

IN THE SUPREME COURT OF NEW ZEALAND

**SC 8/2010
[2010] NZSC 57**

BETWEEN VINCENT ROSS SIEMER
 Applicant

AND MICHAEL PETER STIASSNY AND
 ANOR
 Respondents

Court: Blanchard, Tipping and Wilson JJ

Counsel: Applicant in Person
 J G Miles QC and P Hunt for Respondents

Judgment: 20 May 2010

JUDGMENT OF THE COURT

Both applications for leave to appeal are dismissed.

REASONS

[1] The respondents brought a proceeding against Mr Siemer for defamation and breach of a contract (a settlement agreement).

[2] They obtained an interim injunction restraining Mr Siemer from publicising any information relating to them and directing him to remove a billboard and certain material from websites. He did not comply and was found by the High Court to have breached the injunctions. Potter J declared that he was in contempt of court, fined him and ordered him to pay costs.¹ That ruling was upheld on appeal.²

¹ *Ferrier Hodgson v Siemer* High Court Auckland CIV-2005-404-1808, 16 March 2006.

² *Siemer v Stiassny* [2007] NZCA 117, [2008] 1 NZLR 150.

[3] There was then an allegation of further breach of the injunction and an application for committal. That matter came again before Potter J who made an order debaring Mr Siemer from defending the proceeding.³ That order was, as the Court of Appeal says in [11] of its present judgment,⁴ made on the basis that Mr Siemer had continued deliberately breaching the injunction, as well as on the basis of his refusal to pay the costs award against him.⁵ There was no appeal against Potter J's judgment.

[4] At the hearing of the substantive proceeding, on which Mr Siemer did not appear, there was a formal proof by the plaintiffs. Cooper J found Mr Siemer to have defamed them and to be in breach of contract. He awarded damages totalling \$920,000.⁶

[5] Mr Siemer appealed against Cooper J's judgment. That appeal was brought in time but the Case on Appeal was not filed and a fixture not sought within the requisite six months. However, the Court of Appeal reinstated the appeal. Having done so, it considered whether the appeal should nonetheless be struck out in whole or part. It declined to exercise its discretion to strike out the appeal on the ground of the existence of the debarment order but said that Mr Siemer remained in contempt and that in bringing the appeal he was in reality seeking to challenge the injunction which he had been disobeying. It also said that much of what the appellant wished to challenge on appeal was related to the limitations of the High Court hearing because of the debarment order, but that Mr Siemer sought to do this after the hearing to which the debarment order related, having passed up numerous opportunities to challenge it prior to, or at, the hearing. The Court said that it would be doing an injustice to the respondents if it allowed its processes to be abused in that way.

[6] But the Court considered that Mr Siemer should be given an opportunity to argue on appeal against the quantum of the award of damages made by Cooper J. In the exercise of its discretion it struck out the appeal save to that extent.

³ *Ferrier Hodgson v Siemer* HC Auckland CIV-2005-404-1808, 9 July 2007.

⁴ *Siemer v Stiassny* [2009] NZCA 624.

⁵ At [68].

⁶ *Korda Mentha v Siemer* HC Auckland CIV 2005-404-1808, 23 December 2008.

[7] The applicant wishes on appeal to this Court to challenge that exercise of discretion by the Court of Appeal insofar as it has partially struck out his appeal. As seems to have occurred in the Court of Appeal, much of this challenge seems to be directed to the lawfulness of the interim injunction and the finding that he was in breach of it and in contempt of court. Appeals against those decisions have previously been dismissed. In that circumstance Mr Siemer cannot now be permitted to argue that the orders should not have been made or that he has not been in contempt of court.

[8] The Court of Appeal's exercise of discretion was plainly made on a principled basis and in accordance with authority. There is no arguable ground upon which this Court could justifiably interfere with the Court of Appeal's decision.

[9] Mr Siemer has submitted that the Court of Appeal has wrongly deprived him of his appeal because, he has argued, the sole ground for the debarment order was his failure to pay costs to the respondent, yet the Court has also accepted that, in view of his bankruptcy, that failure should be disregarded. However, as already indicated, it is apparent from the judgment of Potter J making the debarment order that it was also made, as the Court of Appeal records, on the basis of Mr Siemer's continuing failure to comply with the injunction. There is therefore no substance in this point.

[10] Mr Siemer also argues that because O'Regan J had on an earlier appeal made findings against him, the Judge was therefore disqualified from participation in the present appeal. There is no merit in that submission. The fact that a Judge has previously participated in a decision adverse to a litigant does not disqualify him or her.

[11] Mr Siemer complains of a finding against him by Cooper J that he has indulged in racist abuse. However, he remains able to ventilate that matter to the extent that it may have influenced the level of the damages award.

[12] The respondents indicated that their cross-appeal would not be pursued if leave were not granted to Mr Siemer.

Solicitors:
McElroys, Auckland for Respondents