

IN THE SUPREME COURT OF NEW ZEALAND

SC 104/2014
[2014] NZSC 175

BETWEEN MALCOLM EDWARD RABSON
Applicant

AND REGISTRAR OF THE SUPREME
COURT
First Respondent

MINISTRY OF JUSTICE
Second Respondent

Court: William Young, Arnold and O'Regan JJ

Counsel: Applicant in person
K Laurensen for Respondents

Judgment: 2 December 2014

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant and another person were joint plaintiffs in judicial review proceedings. Dobson J held that these proceedings ought not to have been accepted for filing because of the terms of a vexatious litigant order against the applicant's co-plaintiff.¹ The applicant has subsequently issued replacement proceedings in his sole name and these were accepted for filing. But, more relevantly, he also filed a notice of appeal against the order made by Dobson J. The Deputy Registrar of the Court of Appeal refused to accept this notice on the basis that the applicant is an undischarged bankrupt. An application by the applicant to review that decision was

¹ *Siemer v Registrar of the Supreme Court* HC Wellington CIV-2014-485-10918, 25 August 2014.

allowed by French J, who directed that his notice of appeal be accepted for filing as of the date on which it was filed.²

[2] In the course of determining the application, French J:

- (a) saw s 101(1)(b) of the Insolvency Act 2006 as applicable to the applicant's appeal on the basis that his appeal rights if any in relation to the judicial review proceedings were vested in the Official Assignee;³ but
- (b) thought it arguable that by reason of an alleged waiver by the Official Assignee, the applicant might be entitled to appeal, an issue which she thought should be determined by a panel of three judges.⁴

She concluded by saying that, "The issue as to whether Mr Rabson is in fact entitled to bring the appeal will be dealt with at the substantive hearing".⁵

[3] The applicant wishes to challenge in this Court the conclusion of the Judge referred to above in [2](a). The difficulty, however, is that the actual decision of the Judge (which was to direct that his notice of appeal be accepted for filing) was in his favour. So he is seeking to challenge not the decision itself, but rather the reasons. As explained in *Independent Fisheries Ltd v Minister for Canterbury Earthquake Recovery*, this Court does not have jurisdiction to entertain challenges of that kind.⁶

[4] There is no hardship for the applicant in this conclusion. This is because, in addressing the issue identified by French J, the Court of Appeal panel which hears his appeal will have no choice but to grapple with the accuracy or otherwise of her views as to the effect of s 101(1)(b).

Solicitors:
Crown Law Office, Wellington for Respondents

² *Rabson v Registrar of the Supreme Court* [2014] NZCA 481.

³ At [4].

⁴ At [5]–[7].

⁵ At [8].

⁶ *Independent Fisheries Ltd v Minister for Canterbury Earthquake Recovery* [2013] NZSC 35.