

IN THE SUPREME COURT OF NEW ZEALAND

SC 45/2013
SC 53/2013
SC 54/2013
[2013] NZSC 111

BETWEEN	VINCENT ROSS SIEMER Applicant
AND	MICHAEL RICHARD HERON First Respondent
	RUSSELL McVEAGH Second Respondent
	FORCE 1 SECURITY LIMITED Third Respondent
	SIONE TAMAKI Fourth Respondent
	PIO SAMI Fifth Respondent

Court: McGrath, Glazebrook and Arnold JJ

Counsel: Applicant in person
T L Clarke and S P H Elliott for First and Second Respondents
P F Wicks for Third, Fourth and Fifth Respondents

Judgment: 14 November 2013

JUDGMENT OF THE COURT

- A The applications for leave to appeal are dismissed.**
- B Any further applications to this Court that relate to the underlying High Court appeal at issue in these applications should not be accepted for filing.**

C Costs of \$2,500 plus reasonable disbursements (to be set by the Registrar if necessary) are to be paid to the first and second respondents.

REASONS

[1] Mr Siemer has filed three applications for leave to appeal against decisions made in the Court of Appeal which have their origins in the decision of the District Court discussed in the next paragraph.

Background

[2] On 4 July 2012 Judge Bouchier struck out a proceeding filed by Mr Siemer in the District Court as an abuse of process.¹ The proceedings were essentially duplicitous of earlier proceedings and related to an alleged incident in 2007.²

[3] Mr Siemer filed an appeal against Judge Bouchier's judgment in the High Court. By a judgment of 16 August 2012, Wylie J directed that Mr Siemer, within 10 working days, pay security for costs of \$995 on account of the first and second respondents and \$995 on account of the third, fourth and fifth respondents.³ It was expressly recorded in the judgment that, if Mr Siemer did not pay those sums within 10 working days, then s 74(2) of the District Courts Act 1947 would deem the appeal to be abandoned.⁴

Application SC 54/2013

[4] The 10 working day period expired on 30 August 2012. Mr Siemer did not pay security for costs by that date. Instead, on 3 September 2012, he lodged an appeal against Wylie J's judgment with the Court of Appeal.

¹ *Siemer v Heron* DC Auckland CIV-2011-004-002079, 4 July 2012 at [35].

² The history of the earlier proceedings is set out at [8]–[15] of *Siemer v Heron* [2013] NZHC 1604.

³ *Siemer v Heron* [2012] NZHC 2073 at [32].

⁴ At [33].

[5] The notice of appeal against Wylie J's judgment was rejected by the Court of Appeal Registrar for want of jurisdiction. The Registrar's refusal to accept the appeal for filing was confirmed by Wild J in a judgment of 6 June 2013.⁵ This was on the grounds that, as Mr Siemer's appeal to the High Court had been deemed to be abandoned on 30 August 2012, there was nothing left to appeal from.⁶

[6] On 12 June 2013 Mr Siemer purported to apply under s 61A(2) of the Judicature Act for a review of Wild J's decision. By minute of 18 June 2013 Wild J stated that, as his 6 June 2013 decision had reviewed a decision of the Registrar, s 61A(3) of the Judicature Act 1908 applied and there was no right of review of his judgment under s 61A(2). He noted that Mr Siemer's only recourse was to seek leave to appeal to this Court.

[7] Mr Siemer has (in SC 54/2013) applied for leave to appeal to this Court against Wild J's decision as set out in the minute of 18 June 2013.

Application SC 45/2013

[8] At the same time as filing an appeal in the Court of Appeal against Wylie J's judgment of 16 August 2012, Mr Siemer applied to Wylie J to recall that judgment.

[9] On 24 October 2012 Wylie J dismissed Mr Siemer's application for recall.⁷ This was on the basis that, once the 10 working day period given in the judgment for payment of security for costs expired without any steps being taken,⁸ there was no underlying subsisting appeal to the High Court and therefore nothing before the High Court that could be dealt with by way of a recall application. Further, there was no power to resurrect the appeal.⁹ In any event, Wylie J did not consider there were any special circumstances justifying recall of his judgment of 16 August 2012.¹⁰

⁵ *Siemer v Heron* [2013] NZCA 202.

⁶ At [12]–[13], referring to the decision of this Court in *Siemer v Heron* [2011] NZSC 133, [2012] 1 NZLR 309 [*Siemer v Heron* (SC)] at [35]–[36], [38] and [41].

⁷ *Siemer v Heron* [2012] NZHC 2802 [24 October 2012 judgment].

⁸ Wylie J set out the steps that Mr Siemer could have taken at [8] of his 24 October 2012 judgment, above n 7.

⁹ At [10].

¹⁰ At [11].

[10] Mr Siemer, in SC 45/2013, seeks leave to appeal to this Court against Wylie J's decision.¹¹

Application SC 53/2013

[11] On 31 October 2012 Mr Siemer purported to appeal in the Court of Appeal against Wylie J's judgment of 24 October 2012.¹²

[12] On 7 November 2012 counsel for the first and second respondents filed a memorandum expressing the view that Mr Siemer's notice of appeal should not have been accepted for filing as there was no extant appeal before the High Court.

