, McGrath and Anderson JJ

Counsel: C R Carruthers QC for First Respondents
Appellant in Person
P D McKenzie QC as Amicus Curiae

Judgment: 15 July 2011

JUDGMENT OF THE COURT (RECALL APPLICATION)

The application for recall is dismissed.

REASONS

[1] On 18 March 2011 this Court allowed an appeal by Mr Erwood against the striking out of an appeal to the Court of Appeal on the ground that he had not paid the security for costs ordered by the Court of Appeal.¹ We did so because the Court of Appeal had linked together an appeal relating to a bankruptcy notice and an appeal relating to adjudication and had struck out both of them because security was not paid in relation to the adjudication appeal. It emerged only when the matter reached this Court that Mr Erwood had previously filed a notice of abandonment of the

¹ *Erwood v Maxted* [2011] NZSC 23.

adjudication appeal. As a separate sum in relation to the bankruptcy notice appeal had been paid as security, that appeal should not have been struck out.

[2] The proceeding was remitted to the Court of Appeal for the hearing of the bankruptcy notice appeal.

[3] An application has now been made by the first respondents for recall of this Court's judgment. It asserts, in effect, that there was never an abandonment of the adjudication appeal and that the document discovered on the Court of Appeal file must have been placed there by Mr Erwood after the Court of Appeal had dealt with the matter, having been manufactured by him so as to create the situation with which this Court was confronted.

[4] A serious allegation of this kind, essentially alleging criminal behaviour on the part of Mr Erwood, would require proof to a commensurate standard but nothing has been put forward of more than a merely speculative character and, as Mr McKenzie QC points out, a Deputy Registrar of the Court of Appeal has stated that she personally supervised Mr Erwood searching any of his files to ensure the documents were not removed, added or altered during a search and that she has no reason to suspect that Mr Erwood has been untruthful in saying that he found the document on one of the Court of Appeal files relating to his case. The material to which the first respondents have referred the Court is simply insufficient to sustain the allegation which they are making. For that reason their recall application must be dismissed.

[5] It was all the more surprising that any such application should have been made when the first respondent having, it would seem, been served with a bundle of documents containing a copy of the notice of abandonment and certainly having been served with several memoranda from Mr McKenzie making prominent mention of the notice of abandonment, did not contest the leave application or oppose the appeal after leave was granted. If an allegation of the present kind was to be made, that was the time to put it forward, yet the first respondents chose to file nothing in this Court raising the concern which is now suggested.

Solicitors:

McFadden McMeekin Phillips, Nelson for First Respondents