

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC UR 26/2026
[2026] NZSC 119

RE

PETER-RICHARD PRESCOTT
Applicant

Counsel: Applicant in person

Judgment: 28 August 2026

JUDGMENT OF WILLIAMS J

**The application for review of the decision of the Deputy Registrar
not to accept the application for leave to appeal for filing is
dismissed.**

REASONS

[1] Mr Prescott, an undischarged bankrupt, was the sole director of Commercial Logistics Ltd. That company was the sole remaining trustee of the Capricorn Trust, which owned a property in Auckland. In 2014 the property was sold in a mortgagee sale by ASB Bank Ltd. Since then, Mr Prescott has made several attempts to recover the value of the property, claiming among other things that the mortgage was fraudulent. These attempts have failed. On 11 August 2025, Associate Judge Taylor struck out the latest of Mr Prescott's challenges and entered summary judgment in favour of ASB.¹ On 20 October 2025, the Associate Judge awarded ASB indemnity costs of \$46,207.48.²

[2] Mr Prescott filed an appeal to the Court of Appeal on 28 November 2025. That appeal was deemed to have been abandoned on 24 March 2026 because he had

¹ *Prescott v ASB Bank Ltd* [2025] NZHC 2239.

² *Prescott v ASB Bank Ltd* HC Auckland CIV-2024-404-2916, 20 October 2025.

not applied for the allocation of a fixture or filed a case on appeal within three months of bringing the appeal as required by r 43(1) of the Court of Appeal (Civil) Rules 2005.

[3] Mr Prescott then attempted to file an application for leave to appeal in this Court. His notice of application suggests that he was unable to advance his appeal in the Court of Appeal because he could not pay security for costs and was not granted legal aid. It is not made clear in the material before this Court whether Mr Prescott had applied for waiver of security for costs in that Court.

[4] In this Court, the Deputy Registrar refused to accept Mr Prescott's application for filing because he was of the view that there was no decision against which an appeal could be brought, as the deemed abandonment was the result of the operation of r 43(1), not a decision of the Court of Appeal. The Deputy Registrar suggested that Mr Prescott apply for reinstatement of his appeal in that Court.

Assessment

[5] The Deputy Registrar's view is correct. Section 68 of the Senior Courts Act 2016 provides that this Court may hear a civil appeal against "a decision made in the proceeding...". A deemed abandonment under r 43(1) of the Court of Appeal (Civil) Rules is not a decision.³ This Court therefore lacks jurisdiction. The Deputy Registrar is also correct that the appropriate procedure for Mr Prescott is to seek reinstatement of the appeal in the Court of Appeal. If, as the notice of application in this Court seems to suggest, the issue was one of payment of security for costs in that Court, that is also a matter that must be taken up there.

[6] The application for review of the Deputy Registrar's refusal to accept Mr Prescott's application for filing in this Court is dismissed accordingly. No issue of costs arises.

³ See *Dunstan v Attorney-General* [2022] NZSC 3 at [5]; and *Re Akarana-Rewi* [2025] NZSC 81 at [6].