[13] On 13 February 2013 the Registrar declined to dispense with security for costs for the appeal.

[14] The matter came before Wild J who, in a judgment of 6 June 2013,¹³ said that, given there was no extant High Court appeal, it was his view that the Court of Appeal lacked jurisdiction to entertain the appeal and it should not have been accepted for filing.¹⁴ In case he was wrong on that point, Wild J said that he agreed with the Registrar's decision on security for costs for the reasons she gave. He therefore declined to review the Registrar's decision declining to dispense with security for costs.¹⁵

[15] Mr Siemer (in SC 53/2013) seeks leave to appeal to this Court against Wild J's judgment of 6 June 2013.

¹¹ He may also be seeking leave under this application to appeal against various decisions made by the Registrar but those decisions have been reviewed by Wild J and are therefore covered by the other applications.

¹² CA 713/2013.

¹³ *Siemer v Heron* [2013] NZCA 202.

¹⁴ At [13]–[14].

¹⁵ At [15]–[17].

Submissions of the first and second respondents

[16] Counsel for the first and second respondents have filed a memorandum in this matter, submitting that all three applications should be dismissed on the basis that there is no extant High Court appeal.¹⁶

[17] They further request that the Court direct the Registrar not to accept for filing any further court documents from Mr Siemer deriving from the underlying High Court appeal which has been deemed abandoned.

[18] They submit that they have been put to considerable time and expense in responding to the numerous appeals and applications for review Mr Siemer has already made following the abandonment of the High Court appeal. It should now be clear to Mr Siemer that there is no jurisdiction for further challenges from that proceeding, and the respondents ought to be entitled to some end to this litigation.

Procedural issue

[19] With regard to Mr Siemer's application in SC 54/2013,¹⁷ Wild J was clearly correct in his minute of 18 June 2013 that Mr Siemer's remedy was to apply for leave to appeal to this Court.¹⁸

[20] Wild J, in his 6 June 2013 decision, was reviewing a decision of the Registrar under s 61A(3) of the Judicature Act. As this Court has held, there is no jurisdiction for the Court of Appeal to carry out a s 61A(2) review of a decision made under s 61A(3).¹⁹

[21] We will therefore treat Mr Siemer's application in SC 54/2013 as an application for leave to appeal against Wild J's decision of 6 June 2013.

¹⁶ This memorandum was endorsed and adopted by the third, fourth and fifth respondents.

¹⁷ Discussed at [4]–[7] above.

¹⁸ Mr Siemer suggests that Wild J in his 18 June minute “acted in his own cause” in dismissing the application. This is misconceived. Wild J was merely pointing to the correct procedural route for challenging his 6 June 2013 decision.

¹⁹ *Siemer v Stiassny* [2013] NZSC 11 at [4].

Our assessment of the three applications for leave

[22] The answer to all three applications is that given by Wylie and Wild JJ. There is no extant appeal in the High Court. It follows that there is nothing to appeal.²⁰

[23] In *Siemer v Heron*,²¹ despite holding that an appeal against an order for security for costs fixed by the High Court was available as of right under s 66 of the Judicature Act, this Court nevertheless dismissed Mr Siemer's appeal because, before Mr Siemer had actually brought any appeal to the Court of Appeal, his right to do so had ceased. This was because the underlying appeal from the District Court to the High Court was deemed to have been abandoned by operation of s 74(2) of the District Courts Act 1947.²²

[24] The Court noted that the same reasoning would apply to appeals that have been brought before the underlying appeal is deemed abandoned. The bringing of an appeal does not postpone the operation of s 74(2). To hold otherwise would be inconsistent with the wording of s 74(2). It would also be undesirable to treat the bringing of an appeal as operating in effect as a stay.²³ Two applications for recall of this decision were dismissed.²⁴

Result

[25] All applications must therefore be dismissed.

[26] Costs of \$2,500 plus disbursements (to be fixed by the Registrar if necessary) are to be paid to the first and second respondents.

²⁰ In relation to SC 45/2013, we also note that this appeal does not meet the exceptional circumstances criteria for a direct appeal to this Court from a decision of the High Court as set out in the Supreme Court Act 2003, s 14.

²¹ *Siemer v Heron* (SC), above n 6.

²² At [35]–[41] per Elias CJ, Blanchard, Tipping and McGrath JJ; and [59] per William Young J.

²³ At [40] per Elias CJ, Blanchard, Tipping and McGrath JJ.

²⁴ The first recall application was dismissed on 9 December 2011 in *Siemer v Heron* [2011] NZSC 151. The exact date on which the second recall application was dismissed is not available.

[27] Given the multitude of applications already made relating to the defunct High Court appeal, we consider it appropriate to accede to the request of the first and second respondents.

[28] Any further applications deriving from the underlying High Court appeal at issue in this case would be an abuse of process and should not be accepted for filing.

Solicitors:

Bell Gully for the First and Second Respondents

Swarbrick Beck Mackinnon for the Third, Fourth and Fifth Respondents