

IN THE SUPREME COURT OF NEW ZEALAND

SC 59/2012
[2012] NZSC 90

BETWEEN FRANCISC CATALIN DELIU
Applicant

AND NEW ZEALAND LAW SOCIETY
Respondent

Court: McGrath, William Young and Chambers JJ

Counsel: Applicant in Person
P J Morgan QC for Respondent

Judgment: 30 October 2012

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B The applicant is to pay to the respondent costs of \$2,500 plus all reasonable disbursements, to be fixed if necessary by the Registrar.

REASONS

[1] Mr Deliu in his statement of claim against the New Zealand Law Society pleads 11 causes of action. Four seek judicial review of decisions made by the Society. The other seven causes of action are common law claims for damages and other relief.

[2] In the High Court, Peters J, pursuant to r 10.4 of the High Court Rules, ordered that the four judicial review causes of action were to be tried separately from the other causes of action.¹ The Court of Appeal has affirmed that decision.²

¹ *Deliu v New Zealand Law Society* HC Auckland CIV-2010-404-6182, 4 November 2011.

² *Deliu v New Zealand Law Society* [2012] NZCA 359.

[3] Mr Deliu seeks leave to appeal from that decision. In their submissions, the parties approached the question of leave on the basis that s 13(2) of the Supreme Court Act 2003 is the controlling provision. In fact, given Peters J's decision was made "on an interlocutory application", Mr Deliu was required to meet the more exacting standard imposed by s 13(4).³ Notwithstanding that, we shall test the application against s 13(2) criteria.

[4] We are quite satisfied we should not grant leave. No substantive rights will be affected by the decision to split the claims. A r 10.4 decision is purely procedural; it is really just an aspect of case management. The proposed appeal does not raise a matter of general or public importance. There is no risk of a miscarriage of justice if the trials have to proceed as the High Court and the Court of Appeal have determined. We emphasise what this Court has previously said about the "proper reluctance of final courts of appeal to supplant the responsibility of the intermediate court of appeal in supervising trial practice, a responsibility that must be exercised with some expedition".⁴

[5] Mr Deliu also seeks leave to appeal against the costs order in the Court of Appeal. All parties in the Court of Appeal are potentially subject to costs orders if they lose. The fundamental principle of costs in the Court of Appeal's civil jurisdiction is set out in r 53A(a) in the Court of Appeal (Civil) Rules 2005:

the party who fails with respect to an appeal should pay costs to the party who succeeds

[6] If Mr Deliu wished to submit that, if he lost, he should not have to pay costs, he was required so to submit in his substantive submissions filed in advance of the appeal.⁵ He made no such submission. The Court of Appeal was fully entitled to make a standard costs order in favour of the winner. The costs argument Mr Deliu now seeks to run does not raise a matter of general or public importance. There has been no miscarriage of justice.

³ See *Hamed v R [Leave]* [2011] NZSC 27, [2011] 3 NZLR 725.

⁴ *Hamed*, above n 3, at [13].

⁵ Court of Appeal (Civil) Rules, r 41(1)(c).

[7] We dismiss the application for leave to appeal. Mr Deliu having failed on this application, he must pay costs to the Society, which we fix in the sum of \$2,500.

Solicitors:
Glaister Ennor, Auckland, for Respondent