

NOTE: COURT OF APPEAL ORDER PROHIBITING PUBLICATION OF NAMES OR IDENTIFYING PARTICULARS OF THE PARTIES AND PROHIBITING SEARCHING OF COURT OF APPEAL FILE REMAINS IN FORCE.

NOTE: HIGH COURT ORDER PROHIBITING PUBLICATION OF NAMES OR IDENTIFYING PARTICULARS OF THE PARTIES AND PROHIBITING SEARCHING OF HIGH COURT FILE REMAINS IN FORCE.

IN THE SUPREME COURT OF NEW ZEALAND

**SC 51/2017
[2017] NZSC 102**

BETWEEN Z (SC 51/2017)
 Applicant

AND Z
 Respondent

Court: Elias CJ, Glazebrook and O'Regan JJ

Counsel: A J Ellis and G K Edgeler for Applicant
 D H McLellan QC and J S Cooper QC for Respondent

Judgment: 3 July 2017

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B The applicant must pay costs of \$2,500 to the respondent.

REASONS

[1] The applicant seeks leave to appeal against one aspect of a decision of the Court of Appeal.¹

¹ Z v Z [2017] NZCA 94, [2017] NZAR 660 (Asher, Simon France and Peters JJ).

[2] The background to the application is that the applicant alleges that the respondent and another family member have committed fraud and otherwise mismanaged family business interests in a way which has been to the significant detriment of the applicant. In 2012, the applicant sent a 47-page letter to the respondent making these allegations and indicating that he would “make sure that my side of the story is told to everyone” unless the respondent paid him \$485,000 and acknowledged that further compensation was due. The respondent applied for, and obtained, an order from the High Court prohibiting publication of this letter. The non-publication order was later modified to allow the applicant to disclose the letter to lawyers (and, later, to allow disclosure to experts) for the purposes of the applicant’s proposed claim against the respondent.

[3] The applicant applied to the High Court to discharge the non-publication order in 2012, but subsequently abandoned the application. He made a new application in 2014, but this was dismissed by the High Court.²

[4] The applicant appealed against the High Court decision to the Court of Appeal. The Court of Appeal found that the applicant intended to publish the letter only by issuing proceedings, and that there was no blackmail on the part of the applicant. It rescinded the non-publication order, removing any Court-imposed restriction on the applicant disseminating the letter to a wider audience. The applicant has now commenced High Court proceedings against the respondent. The statement of claim in those proceedings is not suppressed.

[5] Although the Court of Appeal rescinded the non-publication order, it determined that it was appropriate to make an order prohibiting publication of the names or identifying particulars of the parties, and also ordered that the file was not to be searched without the leave of a Judge of the Court of Appeal. A similar order made in the High Court continued in force. It is the order prohibiting publication of the names and identifying particulars of the parties to which the present application for leave to appeal applies.

² Z v Z [2015] NZHC 2674 (Woodhouse J).

[6] The application is advanced on the basis that the question of the exercise of suppression powers in a civil dispute is a matter of general or public importance. However, this Court has recently given judgment in a case relating to an application for a non-publication order in a civil dispute among family members.³ We do not consider there is any need to revisit this decision, which was delivered less than a year ago.

[7] In the circumstances we conclude that the point at issue in the proposed appeal is not a point of public importance and we see no appearance of a miscarriage.

[8] The application for leave to appeal is dismissed. The applicant must pay costs of \$2,500 to the respondent.

Solicitors:
Nat Dunning Law, Wellington for Applicant
Harmos Horton Lusk, Auckland for Respondent

³ *Erceg v Erceg* [2016] NZSC 135.