

IN THE SUPREME COURT OF NEW ZEALAND

SC 37/2016  
[2016] NZSC 93

BETWEEN FRANCISC CATALIN DELIU  
Applicant

AND BOON GUNN HONG  
Respondent

Court: William Young, Glazebrook and O'Regan JJ

Counsel: Applicant in person  
Respondent in person

Judgment: 28 July 2016

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**JUDGMENT OF THE COURT**

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**A The application for leave to appeal is dismissed.**

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

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**REASONS**

[1] This proposed appeal arises out of a complaint to the Law Society made by the applicant barrister (Dr Deliu) against the respondent solicitor (Mr Hong) in May 2010. After a particularly convoluted process, a charge alleging misconduct was laid with the New Zealand Lawyers and Conveyancers Disciplinary Tribunal against Mr Hong. This was in September 2012. In a decision delivered on 22 March 2013, the Tribunal dismissed the charge. Dr Deliu, who had not been a party to the proceedings before the Tribunal, sought review of the decision in the High Court.<sup>1</sup> The named respondents were the Tribunal and Mr Hong. Neither participated in the substantive proceedings other than to indicate that they abided the decision of the Court.<sup>2</sup>

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<sup>1</sup> *Deliu v Hong* [2015] NZHC 492 (Andrews J) at [1].

<sup>2</sup> At [2].

[2] Dr Deliu was successful in the review proceedings before Andrews J with the result that the decision of the Tribunal was quashed and reconsideration was directed.<sup>3</sup> In a subsequent judgment, she ordered Mr Hong to pay costs on a category 2 band B basis together with disbursements to be fixed by the Registrar.<sup>4</sup>

[3] Mr Hong then appealed. The process continued to be convoluted by reason of procedural issues as to the timing and likely length of the hearing and a request for additional security for costs. In the course of dealing with these issues, the Court of Appeal twice recorded that Mr Hong's appeal was confined to a "sole issue" which Mr Hong had identified in this way:<sup>5</sup>

... whether costs can be awarded against [Mr Hong] when [he] had abided the lower Court's decision and ... not committed any perversion of justice offences.

[4] In its substantive judgment on Mr Hong's appeal, the Court of Appeal concluded that Mr Hong's notification that he abided the decision of the Court did not immunise him from an award of costs but that it was a material factor in respect of the costs to be awarded.<sup>6</sup> In the result the order for costs was reduced by half.<sup>7</sup>

[5] Dr Deliu's proposed appeal rests on two bases:

- (a) the Court of Appeal had determined that the appeal should be confined to the "sole issue" identified (in effect whether Mr Hong's abiding memorandum insulated him from a costs award) and was therefore not entitled, and wrong, to decide the appeal on the basis that the abiding memorandum, while not insulating Mr Hong from costs, nonetheless warranted a reduction in the order made; and
- (b) the Court of Appeal thereby interfered with the exercise by Andrews J of a discretionary decision without identifying a relevant error on her part.

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<sup>3</sup> At [40]–[42].

<sup>4</sup> *Deliu v Hong* [2015] NZHC 1635 at [2]–[3].

<sup>5</sup> *Hong v Deliu* [2016] NZCA 75, [2016] NZAR 667 (Kós, Keane and Dobson JJ) at [16].

<sup>6</sup> At [25]–[26].

<sup>7</sup> At [30].

[6] The pre-hearing identification of the “sole issue” on the appeal did not, as a matter of jurisdiction, preclude the Court of Appeal from dealing with the appeal on a broader basis if it saw this as appropriate in the interests of justice. It is apparent from both the judgment of the Court of Appeal and his submissions that the judges at the hearing put Dr Deliu on notice of the broader argument which he faced and that he did his best to meet it. Viewed in this light, the first proposed ground of appeal is one of process only and therefore does not raise a question of public or general importance. As well, given that Dr Deliu was given the opportunity to address the point on which the appeal was eventually resolved against him, there is no appearance of a miscarriage of justice.

[7] We agree that the Court of Appeal did not expressly say that Andrews J was in error in not taking into the fact that Mr Hong had abided the decision of the Court. It is, however, implicit in its judgment that the Court of Appeal was of that view. So we see nothing in the second point.

[8] Mr Hong seeks costs. Although this is opposed by Dr Deliu, we see no reason why the usual order should not be made.

Solicitors:  
BG Hong Law Firm, Auckland for Respondent