

IN THE SUPREME COURT OF NEW ZEALAND

**SC 135/2015
[2016] NZSC 14**

BETWEEN

MALCOLM EDWARD RABSON
Applicant

AND

WAYNE SEYMOUR CHAPMAN
Respondent

Court: William Young, Glazebrook and Arnold JJ

Counsel: Applicant in person
S A Barker for Respondent

Judgment: 23 February 2016

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
 - B The applicant is to pay costs of \$2,500 to the respondent.**
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REASONS

[1] This is a second application for leave to appeal against a judgment of the Court of Appeal of 29 April 2014 striking out an appeal by Mr Rabson and ordering him to pay costs.¹ His challenge to the judgment is based on the premise that, by the time the Court of Appeal struck out his appeal, it had already been abandoned by reason of r 43 of the Court of Appeal (Civil) Rules 2005. His first application for leave to appeal was refused on the basis that he could, if he wished, apply to the Court of Appeal to recall the judgment.² Some 12 months later he did so. That application is, as we understand, still undetermined.

¹ *Rabson v Chapman* [2014] NZCA 158 (O'Regan P, White and Miller JJ).

² *Rabson v Chapman* [2014] NZSC 90.

[2] The present application (which is a second in relation to the same judgment) does not meet the criteria for a grant of leave to appeal. It does not raise a point of law of general or public importance. As well, as there is no impediment to a costs order being made against an appellant in respect of an abandoned appeal, we see no appearance of a miscarriage of justice. More generally, the case is simply of insufficient moment to warrant a grant of leave to appeal.

Solicitors:
Buddle Findlay, Wellington for Respondent